

THE HIGH COURT

COMMERCIAL

2022 No. 92 COS

(2022 42 COM)

Tuesday the 6th day of September 2022

BEFORE MR JUSTICE McDONALD

**IN THE MATTER OF ARK LIFE ASSURANCE COMPANY DESIGNATED
ACTIVITY COMPANY**

**AND IN THE MATTER OF IRISH LIFE ASSURANCE PUBLIC LIMITED
COMPANY**

AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909

AND IN THE MATTER OF THE INSURANCE ACT 1989

**AND IN THE MATTER OF THE EUROPEAN UNION (INSURANCE AND
REINSURANCE) REGULATIONS 2015**

The Petition presented on 9 May 2022 seeking sanction for the scheme of transfer annexed thereto by the directors of Ark Life Assurance Company DAC (hereinafter referred to as “Ark Life” the “**Petitioner**” or the “**Transferor**” as relevant) coming on for hearing this day pursuant to the Order herein dated 20 May 2022 Defined terms used herein shall have the meanings as assigned to them in the Scheme (as defined below) save where otherwise provided

AND UPON reading the said Petition the Notice of Motion dated 9 May 2022 the Notice of Motion for Directions and entry into the Commercial List dated 9 May 2022 the Grounding Affidavit of Ann Kelleher sworn on 29 April 2022 the Second Affidavit of Ann Kelleher sworn on 29 April 2022 the Supplemental Affidavit of Ann Kelleher sworn on 17 May 2022 the Affidavit of

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Denis McLoughlin sworn on 6 May 2022 the Affidavit of Elaine Long sworn on 19 May 2022 the Certificate of Solicitor of Elaine Long dated 5 May 2022 the Verifying Affidavit of Ann Kelleher sworn on 26 August 2022 the Supplemental Affidavit of Ann Kelleher sworn on 1 September 2022 the Affidavit of Denis McLoughlin sworn on 29 August 2022 the Affidavit of Joanie Draper sworn on 29 August 2022 the Affidavit of Karen Burke sworn on 29 August 2022 the Affidavit of Elaine Long sworn on 30 August 2022 the Second Affidavit of Elaine Long sworn on 5 September 2022 and the documents and exhibits referred to in said Affidavits including the final scheme of transfer (a copy of which is exhibited at "Tab 52" to the Verifying Affidavit of Ann Kelleher sworn on 26 August 2022) (the "Scheme")

AND UPON hearing Counsel for the Petitioner

AND UPON the Court noting the undertaking given by Counsel on behalf of Ark Life and Irish Life Assurance plc ("**Irish Life**") to be bound by the Scheme and to take all reasonable steps (including the execution of documents) which may be necessary or expedient to give effect to the Scheme

And there being an appearance in Court by Ms O'Donohoe (a Transferring Policyholder) as an interested observer

IT IS ORDERED as follows

- (1) That the Scheme be sanctioned pursuant to the provisions of Section 13 of the Assurance Companies Act 1909 (as amended) the EU (Insurance and Reinsurance) Regulations 2015 and Section 36 of the Insurance Act 1989 (as amended)

- (2) That notwithstanding any provision to the contrary in the Scheme the Scheme shall take effect at 2:00 am on the 1st day of October 2022 (and for the avoidance of doubt this date and time shall by virtue of this Order and without the need for any further act or instrument be the Effective Time for the purposes of the Scheme (and the Scheme shall be construed accordingly)
- (3) That pursuant to Section 36 of the Insurance Act 1989 the following ancillary provisions for implementing the Scheme shall be sanctioned by virtue of this Order without the need for any further act or instrument
- (i) the Transferring Business which includes the Transferring Policies Transferring Assets Transferring Liabilities and rights of Ark Life in respect of the Transferring Contracts will be transferred by Ark Life to Irish Life
 - (ii) the Transferring Assets shall be transferred to and vested in Irish Life and shall cease to be assets of Ark Life (as appropriate)
 - (iii) that all rights benefits and powers conferred on or vested in Ark Life and the liabilities imposed on Ark Life by or under the Transferring Contracts shall be transferred to Irish Life
 - (iv) that all premiums or amounts attributable or referable to the Transferring Policies or the Transferring Contracts shall be payable to Irish Life
 - (v) that Irish Life shall be entitled to any and all defences claims counterclaims and rights of set-off under or in respect of the Transferring Contracts which would have been available to Ark Life
 - (vi) all references in any Transferring Contract to Ark Life, the board of directors of Ark Life or any other officers employees

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or agents of Ark Life shall be read as references to Irish Life the board of directors of Irish Life or any other officers employees or agents of Irish Life or where appropriate agents of Irish Life to which the administration carried on by Irish Life has been delegated In particular but without limitation all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by Ark Life the board of directors of Ark Life or any other officers employees or agents of Ark Life in relation to any of the Transferring Contracts shall from and after the Effective Time be exercisable or required to be performed by Irish Life the board of directors of Irish Life or any other officers employees or agents of Irish Life

- (vii) that the Transferring Liabilities shall be transferred to and shall become the liabilities of Irish Life and shall cease to be liabilities of Ark Life
- (viii) that any mandate or other instruction in force on the Effective Time (including without limitation any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums payable under or in respect of any of the Transferring Contracts or the Transferring Policies shall take effect as if it had provided for and authorised such payment to Irish Life
- (ix) that any judicial quasi-judicial arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim which are pending by

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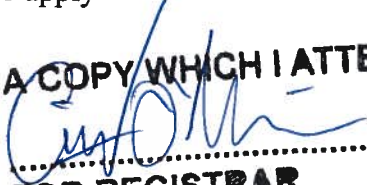
or against Ark Life in connection with the Transferring Business shall be continued by or against Irish Life and Irish Life shall be entitled to all defences claims counterclaims and rights of set-off that would have been available to Ark Life in relation to any such proceedings

- (x) Ark Life is given liberty to transfer to Irish Life all data (including personal data) held by or on behalf of the Ark Life in relation to the Transferring Policies the Transferring Assets and the Transferring Liabilities (as each such term is defined in the Scheme)
- (xi) the Books and Records (being the books and records relating to the Transferring Business) which may include Transferring Policyholder Data (as defined in the Scheme) protected under the Data Protection Legislation (as defined in the Scheme) shall be transferred to Irish Life (such that Irish Life shall be deemed to be the Data Controller of the Policyholder Data) and may be used by Irish Life for and disclosed by Irish Life to and used by any agent or contractor of Irish Life to the same extent that they were used by Ark Life and its agents or contractors prior to the Effective Time for all purposes in connection with the Transferring Contracts or the Transferring Policies including in particular administration thereof and all matters relevant or incidental thereto and
- (xii) to the extent that an authority has been given to Ark Life in connection with a Transferring Policy or a Transferring Contract by a policyholder or counterparty thereto or by any other relevant person whether pursuant to Data Protection

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Legislation or otherwise such authority shall be deemed to
have been given to Irish Life

Liberty to apply

A COPY WHICH I ATTEST

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FOR REGISTRAR

NINA BRENNAN
REGISTRAR
PERFECTED the 8th day of
September 2022

Matheson
Solicitors for the Petitioner