



HERBERT
SMITH
FREEHILLS

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (Ch D)**

No. CR-2020-003541

**IN THE MATTER OF CANADA LIFE LIMITED
and
IN THE MATTER OF IRISH LIFE ASSURANCE PLC
and
IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000**

SCHEME

**for the transfer of part of the business of
Canada Life Limited to Irish Life Assurance
Plc
pursuant to Part VII of the Financial Services
and Markets Act 2000**

Herbert Smith Freehills LLP

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PART A

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions bear the meanings respectively set opposite them:

"Appropriate Actuarial Advice" means the Transferor's Board or the Transferee's Board (as applicable), having taken advice from:

- (a) the Head of Actuarial Function in relation to actuarial matters (including, for the avoidance of doubt, policyholder security or benefit expectations); and
- (b) such additional external actuarial guidance (if any) as the Transferor's Board or the Transferee's Board determines in its absolute discretion to obtain;

"Asset" means any asset and property of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, that is owned, leased or licensed by the Transferor (and comprised within the Transferred Business) or by the Transferee (as the context requires) including all rights, benefits and powers of the Transferor or the Transferee under any Services Agreement and all rights, including any right to repayment or recovery of Tax relating to the Transferred Business, claims and powers of the Transferor or the Transferee against any third party and including (for the avoidance of doubt) any such asset or property to which legal title is held by another party, provided that the Transferor or the Transferee has an interest in such asset or property, including beneficial ownership of such asset or property;

"Asset Value" means, in respect of any Asset or Assets, its or their value determined in accordance with Solvency II Requirements;

"Board" means, in relation to a company, the board of directors from time to time of that company;

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for business (other than solely for trading and settlement in euro) in London, United Kingdom and in Dublin, Ireland;

"CBI" means the Central Bank of Ireland or such other governmental, statutory or other authority or authorities as shall from time to time carry out such functions in relation to Long-Term Insurance Business carried on in Ireland as were at the date of this Scheme allocated to the Central Bank of Ireland;

"Court" means the High Court of Justice in England and Wales;

"Data Protection Laws" means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the processing of personal data to which a party is subject, including Directive 2002/58/EC, the Privacy and electronic Communications (EC Directive) Regulations 2003 and the GDPR, or all legislation enacted in the United Kingdom in respect of the protection of personal data;

"DISP" has the meaning given to it in paragraph 5.5.1;

"Effective Date" means the time and date on which this Scheme shall become effective in accordance with paragraph 12;

"Encumbrance" means any mortgage, charge (fixed or floating), pledge, lien, option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security or other security interest of any kind (including any retention arrangement), or any agreement to create any of the foregoing, or any other encumbrance or security interest of any kind and any other type of preferential arrangement having a similar effect;

"Excluded Assets" means any assets of the Transferor except for the Transferred Assets and the Residual Assets, and such Excluded Assets shall include:

- (a) the rights of the Transferor under or relating to this Scheme, the Excluded Policies or the Residual Policies;
- (b) any Tax Reliefs or other assets in respect of Tax of the Transferor save to the extent that the same arise after the Effective Date in respect of the Transferred Policies and Transferred Contracts, other than Tax on losses incurred by the Transferor prior to the Effective Date;
- (c) any property of the Transferor that would be comprised in the Transferred Assets but which the parties agree in writing prior to the Effective Date that it shall not be transferred to the Transferee; and
- (d) the rights of the Transferor to any defence, claim, counterclaim, defence to counterclaim or right of set-off in respect of any of the rights referred to in paragraphs (a) to (c) inclusive above or in respect of any of the Excluded Liabilities;

"Excluded Liabilities" means:

- (a) any liabilities arising from the acts or omissions of the Transferor or of any other member of the Transferor Group or any of their directors, officers, employees, contractors or agents in relation to the Transferred Business which occurred on or before the Effective Date, including the liabilities of the Transferor for breach of the terms and conditions of the Transferred Policies or of policies whose proceeds were used, wholly or in part, to pay the premium for a Transferred Policy and any liabilities arising from any breach by the Transferor of the FSMA, the FCA Handbook or the PRA Rulebook;
- (b) any liabilities of the Transferor under or relating to this Scheme, the Excluded Policies, the Residual Policies;
- (c) any liabilities in respect of Tax of the Transferor save to the extent that the same arises after the Effective Date in respect of the Transferred Policies and Transferred Contracts, other than Tax on profits earned by the Transferor prior to the Effective Date; and
- (d) any liability of the Transferor that would be comprised in the Transferred Liabilities but which the parties agree in writing prior to the Effective Date that it shall not be transferred to the Transferee;

"Excluded Policies" means:

- (a) any policies which the parties agree in writing are not to be included in the Schedule of Policies; and
- (b) any other policies which are not Transferred Policies;

"FATCA" means:

- (a) sections 1471 to 1474 of the UK Internal Revenue Code of 1986 or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

"FCA Handbook" means the rules and guidance contained in the FCA Handbook of Rules and Guidance;

"**FSMA**" means the Financial Services and Markets Act 2000;

"**GDPR**" means the EU General Data Protection Regulation (Regulation (EU) 2016/679);

"**Long-Term Insurance Business**" means the business of effecting or carrying out long-term insurance contracts as principal, being contracts falling within Part II of Schedule 1 to the RAO;

"**Order**" means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

"**Policy Materials**" means any materials existing prior to the Effective Date relating to the process of underwriting of the Transferred Policies or evidencing the rights and obligations of the Transferor under the Transferred Policies in whatever media including proposal forms, policy wordings, policy schedules, underwriting manuals and such or similar materials that are not Promotional Materials;

"**PRA**" means the Prudential Regulation Authority and any successor regulatory authority;

"**PRA Rulebook**" means the rules contained in the PRA Rulebook for Solvency II firms, issued by the PRA;

"**Proceedings**" has the meaning given to it in paragraph 5.1;

"**Promotional Materials**" means any materials existing prior to the Effective Date in any form or media whatever prepared for the advertising, marketing or provision of the Transferred Policies;

"**RAO**" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);

"**Records**" means (i) all Policy Materials, Promotional Materials, documents, files and other records, whether in physical or electronic form, which are in the possession of, or under the control of, the Transferor relating to the Transferred Policies, the Services Agreements, the Transferred Assets, the Residual Assets, the Transferred Liabilities and the Residual Liabilities, but excluding any documents, files and other records relating to Tax (except to the extent relating to policyholder tax-related matters or policyholder tax reporting-related matters connected solely with the Transferred Policies);

"**Residual Assets**" means:

- (a) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under any Transferred Policy) but in respect of which the Court has declined to order the transfer to the Transferee under section 112(2) of FSMA at the Effective Date;
- (b) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy) but where the Transferor and the Transferee agree in writing prior to the Effective Date that its transfer should be delayed;
- (c) any property of the Transferor that would be comprised in the Transferred Business but which is outside the jurisdiction of the Court or in respect of which the transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated or in respect of which further steps are necessary to effect the transfer pursuant to the laws of the jurisdiction in which such property is situated;
- (d) any property of the Transferor that would be comprised in the Transferred Business but which cannot be transferred to or vested in the Transferee on the Effective Date for any other reason; and
- (e) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, or any other property or rights earned or received from time to time after the Effective Date but prior to any relevant

Subsequent Transfer Date in respect of any property referred to in paragraphs (a) to (d) of this definition;

"Residual Liability" means any liability of the Transferor:

- (a) that would be comprised in the Transferred Liabilities but in respect of which the Court has declined to order the transfer to the Transferee under section 112(2) of FSMA at the Effective Date; or
- (b) that would be comprised in the Transferred Liabilities but where the Transferor and the Transferee agree in writing prior to the Effective Date that its transfer should be delayed; or
- (c) that would be comprised in the Transferred Liabilities but which is outside the jurisdiction of the Court or in respect of which the transfer pursuant to an order of the Court is not recognised by the laws of any applicable jurisdiction or in respect of which further steps are necessary to effect the transfer pursuant to the laws of any applicable jurisdiction; or
- (d) that would be comprised in the Transferred Liabilities but which cannot be transferred to or vested in the Transferee on the Effective Date for any other reason; or
- (e) in respect of a Residual Asset or any liability arising from any liabilities referred to in paragraphs (a) to (d) of this definition, including any liability to Taxation;

"Residual Policies" means any policy of the Transferor comprised in the Schedule of Policies under which any liability remains unsatisfied or outstanding at the Effective Date:

- (a) which was concluded in an EEA State for the purposes of paragraph 1(2A) of Schedule 12 to FSMA and the appropriate Insurance Regulator has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 3A of Schedule 12 to FSMA with respect to the relevant EEA State; or
- (b) written by the Transferor in the course of carrying on Long-Term Insurance Business but which are not otherwise capable of being transferred pursuant to FSMA at the Effective Date; or
- (c) which the Court for any reason determines not to transfer by the Order, but only until in respect of each such policy, the earlier of (i) the Subsequent Transfer Date applicable to such policy at which point any such policy becomes a Transferred Policy;

"Schedule of Policies" means the policies listed in Schedule 1, as amended from time to time prior to the Effective Date by agreement in writing between the parties;

"Scheme" means this scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with paragraph 13;

"Services Agreements" means:

- (a) the services agreement between Canada Life Group Services Limited and the Transferor dated 22 February 2016 as amended from time to time; and
- (b) the services agreement between Irish Life Financial Services Limited and the Transferor dated 30 September 2018 as amended from time to time;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance, as amended from time to time;

"Solvency II Best Estimate Liabilities" means the amount in relation to the Transferor, calculated by the Transferor in accordance with Technical Provisions Rules 3, 5 and 9 (and, to the extent applicable, 6 and 7) of the PRA Rulebook and relevant provisions of the Level 2 Delegated Acts, without taking account of transitional measures;

"Solvency II Requirements" means the Solvency II Directive and any directive, legislation, regulation, decision, order, decree, determination, award, standard, guidance or rule, which implements, gives effect to or is made pursuant to the Solvency II Directive, including the PRA Rulebook and the Level 2 Delegated Acts;

"Specified Assets" means the Assets selected by the Transferor, in consultation with the Transferee, immediately prior to the Effective Date with an estimated Asset Value at the Effective Date equal to the estimated value of the Specified Assets Amount, calculated and notified to the Transferee in accordance with paragraph 11;

"Specified Assets Amount" means the value, as at the Effective Date, of the Solvency II Best Estimate Liabilities of the Transferor in respect of the benefits of the Transferred Policies and any Residual Policies;

"Specified Assets Balancing Amount" has the meaning given to it in paragraph 11.2.3;

"Specified Assets Balancing Assets" means property of the Transferor selected by the Transferor, in consultation with the Transferee, (in the case of paragraph 11.3.1) or of the Transferee selected by the Transferee, in consultation with the Transferor, (in the case of paragraph 11.3.2) in each case having an Asset Value on the Effective Date equal to the absolute value of the Specified Assets Balancing Amount;

"Subsequent Transfer Date" means, in relation to any Residual Policy, Residual Asset or Residual Liability, the date (and each date) after the Effective Date on which such Residual Policy, Residual Asset or Residual Liability is to be transferred to the Transferee, namely:

- (a) in respect of any Residual Asset falling within paragraph (a), (c) or (d) of the definition thereof and of any Residual Liability falling within paragraph (a), (c) or (d) of the definition thereof, the date on which any impediment to its transfer shall have been removed or overcome;
- (b) in respect of any Residual Asset falling within paragraphs (b) of the definition thereof and of any Residual Liability falling within paragraph (b) of the definition thereof, the date on which the parties agree that the transfer should take effect;
- (c) in the case of any Residual Asset falling within paragraph (e) of the definition thereof and of any Residual Liability falling within paragraph (e) of the definition thereof, the Business Day agreed between the Transferor and the Transferee and to be no later than 5 Business Days from the date on which such Residual Asset or Residual Liability is received, earned or incurred (as applicable) by the Transferor; and
- (d) in the case of any Residual Policy, the date on which all consents, orders, permissions or other requirements for the transfer or novation of such Residual Policy are obtained;

"Tax" or "Taxation" means all forms of tax, duty, rate, levy, contribution, charge or other imposition, liability or withholding in the nature of tax whenever or by whatever authority imposed and whether of the United Kingdom or elsewhere, including (without limitation) any deduction or withholding required by FATCA together with any interest, penalty or fine in connection with taxation or in connection with the failure to file any return for the purposes of any taxation and in each case regardless of whether or not such taxation is directly or primarily chargeable on the Transferor or any other person;

"Tax Relief" means any reliefs, allowances or credits in respect of Taxation, any deductions in computing income, profits or gains for the purposes of any Taxation, or any right to repayment or recovery of Taxation including any interest on any such repayments;

"Transferee" means Irish Life Assurance plc, a company incorporated in Ireland under registered number 152576 whose registered office is at Irish Life Centre, Lower Abbey Street, Dublin 1;

"Transferee Actuary" means the person appointed by the Transferee from time to time to perform the "Head of Actuarial Function (PCF48)", in accordance with the guidance issued by the CBI;

"Transferee Board" means the Board of the Transferee;

"Transferee Group" means the Transferee and any of its holding companies from time to time and any of its or their subsidiaries from time to time;

"Transferee Non-Profit Fund" means the non-profit fund of the Transferee comprising the property and liabilities of the Transferee which the Transferee Board shall determine from time to time as being:

- (a) attributable to, arising from or held in connection with the long-term insurance business of the Transferee, or
- (b) required for the management of the long-term insurance business of the Transferee,

but excluding property and liabilities of the Transferee that the Transferee Board from time to time determines are attributable to a with-profit fund of the Transferee;

"Transferor" means Canada Life Limited, a company incorporated in England and Wales under registered number 973271 whose registered office is at Canada Life Place, Potters Bar, Hertfordshire EN6 58A;

"Transferor Actuary" means the person appointed by the Transferor from time to time to perform the "Chief Actuary function", in accordance with the Insurance – Senior Insurance Management Functions part of the PRA Rulebook;

"Transferor Board" means the Board of the Transferor;

"Transferor Group" means the Transferor and its subsidiaries from time to time;

"Transferred Assets" means all of the following whatsoever and wheresoever situated as at the Effective Date:

- (a) the Specified Assets;
- (b) the rights, benefits and powers of the Transferor under or by virtue of the Transferred Policies;
- (c) all rights and claims (present, future, actual or contingent) against any third party in relation to the Transferred Policies or arising as a result of the Transferor having written or administered the Transferred Policies;
- (d) all rights, benefits and powers of the Transferor under or by virtue of the Services Agreements (whether or not the Transferor is a party to such Contracts); and
- (e) the Records, including all rights, title and interest of the Transferor in the Records,

but excluding any rights, benefits or powers under or relating to the Excluded Assets and, prior to each Subsequent Transfer Date, the relevant Residual Assets and any rights, benefits and powers under the Residual Policies;

"Transferred Business" means:

- (a) the Transferred Policies;
- (b) the Transferred Assets; and
- (c) the Transferred Liabilities,

and following each Subsequent Transfer Date, the relevant Residual Asset or Residual Liability, but does not include the Excluded Assets, the Excluded Policies and the Excluded Liabilities;

"Transferred Liabilities" means all and any liabilities whatsoever of the Transferor under the Transferred Policies and Services Agreements, to the extent that such liabilities first become due for payment on or after the Effective Date, but excluding the Excluded Liabilities, the Excluded Policies and, prior to each Subsequent Transfer Date, the relevant Residual Liabilities and Residual Policies;

"Transferred Policies" means the policies underwritten by the Transferor to the extent listed in the Schedule of Policies, but for the avoidance of doubt excluding the Excluded Policies and, prior to each Subsequent Transfer Date, the Residual Policies;

"Transferred Policyholders" means the policyholders of the Transferred Policies;

"UK Insurance Regulators" means, as the context requires, the Financial Conduct Authority or the Prudential Regulation Authority or both, or such other governmental, statutory or other authority or authorities as shall from time to time carry out such functions in relation to Long-Term Insurance Business carried on in the United Kingdom as were at the date of this Scheme allocated to the Financial Conduct Authority and the Prudential Regulation Authority under FSMA; and

"VAT" means value added tax imposed in compliance with the council directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) and to the extent not included therein, as provided for by the Value Added Tax Act 1994 or any other equivalent tax in any jurisdiction and in each case any tax of a similar nature in replacement thereto (including any interest, surcharges or penalties in respect of the same).

1.2 In this Scheme, unless the subject or context requires otherwise:

1.2.1 **"including"** or **"includes"** means including or includes without limitation;

1.2.2 **"property"** or **"assets"** includes property (including real property and charges registered at the Land Registry within England and Wales and at the Registers of Scotland in Scotland and elsewhere and unregistered real property and charges), assets, cash, Encumbrances, causes of action, rights (including contingent rights as to the repayment of Tax) and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, income or interest accrued but unpaid, powers of any description and any interest whatsoever in any of the foregoing;

1.2.3 **"liabilities"** includes, without limitation, duties and obligations of every description (whether present or future, actual or contingent);

1.2.4 **"transfer"** includes (as the context may require) "assign", "assignment" or "assignment", "dispose" or "disposal" or "convey" or "conveyance";

1.2.5 references to rights or liabilities being "under" a Transferred Policy shall mean rights or liabilities under the contractual terms of that Transferred Policy;

1.2.6 any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa;

1.2.7 any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted on or before the Effective Date and to any instrument or order made on or before the Effective Date under such enactment, statutory provision or subordinate legislation;

1.2.8 any reference to any rules or regulations issued by the UK Insurance Regulators shall be deemed to include a reference to such rules or regulations as at the date of this Scheme;

1.2.9 expressions used in this Scheme which have meanings under FSMA shall bear those meanings, including "EEA State" which bears the meaning set out in paragraph 8, Part I of Schedule 3 to FSMA;

1.2.10 references to "holding company" and "subsidiary" shall have the same meanings as in the Companies Act 2006;

- 1.2.11 reference to a "party" shall be a reference to the Transferor or the Transferee as applicable, and a reference to the "parties" shall be to the Transferor and the Transferee;
- 1.2.12 references to a "policy" and a "policyholder" shall have the meanings ascribed to them by the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2000 (SI 2001/2361);
- 1.2.13 references to paragraphs and Parts are to paragraphs and Parts respectively of this Scheme;
- 1.2.14 headings are inserted for convenience only and shall not affect the construction of this Scheme;
- 1.2.15 any reference to a person shall include a reference to a body corporate, a partnership (whether or not having separate legal personality), an unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- 1.2.16 any reference to a board of directors of a company shall be deemed to include a reference to a duly constituted committee or duly authorised representative of that board of directors;
- 1.2.17 if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- 1.2.18 any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.19 the expression "variation" shall include any variation, supplement, deletion, replacement or termination, however effected;
- 1.2.20 any reference to an amount shall be exclusive of any applicable VAT; and
- 1.2.21 any reference to "euro" shall denote the lawful currency of the Euro area.

PART B

INTRODUCTION

2. INTRODUCTION

- 2.1 The Transferor is a company incorporated in England and Wales with registered number 973271. The Transferor provides insurance-based retirement, group risk and investment products under the "Canada Life" brand.
- 2.2 The Transferee is a company incorporated in Ireland with registered number 152576 and is a wholly-owned subsidiary of the Transferor. The Transferee provides life assurance and pension products under the "Irish Life" brand.
- 2.3 The Transferor has permission under Part 4A of FSMA to carry on Long-Term Insurance Business of the same classes as the Transferred Policies.
- 2.4 The Transferee is authorised by the CBI as a "Life Insurance Undertaking" subject to Solvency II under the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), authorised to effect and carry out, within Ireland and with a services passport into Germany, the business of life insurance within classes 1, 3, 4, 6 and 7.
- 2.5 The purpose of this Scheme is to effect the transfer to the Transferee, subject to the terms of this Scheme, of certain Long-Term Insurance Business carried on by the Transferor.
- 2.6 Accordingly, it is further proposed that:
 - 2.6.1 an Order be made for the sanction of this Scheme under Section 111 (1) of FSMA and that by the Order by which this Scheme is sanctioned, provision be made, as hereinafter appearing, for, inter alia, the transfer of the Transferred Business to the Transferee, pursuant to Section 112(1) of FSMA; and
 - 2.6.2 by such Order, provision be made for the transfer of the Transferred Business from the Transferor to the Transferee in accordance with the terms of this Scheme.

PART C

TRANSFER

3. TRANSFER OF THE TRANSFERRED BUSINESS

- 3.1 Each part of the Transferred Business shall be transferred to and be vested in the Transferee in accordance with this Scheme, so that:
- 3.1.1 subject to paragraph 9, on and with effect from the Effective Date, each Transferred Asset and all the interest of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset;
 - 3.1.2 subject to paragraph 9, on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset;
 - 3.1.3 on and with effect from the Effective Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the Transferor; and
 - 3.1.4 on and with effect from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the Transferor.
- 3.2 The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferred Assets and, at any Subsequent Transfer Date, to each Residual Asset then transferred.
- 3.3 On and with effect from the Effective Date, the Transferee shall:
- 3.3.1 succeed to all rights, liabilities and obligations of the Transferor in respect of any personal data which relates to the Transferred Business and which is subject to Data Protection Laws;
 - 3.3.2 become the data controller of any personal data which relates to the Transferred Business and which is subject to Data Protection Laws in place of the Transferor; and
 - 3.3.3 in respect of any personal data which relates to the Transferred Business be under the same duty by virtue of any law as the Transferor was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on either the Transferor or the Transferee and which required either the Transferor or the Transferee not to use the personal data for marketing purposes,
- and in any consent given by a data subject in respect of such data as is mentioned in this paragraph 3.3, any reference to the Transferor (or to any member of the Transferor Group) shall be deemed to include a reference to the Transferee (and to any member of the Transferee Group).
- 3.4 Without prejudice to any other provision in this Scheme, the Transferor and Transferee shall each use reasonable endeavours to:

- 3.4.1 effect or perfect the transfer to and vesting in the Transferee of any Transferred Asset or Residual Asset pursuant to this Scheme;
- 3.4.2 correct any errors in the identity or amount of the assets so transferred or allocated;
- 3.4.3 effect or perfect the transfer to and assumption by the Transferee of any Transferred Liability or Residual Liability pursuant to the Scheme,

including executing and delivering any necessary documents, but provided always that such reasonable endeavours shall not include the making of any application for the transfer of Residual Policies to any court or regulatory body or authority or of any application to any regulatory body or authority for any authorisation, permission, licence, waiver or consent.

- 3.5 No Excluded Policies, Excluded Assets or Excluded Liabilities shall be transferred to or vested in the Transferee under or by virtue of the terms of this Scheme.

4. **ALLOCATION**

- 4.1 On and with effect from the Effective Date, all Transferred Policies, Transferred Assets and Transferred Liabilities shall be allocated to the Transferee Non-Profit Fund.
- 4.2 On and with effect from the applicable Subsequent Transfer Date, each Residual Policy, Residual Asset and Residual Liability to which that Subsequent Transfer Date relates shall be allocated in the same way as it would have been allocated in accordance with clause 4.1 had it been a Transferred Policy, Transferred Asset or Transferred Liability on the Effective Date.

5. **CONTINUITY OF PROCEEDINGS**

- 5.1 On and with effect from the Effective Date, any proceedings or applications to any authority in connection with the Transferred Business (including any complaint or claim to any ombudsman) whether pending, current or future, by, against or in relation to and/or in respect of which the Transferor is a party (or, in the case of future proceedings, would have been a party but for this Scheme) (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner) ("**Proceedings**") and including any such Proceedings commenced in error against the Transferor on or after the Effective Date to the extent connected with the Transferred Policies, the Transferred Assets or the Transferred Liabilities, but excluding in each case any such Proceedings to the extent relating to Excluded Liabilities, shall be continued or commenced by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that would have been available to the Transferor in relation to the Transferred Business and such Proceedings.
- 5.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings issued, served, pending, threatened or otherwise (including future Proceedings not yet in contemplation) in connection with the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date in respect of which the Transferor is a party (whether as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender, petitioner or otherwise), and including any such Proceedings commenced in error against the Transferor on or after the relevant Subsequent Transfer Date, shall be continued or commenced by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that would have been available to the Transferor in relation to the Residual Assets or the Residual Liabilities and such Proceedings. Until such Subsequent Transfer Date, the relevant Proceedings shall be continued by or against the Transferor, provided that the Transferor shall conduct such proceedings in accordance with the Transferee's instructions and the Transferee shall discharge on behalf of the Transferor or, failing that, shall indemnify the Transferor against any charges, costs and claims in respect of such Proceedings (but on the basis that the Transferor will use reasonable endeavours to mitigate any such charges, costs and claims).

- 5.3 Any judgement, settlement, order or award obtained by or against the Transferor to the extent that it is in connection with any part of the Transferred Business and which is not fully satisfied before the Effective Date shall, on and with effect from the Effective Date, become enforceable by or against the Transferee to the exclusion of the Transferor.
- 5.4 Any judgement, settlement, order or award obtained by or against the Transferor to the extent that it is in connection with the Residual Assets or the Residual Liabilities and which is not fully satisfied before the Subsequent Transfer Date shall, on and with effect from the Subsequent Transfer Date, become enforceable by or against the Transferee to the exclusion of the Transferor.
- 5.5 In respect of any Proceedings in relation to the Transferred Business which are (a) commenced but not settled before the Effective Date, or (b) commenced after the Effective Date in respect of acts or omissions of the Transferor prior to the Effective Date, the Transferee undertakes to comply with:
- 5.5.1 the relevant provisions of the Dispute Resolution ("**DISP**") rules of the FCA Handbook that would apply to the handling of any complaints brought to the UK Financial Ombudsman Service that fall under its jurisdiction as, and to the extent that, such rules apply to the Transferred Business on the Effective Date; and
- 5.5.2 any valid judgment, settlement, order or award (or relevant part thereof) of the UK Financial Ombudsman Service, made under its jurisdiction as set out in DISP 2 of the FCA Handbook,

to the extent that such compliance is compatible with any rules or regulations issued by the CBI that are applicable to the Transferee.

6. **RIGHTS AND OBLIGATIONS UNDER TRANSFERRED POLICIES AND OTHER DOCUMENTS**

- 6.1 On the Effective Date, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor whatsoever subsisting immediately prior to the Effective Date under or by virtue of the Transferred Policies.
- 6.2 Subject to the terms of this Scheme, every person who is a policyholder in respect of a Transferred Policy shall, on and with effect from the Effective Date, become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under such Transferred Policy (other than any right arising in respect of or from any Excluded Liability), to the same rights against the Transferee as were available to him against the Transferor under such Transferred Policy (other than any right arising in respect of or from any Excluded Liability) and (as regards a Transferred Policy under which any premiums or other sums attributable or referable thereto continue to be payable by him) shall on and with effect from the Effective Date account to the Transferee for any further or additional premiums or other sums attributable or referable thereto, if any, as and when the same become due and payable. Specifically with respect to inflation linked cases which are or may be subject to revenue restrictions, the Transferee is obliged to continue to apply the same methodology for inflating these payments as the Transferor has previously implemented.
- 6.3 If any person entitled to do so with respect to a Transferred Policy exercises any right or option granted under the terms of that Transferred Policy and either:
- 6.3.1 the right or option provides for a new, additional or replacement policy to be issued or amendments to be made to an existing Transferred Policy; or
- 6.3.2 it is appropriate in the opinion of the Transferee Board, having regard to the advice of the Transferee Actuary, in order to comply with that right or option to issue a new, additional or replacement policy or, as the case may be, amend an existing Transferred Policy,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue or amendment (as the case may be) by the Transferee of a policy which

complies with the terms of such right or option. Without prejudice to such entitlement, if the Transferee is not at the time of the exercise of such right or option writing policies complying exactly with the policy to which such person is entitled pursuant to the right or option, the Transferee shall be entitled to offer to such person as an alternative (and, if accepted, in lieu thereof) the policy commonly offered by the Transferee or any other member of the Transferee Group which the Transferee in its absolute discretion considers to be the nearest equivalent policy of the Transferee or such other member of the Transferee Group (as the case may be) at that time.

- 6.4 All references in any Transferred Policy or any other agreement or document to the extent that, in each case, it refers to the Transferred Business (including in a contract to which the Transferor is party, a contract to which the Transferor is not party or elsewhere and whether in writing or not) to the Transferor, the Transferor Board, the Transferor Actuary or any other officers, employees or agents of the Transferor shall, with effect on and from the Effective Date, be read as references to the Transferee, the Transferee Board, the Transferee Actuary or any other officers, employees or agents of the Transferee respectively. In particular, but without limitation, and subject to the other provisions of this Scheme, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the Transferor Board, the Transferor Actuary or any other officers, employees or agents of the Transferor in relation to any of the Transferred Policies or any other agreement or document to the extent that, in each case, it refers to the Transferred Business (including in a contract to which the Transferor is party, a contract to which the Transferor is not party or elsewhere and whether in writing or not), shall, with effect on and from the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee Board, the Transferee Actuary or any other officers, employees or such agents of the Transferee respectively. All references in a Transferred Policy to the Transferor Group shall, where the context requires, be read and construed with effect from the Effective Date as references to the Transferee Group. For the avoidance of doubt, this paragraph 6.4 shall have no effect on any agreement or document to the extent that, in each case, it refers to the Excluded Policies, the Excluded Assets or the Excluded Liabilities.
- 6.5 Without prejudice to the generality of paragraph 3.1.1, where the benefits of any Transferred Policy are held under the terms of a trust, such terms together with any rules applicable to any pension scheme in the case of any pension scheme under which benefits are referable to a Transferred Policy, shall operate and be construed, with effect on and from the Effective Date, on a basis which is consistent with the transfer of such Transferred Policy in accordance with the provisions of this Scheme. For the avoidance of doubt:
- 6.5.1 where the consent of the Transferor is required under any such terms, the consent of the Transferee shall, with effect on and from the Effective Date, instead be treated as required; and
- 6.5.2 where a power to appoint trustees under such terms is conferred on the Transferor, that power shall, with effect on and from the Effective Date, instead be treated as conferred on the Transferee.
- 6.6 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferred Policy, Transferred Asset, Residual Asset, Transferred Liability or Residual Liability pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified.

6.7 The provisions of paragraphs 6.1 to 6.6 shall apply, mutatis mutandis, to all Services Agreements or otherwise relating or referring to the Transferred Business or any part thereof.

7. **MANDATES**

Any mandate or other instruction in force on the Effective Date as to the manner of payment by the Transferor of any sum payable under any Transferred Policy shall continue in force as an effective instruction or authority to the Transferee.

8. **RESIDUAL POLICIES**

8.1 Subject to paragraph 8.2, the Residual Policies shall not be transferred to the Transferee by this Scheme and all liabilities attributable to the Residual Policies shall remain liabilities of the Transferor.

8.2 If all consents, orders, permissions or other requirements for the transfer or novation of a Residual Policy from the Transferor to the Transferee are obtained, such Residual Policy shall, by the Order and without any further act or instrument, be transferred to the Transferee, and shall thereafter be treated in all respects, as if it were a Transferred Policy and not a Residual Policy.

9. **DECLARATION OF TRUST BY THE TRANSFEROR**

9.1 The Transferor shall from the Effective Date (but save to the extent that giving effect to such a trust would require a consent or waiver which has not been obtained or that such a trust would not be recognised by any applicable law or that the parties agree in writing not to give effect to such a trust for any reason) hold any Residual Asset, together with any proceeds of sale or income or other right accrued or return arising in respect thereof, as trustee for the Transferee.

9.2 The Transferor shall be subject to the Transferee's reasonable directions in respect of the Residual Assets from the Effective Date until the relevant asset is transferred to or otherwise vested in the Transferee or disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of the sale thereof), and the Transferee shall have authority to act as the attorney of the Transferor in respect of such property for all such purposes.

9.3 In the event of any payment being made to, property being received by, or right being conferred upon the Transferor on or after the Effective Date in respect of any Transferred Asset or any Residual Asset, the Transferor shall, as soon as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee.

10. **INDEMNITIES IN FAVOUR OF THE TRANSFEROR**

10.1 With effect from the Effective Date until the relevant Subsequent Transfer Date, the Transferee shall discharge on the Transferor's behalf or, failing that, shall indemnify the Transferor against:

10.1.1 charges, costs and claims arising in respect of any Residual Liabilities which are liabilities of the Transferor (other than liabilities which are the subject of paragraph 10.1.2 or paragraph 10.2) until the relevant liability is transferred to or becomes a liability of the Transferee; and

10.1.2 any amount paid by the Transferor in respect of any Residual Liabilities of the Transferor which are, whether wholly or in part, the subject of a policy of indemnity insurance or a claim or right of recovery against a third party, but only to the extent that the Transferor, having made a claim under such a policy or against such third party, shall have failed to recover any such amount pursuant to rights it may have under such policy, claim or right of recovery (having used reasonable endeavours to do so).

- 10.2 The Transferee shall indemnify the Transferor against any costs and/or expenses which it may incur in pursuing any claim under any such policy of indemnity insurance or against any such third party as is referred to in paragraph 10.1.2. Subject thereto, the Transferor shall take such steps as the Transferee shall reasonably require in order to pursue the rights it may have under any such policy of indemnity insurance or against any such third party. The Transferee shall be entitled, upon notice to the Transferor, to have conduct of all litigation or other proceedings in respect of any such claim. In that connection, the Transferor shall give all such assistance as the Transferee may reasonably require in conducting any such proceedings.
- 10.3 The indemnities given by the Transferee under paragraphs 10.1 and 10.2 are given on the basis that the Transferor will use reasonable endeavours to mitigate its charges, costs and claims for which indemnification may be sought under paragraphs 10.1 and 10.2.
- 10.4 Where the Transferor is entitled to receive an amount pursuant to the indemnities contained in paragraphs 10.1 and 10.2 it shall be entitled to receive such amount free and clear of all deductions or withholding whatsoever save only for any deductions or withholdings required by law. If any deductions or withholdings are required by law from such payment or the Transferor is subject to Tax in respect of such payment then (save to the extent such deduction, withholding or Tax has already been taken into account in calculating the quantum of loss for the relevant claim) the Transferee shall be liable to pay to the Transferor such further sums as shall be required to ensure that the net amount received by the Transferor will equal the full amount which would have been received and retained in the absence of any such deductions or withholdings or Tax; and if the Transferor obtains and utilises a Tax credit, or obtains a Tax repayment, which the Transferor determines (acting in good faith) as being attributable to any increased payment made pursuant to this paragraph 10.4 it shall pay an amount to the Transferee which the Transferor (acting in good faith) determines will leave it with such amount that the Transferor would have received under the relevant indemnities in the absence of any deductions or withholdings or such Tax on receipt.
- 10.5 For the avoidance of doubt, the Transferee shall not be required under paragraph 10.1 above to discharge or indemnify the Transferor against Excluded Liabilities, any Excluded Policies or any charges, costs, claims or other liabilities in respect of Excluded Liabilities, or any Excluded Policies and in particular, but without limitation, the Transferee shall not be required to discharge or indemnify the Transferor against any Tax liabilities of the Transferor.
11. **SPECIFIED ASSETS BALANCING AMOUNT**
- 11.1 Prior to the Effective Date, the Transferor shall calculate and notify to the Transferee its estimate of the Specified Assets Amount using the information available to the Transferor at the time of estimation.
- 11.2 On a date selected by the Transferee which is not more than 90 Business Days after the Effective Date, the Transferee shall, having regard to Appropriate Actuarial Advice, determine and certify to the Transferor:
- 11.2.1 the Specified Assets Amount;
- 11.2.2 the Asset Value as at the Effective Date of the Specified Assets; and
- 11.2.3 the amount by which the figure certified under paragraph 11.2.1 exceeds the figure certified under paragraph 11.2.2 (such amount, which may be positive or negative, being the "**Specified Assets Balancing Amount**").
- 11.3 On and with effect from the date falling 5 Business Days after the certification by the Transferee of the Specified Assets Balancing Amount:
- 11.3.1 if the Specified Assets Balancing Amount is positive, then the Specified Assets Balancing Assets and all interest of the Transferor therein shall, by the Order and without any further act or instrument, be transferred from the Transferor to, and

be vested in, the Transferee, subject to all Encumbrances (if any) affecting such Specified Assets Balancing Assets; or

- 11.3.2 if the Specified Assets Balancing Amount is negative, then the Specified Assets Balancing Assets and all interest of the Transferee therein shall, by the Order and without any further act or instrument, be transferred from the Transferee to, and be vested in, the Transferor, subject to all Encumbrances (if any) affecting such Specified Assets Balancing Assets.

PART D

MISCELLANEOUS PROVISIONS

12. EFFECTIVE DATE

- 12.1 This Scheme shall become effective at 22.59 GMT on 31 December 2020 or such other time and date as the Transferor and the Transferee may agree (being a time and date after the making of the Order), provided that if such time and date for the Scheme to become operative is after 22.59 GMT on 31 March 2021, the provisions of paragraph 12.2 shall apply.
- 12.2 If the Transferor and the Transferee agree that the transfer of the Transferred Business to the Transferee should become effective after 22.59 GMT on 31 March 2021, the Transferor and the Transferee must apply to the Court for a further order specifying such time and date after 22.59 GMT on 31 March 2021 upon which, subject to the consent of the Court, this Scheme shall become operative, provided that in any such case:
- 12.2.1 the UK Insurance Regulators shall be notified in advance and as soon as reasonably practicable of, and shall have the right to be heard at, any hearing of the Court at which such application is considered;
- 12.2.2 such application shall be accompanied by a supplementary report from Jeremy Nurse of Willis Towers Watson or any other independent expert approved pursuant to section 109(2)(b) of FSMA to the effect that in his opinion the proposed amendment will not materially adversely affect the holders of Transferred Policies or Residual Policies or Excluded Policies or policies of the Transferee (including the security or reasonable expectations of such policyholders); and
- 12.2.3 a notice of the making of such order is published on the websites of the Transferor and the Transferee within 5 days of the making of such further order.
- 12.3 Unless this Scheme shall become effective in its entirety on the date determined in accordance with paragraph 12.1, it shall lapse.

13. MODIFICATIONS OR ADDITIONS

- 13.1 The Transferee and the Transferor may consent for and on behalf of themselves and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, in each case prior to its sanction of this Scheme, the Court may approve or impose, provided that any such modification, addition, condition or provision which is material to the Scheme may only be made with the consent of the UK Insurance Regulators.
- 13.2 Subject to paragraphs 13.3, at any time after the sanction of this Scheme, the Transferee and the Transferor shall be at liberty to apply jointly to the Court for consent to amend its terms, provided that in any such case:
- 13.2.1 the UK Insurance Regulators shall be notified at least six weeks in advance of, and have the right to be heard at, any hearing of the Court at which such application is considered; and
- 13.2.2 such application shall be accompanied by a certificate from an independent actuary (forming part of a reasoned report based on the latest financial information that can reasonably be made available to the independent actuary at the time of the report) to the effect that in his opinion the proposed amendment will not adversely affect the security or adversely affect the reasonable expectations of the holders or Transferred Policies or Residual Policies or Excluded Policies or policies of the Transferee, in each case as they stood before the implementation of the proposed amendment.

If such consent is granted, the Transferee and the Transferor may amend the terms of this Scheme in accordance with such consent.

13.3 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors and/or changes required by law or regulation), provided that the UK Insurance Regulators have been notified of the same and have either: (i) indicated that they do not object thereto; or (ii) a period of 28 days has passed commencing on the date of receipt of the relevant notification by the UK Insurance Regulators without them indicating any objections thereto.

14. **COSTS AND EXPENSES**

Except as otherwise agreed in writing, the Transferor and the Transferee shall bear their own costs and expenses in relation to the preparation and carrying into effect of this Scheme, whether before or after the Effective Date.

15. **EVIDENCE OF TRANSFER**

The production of a copy of the Order with any modification, amendments and/or additions made under paragraph 13 shall for all purposes be evidence of the transfer to and vesting in the Transferee of the Transferred Business.

16. **VAT**

It is the mutual understanding of the parties that nothing to be done by either party hereunder will constitute the making of a supply on which VAT will be chargeable (whether the person required to account for such VAT is the person making the supply or the recipient thereof), in any jurisdiction on account of the Scheme being treated as the transfer of a going concern or constituting transactions that are outside the scope of VAT for the purposes of relevant applicable laws. The parties therefore are of the view there will be no reporting of the supply as an exported supply which would have been chargeable to VAT if supplied within the country. If, notwithstanding the foregoing, it is at any time determined in writing by a Tax authority that anything done hereunder has to be treated as a supply on which VAT is chargeable (whether the person required to account for such VAT is the person making the supply or the recipient thereof), the parties shall engage in good faith to agree which party shall bear the excess cost of the VAT and further shall cooperate in completing any procedural formalities or VAT invoicing requirements related thereto.

17. **THIRD PARTY RIGHTS**

17.1 Subject to paragraph 17.2, it is not intended that any person who is not a party to this Scheme may enforce any of its terms, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17.2 Policyholders of the Transferred Policies may enforce the provisions of paragraph 5.5 against the Transferee. Neither the Transferor nor the Transferee shall require the consent of any such policyholders to amend this Scheme pursuant to paragraph 13.

18. **GOVERNING LAW**

This Scheme is governed by, and shall be construed in accordance with, English law.

Dated this 2020

SCHEDULE 1 – SCHEDULE OF POLICIES

Policy numbers of the policies:







