



Switzerland No. 3 (2019)

Agreement

between the United Kingdom of Great Britain and Northern Ireland and
the Swiss Confederation on Direct Insurance other than Life Insurance

Davos, 25 January 2019

[The Agreement is not in force]

Decision

by the contracting parties concerning the agreement between the United
Kingdom of Great Britain and Northern Ireland and Swiss Confederation
on Direct Insurance other than Life Insurance

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
January 2019*



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**AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND AND THE SWISS
CONFEDERATION ON DIRECT INSURANCE OTHER THAN LIFE
ASSURANCE (The 'Agreement')**

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Preamble

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
of the one part and

THE SWISS CONFEDERATION of the other part (the 'Contracting Parties')

CONSIDERING the close relations which exist between the Swiss Confederation ("Switzerland") and the United Kingdom of Great Britain and Northern Ireland;

DESIRING to consolidate existing economic relations between the two Contracting Parties in the field of insurance, and to promote, under fair conditions of competition, the harmonious development of these relations by ensuring protection for insured persons;

RESOLVED to that end to remove obstacles to the taking-up and pursuit of the business of direct insurance, other than life assurance, on a reciprocal and non-discriminatory basis safeguarded by the necessary legal conditions in respect of supervision, and thus to introduce between themselves freedom of establishment in this field;

EMPHASISING that this in no way affects their power to legislate subject to limits set by public international law;

ENDEAVOURING to do everything in their power to see that their domestic legal orders in this field evolve in a mutually compatible manner;

OBSERVING that it is in the interest of their economies to develop and strengthen their relations in this way in a field which up to now has not been governed by contractual rules, and to contribute thus to the coordination of economic law between the two Contracting Parties;

DECLARE themselves ready to consider in the light of any relevant factor, and particularly of the evolution of insurance law, the possibility of concluding other agreements in respect of private insurance;

HAVE AGREED in pursuit of these aims to conclude the present Agreement and to this end have designated as their Plenipotentiaries:

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Mr Philip Hammond, Chancellor of the Exchequer, HM Treasury;

THE SWISS CONFEDERATION:

Mr Ueli Maurer, President of the Swiss Confederation, Head of the Federal Department of Finance;

WHO, having exchanged their Full Powers, found in good and due form, have agreed as follows:

SECTION I

BASIC PROVISIONS

ARTICLE 1

Object of the Agreement

The object of the Agreement is to lay down, on a reciprocal basis, the conditions which are necessary and sufficient to enable agencies and branches of undertakings whose head office is situated in the territory of one of the Contracting Parties and which wish to become established in the territory of the other Contracting Party, or are established there, to take up or pursue the self-employed activity of direct insurance other than life assurance.

ARTICLE 2

Scope

The classes of insurance which are subject to this Agreement are set out in Annex No 1.

ARTICLE 3

Exceptions to the Scope

The kinds of insurance, operations and undertakings which are not subject to this Agreement are listed in Annex No 2.

ARTICLE 4

Application of Domestic Law

The law in force in each Contracting Party shall apply:

- to points which are not governed by this Agreement, and
- to questions relating to points governed by this Agreement, in so far as such questions are not regulated by the Agreement.

ARTICLE 5

Principle of Non-Discrimination

5.1. The Contracting Parties undertake to apply the principle of non-discrimination when introducing and applying the provisions of this Agreement.

5.2. The principle of non-discrimination exclusively concerns the taking up and pursuit of the activity of direct insurance, other than life assurance, in the territory in which the supervisory authority which grants authorisation is competent.

ARTICLE 6

Supervisory Authority

For the purposes of this Agreement, the supervisory authority shall be any supervisor of direct insurance in the United Kingdom of Great Britain and Northern Ireland or Switzerland in scope of this Agreement. For the avoidance of doubt, this includes any supervisor in the territories defined in Article 43.

SECTION II

CONDITIONS GOVERNING ADMISSION

ARTICLE 7

Compulsory Authorisation

7.1. Each Contracting Party shall make the taking-up of the business of direct insurance in its territory by an undertaking which establishes its head office there subject to authorisation by the supervisory authority.

7.2. Each Contracting Party shall, furthermore, make the opening in its territory of an agency or branch of an undertaking whose head office is situated in the territory of the other Contracting Party subject to authorisation by the supervisory authority.

7.3. In addition, it shall make the opening in its territory of an agency or branch of an undertaking whose head office is situated outside the territories to which this Agreement applies, as laid down in Article 43, subject to authorisation by the supervisory authority.

ARTICLE 8

Scope of Authorisation

8.1. An authorisation shall be valid for the covering of risks situated in the entire territory in which the supervisory authority granting the authorisation is competent unless, and in so far as the legislation applicable permits, the applicant seeks permission to carry on his business only in a part of that territory.

Provisions already in force in each Contracting Party concerning the possibility for an insurance undertaking to cover risks situated outside the territory in which the supervisory authority which granted its authorisation is competent are not affected by the obligations set out in the first sentence of this paragraph.

8.2. A risk is situated in the territory in which a supervisory authority is competent:

- in the case of insurance relating either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy, where the property is situated in that territory;
- in the case of insurance relating to vehicles of any type, where the vehicle is registered in that territory;
- in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned, where the policy-holder took out the policy in that territory;
- in all cases not explicitly covered by the foregoing indents, where the policy-holder has his habitual residence in that territory or, if the policy-holder is a legal person, where the latter's establishment, to which the contract relates, is situated in that territory.

8.3. Authorisation shall be granted in respect of a particular class of insurance. It shall cover the entire class, unless the applicant wishes to cover only part of the risks pertaining to such class, as classified under Part A of Annex No 1.

However:

- it shall be open to the supervisory authority to grant authorisation for any group of classes classified under Part B of Annex No 1, provided that it attaches to such authorisation the appropriate denomination specified therein;
- authorisation granted for one class or group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified under Part C of Annex No 1 are fulfilled.

ARTICLE 9

Legal Form

The legal forms which may be assumed by an undertaking whose head office is situated in the territory of a Contracting Party are listed in Annex No 3.

ARTICLE 10

Conditions of Authorisation

10.1. Each Contracting Party shall require that an undertaking whose head office is situated in the territory of the other Contracting Party and which seeks an authorisation to open in its territory an agency or branch shall satisfy the following conditions:

- (a) it shall submit its statutes and a list of its directors and managers;
- (b) it shall produce a certificate issued by the supervisory authority of the Contracting Party in whose territory its head office is situated, attesting:
 - that the applicant undertaking is constituted in one of the legal forms listed in Annex No 3,
 - that the applicant undertaking limits its business activities to the business of insurance and to operations directly arising therefrom to the exclusion of all other commercial business,
 - the classes of insurance which the undertaking is entitled to transact,
 - that it possesses the minimum guarantee fund referred to in Article 2 of Protocol No 1 or, where appropriate, the minimum solvency margin calculated in accordance with Article 1 of that Protocol if the minimum solvency margin is higher than the minimum guarantee fund,
 - the risks which it actually covers,
 - the existence of the financial resources referred to in Article 1 (f) of Protocol No 2;
- (c) it shall submit a scheme of operations drawn up in accordance with Protocol No 2, accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years.

However, where an undertaking has existed for fewer than three financial years, it shall submit such documents only for the financial years that have closed, if:

- it is a new undertaking created as a result of a merger between existing undertakings, or
 - it is a new undertaking created by one or more existing undertakings for the purpose of transacting a specific class of insurance, previously pursued by one of the undertakings in question;
- (d) it shall designate an authorised agent having his permanent residence and abode in the territory in which the supervisory authority of the Contracting Party in question is competent and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of that Contracting Party.

Where the legal provisions of a Contracting Party permit the authorised agent to have legal personality, it shall have its head office in the territory of that Contracting Party and in turn designate a natural person to represent it who satisfies the above conditions.

This Agreement does not preclude the authorised agent referred to in Articles 10.1 (d) and 11.4 thereof and in Article 1 (d) of Protocol No 3 being required to assume effective management of the agency or branch in respect of all the business activities the latter intends carrying on in the territory in which the supervisory authority from which authorisation is sought is competent.

10.2. This Agreement shall not prevent the Contracting Parties from enforcing provisions requiring for all insurance undertakings, at the time of granting of the authorisation, approval of the general and special policy conditions, scales of premiums and any other documents necessary for the normal exercise of supervision.

However, with regard to the risks referred to in Article 2 of Protocol No 2, the Contracting Parties shall not lay down provisions requiring the approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which the undertaking intends to use in its dealings with policy holders. They may require only non-systematic notification of these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks, and this requirement may not constitute a prior condition for an undertaking to be able to carry on its activities.

For the purposes of this Agreement, general and special policy conditions shall not include specific conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

This Agreement shall likewise not prevent the Contracting Parties from subjecting undertakings requesting authorisation for class 18 in Part A of Annex No 1 to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment, available to the undertakings to meet their commitments arising from this class of insurance.

ARTICLE 11

Granting of Authorisation

11.1. Each Contracting Party undertakes to grant authorisation provided the conditions laid down in Article 10 are met and further provided that the other provisions governing undertakings with their head offices in its territory are observed.

11.2. The Contracting Parties shall not make authorisation subject to the lodging of a deposit or the provision of security.

Switzerland reserves the right, with regard to the assignment to the securities fund of immovable property directly owned by insurance undertakings, to have the said immovable property registered in the securities fund register maintained by the undertaking and to have included in the land register a note relating thereto restricting the right to dispose freely of such property which, under Swiss law, does not constitute registration of a mortgage.

11.3. The Contracting Parties undertake furthermore that no application for an authorisation shall be examined in the light of the economic requirements of the market.

11.4. The designated authorised agent may be challenged by the supervisory authority only on grounds relating to his good repute or technical qualifications.

ARTICLE 12

Extension of the Scope of an Authorisation

12.1. Each Contracting Party shall make any extension of the business for which an initial authorisation was granted pursuant to Articles 7 and 8 subject to a new authorisation.

12.2. Each Contracting Party shall require that, for the purpose of extending the business of an agency or branch either to other classes or in the circumstances referred to in Article 8.1, the applicant for the authorisation shall submit a scheme of operations in accordance with Protocol No 2 and produce the certificate referred to in Article 10.1 (b).

ARTICLE 13

Authorisation Procedure

13.1. Authorisation shall be sought from the supervisory authority by the undertaking whose head office is situated in the territory of the other Contracting Party.

13.2. The scheme of operations drawn up in accordance with Protocol No 2, together with the observations of the supervisory authority responsible for granting authorisation, shall be forwarded by the latter to the supervisory authority of the Contracting Party in whose territory the head office is situated.

The latter shall make known its opinion to the former within three months following receipt of the documents. If no opinion has been received upon the expiry of that period, it shall be deemed to be favourable.

13.3. The supervisory authority from whom authorisation has been sought shall forward to the applicant undertaking its decision on the application not later than six months following receipt of the application for authorisation.

ARTICLE 14

Refusal of Authorisation

14.1. Any decision to refuse an authorisation shall be accompanied by the grounds on which it is based and shall be notified to the undertaking in question.

14.2. Each Contracting Party shall make provision for a right of recourse to the courts in the event of any refusal of authorisation. Provision shall also be made for such right in regard to cases where the supervisory authority has not given a decision on an application for authorisation upon the expiry of a period of six months from the date of its receipt.

SECTION III

CONDITIONS GOVERNING THE PURSUIT OF BUSINESS

ARTICLE 15

Choice of Assets

The Contracting Parties shall not prescribe any rules as to the choice of assets in excess of those representing the technical reserves referred to in Articles 19 to 23. Subject to the provisions of Articles 18.2, 20, 21, 23, 29.2 and 29.3, the Contracting

Parties shall not restrict the free disposal of movable or immovable property forming part of the assets of undertakings.

ARTICLE 16

Establishment of Solvency Margin

16.1. Each Contracting Party shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.

16.2. The definition of the solvency margin and the manner in which it is to be calculated and represented, and the minimum guarantee fund fixed, are set out in Protocol No 1.

ARTICLE 17

Verification of the State of Solvency

17.1. The supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated shall verify the state of solvency of the undertaking with respect to its entire business.

17.2. The supervisory authority of the other Contracting Party shall, where it has granted the said undertaking authorisation to open an agency or branch, provide the abovementioned authority with all the information necessary to enable such verification to be carried out.

17.3. Each Contracting Party shall require undertakings whose head office is situated in its territory to produce an annual account, covering all their transactions, of their situation and solvency, and, as regards cover for risks listed under class 18 in Part A of Annex No 1, of the other resources available to them for meeting their liabilities, where its laws provide for supervision of such resources.

ARTICLE 18

Restoration of Financial Situation

18.1. For the purpose of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required under Article 1 of Protocol No 1, the supervisory authority of the Contracting Party in whose territory the head office is situated shall require a plan for the restoration of a sound financial situation to be submitted for its approval.

18.2. If the solvency margin falls below the guarantee fund defined in Article 2 of Protocol No 1, the supervisory authority of the Contracting Party in whose territory

the head office of the undertaking is situated shall require the latter to submit a short-term financing plan for its approval.

It may also restrict or prohibit the free disposal of the assets of the undertaking. It shall inform the supervisory authority of the Contracting Party in whose territory authorised agencies or branches of the undertaking are situated of any such measures. If they are requested by the former authority, the latter authority shall take the same measures.

The supervisory authority may, furthermore, take all measures necessary to safeguard the interests of insured persons should the situation envisaged in this paragraph arise.

ARTICLE 19

Establishment of Technical Reserves

19.1. Each Contracting Party in whose territory an undertaking carries on business shall require that undertaking to establish sufficient technical reserves.

19.2. The amount of such reserves shall be determined in accordance with the rules laid down in each Contracting Party, or, in the absence of such rules, in accordance with the established practices in each Contracting Party.

ARTICLE 20

Matching Assets and Localisation of Assets constituting Technical Reserves

20.1. Technical reserves shall be represented by equivalent and matching assets localised in the territory in which the supervisory authority of each Contracting Party is respectively competent. Each Contracting Party may, however, permit relaxations of the rules on matching assets and the localisation of assets.

20.2. 'Matching assets' means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realisable in the same currency.

20.3. 'Localisation of assets' means the existence of movable or immovable assets in the territory in which the supervisory authority of the Contracting Party concerned is competent, but shall not be construed as involving a requirement that movable property be deposited or that immovable property be made subject to restrictive measures such as the registration of a mortgage. Assets represented by claims against debtors shall be regarded as localised in the territory in which the supervisory authority of the Contracting Party where they are to be realised is competent.

20.4. Subject to the above Articles 20.1 - 20.3, localisation shall be governed by the respective rules in force in the Contracting Parties.

20.5. With regard to Article 20.3, Switzerland reserves the right, with regard to the assignment to the securities fund of immovable property directly owned by insurance undertakings, to have the said immovable property registered in the securities fund register maintained by the undertaking and to have included in the land register a note relating thereto restricting the right to dispose freely of such property which, under Swiss law, does not constitute registration of a mortgage.

ARTICLE 21

Nature of Technical Reserves

21.1. The rules in force in each Contracting Party in whose territory an undertaking pursues its business shall determine the nature of the assets and, where appropriate, the extent to which they may be used for the purpose of representing the technical reserves, and shall also determine the rules for valuing such assets.

21.2. The expression 'nature of the assets' refers to the various categories of movable and immovable assets and their specific characteristics, such as those relating to the debtor in the case of a claim forming part of the representation of the technical reserves.

21.3. If a Contracting Party allows any technical reserves to be represented by claims against re-insurers, it shall fix the percentage so allowed or shall make provision for it to be fixed. In such case, notwithstanding the provisions of Article 20.1, it may not require the assets representing such claims to be localised.

ARTICLE 22

Balance Sheet

The supervisory authority of the Contracting Party in whose territory the head office of an undertaking is situated shall verify that the undertaking's balance sheet shows in respect of the technical reserves assets equivalent to the underwriting liabilities assumed in all the countries in which it carries on business.

ARTICLE 23

Non-Compliance with the Requirements relating to Technical Reserves

23.1. If an agency or branch does not comply with the provisions laid down in Articles 19 to 21, the supervisory authority of the Contracting Party in whose territory it carries on business may prohibit the free disposal of assets localised in its

territory after having informed the supervisory authority of the Contracting Party in whose territory the head office is situated that it intends to take such action.

23.2. The supervisory authority of the Contracting Party in whose territory such agency or branch carries on business may, furthermore, take any measure necessary to safeguard the interests of insured persons.

ARTICLE 24

Transfer of Portfolio

24.1. Under the conditions laid down by the legal provisions in force in the Contracting Party in question, the supervisory authority shall authorise undertakings which are established in the territory for which it is responsible to transfer all or part of their portfolios of contracts to an accepting office established in the same territory as the transferring undertaking, if the supervisory authority of the Contracting Party in whose territory the head office of the accepting office is situated certifies that the latter possesses the necessary margin of solvency after taking the transfer into account.

24.2. A transfer authorised in accordance with Article 24.1 shall be published in the territory in which the supervisory authority of the Contracting Party in which the transferring undertaking and the accepting office are established is competent, under the conditions laid down by the legal provisions in force in each Contracting Party in question. Such transfer shall be automatically valid against the policy-holders, the insured persons and any other person having rights and obligations arising out of the contracts transferred. However, this paragraph shall not preclude the existence in each of the Contracting Parties of provisions providing policy-holders with the option of cancelling the contract within a given period after the transfer.

ARTICLE 25

Approval of Conditions and Scales of Premiums

25.1. This Agreement shall not prevent the Contracting Parties from enforcing provisions requiring of all undertakings and in respect of all classes of insurance, during the pursuit of business, approval of the general and special policy conditions, scales of premiums and any other documents necessary for the normal exercise of supervision.

However, with regard to the risks referred to in Article 2 of Protocol No 2, the Contracting Parties shall not lay down provisions requiring the approval or systematic notification of general and special policy conditions, scales of premiums, forms and other printed documents which the undertaking intends to use in its dealings with policy-holders. They may require only non-systematic notification of

these conditions and other documents, for the purpose of verifying compliance with laws, regulations and administrative provisions in respect of such risks.

With regard to the same risks, the Contracting Parties may not retain or introduce prior notification or approval of proposed increases in scales of premiums except as part of a general price control system.

25.2. This Agreement shall likewise not prevent the Contracting Parties from subjecting undertakings which have obtained authorisation for class 18 in Part A of Annex No 1 to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment, available to the undertakings to meet their commitments arising from this class of insurance.

25.3. For the purposes of this Agreement, general and special policy conditions shall not include specific conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

ARTICLE 26

Documentation

The Contracting Parties shall require undertakings carrying on business in their territory to produce the documents, including statistical documents, necessary for the exercise of supervision and, as regards cover for risks listed under class 18 in Part A of Annex No 1, to indicate the resources available to them for meeting their liabilities, where their laws provide for supervision of such resources.

SECTION IV

WITHDRAWAL OF AUTHORISATION

ARTICLE 27

Withdrawal Conditions

The supervisory authority of a Contracting Party may withdraw from an undertaking whose head office is situated in the territory of the other Contracting Party the authorisation which it granted to open an agency or branch, where such agency or branch:

- (a) no longer fulfils the conditions for admission, or
- (b) fails seriously to fulfil its obligations under the rules applicable to it, in particular with respect to the establishment of technical reserves.

ARTICLE 28

Withdrawal Procedure

28.1. Before withdrawing authorisation, the supervisory authority shall consult the supervisory authority of the Contracting Party in whose territory the head office of the undertaking is situated.

If the former authority deems it necessary to suspend the business of the agency or branch referred to in Article 27 before consultation is concluded, it shall immediately advise the latter authority thereof.

28.2. Any decision to withdraw an authorisation or to order the suspension of business shall state the reasons on which it is based and shall be notified to the undertaking in question.

28.3. Each Contracting Party shall make provision for a right of recourse to the courts against such a decision.

ARTICLE 29

Withdrawal of the Authorisation granted to the Head Office

29.1. Where the supervisory authority of a Contracting Party in whose territory the head office is situated withdraws the authorisation which it has granted to the undertaking, it shall notify such action to the supervisory authority of the other Contracting Party if the latter has granted the undertaking authorisation to open an agency or branch. The latter authority shall also withdraw its authorisation.

29.2. In the case referred to in Article 29.1, the supervisory authority of the Contracting Party in whose territory the head office is situated shall, in conjunction with the supervisory authority of the other Contracting Party, take all measures necessary to safeguard the interests of insured persons and shall, in particular, restrict the free disposal of the assets of the undertaking, if this measure has not already been taken, pursuant to Article 18.2 and Article 23.

29.3. Article 29.1 and, where relevant, Article 29.2 shall likewise apply where the undertaking surrenders of its own accord the authorisation granted to it.

SECTION V

COLLABORATION BETWEEN SUPERVISORY AUTHORITIES

ARTICLE 30

Conditions of Collaboration

The Contracting Parties shall take all necessary measures to enable their supervisory authorities to collaborate closely in the implementation of this Agreement.

ARTICLE 31

Objectives of the Collaboration

31.1. The supervisory authorities shall collaborate in verifying the provisions by undertakings of financial guarantees as defined in Articles 16 and 19 to 21 and, in particular, in applying the measures provided for in Articles 18 and 23.

31.2. Where the undertakings in question are authorised to cover the risks listed under class 18 in Part A of Annex No 1, the supervisory authorities shall also collaborate in supervising the resources available to those undertakings for carrying out the assistance operations they have undertaken to perform, where their laws provide for supervision of such resources.

ARTICLE 32

Exchange of Information

The supervisory authorities shall furnish each other with all documents and information necessary for exercising supervision.

ARTICLE 33

Requirements of Secrecy

33.1. Articles 30 to 32 shall under no circumstances be interpreted as requiring any supervisory authority to furnish information which would disclose commercial secrets of an undertaking or information the communication of which would be contrary to public policy.

33.2. Nevertheless, the secrecy rules to which the supervisory authorities are subject shall not hinder collaboration between those authorities and the mutual assistance provided for by this Agreement.

33.3. The information exchanged shall be used by such authorities solely for the purpose of carrying out their supervisory duties.

SECTION VI

GENERAL AND FINAL PROVISIONS

ARTICLE 34

Particular Provisions

34.1. The following particular provisions shall apply to the United Kingdom of Great Britain and Northern Ireland:

re Article 10.1 (c) of the Agreement:

with regard to the association of underwriters known as Lloyd's, submission of the balance sheet and the profit and loss account shall be replaced by the compulsory presentation of overall annual trading accounts covering the insurance operations, and accompanied by an affidavit certifying that auditors' certificates have been supplied in respect of each insurer and showing that the liabilities incurred as a result of those operations are wholly covered by the assets. These documents must allow the supervisory authorities to form a comparable view of the state of solvency of the Association;

re Article 10.1 (d) of the Agreement:

with regard to the association of underwriters known as Lloyd's, in the event of any litigation in the host country resulting from underwritten commitments, insured persons must not be less favourably treated than if the litigation had been brought against a business of a more conventional type. The authorised agent must, therefore, possess sufficient powers to enable proceedings to be instituted against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

34.2. The provisions applicable to agencies and branches of undertakings whose head office is situated outside the territories to which this Agreement applies pursuant to Article 43 thereof are set out in Protocol No 3.

ARTICLE 35

Integral Parts of the Agreement

The Annexes and Protocols annexed to this Agreement shall form an integral part thereof.

ARTICLE 36

Failure to Fulfil Obligations

- 36.1. The Contracting Parties shall refrain from taking any measures which might jeopardise the attainment of the objectives of the Agreement.
- 36.2. They shall take all general or special measures necessary to ensure fulfilment of the obligations arising from this Agreement.
- 36.3. If either Contracting Party considers that the other Contracting Party has failed to fulfil an obligation arising from this Agreement, the procedure referred to in Article 37.2 shall apply.

ARTICLE 37

Joint Committee

- 37.1. A joint committee composed of representatives of Switzerland and representatives of the United Kingdom of Great Britain and Northern Ireland, is hereby established (the 'Joint Committee'), which shall be responsible for the administration of the Agreement and its proper implementation and for taking decisions in the circumstances provided for therein. Its decisions shall be taken by mutual agreement.
- 37.2. For the purpose of the proper implementation of the Agreement, the Contracting Parties shall exchange information and, at the request of either Contracting Party, shall hold consultations within the Joint Committee. The exercise of supervision, referred to in Section V of this Agreement, shall not come within its powers.
- 37.3. The Joint Committee shall adopt its own rules of procedure.
- 37.4. The Joint Committee shall be chaired in turn by each of the Contracting Parties in accordance with detailed arrangements to be laid down in its rules of procedure. At the request of either Contracting Party, in accordance with conditions to be laid down in its rules of procedure, it shall be convened by its Chairman whenever special circumstances so require.
- 37.5. The Joint Committee may decide to set up any working party needed to assist it in carrying out its tasks.

ARTICLE 38

Settlement of Disputes

38.1. If a dispute arises between the Contracting Parties concerning the operation of this Agreement and in particular its interpretation or implementation and such dispute cannot be resolved either through collaboration between the supervisory authorities referred to in Section V of this Agreement or by the Joint Committee referred to in Article 37, the Contracting Parties shall consult each other through diplomatic channels.

38.2. If it has not been possible to resolve the dispute by means of the procedure provided for in Article 38.1, it shall be referred, at the request of either of the Contracting Parties, to an arbitration tribunal consisting of three members. Reference may be made to this tribunal at the earliest after a period of two years following the first reference to the Joint Committee referred to in Article 37, unless the Contracting Parties agree jointly to refer their dispute to the said tribunal before the end of that period. Each Contracting Party shall appoint an arbitrator. The two arbitrators appointed shall appoint an umpire who shall be a national neither of Switzerland nor of the United Kingdom of Great Britain and Northern Ireland.

38.3. Where one of the Contracting Parties does not appoint its arbitrator and has not complied with the request made by the other Contracting Party to make such appointment within two months, the arbitrator shall be appointed, at the request of that other Contracting Party, by the President of the International Court of Justice.

38.4. Where after a period of two months following their appointment the two arbitrators are unable to agree on the choice of an umpire, the latter shall be appointed at the request of one of the Contracting Parties by the President of the International Court of Justice.

38.5. Where, in the case provided for in Articles 38.3 and 38.4, the President of the International Court of Justice is unable to act, or is a national of Switzerland or the United Kingdom of Great Britain and Northern Ireland, the appointments shall be made by the Vice-President. If the latter is unable to act or is a national of Switzerland or of the United Kingdom of Great Britain and Northern Ireland, the appointments shall be made by the oldest member of the Court who is not a national either of Switzerland or of the United Kingdom of Great Britain and Northern Ireland.

38.6. Save as otherwise provided by the Contracting Parties, the tribunal shall lay down its own rules of procedure. It shall take its decision by majority vote.

38.7. The decisions of the tribunal shall be binding on the Contracting Parties.

ARTICLE 39

Evolution of the Domestic Legislation of the Contracting Parties

39.1. The Agreement shall be without prejudice to the right of each Contracting Party, subject to compliance with the principle of non-discrimination and the provisions of this Article, unilaterally to amend its domestic legislation on a point regulated by this Agreement.

39.2. As soon as a Contracting Party has initiated the process for adopting a draft amendment of its domestic legislation concerning the conditions for taking up and pursuing, by means of establishment, the activity of direct insurance other than life assurance, it shall inform the other Contracting Party via the Joint Committee referred to in Article 37. The Joint Committee shall hold an exchange of views on the implications of such an amendment for the proper functioning of the Agreement.

39.3. As soon as the amended legislation has been adopted, and eight days after adoption at the latest, the Contracting Party concerned shall notify the text of the new provisions to the other Contracting Party.

39.4. In order to guarantee legal certainty, a period of at least 12 months from the date of adoption of the amended legislation must be laid down by the Contracting Party concerned for the implementation of any amendment of legislation which deviates from the provisions of the Agreement.

39.5. Any amendment of legislation which has been the subject of the procedures referred to in Articles 39.2 and 39.3 and which, in the opinion of either Contracting Party, deviates from the provisions of the Agreement, shall be referred to the Joint Committee. The Joint Committee shall meet at the latest six weeks after the notification laid down in Article 39.3.

39.6. The Joint Committee shall:

- either adopt a decision revising the provisions of the Agreement so as to integrate therein, if necessary on a basis of reciprocity, the amendments made to the legislation in question,
- or, as long as the insured person is guaranteed equivalent protection to that provided for under the Agreement, adopt a decision to the effect that the amendments to the legislation in question shall be regarded as in accordance with the Agreement,
- or decide any other measure to safeguard the proper functioning of the Agreement.

39.7. The decisions of the Joint Committee shall be published in the Official Compendium of Federal Laws (Recueil Officiel des lois fédérales) and in the equivalent official publication of the United Kingdom of Great Britain and Northern

Ireland. Each decision shall state the date of its implementation in the two Contracting Parties and any other information likely to concern economic operators. The decisions shall be submitted as necessary for ratification or approval by the Contracting Parties in accordance with their own procedures.

The Contracting Parties shall notify each other of the completion of this formality. If upon the expiry of the period provided for in Article 39.4 such notification has not taken place, the decisions of the Joint Committee shall be implemented provisionally pending their ratification or approval by the Contracting Parties. If either Contracting Party notifies the non-ratification or non-approval of a decision of the Joint Committee, Article 39.8 shall apply *mutatis mutandis* from the time of such notification.

39.8. If the Joint Committee does not reach agreement on the decisions to be taken within six months of the date of referral pursuant to Article 39.5, the Agreement shall be regarded as ended on the day the legislation in question is implemented, pursuant to Article 39.4; in that event the provisions of Article 38 are not applicable. The provisions of Article 42.2 shall apply *mutatis mutandis*.

ARTICLE 40

Revision of the Agreement

40.1. If a Contracting Party wishes that this Agreement be revised, it shall request the other Contracting Party to open negotiations to that end. Such request shall be made through diplomatic channels.

40.2. Amendments to this Agreement shall enter into force in accordance with the procedure set out in Article 44.

40.3. Nevertheless, amendments to the Annexes and Protocols annexed to this Agreement shall be adopted by the Joint Committee referred to in Article 37, which shall determine the date of their entry into force.

ARTICLE 41

Matters not Covered by the Agreement

41.1. Where a Contracting Party considers that it would be useful in the interests of both Contracting Parties to develop the relations established by this Agreement by extending them to private insurance activities not covered thereby, it shall propose to the other Contracting Party that negotiations be opened to that end.

41.2. Agreements resulting from negotiations referred to in Article 41.1 shall be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

ARTICLE 42

Denunciation

42.1. Either Contracting Party may denounce this Agreement at any time by notifying the other Contracting Party to that effect. The Agreement shall cease to be in force 12 months after the date of such notification.

42.2. In the event of denunciation, the Contracting Parties shall jointly agree on rules governing the situation of undertakings which have obtained authorisation in accordance with Article 11.1. In the absence of agreement upon expiry of the period of 12 months referred to in Article 42.1, those undertakings shall be made subject to the rules applicable to those of third countries. Nevertheless, the Contracting Parties hereby undertake that the authorisation obtained in accordance with Article 11.1 shall not be withdrawn in the light of the economic requirements of the market for a period of at least five years from the date on which this Agreement ceases to be in force.

ARTICLE 43

Territorial Scope

The provisions of this Agreement shall apply, on the one hand, to the United Kingdom of Great Britain and Northern Ireland and the following territories for whose international relations it is responsible:

- (a) Gibraltar;

and, on the other hand, to the Swiss Confederation.

ARTICLE 44

Entry into Force

44.1. This Agreement was negotiated in English and drawn up in duplicate in German. Both of these texts are equally authentic.

44.2. The Contracting Parties shall ratify or approve this Agreement in accordance with their internal procedures. Each Contracting Party shall notify the other Contracting Party of the completion of those procedures.

44.3. This Agreement shall enter into force on the later of:

- (a) the date on which the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other

than life assurance ceases to apply to the United Kingdom of Great Britain and Northern Ireland; or

- (b) the first day of the second month following the date of receipt of the later of the Contracting Parties' notifications that they have completed their internal procedures.

44.4. (a) Pending entry into force of this Agreement, the Contracting Parties shall provisionally apply this Agreement from the date on which the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance ceases to apply to the United Kingdom of Great Britain and Northern Ireland.

- (b) A Contracting Party may terminate the provisional application of the Agreement by giving written notice to the other Contracting Party. Such termination shall take effect on the first day of the second month following notification.

DONE at Davos on 25 January 2019.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

**For the Government of the Swiss
Confederation:**

PHILIP HAMMOND

UELI MAURER

ANNEX NO. 1

CLASSES OF INSURANCE SUBJECT TO THE AGREEMENT

A. Classification of Risks according to Classes of Insurance

1. *Accident (including Industrial Injury and Occupational Diseases)*
 - fixed pecuniary benefits,
 - benefits in the nature of indemnity,
 - combinations of the two,
 - injury to passengers.
2. *Sickness*
 - fixed pecuniary benefits,
 - benefits in the nature of indemnity,
 - combinations of the two.
3. *Land Vehicles (other than railway rolling stock)*

All damage to or loss of:

 - land motor vehicles,
 - land vehicles other than motor vehicles.
4. *Railway Rolling Stock*

All damage to or loss of railway rolling stock.
5. *Aircraft*

All damage to or loss of aircraft.
6. *Ships (sea, lake and river and canal vessels)*

All damage to or loss of:

 - river and canal vessels,
 - lake vessels,
 - sea vessels.
7. *Goods in Transit (including merchandise, baggage and all other goods)*

All damage to or loss of goods in transit or baggage, irrespective of the form of transport.
8. *Fire and Natural Forces*

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:

 - fire,
 - explosion,
 - storm,
 - natural forces other than storm,

- nuclear energy,
 - land subsidence and landslides.
9. *Other Damage to Property*
All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under class 8.
10. *Motor Vehicle Liability*
All liability arising out of the use of motor vehicles operating on land (including carrier's liability).
11. *Aircraft Liability*
All liability arising out of the use of aircraft (including carrier's liability).
12. *Liability for Ships (sea, lake and river and canal vessels)*
All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).
13. *General Liability*
All liability other than those forms mentioned under classes 10, 11 and 12.
14. *Credit*
- insolvency (general),
 - export credit,
 - instalment credit,
 - mortgages,
 - agricultural credit.
15. *Suretyship*
- suretyship (direct),
 - suretyship (indirect).
16. *Miscellaneous Financial Loss*
- employment risks,
 - insufficiency of income (general),
 - bad weather,
 - loss of profits,
 - continuing general expenses,
 - unforeseen trading expenses,
 - loss of market value,
 - loss of rent or revenue,
 - indirect trading losses other than those mentioned above,
 - other financial loss (non-trading),
 - other forms of financial loss.
17. *Legal Expenses*
Legal expenses and costs of litigation.

18. *Tourist Assistance*

Assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence.

The risks included in a class may not be included in any other class except in the cases referred to in Part C of this Annex.

B. Description of Authorisations granted Simultaneously for more than One Class of Insurance

Where the authorisation simultaneously covers:

- (a) classes 1 and 2, it shall be named 'Accident and Health Insurance';
- (b) classes 1 (fourth indent), 3, 7 and 10, it shall be named 'Motor Insurance';
- (c) classes 1 (fourth indent), 4, 6, 7 and 12, it shall be named 'Marine and Transport Insurance';
- (d) classes 1 (fourth indent), 5, 7 and 11, it shall be named 'Aviation Insurance';
- (e) classes 8 and 9, it shall be named 'Insurance against Fire and other Damage to Property';
- (f) classes 10, 11, 12 and 13, it shall be named 'Liability Insurance';
- (g) classes 14 and 15, it shall be named 'Credit and Suretyship Insurance';
- (h) all classes, it shall have the name or names chosen by the Contracting Party in question, which shall notify the other Contracting Party of its choice(s).

C. Ancillary Risks

1. An undertaking obtaining an authorisation for a principal risk belonging to one class or a group of classes may also insure risks included in another class without an authorisation being necessary for them if they:

- are connected with the principal risk,
- concern the object which is covered against the principal risk, and
- are covered by the contract insuring the principal risk.

However, the risks included in classes 14, 15 and 17 may not be regarded as risks ancillary to other classes.

2. Nonetheless, the risk included in class 17 (legal expenses insurance) may be regarded as an ancillary risk of class 18 where the conditions laid down in paragraph 1 of Part C of this Annex are fulfilled, and where the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence.

3. Legal expenses insurance may also be regarded as an ancillary risk under the conditions set out in paragraph 1 of Part C of this Annex where it concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

D. Assistance

1. The assistance activity shall be the assistance provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence. It shall consist in undertaking, against the prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

The aid may consist in the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

The assistance activity does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

2. Either Contracting Party may, in its territory, make the provision of assistance to persons who get into difficulties in circumstances other than those referred to in paragraph 1 of Part D of this Annex subject to the arrangements introduced by this Agreement. If a Contracting Party makes use of this possibility it shall, for the purposes of applying these arrangements, treat such activity as if it were listed under class 18 in Part A of this Annex, without prejudice to Part C thereof.

This shall in no way affect the possibilities for classification laid down in this Annex for activities which clearly come under other classes.

It shall not be possible to refuse authorisation sought for an agency or branch by an undertaking whose head office is situated in the territory of the other Contracting Party solely on the grounds that the activity covered by this point is classified differently in the Contracting Party, in the territory of which the head office of the undertaking is situated.

ANNEX NO. 2

KINDS OF INSURANCE, OPERATIONS AND UNDERTAKINGS NOT SUBJECT TO THE AGREEMENT

A. Kinds of Insurance Excluded

This Agreement does not apply to:

1. life assurance, that is to say the class of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, tontines, marriage assurance and birth assurance;
2. annuities;
3. supplementary insurance carried on by life assurance undertakings, that is to say, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;
4. insurance forming part of a statutory system of social security;
5. the type of insurance existing in the United Kingdom of Great Britain and Northern Ireland known as 'permanent health insurance not subject to cancellation'.

B. Operations Excluded

This Agreement does not apply to:

1. capital redemption operations, as defined by the law in each Contracting Party;
2. operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of members are determined on a flat rate basis;
3. operations carried out by organisations not having legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

4. export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer;
5. the assistance activity in which liability is limited to the following operations provided in the event of an accident or breakdown involving a road vehicle which normally occurs in the territory in which the supervisory authority of the Contracting Party in which the undertaking providing cover is established is competent:
 - an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment,
 - the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means,
 - if provided for by the provisions in force in the territory in which the supervisory authority of the Contracting Party in which the undertaking providing cover is established is competent, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same territory,

unless such operations are carried out by an undertaking subject to the Agreement.

In the cases referred to in the first two indents, the condition that the accident or breakdown must have happened in the territory in which the supervisory authority of the Contracting Party, in which the undertaking providing cover is established, is competent:

- (a) shall not apply where the latter is a body of which the beneficiary is a member and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the same or the other Contracting Party on the basis of a reciprocal agreement;
- (b) shall not preclude the provision of such assistance in Ireland and the United Kingdom of Great Britain and Northern Ireland by a single body operating in both States

In the circumstances referred to in the third indent, where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom of Great Britain and Northern Ireland, in the territory of Northern Ireland,

the vehicle, possibly accompanied by the driver and passengers, may be conveyed to their home, point of departure or original destination within either territory.

Undertakings subject to the Agreement may engage in the activity referred to under this point only if they have received authorisation for class 18 in Part A of Annex No 1 without prejudice to Part C of the said Annex. In that event the Agreement shall apply to the operations in question.

C. Exclusion of Undertakings occupying Special Positions

This Agreement does not apply:

1. To undertakings which fulfil the following conditions:
 - the undertaking does not pursue any activity falling within the scope of the Agreement other than the one described in class 18 in Part A of Annex No 1,
 - the activity is carried out exclusively on a local basis and consists only of benefits in kind, and
 - the total annual income collected in respect of the activity of assistance to persons who get into difficulties does not exceed 175 000 pounds sterling, if the head office of the undertaking is domiciled in the United Kingdom of Great Britain and Northern Ireland, or 228 000 Swiss francs, if the head office of the undertaking is domiciled in Switzerland.
2. *In the case of undertakings whose head office is situated in Switzerland, to:* undertakings whose annual premium income for the activities covered by the Agreement does not exceed the sum of three million Swiss francs on the date of entry into force of this Agreement and whose activities extend only to Swiss territory for such time as they satisfy these conditions. Once it has become subject to the rules of the Agreement an undertaking may no longer rely on this exception even if it satisfies the two abovementioned conditions.
3. *In the case of undertakings whose head office is situated in the United Kingdom of Great Britain and Northern Ireland, to:*
Mutual associations in so far as they fulfil all the following conditions:
 - the articles of association contain provisions for calling up additional contributions or reducing their benefits,
 - their business does not cover liability risks - unless the latter constitute ancillary cover within the meaning of Part C of Annex No 1 - or credit and suretyship risks,

- the annual contribution income from the activities covered by this Agreement does not exceed 900 000 pounds sterling, and
- at least half of the contribution income from the activities covered by this Agreement comes from persons who are members of the mutual association.

Mutual associations which have concluded with another undertaking of the same nature an agreement which provides for the full reinsurance of the insurance contracts concluded by them or under which the concessionary undertaking is to meet the liabilities arising out of such contracts in the place of the ceding undertaking.

In such a case, the concessionary undertaking shall be subject to this Agreement.

D. Exclusion of Specific Undertakings

This Agreement shall not apply to the undertakings listed under 1 and 2 of Part D of Annex No 2 unless their articles of association are amended as regards scope.

However, the territorial capacity of the undertakings referred to in 1 of Part D of Annex No 2 shall not be regarded as modified in the case of a merger between or division of such undertakings which has the effect of maintaining for the benefit of the new undertaking or undertakings the territorial capacity of the undertaking which has divided or the undertakings which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these undertakings takes over in respect of the same territory one or more of the classes of another such undertaking.

1. In Switzerland

The following cantonal institutions under public law, enjoying a monopoly:

- (a) Aargau: Aargauisches Versicherungsamt, Aarau;
- (b) Appenzell Ausser-Roden: Brand und Elementarschadenversicherung Appenzell AR, Herisau;
- (c) Basel Land: Basellandschaftliche Gebäudeversicherung, Liestal;
- (d) Basel Stadt: Gebäudeversicherung des Kantons Basel Stadt, Basel;
- (e) Bern/Berne: Gebäudeversicherung des Kantons Bern, Bern, Assurance immobilière du canton de Berne, Berne;

- (f) Fribourg/Freiburg: Etablissement cantonal d'assurance des bâtiments du canton de Fribourg, Fribourg/ Kantonale Gebäudeversicherungsanstalt Freiburg, Freiburg;
- (g) Glarus: Kantonale Sachversicherung Glarus, Glarus;
- (h) Graubünden/Grigioni/Grischun: Gebäudeversicherungsanstalt des Kantons Graubünden, Chur/Istituto d'assicurazione fabbricati del cantone dei Grigioni, Coira/Institut dil cantun Grischun per assicuranzas da baghetgs, Cuera;
- (i) Jura: Assurance immobilière de la République et canton du Jura, Saignelégier;
- (j) Luzern: Gebäudeversicherung des Kantons Luzern, Luzern;
- (k) Neuchâtel: Etablissement cantonal d'assurance immobilière contre l'incendie, Neuchâtel;
- (l) Nidwalden: Kantonale Brandversicherungsanstalt Nidwalden, Stans;
- (m) Schaffhausen: Gebäudeversicherung des Kantons Schaffhausen, Schaffhausen;
- (n) Solothurn: Solothurnische Gebäudeversicherung, Solothurn;
- (o) St. Gallen: Gebäudeversicherungsanstalt des Kantons St. Gallen, St. Gallen;
- (p) Thurgau: Gebäudeversicherung des Kantons Thurgau, Frauenfeld;
- (q) Vaud: Etablissement d'assurance contre l'incendie et les éléments naturels du canton de Vaud, Lausanne;
- (r) Zug: Gebäudeversicherung des Kantons Zug, Zug;
- (s) Zürich: Gebäudeversicherung des Kantons Zürich, Zürich;

2. *In the United Kingdom of Great Britain and Northern Ireland:*

The Crown Agents.

ANNEX NO. 3

LISTING OF ACCEPTABLE LEGAL FORMS

An undertaking whose head office is situated in the territory of a Contracting Party shall be constituted in one of the legal forms listed below.

The Contracting Parties may also set up, where appropriate, undertakings under any form governed by public law provided that such institutions have as their object insurance transactions under conditions equivalent to those of undertakings governed by private law.

A. In Switzerland

Aktiengesellschaft / société anonyme / società per azioni

Genossenschaft / coopérative / cooperativa

B. In the United Kingdom of Great Britain and Northern Ireland

incorporated companies limited by shares or by guarantee, or unlimited societies registered under the Co-operative and Community Benefit Societies Act 2014;

societies registered under the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016;

the association of underwriters known as Lloyd's;

Friendly societies registered under the Friendly Societies Act 1974 and/or incorporated under the Friendly Societies Act 1992.

PROTOCOL NO. 1

SOLVENCY MARGIN

ARTICLE 1

Definition of the Solvency Margin

The solvency margin for undertakings whose head office is domiciled in the territory of the United Kingdom of Great Britain and Northern Ireland is the Solvency Capital

Requirement, as referred to in Articles 100 and 101 of Directive 2009/138/EC of the European Parliament and of the Council¹.

The solvency margin for undertakings whose head office is domiciled in the territory of the Swiss Confederation is the Target Capital (Zielkapital), which is defined together with related concepts such as the valuation of assets and liabilities and the Risk Bearing Capital (Risikotragendes Kapital) of the Swiss Solvency Test (SST) in the Versicherungsaufsichtsgesetz² ('Insurance Supervisory Act') and the Aufsichtsverordnung³ ('Insurance Supervisory Ordinance').

ARTICLE 2

Definition of the Guarantee Fund

The guarantee fund for undertakings whose head office is domiciled in the territory of the United Kingdom of Great Britain and Northern Ireland is the Minimum Capital Requirement as referred to in Articles 128 and 129 of Directive 2009/138/EC⁴.

The guarantee fund for undertakings whose head office is domiciled in the territory of the Swiss Confederation is the minimal capital (lowest intervention level) in the Swiss Solvency Test.

ARTICLE 3

References to EU Legislation

References to EU legislation in this Agreement are to be read as references to the EU legislation as incorporated, implemented or otherwise transposed into United Kingdom of Great Britain and Northern Ireland domestic law as at the later of (i) the date the United Kingdom of Great Britain and Northern Ireland leaves the EU, or (ii) the date the United Kingdom of Great Britain and Northern Ireland ceases to be bound to respect the relevant EU legislation.

Between signature and the entry into force of this Agreement, the United Kingdom of Great Britain and Northern Ireland may not adopt or maintain a measure that decreases its conformity with Articles 100, 101, 128 and 129 of Directive

¹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ EU L 335, 17.12.2009, p. 1), as amended by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ EU L 153, 22.5.2014, p. 1) and as last amended by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ EU L 354, 23.12.2016, p 37).

² Versicherungsaufsichtsgesetz (AS 2005 5269) as last amended on 19 June 2015 (AS 2015 5339).

³ Aufsichtsverordnung (AS 2005 5305) as last amended on 25 November 2015 (AS 2015 5413).

⁴ as amended by Directive 2014/51/EU and as last amended by Directive (EU) 2016/2341.

2009/138/EC of the European Parliament and of the Council⁵ as they applied to the United Kingdom of Great Britain and Northern Ireland immediately before the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance⁶ ceased to apply to the United Kingdom of Great Britain and Northern Ireland.

PROTOCOL NO. 2

SCHEME OF OPERATIONS

ARTICLE 1

Content

The scheme of operations of the agency or branch shall contain the following particulars or proofs concerning:

- (a) the nature of the risks which the undertaking proposes to cover;
- (b) the general and special policy conditions which it proposes to use;
- (c) the scales of premiums which the undertaking proposes to apply or each category of business;
- (d) the guiding principles as to reinsurance;
- (e) the state of the solvency margin of the undertaking, referred to in Protocol No 1;
- (f) estimates relating to the expenses of installing the administrative services and the organisation for securing business; the financial resources intended to cover them, and, where the risks to be covered are listed under class 18 in Part A of Annex No 1, the resources available to the undertaking for providing the promised assistance; and, in addition, for the first three financial years,
- (g) estimates relating to expenses of management;
- (h) estimates relating to premiums or contributions and to claims in respect of the new business;

⁵ as amended by Directive 2014/51/EU and as last amended by Directive (EU) 2016/2341.

⁶ Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance (OJ EU L 205, 27.6.1991, p. 2; AS 1992 1894), as amended by Decision No 1/2001 of the EC-Switzerland Joint Committee of 18 July 2001 (OJ L 291, 8.11.2001, p. 52; AS 2002 3056) and as last amended by Decision No 1/2018 of the EU-Switzerland Joint Committee of 3 July 2018 (OJ C 255, 20.7.2018, p. 9).

- (i) the forecast balance sheet for the agency for branch.

ARTICLE 2

Exceptions

The particulars referred to in (b) and (c) of Article 1 of this Protocol may not be required with regard to the following risks:

- (a) risks listed under classes 1, 3 to 7 and 9 to 18 in Part A of Annex No 1;
- (b) risks listed under class 8 in Part A of Annex No 1 other than those caused by natural forces.

PROTOCOL NO. 3

AGENCIES AND BRANCHES OF UNDERTAKINGS WHOSE HEAD OFFICE IS SITUATED OUTSIDE THE TERRITORIES TO WHICH THIS AGREEMENT APPLIES

ARTICLE 1

Conditions for Authorisation

Each Contracting Party may grant to an undertaking whose head office is situated outside the territories to which this Agreement applies under Article 43 thereof, authorisation to open an agency or branch in its territory, if the applicant undertaking fulfils at least the following conditions:

- (a) it is entitled to undertake insurance business under its national law;
- (b) it establishes an agency or branch in the territory of the Contracting Party in question;
- (c) it undertakes to establish at the place of management of the agency or branch accounts specific to the business which it undertakes there, and to keep there all the records relating to the business transacted;
- (d) it designates an authorised agent, to be approved by the supervisory authority;
- (e) it possesses in the country in which it carries on its business assets of an amount equal to at least one-half of the minimum amount prescribed in Article 2 of Protocol No 1, in respect of the guarantee fund, and deposits one-quarter of the minimum amount as security;

- (f) it undertakes to keep a solvency margin in accordance with Article 3 of this Protocol;
- (g) it submits a scheme of operations in accordance with the provisions of Article 10.1 (c) of the Agreement and Protocol No 2. Each Contracting Party may, if the legal provisions in force therein so permit, require an undertaking which has been in existence for fewer than three financial years to supply the balance sheet and profit and loss account which must accompany the scheme of operations only in respect of the financial years which have closed.

ARTICLE 2

Technical Reserves

Under this Protocol, each Contracting Party shall apply to agencies or branches set up in its territory rules regarding technical reserves which may not be more favourable than those provided for in Articles 19, 20 and 21 of the Agreement.

ARTICLE 3

Solvency Margin

3.1. Under this Protocol, each Contracting Party shall require for agencies or branches established in its territory a solvency margin consisting of assets free of all foreseeable liabilities, less any intangible items. The solvency margin shall be calculated in accordance with Protocol No 1. However, for the purpose of calculating this margin, account shall be taken only of the premiums or contributions and claims pertaining to the business effected by the agency or branch concerned.

3.2. One-third of the solvency margin shall constitute the guarantee fund. The guarantee fund may not be less than one-half of the minimum required under Article 2 of Protocol No 1. The initial security lodged in accordance with Article 1 (e) of this Protocol shall be counted towards such guarantee fund.

3.3. The assets representing the solvency margin shall be localised in the territory in which the supervisory authority of the Contracting Party concerned is competent.

ARTICLE 4

Verification and Restoration of Financial Situation

The provisions of Article 17.3 and Article 18 of the Agreement shall apply *mutatis mutandis* in relation to agencies and branches of undertakings to which this Protocol applies.

ARTICLE 5

Agreements with Third Countries

Each Contracting Party may, by means of agreements concluded with one or more third countries, agree to the application of provisions different from those provided for in this Protocol on condition that its insured persons are adequately protected under conditions of reciprocity.

DECISION BY THE CONTRACTING PARTIES CONCERNING THE AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS CONFEDERATION ON DIRECT INSURANCE OTHER THAN LIFE ASSURANCE

The representatives of

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

AND THE SWISS CONFEDERATION,

on the occasion of the signature of the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on direct insurance other than life assurance ('the Agreement'),

1. confirm the understanding that the legal acts referenced in Article 2 of "*Decision No 1/2018¹ of the EU-Switzerland Joint Committee of 3 July 2018 amending the Annexes and Protocols to the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance² and finding that the domestic legislation of the Contracting Parties is compatible with that Agreement*" ('the Decision') are compatible with the Agreement. Guidance on how the legal acts of the European Union in Article 2 of the Decision relate to the United Kingdom of Great Britain and Northern Ireland's domestic law once it has left the EU or ceases to be bound to respect the relevant EU law can be found in Article 3 of Protocol No 1 of the Agreement.
2. Furthermore, they take note that the Agreement contains references to EU legislation in its Protocol No 1, and declare that such references should be replaced with references to the United Kingdom of Great Britain and Northern Ireland's domestic legislation once the United Kingdom of Great Britain and Northern Ireland has left the European Union or ceases to be bound to respect the relevant EU law and that the United Kingdom of Great Britain and Northern Ireland intends to replace such references at an opportune moment after that point in time.

For the United Kingdom of Great Britain and Northern Ireland

[PHILIP HAMMOND]

For the Swiss Confederation

[WELI MAURER]

¹ OJ C 255, 20.7.2018, p. 9.

² Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance (OJ EU L 205, 27.6.1991, p. 2; AS 1992 1894), as amended by Decision No 1/2001 of the EC-Switzerland Joint Committee of 18 July 2001 (OJ L 291, 8.11.2001, p. 52; AS 2002 3056) and as last amended by Decision No 1/2018 of the EU-Switzerland Joint Committee of 3 July 2018 (OJ C 255, 20.7.2018, p. 9).

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