

MR JUSTICE ARNOLD
22 MARCH 2012

IN THE MATTER OF PEARL ASSURANCE LIMITED

- and -

IN THE MATTER OF BA (GI) LIMITED

- and -

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000



ORDER

UPON THE APPLICATION of Pearl Assurance Limited ("**Pearl**") whose registered office is situated at 1 Wythall Green Way, Wythall, Birmingham, West Midlands, B47 6WG by the Claim Form presented to this Court on 6 December 2011;

AND UPON HEARING Counsel for Pearl and BA (GI) Limited ("**BA(GI)**"), whose registered office is situated at 1 Wythall Green Way, Wythall, Birmingham, West Midlands, B47 6WG;

AND UPON HEARING Counsel for the Financial Services Authority;

AND UPON READING the Claim Form and the evidence;

AND UPON BA(GI) by Counsel for Pearl (being BA(GI)'s Counsel for the purposes herein), undertaking to be bound by the Scheme and to do all such acts and things as may be necessary or expedient to be done or executed by them for the purposes of giving effect thereto;

THIS COURT HEREBY sanctions pursuant to section 111(1) of the Financial Services and Markets Act 2000 (the "**Act**") the Scheme set out in Schedule 1 hereto;

AND IT IS ORDERED pursuant to section 112(1) of the Act that, using the definitions as set out in the Scheme:

1. on and with effect from the Effective Date, the Transferred Business shall be transferred to and vested in BA(GI) in accordance with and subject to the terms of the Scheme;
2. on and with effect from the Effective Date, the Transferred Assets shall, by virtue of such Order and without any further act or instrument, be transferred to and vested in BA(GI) in accordance with and subject to the terms of the Scheme;

3. on and with effect from the Effective Date, the Transferred Liabilities shall, by virtue of such Order and without any further act or instrument, be transferred to and become the liabilities of BA(GI) in accordance with and subject to the terms of the Scheme;
4. the transfers effected by paragraphs 1, 2 and 3 above shall have effect notwithstanding any provision to the contrary in any agreement or arrangement with any person and whether or not Pearl would apart from the terms of this Order have capacity to effect the same;
5. on and with effect from the Effective Date, all references to Pearl in:
 - (a) any Transferred Policy; and
 - (b) any Outwards Reinsurance Contract,shall be read and construed as if the same were references to BA(GI) so that such contract shall operate as if BA(GI) was the original party to the contract in place of Pearl;
6. on and with effect from the Effective Date, all rights, benefits and advantages conferred on or vested in Pearl by or under all guarantees or sureties to which Pearl is a party and which relate solely to the Transferred Business shall by virtue of such Order be transferred to and vested in BA(GI);
7. all premiums attributable to or referable to Transferred Policies shall on and after the Effective Date be payable to BA(GI);
8. any mandate or other instructions in force on the Effective Date and providing for the payment by a banker or other intermediary of premiums payable under any of the Transferred Policies shall thereafter take effect as if it had provided for and authorised such payment to BA(GI);
9. any mandate or other instruction in force on the Effective Date as to the manner of payment by Pearl of any sum payable under any Transferred Policy shall continue in force as an effective authority to BA(GI);
10. any legal proceedings which immediately prior to the Effective Date are pending or contemplated by or against Pearl in relation to the Transferred Business, shall be continued or (as the case may be) commenced by or against BA(GI) in accordance with paragraph 3 of the Scheme, and that BA(GI) shall be entitled to all defences, claims, counterclaims and rights of set-off which would have been available to Pearl (as the case may be) in relation to such proceedings;
11. without prejudice to the generality of the other provisions of this Order, on and with effect from the Effective Date in any document evidencing or constituting a Transferred Policy references to Pearl (or any short form or abbreviation thereof) and/or to rights, powers, duties and/or obligations imposed upon Pearl shall, to the extent necessary to give full effect to the Scheme, be read, construed and treated as references to BA(GI) and/or to rights, powers, duties and/or obligations imposed upon, BA(GI), its board of directors or other officers, employees or agents of BA(GI) subject to and in accordance with the terms of the Scheme;
12. the production of a copy of this Order and a copy of a certificate by a director of BA(GI) that the Scheme has taken effect shall, for all purposes, be evidence of the transfer to, and vesting in, BA(GI) of the Transferred Business, the Transferred Assets and the Transferred Liabilities in accordance with this Order and the Scheme;

13. neither the transfer of the Transferred Business, the Transferred Assets and the Transferred Liabilities nor any other matter provided for by this Order or the Scheme shall:
 - (a) invalidate or discharge any agreement or other thing;
 - (b) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or instrument to which Pearl or BA(GI) is a party or is bound;
 - (c) allow any party to any agreement to terminate that agreement when he would not otherwise have been able to do so;
 - (d) entitle any party to any agreement to which Pearl or BA(GI) is a party or is bound to vary the terms of that agreement when he would not otherwise have been able to do so; or
 - (e) cause the imposition of any greater or lesser obligation on any party to any such agreement when that greater or lesser obligation would not otherwise have been imposed;
14. each reference in the ILU Guarantee dated 24 April 1990 between the Institute of London Underwriters and AMP Society, to "the Company" (being Pearl) shall be read and construed as a reference to both Pearl and BA(GI) and the obligations of the guarantor under such guarantee shall continue in full force and effect;
15. in accordance with section 114(2) of the Act:
 - (a) notice of the making of this Order shall be published in each of the EEA States listed in Schedule 2 hereto by the insertion of a notice in such publication as is advised to BA(GI) by either the Financial Services Authority or any other relevant regulatory authority or failing any such advice in any official gazette or national newspaper in the relevant state or in an edition of the Financial Times newspaper circulating in the relevant state; and
 - (b) such notice shall specify that the period during which the holder of any policy included within the transfer for which the Scheme provides, which evidences a contract of insurance as regards which the relevant EEA State is the EEA State in which the risk is situated, may exercise the right (if any) under the law of the relevant EEA State to cancel the policy shall be the period of 21 days starting from the date of such publication or such other period (if any) as the relevant EEA State shall determine; and
16. there shall be liberty for Pearl and BA(GI) to apply:
 - (a) for such Orders as may be expedient or necessary for the purposes set out in section 112(1) of the Act;
 - (b) pursuant to paragraph 8 of the Scheme; and
 - (c) generally.

Dated 22 March 2012.

SCHEDULE 1

THE SCHEME

IN THE MATTER OF PEARL ASSURANCE LIMITED

- and -

IN THE MATTER OF BA (GI) LIMITED

- and -

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

SCHEME



M0305.00169.8
C4/JSS/TJG

Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London, EC1A 2FG

SCHEME

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IN THE MATTER OF PEARL ASSURANCE LIMITED

- and -

BA (GI) LIMITED

- and -

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

SCHEME

Pursuant to Part VII of the Financial Services and Markets Act 2000 for the transfer to BA (GI) Limited of the non-life insurance business of Pearl Assurance Limited.

INTERPRETATION

In this Scheme:

1. The following expressions bear the meanings specified opposite them:

"Act"	the Financial Services and Markets Act 2000;
"BA(GI)"	BA (GI) Limited, a company incorporated in England with company number 3002 and whose registered office is at 1 Wythall Green Way, Wythall, Birmingham, West Midlands, B47 6WG;
"Court"	the High Court of Justice of England and Wales;
"Effective Date"	the time and date on which this Scheme shall become effective in accordance with paragraph 7 of this Scheme;

"Excluded Policies"	<p>policies written by Pearl falling within Part I of Schedule 1 to the Regulated Activities Order (Contracts of General Insurance) under which any liability (whether current or future, actual or contingent) remains unsatisfied or outstanding at the Effective Date:</p> <ul style="list-style-type: none">(a) which are direct insurance policies written by the Transferor in the course of carrying on insurance business in the UK in respect of which:<ul style="list-style-type: none">(i) for the purposes of Schedule 12 to the Act, an EEA State other than the UK is the State in which the risk is situated; and(ii) the Insurance Regulator has not prior to the issue of the Order provided the certificate referred to in Schedule 12 to the Act with respect to the relevant EEA State which is the State in which the risk is situated; or(b) which the Court for any reason determines shall not be transferred by virtue of the Scheme or the Order; or(c) which prior to the Court making the Order the Transferor and the Transferee agree should be excluded from the Scheme;
"Excluded Policies Reinsurance Agreement"	<p>the reinsurance agreement dated 22 November 2011 between Pearl and BA(GI) in respect of the Excluded Policies;</p>
"Insurance Regulator"	<p>the Financial Services Authority and all relevant successor regulators of UK insurance companies;</p>
"Order"	<p>the Order of the Court sanctioning this Scheme in accordance with section 111(1) of the Act;</p>
"Outwards Reinsurance Contracts"	<p>all reinsurance contracts entered into by Pearl as reinsured in relation to the Transferred Policies subsisting on the Effective Date other than the Excluded Policies Reinsurance Agreement;</p>

"Pearl"	Pearl Assurance Limited, a company incorporated in England with company number 1419 and whose registered office is 1 Wythall Green Way, Wythall, Birmingham, West Midlands, B47 6W9;
"Regulated Activities Order"	the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);
"Transferred Assets"	<p>all rights and powers of Pearl under or by virtue of the Transferred Policies and the Outwards Reinsurance Contracts as at the Effective Date but excluding:</p> <ul style="list-style-type: none">(a) rights under the Excluded Policies; and(b) any commission due to Pearl in respect of, and tax assets attributable to, the Transferred Policies and the Outwards Reinsurance Contracts;
"Transferred Business"	the Transferred Assets and the Transferred Liabilities;
"Transferred Liabilities"	<p>all liabilities (whether current or future, certain or contingent) under the Transferred Policies and the Outwards Reinsurance Contracts as at the Effective Date, whensoever incurred but excluding:</p> <ul style="list-style-type: none">(a) any liabilities arising under any Excluded Policies; and(b) any commission due from Pearl in respect of, and all liability to taxation attributable to, the Transferred Policies and the Outwards Reinsurance Contracts;
"Transferred Policies"	<p>all policies written by Pearl falling within Part I of Schedule 1 to the Regulated Activities Order (Contracts of General Insurance) except the Excluded Policies, under which any liability or contingent liability remains unsatisfied or outstanding on the Effective Date, including:</p> <ul style="list-style-type: none">(a) every application for such a policy received by Pearl and that becomes a policy of BA(GI) after the Effective Date; and(b) any such policy written by Pearl that has lapsed on or before the Effective Date and is reinstated by BA(GI) after the Effective Date;

"UK"

the United Kingdom of Great Britain and Northern Ireland.

2. "Property" includes property, assets, rights and any interest therein and powers of every description; "liabilities" includes duties and obligations and "transfer" includes (as the context may require) assign or assignment, dispose or disposal, convey or conveyance.
3. Any reference to an enactment or a statutory provision includes that enactment or statutory provision as amended, varied or re-enacted from time to time.
4. Words denoting the singular include the plural and vice versa; words denoting one gender include the other genders; and words denoting persons include corporations and vice versa.
5. For the avoidance of doubt "insurance" includes reinsurance and "policies" includes reinsurance contracts.

PRELIMINARY

- (A) BA(GI) is an insurance company authorised under Part IV of the Act to carry out contracts of general insurance and reinsurance in the UK. Pearl is an insurance company authorised under Part IV of the Act to effect and carry out contracts of long-term insurance and reinsurance in the UK and to carry out contracts of general insurance and reinsurance in the UK.
- (B) Pearl and BA(GI) are both subsidiaries of Pearl Group Holdings (No. 2) Limited.
- (C) In accordance with this Scheme, and subject to, and in accordance with, Part VII of the Act, it is proposed to transfer the Transferred Business to BA(GI).
- (D) Pearl and BA(GI) have agreed to appear by Counsel on the hearing of the application made by the Claim Form seeking an Order to sanction this Scheme and to undertake to be bound thereby and to do all such acts and things as may be necessary or expedient to be executed or done by it for the purposes of giving effect to this Scheme.

OPERATIVE PROVISIONS

1. TRANSFER OF ASSETS

- 1.1 On the Effective Date the Transferred Assets shall be transferred to BA(GI).
- 1.2 BA(GI) shall accept without investigation or requisition such title as Pearl shall have at the Effective Date to the Transferred Assets.

2. TRANSFER OF LIABILITIES

On the Effective Date the Transferred Liabilities shall be transferred to, and shall become liabilities of, BA(GI) and shall cease to be liabilities of Pearl.

3. TRANSFER OF BUSINESS AND CONTINUITY OF PROCEEDINGS

- 3.1 Subject to paragraphs 1 and 2 of this Scheme the Transferred Business shall by Order of the Court and without any further act or instrument be transferred to and vest in BA(GI) in accordance with this Scheme for all the estate and interest therein of Pearl but subject to all mortgages, charges and encumbrances (if any) then affecting any asset comprised therein.
- 3.2 On the Effective Date every holder of a Transferred Policy shall become entitled, in substitution for any rights available to him under that policy against Pearl, to the same rights against BA(GI) and the obligations of every such holder under a Transferred Policy shall become enforceable (so far as still subsisting) by BA(GI). BA(GI) shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in relation to the Transferred Policies that would have been available to Pearl.
- 3.3 If any proceedings are pending or contemplated by or against Pearl in relation to the Transferred Business on the Effective Date, the same shall be continued or (as the case may be) commenced by or against BA(GI) with effect from the Effective Date.

4. PREMIUMS AND MANDATES

- 4.1 All premiums attributable or referable to the Transferred Policies shall on and after the Effective Date be payable to BA(GI).
- 4.2 Any direct debit mandate, standing order or other instruction in force on the Effective Date and providing for the payment by a bank or other intermediary of premiums payable under any Transferred Policy shall thereafter take effect as if it had provided for and authorised such payment to BA(GI).
- 4.3 Any mandate or other instruction in force on the Effective Date as to the manner of payment by Pearl of any sum payable under any Transferred Policy shall continue in force as an effective authority to BA(GI).

5. EXCLUDED POLICIES

- 5.1 Subject to paragraph 5.4 the Excluded Policies shall not be transferred to BA(GI) by this Scheme and the liabilities under the Excluded Policies shall remain liabilities of Pearl but shall at all times after the Effective Date be reinsured in their entirety into BA(GI) pursuant to the Excluded Policies Reinsurance Agreement.
- 5.2 If any person exercises any right or option granted under the terms of an Excluded Policy which provides for a new, additional or replacement policy to be issued such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by Pearl of a policy which complies with the terms of such right or option. Any new policy

issued by Pearl pursuant to this paragraph 5.2 shall be treated as an Excluded Policy and shall be reinsured on the basis set out in this paragraph 5.

5.3 Without prejudice to the right of a person set out in paragraph 5.2 to have a right or option satisfied by the issue of a policy by Pearl, Pearl shall be entitled to procure that BA(GI) shall offer to such person a policy which complies with the terms of such right or option.

5.4 If the novation of any Excluded Policy to BA(GI) is procured, the rights and liabilities relating to such policy shall, to the extent not previously transferred, be transferred to BA(GI) and such policy shall thereafter be dealt with by BA(GI) under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferred Policy.

6. **INDEMNITY**

From the Effective Date BA(GI) shall on demand indemnify Pearl against and hold Pearl harmless from:

- (a) all actions, claims, demands and proceedings of any nature from time to time made against Pearl (whether brought by a party to a Transferred Policy or by a third party); and
- (b) all losses, damages, payments, awards, costs or expenses made, suffered or incurred by Pearl,

in respect of the Transferred Policies whensoever arising.

7. **EFFECTIVE DATE**

This Scheme shall become operative at 11:59 pm (UK time) on 31 March 2012 or such other date as may be specified in an Order of the High Court of Justice in England sanctioning this Scheme under Part VII of the Act, or as the Court may allow upon the application of Pearl and BA(GI).

8. **COSTS AND EXPENSES**

The costs and expenses of and incidental to the preparation and carrying into effect of this Scheme arising prior to the Effective Date and not previously paid by Pearl or BA(GI) shall be met by BA(GI).

9. **MODIFICATIONS OR ADDITIONS**

BA(GI) may with the consent of Pearl agree for and on behalf of themselves and all other persons concerned to any modification or addition to this Scheme or to any further condition or provision affecting the same that the Court may approve or impose, whether before or after the Effective Date.

DATED 22 March 2012

No: 10406 of 2011

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT**

**IN THE MATTER OF PEARL ASSURANCE
LIMITED**

- AND -

IN THE MATTER OF BA (GI) LIMITED

- AND -

**IN THE MATTER OF THE FINANCIAL SERVICES
AND MARKETS ACT 2000**

SCHEME

(pursuant to Part VII of the Financial
Services and Markets Act 2000)

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SCHEDULE 2

LIST OF EEA STATES

Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Gibraltar
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden

No: 10406 of 2011

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

MR JUSTICE *ARNOLD*
22 MARCH 2012

IN THE MATTER OF PEARL ASSURANCE LIMITED

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IN THE MATTER OF BA (GI) LIMITED

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ORDER

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