

IN THE HIGH COURT OF JUSTICE

CR-2022-002956

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

IN THE MATTER OF
HODGE LIFE ASSURANCE COMPANY LIMITED

and

IN THE MATTER OF
OMNILIFE INSURANCE COMPANY LIMITED

and

IN THE MATTER OF
PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

INSURANCE BUSINESS TRANSFER SCHEME

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

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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:

Actuary means the person appointed by the relevant insurer from time to time to perform the “actuarial function”, as described in SUP 4.3.13R

Asset(s) means any assets and property of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, whether owned, leased or licensed including without limitation all rights, benefits and powers under any contract and all rights, claims and powers against any third party

CA 2006 means the Companies Act 2006

Capital Assets means such amount of Assets as is necessary to ensure that the Transferor continues to comply with its Capital Requirements immediately upon the Effective Date

Capital Requirements means the obligation to hold sufficient own funds to cover the higher of the following:

- (a) the Minimum Capital Requirement; and
- (b) the Solvency Capital Requirement;

Court means the High Court of Justice in England and Wales

Data Protection Legislation means the Data Protection Act 2018 (and any subordinate legislation and codes of practice relating to it) and any other applicable data protection or privacy rules, legislation in any jurisdiction with regard to the processing of personal data and on the free movement of such data including the transposition of Regulation (EU) 2016/679 (General Data Protection Regulation) into the law of the UK by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data

Data Subject Request means a request by a person to access, correct, amend, transfer or delete that person's personal data consistent with that person's rights under Data Protection Legislation

Effective Date means the time and date on which this Scheme shall take effect in accordance with paragraph 12

Encumbrance means any mortgage, charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind and any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar effect

Excluded Assets means:

- (a) the Retained Records;
- (b) any Asset of the Transferor attributable to the Transferring Business (including any right or benefit of the Transferor under any Transferring Policy) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred at all;
- (c) without prejudice to paragraph 3.8, any Asset of the Transferor attributable to or connected with the Excluded Policies and the rights, benefits and powers of the Transferor under or by virtue of the Excluded Policies;
- (d) the legal title to the Excluded Properties;
- (e) Assets in an amount equal to £7,000,000; and
- (f) the Capital Assets

Excluded Liabilities means any Liability whatsoever of the Transferor:

- (a) that is attributable to or connected with an Excluded Asset;
- (b) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred at all;
- (c) without prejudice to paragraph 3.8, under or pursuant to any Excluded Policy;

Excluded Policies means Policies:

- (a) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred; or
- (b) without prejudice to paragraph 3.8, which are an Excluded Sanctioned Policy

Excluded Properties means those properties listed in Schedule 1

Excluded Sanctioned Policy means a Policy in relation to which a policyholder is included on any of the Sanctions Lists as at the Effective Date

FCA means the Financial Conduct Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such regulatory and supervisory functions in relation to Long Term Business carried on in the United Kingdom as are at the date of this Scheme allocated to the Financial Conduct Authority under FSMA

FCA Handbook means the handbook of rules and guidance issued by the FCA from time to time pursuant to FSMA

FSMA means the Financial Services and Markets Act 2000

Governmental Authority means any national, supra-national, federal, state, provincial or local government, political subdivision, governmental, regulatory, department, bureau, board or other administrative authority, instrumentality, agency, body or commission, self-regulatory organization or any court (including, without limitation, the Court), tribunal, or judicial or arbitral body

Group means, in relation to a company, that company and any subsidiary, subsidiary undertaking or holding company of such company and any subsidiary or subsidiary undertaking of any such holding company

Independent Expert means Stephen Makin of Hymans Robertson LLP or any other independent expert approved pursuant to section 109(2)(b) of FSMA

Liability means any debt, liability, duty or obligation (in each case, whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) including, without limitation, all costs and expenses relating thereto

Long Term 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

Marketing Preference means a consent given by a data subject for use of his personal data to market directly to him by any means, or an indication (by act or omission as appropriate) by the data subject that such consent is withheld or that he has opted out of direct marketing or sub-set thereof

Minimum Capital Requirement means the Minimum Capital Requirement as required by Article 128 of the Solvency II Directive

Mis-selling Liabilities means all Liabilities for damages (including compensatory, consequential, exemplary, punitive, bad faith or similar or other damages) which relate to the marketing, sale, underwriting, issuance, delivery, cancellation or administration of any Transferring Policy, including (without limitation): (i) any amount in respect of interest arising in connection thereto or

in connection with any payment made in respect thereof; (ii) any amount in respect of any additional liability or an increase in liability to taxation of a policyholder, potential policyholder or former policyholder when compared to that person's liability to taxation if the event or series of events giving rise to the relevant damages had not occurred; and (iii) any liability arising out of or relating to any alleged or actual act, error or omission by the Transferor or its agents, whether intentional or otherwise, with respect to any such Transferring Policy, including: (A) any alleged or actual reckless conduct or bad faith in connection with the handling of any claim arising out of or under such Transferring Policy; or (B) the marketing, sale, underwriting, issuance, delivery, cancellation or administration of such Transferring Policy, in each case including where identified by the UK Financial Ombudsman Service (whether prior to, on or following the Effective Date)

Order means an order made by the Court pursuant to Section 111(1) of FSMA sanctioning this Scheme and any order (including any subsequent order which is ancillary thereto) in relation to this Scheme made by the Court pursuant to Section 112 of FSMA

Outwards Reinsurance Agreements means all agreements pursuant to which any portion of the Liabilities under the Transferring Policies is or has been reinsured, and which are in force immediately prior to the Effective Date

Payment has the meaning given to that expression in paragraph 7.2

Policies means all policies (as defined in the Policyholder Order), and other contracts of or for insurance and all binding quotations (and including at any time any constituent part of a Policy which gives rise to any separately identifiable benefit) written by or on behalf of or assumed by the Transferor as insurer (where such policy or other contract was not written or assumed solely by or on behalf of the Transferor) (including, without limitation, all supplements, endorsements and riders thereto and all ancillary agreements in connection therewith) prior to the Effective Date

policyholder has the meaning set out in the Policyholder Order

Policyholder Order means the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361)

PRA means the Prudential Regulation Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such prudential and supervisory functions in relation to Long Term Business carried on in the United Kingdom as are at the date of this Scheme allocated to the Prudential Regulation Authority under FSMA

PRA Rulebook means the rules and directions made by the PRA

Proceedings means any action or other legal or administrative proceedings or step (whether direct or indirect, by way of a claim, demand, legal proceedings, execution of judgement, arbitration, complaint or otherwise howsoever) including:

- (a) arbitration;
- (b) mediation;
- (c) any other dispute resolution procedure (whether or not it involves submission to any court);
- (d) any judicial, quasi-judicial, administrative or regulatory review or process; and
- (e) any complaint or claim to any ombudsman (including the Financial Ombudsman Service)

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

Residual Asset means each Asset of the Transferor (without prejudice to paragraph 3.8, other than an Excluded Asset) comprised in or relating to the Transferring Business which would be a Transferring Asset (including any right, benefit or power of the Transferor under any Transferring Policy) but for the fact that, in relation to the relevant Asset:

- (a) the Court has declined to order the transfer of such Asset to the Transferee under FSMA (either at all or without the consent of a person other than the Transferee or the Transferor);
- (b) the Transferor and the Transferee have agreed, prior to the Effective Date, that the transfer of such Asset to the Transferee should be delayed or should not be transferred at all (including where the Court has made an order as to the enforceability of an interest or right relating to such Asset as referred to in section 112A(2)(b) of FSMA);
- (c) the transfer of such Asset to the Transferee is outside the jurisdiction of the Court;
- (d) such Asset is subject to the law of any country or territory outside the UK and such law provides that further steps, in addition to the Order, are required to be taken to effect the transfer of such Asset pursuant to such law;
- (e) such Asset cannot be transferred or vested in the Transferee for any other reason; or
- (f) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Date in respect of any Asset referred to in the preceding paragraphs (a) to (e), but excluding for the avoidance of doubt, any Excluded Assets

Residual Liability means any Liability of the Transferor (without prejudice to paragraph 3.8, other than an Excluded Liability) comprised in or relating to the Transferring Business which would be a Transferring Liability, but for the fact that, in relation to the relevant Liability:

- (a) the Court has declined to order the transfer of such Liability to the Transferee under FSMA (either at all or without the consent of a person other than the Transferee or the Transferor);
- (b) the Transferor and the Transferee have agreed, prior to the Effective Date, that the transfer of such Liability to the Transferee should be delayed or not transferred at all (including where the Court has made an order as to the enforceability of an interest or right relating to such Liability as referred to in section 112A(2)(b) of FSMA);
- (c) the transfer of such Liability to the Transferee is outside the jurisdiction of the Court;
- (d) such Liability is subject to the law of any country or territory outside the UK and such law provides that further steps, in addition to the Order, are required to be taken to effect the transfer of such Liability pursuant to such law;
- (e) it is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (f) it relates to or is otherwise attributable to or connected with a Residual Policy; or
- (g) it cannot be transferred or vested in the Transferee for any other reason

Residual Policy means any Policy (without prejudice to paragraph 3.8, other than an Excluded Policy) which would be a Transferring Policy save that:

- (a) the Order requires further steps be taken to make the transfer of such Policy to the Transferee fully effective or such Policy is not otherwise capable of being transferred to the Transferee pursuant to FSMA at the Effective Date; or
- (b) the Transferor and the Transferee agree prior to the Effective Date that its transfer is to be delayed

Retained Records means:

- (a) the corporate minute books and stock records of the Transferor;
- (b) any accounting and financial and other records of the Transferor which the Transferor is required by law to retain, including VAT records; and
- (c) any other books and records to the extent relating to any other Excluded Asset

Sanctions Lists means the sanctions lists maintained by the following as at the Effective Date: (i) the United Nations; (ii) the European Union; (iii) the US Department of the Treasury; (iv) Switzerland (including any relevant governmental or regulatory body); (v) the Office of Foreign Asset Control; (vi) Her Majesty's Treasury; and (vii) Canada (including any relevant governmental or regulatory body)

Sanction Release has the meaning given to that expression in paragraph 3.8

Sanction Release Date has the meaning given to that expression in paragraph 3.8

Scheme means this scheme in its original form or with or subject to any modification, addition or condition which may be made, approved or imposed in accordance with paragraph 14

Solvency Capital Requirement means the Solvency Capital Requirement as required by Article 100 of the Solvency II Directive

Solvency II Directive means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and reinsurance

Subsequent Transfer Date means, without prejudice to paragraph 3.8, 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 or is to be transferred to the Transferee, namely:

(a) in respect of:

- (i) any Residual Policy falling within paragraph (a) of the definition of Residual Policy and of any Residual Liability which is attributable to or connected with that Residual Policy and of any Residual Asset which relates to or is otherwise attributable to that Residual Policy;
- (ii) any Residual Asset falling within paragraph (a), (c), (d) or (e) of the definition of Residual Asset, and of any Residual Liability which is attributable to or connected with that Residual Asset; or
- (iii) any Residual Liability falling within paragraph (a), (c), (d) or (g) of the definition of Residual Liability,

the date on which any impediment to its transfer shall have been removed or overcome;
and

(b) in respect of

- (i) any Residual Policy falling within paragraph (b) of the definition of Residual Policy and of any Residual Liability which is attributable to or connected with that Residual Policy and of any Residual Asset which relates to or is otherwise attributable to that Residual Policy;
- (ii) any Residual Asset falling within paragraph (b) of the definition of Residual Asset and of any Residual Liability which is attributable to or connected with that Residual Asset; or
- (iii) any Residual Liability falling within paragraph (b) of the definition of Residual Liability,

the date on which the Transferor and the Transferee agree the transfer should take effect; and

- (c) in respect of any Residual Asset falling within paragraph (f) of the definition of Residual Asset, the date on which such Residual Asset is received or earned by the Transferor

Tax means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the United Kingdom or elsewhere payable to or imposed by any authority responsible for the collection or management of any such tax, levy, duty, charge, impost, withholding or other amount; and
- (b) all charges, interest, penalties and fines incidental or relating to any sum falling within (a) above or which arise as a result of the failure to pay that sum on the due date or to comply with any obligation relating to it

Transferee means Omnilife Insurance Company Limited

Transferee's Actuary means the Actuary of the Transferee

Transferee's Board means the board of directors of the Transferee from time to time

Transferor means Hodge Life Assurance Company Limited

Transferor's Actuary means the Actuary of the Transferor

Transferor's Board means the board of directors of the Transferor from time to time

Transferring Assets means all of the Assets comprised in or relating to the Transferring Business, including without limitation:

- (a) all right, title, interest, benefit and powers of the Transferor in, to or under by virtue of
 - (i) the Transferring Policies;
 - (ii) the Transferring Third Party Contracts;
 - (iii) the Outwards Reinsurance Agreements;
- (b) all rights and claims (present or future, actual or contingent) against any third party in relation to the Transferring Business or arising as a result of the Transferor having carried on the Transferring Business;
- (c) all expenses that have been prepaid by the Transferor relating to the Transferring Business, including ad valorem Taxes and lease and rental payments;
- (d) all books, records, files and papers, whether in hard copy or computer format, of the Transferring Business, including insurance and reinsurance contracts, claims and underwriting files sales and promotional literature, manuals and data, sales and purchase correspondence and lists of present and former customers, excluding the Retained Records;
- (e) all goodwill associated with the Transferring Assets;
- (f) any right to repayment of Tax (including any deferred tax asset) in respect of any accounting period on or before the Effective Date

but excluding:

- (g) until the relevant Subsequent Transfer Date, the Residual Assets and Residual Liabilities;
- (h) at all times, the Excluded Assets

Transferring Business means the entire insurance business of the Transferor including, without limitation, the underwriting, management and administration of the Transferring Policies and all activities carried on by the Transferor in relation or in connection thereto, and the Transferring Assets, the Transferring Liabilities, the Transferring Policies, the Transferring Third Party Contracts and the Outwards Reinsurance Agreements but excluding: (i) the Excluded Assets; (ii) the Excluded Liabilities; (iii) until the relevant Subsequent Transfer Date, the Residual Assets; and (iv) until the relevant Subsequent Transfer Date, the Residual Liabilities

Transferring Liabilities means all Liabilities of the Transferor to the extent arising from or relating to the Transferring Business, and irrespective of whether the Liabilities shall arise prior to or following the Effective Date, including, without limitation:

- (a) all Liabilities arising under or in connection with the Transferring Policies;
- (b) all Liabilities arising under or in connection with lapsed, surrendered, expired and reinstated policies written and/or assumed by or on behalf of the Transferor;
- (c) all Liabilities in connection with quotations made by or on behalf of the Transferor which were not proceeded with and/or which did not become policies of insurance for any reason whatsoever (including due to an administrative or proceeding error);
- (d) any Mis-selling Liabilities;
- (e) any Liabilities under the Outwards Reinsurance Agreements;
- (f) all Liabilities under the Transferring Third Party Contracts; and
- (g) Liabilities to make a payment of or in respect of or an amount representing, equal to, equivalent to, or deemed to be, Tax (whether actual, present, future, contingent or deferred),

but excluding:

- (i) until the relevant Subsequent Transfer Date, the Residual Liabilities; and
- (ii) at all times, the Excluded Liabilities

Transferring Policies means the Policies comprised in or relating to the Transferring Business, together or individually as the context may indicate, excluding any Excluded Policy and, until the relevant Subsequent Transfer Date, any Residual Policy

Transferring Policyholder means a policyholder who has insured a risk with the Transferor or whose risk has been assumed by the Transferor pursuant to a Transferring Policy

Transferring Third Party Contracts means all subsisting contracts to which the Transferor is party or beneficiary which relate to the Transferring Business (including, without limitation, any investment management agreements, administration agreements (including the administration agreements with Paymaster (1836) Limited and Pure Retirement Limited), all sale and purchase agreements entered into by the Transferor, distribution agreements, indemnity agreements, counter-indemnities, collateral agreements, pledges, liens, guarantees, reinsurance deposit agreements, trust agreements and other similar contracts or commitments related to the Transferring Policies and the Outwards Reinsurance Agreements but excluding the Transferring Policies and the Outwards Reinsurance Agreements

UK means the United Kingdom of Great Britain and Northern Ireland; and

VAT means value added or similar turnover or sales taxes, wheresoever imposed (including any interest, surcharges or penalties in respect of the same).

1.2 In this Scheme:

- (a) **property** and **asset** includes property, assets, 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 and assets held on trust, securities (quoted or unquoted), benefits (including tax benefits), powers of any description and any interest whatsoever in any of the foregoing;
- (b) **transfer** includes (as the context may require) **assign, assignation, assignment, dispose, disposal, novate, novation, convey** and **conveyance** and shall include a transfer by operation of law;
- (c) any reference to the **contracts, assets** or **liabilities** of the Transferor relating to the Transferring Business is a reference to the contracts, assets or liabilities relating to the Transferring Business to which the Transferor is entitled or subject (whether beneficially or in any fiduciary capacity):
 - (i) wherever they are situated or arise;
 - (ii) whether or not they are capable of being transferred or assigned by the Transferor;
 - (iii) whether or not they are expressed to be binding on the successors or assignees of the Transferor;
- (d) 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;
- (e) any reference to a **court, tax, accounting** or **regulatory authority** shall be deemed to include a reference to such authority's successors from time to time;
- (f) 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 from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- (g) any reference to any rules, regulations or guidance made by the PRA and/or the FCA (as applicable) shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time, and any reference to any provision of the PRA Rulebook or

FCA Handbook (as applicable) which is not in force at the date of this Scheme but will be in force by the Effective Date shall, in respect of the period before it comes into force, be deemed to include a reference to such rules or regulations issued by the PRA and/or the FCA (as applicable) as most closely corresponded to that provision at the date of this Scheme;

- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, Court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to that English legal term;
- (i) expressions used which have meanings under FSMA shall bear those meanings unless stated otherwise;
- (j) the expressions **subsidiary** and **holding company** shall have the meanings given in section 1159 of the CA 2006, save that for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c) of the CA 2006 a company shall be treated as a member of another company:
 - (i) if any shares in that other company are held by a person acting on behalf of the company or any of its subsidiaries;
 - (ii) if any of its subsidiaries is a member of that other company; or
 - (iii) if any shares in that other company are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the company or any of its subsidiaries;
- (k) the expression **subsidiary undertaking** shall have the meaning given in section 1162 of the CA 2006, save that for the purposes of section 1162(2) of the CA 2006, an undertaking shall also be treated as a member of another undertaking if any shares in that other undertaking are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the undertaking or any of its subsidiary undertakings;
- (l) any reference to this Scheme shall include the recitals and Schedules to it and (unless inconsistent with the subject or context) references in this Scheme to paragraphs, parts or Schedules are to paragraphs of, parts of or the Schedules to this Scheme;
- (m) the rule known as the *ejusdem generis* rule shall not apply, and accordingly words introduced by words and phrases such as **include**, **including**, **other** and **in particular** shall not be given a restrictive meaning or limit the generality of any preceding words or be

construed as being limited to the same class as the preceding words where a wider construction is possible;

- (n) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (o) any reference to a person shall include a reference to a body corporate, a partnership, an unincorporated association or to a person's executors or administrators;
- (p) any reference to writing shall include any mode of reproducing words in a legible and non-transitory form;
- (q) any reference to a calculation, decision, determination or opinion of any of the Transferee's Board or the Transferor's Board (or any similar expression) shall be deemed to include a calculation, decision, determination or opinion of a duly constituted committee or duly authorised representative of the Transferee's Board or the Transferor's Board (as appropriate);
- (r) references to time are to London time; and
- (s) if a period of time is specified from a given day or date or from the day or date of an act or event, it shall be calculated exclusive of that day or date.

PART B – INTRODUCTION

2 Introduction

- 2.1 The Transferor is a private limited company incorporated in England and Wales with registered company number 00837457 and whose registered office is at Level 45, 22 Bishopsgate, London, United Kingdom, EC2N 4BQ. The Transferor is a "UK authorised person" as defined in section 105(8) of FSMA. The Transferor has permissions under Part 4A of FSMA, *inter alia*, to effect and carry out contracts of long term insurance in the UK under classes of business I–IV and VI–VII set out in Part II of Schedule 1 to the Regulated Activities Order and the Transferring Business consists of business carried on by the Transferor in the UK.
- 2.2 The Transferee is a private limited company incorporated in England and Wales with registered company number 02294080 and whose registered office is at Level 45, 22 Bishopsgate, London, United Kingdom, EC2N 4BQ. The Transferee is a "UK authorised person" as defined in section 105(8) of FSMA. The Transferee has permissions under Part 4A of FSMA, *inter alia*, to effect and carry out contracts of long term insurance in the UK under classes of business I and IV set out in Part II of Schedule 1 to the Regulated Activities Order. The Transferring Business will be carried on by the Transferee in the UK.
- 2.3 The Transferor and the Transferee are members of the same Group.
- 2.4 It is proposed that, subject to the sanction of this Scheme pursuant to the Order, the Transferring Business will transfer to the Transferee pursuant to Part VII of FSMA and in accordance with this Scheme and by virtue of the Order with effect from the Effective Date. The Transferee intends to use the assets it receives pursuant to this Scheme to carry on the Transferring Business.

PART C – THE TRANSFER

3 Transfer of the Transferring Business, Assets and Liabilities

3.1 Transferring Business

With effect on and from the Effective Date, the Transferring Business shall by the Order and without any further act or instrument be transferred to, and vested in, the Transferee in accordance with this Scheme.

3.2 Transferring Assets

- (a) With effect on and from the Effective Date, each Transferring Asset shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances affecting such Transferring Assets.
- (b) With effect on and from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances affecting such Residual Asset.
- (c) The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferring Assets and, at each Subsequent Transfer Date, to the Residual Assets then transferred.

3.3 Transferring Liabilities

- (a) With effect on and from the Effective Date, each Transferring Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and the Transferee shall succeed to each Transferring Liability as if in all respects it were the same person in law as the Transferor and such Transferring Liability shall cease to be a liability of the Transferor.
- (b) With effect on and 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 the Transferee shall succeed to each such Residual Liability as if in all respects it were the same person in law as the Transferor and each such Residual Liability shall cease to be a liability of the Transferor.

- 3.4 Each of the Transferor and the Transferee shall execute and deliver (or, if applicable procure the execution and deliverance of) all such documents (including assignments or novation, as appropriate) and shall, as and when appropriate, use reasonable endeavours to perform such other acts and things as may be required to effect or perfect the transfer and vesting in the Transferee of any Transferring Asset, Transferring Liability, Residual Asset or Residual Liability in accordance with the terms of this Scheme including, for the purposes of clarity, obtaining any required consent or waiver in respect of any Residual Asset or Residual Liability.
- 3.5 The transfer of any Transferring Asset, Transferring Liability, Residual Asset or Residual Liability to the Transferee shall have effect notwithstanding any provision (whether express or implied) to the contrary in any contract or arrangement with any policyholder or any other person.
- 3.6 The transfers effected pursuant to paragraph 3.1 to 3.3 above shall have effect whether or not the Transferor would, other than pursuant to the terms of this Scheme, have capacity to effect the same.
- 3.7 For the avoidance of doubt, unless otherwise agreed by the Transferor and the Transferee, any Transferring Asset relating to or connected with any Outwards Reinsurance Agreement in respect of which an Encumbrance has been granted in favour of the Transferor, shall only transfer to the Transferee if the benefit of the relevant Encumbrance in respect of such Transferring Asset shall transfer at the same time. If not, then such Transferring Asset shall be a Residual Asset until such time as the benefit of such Encumbrance is transferred to the Transferee.
- 3.8 In the event that a policyholder of an Excluded Sanctioned Policy ceases to be named on a Sanctions List following the Effective Date (such event being a **Sanction Release** and the date on which the Sanction Release occurs being the **Sanction Release Date**):
- (a) such Excluded Sanctioned Policy shall cease to be an Excluded Policy and shall be treated with immediate effect from the Sanction Release Date as if it were a Residual Policy for the purposes of paragraph 5.5;
 - (b) any Excluded Asset attributable or connected with such Excluded Sanctioned Policy shall cease to be an Excluded Asset and shall be treated with immediate effect from the Sanction Release Date as if it were a Residual Asset; and
 - (c) any Excluded Liability attributable or connected with such Excluded Sanctioned Policy shall cease to be an Excluded Liability and shall be treated with immediate effect from the Sanction Release Date as if it were a Residual Liability,
- and in each case for the purposes of this Scheme, the Subsequent Transfer Date of such Policies, Assets and Liabilities shall occur immediately following the Sanction Release.

4 Consequences of the Transfer

- 4.1 In addition to the provisions of paragraph 3 and save as otherwise provided in this Scheme, with effect on and from the Effective Date, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits, powers and Transferring Assets under the Transferring Policies and be subject to all the obligations and Transferring Liabilities of the Transferor under the Transferring Policies whatsoever subsisting on the Effective Date.
- 4.2 Save as provided in this Scheme, every Transferring Policy shall be construed and have effect on and from the Effective Date as if the Transferee had always been an original party thereto from inception instead of the Transferor (such that the Transferring Policy shall continue in force as between the Transferee and the relevant policyholder or other party thereto on the terms which applied to that Transferring Policy prior to the Effective Date, but without prejudice to any right which the Transferee may have subsequently to vary, terminate or avoid such Transferring Policy, whether under the terms thereof or at law).
- 4.3 Save as provided in this Scheme, the transfer and vesting of any Asset or Liability relating to any part of the Transferring Business by virtue of the Order and this Scheme shall not:
- (a) invalidate or discharge any contract, security interest or any other agreement or arrangement having a similar effect; or
 - (b) require further registration in respect of any security; or
 - (c) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the Transferor or the Transferee is a party or is bound; or
 - (d) allow any party to a contract to which the Transferor or the Transferee is a party to terminate that contract when he would not otherwise have been able to terminate it; or
 - (e) entitle any party to any contract to which the Transferor or the Transferee is a party to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right or benefit on him which he would not otherwise have had; or
 - (f) confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, on any party to any contract to which the Transferor or the Transferee is a party when that greater or lesser obligation would not otherwise have been imposed.
- 4.4 Every Transferring Policyholder shall, with effect on and from the Effective Date and to the exclusion of any rights he may have against the Transferor under any Transferring Policy, be

entitled to the same rights against the Transferee as were available to him against the Transferor under such Transferring Policies.

- 4.5 All premiums and other amounts attributable or referable to the Transferring Policies which are payable to the Transferor shall on and after the Effective Date be payable to the Transferee and shall be receivable and received by the Transferee.
- 4.6 The Transferee shall be entitled to any and all defences, claims, counterclaims, rights of set-off, rights of subrogation and any other rights under the Transferring Policies which would have been available to the Transferor.
- 4.7 Every Transferring Policyholder shall, with effect on and from the Effective Date, in substitution for any Liability or obligation owed by him thereunder to the Transferor, be under the same Liability or obligation to the Transferee.
- 4.8 All references in any Transferring Policy (to the extent they relate to the Transferor's participation on that Transferring Policy) to the Transferor, the Transferor's Board, the Transferor's Actuary or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers, employees or agents of the Transferee to which the administration or investment management of the relevant part of the business carried on by the Transferee 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 the Transferor, the Transferor's Board, the Transferor's Actuary, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Policies shall, with effect on and from the Effective Date be exercisable or required to be performed by the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers, employees or agents of the Transferee.
- 4.9 The provisions of paragraph 4.1 to 4.8 shall apply, *mutatis mutandis*, to all Outwards Reinsurance Agreements and Transferring Third Party Contracts.

5 Residual Policies

- 5.1 Liabilities arising out of the Residual Policies shall pending their transfer to the Transferee (whether pursuant to this Scheme or otherwise), remain Liabilities of the Transferor but all such Liabilities of the Transferor and all other amounts paid or payable by the Transferor in respect of such Residual Policies shall at all times by the Order and without further act or instrument with effect on and from the Effective Date be reinsured in their entirety by the Transferee.
- 5.2 The premiums payable by the Transferor in respect of such reinsurance shall be an amount equal to the reserves relating to such Residual Policies as at the Effective Date, which shall be deemed

to have been satisfied by the transfer to the Transferee of the Transferring Assets and the declaration of trust pursuant to paragraph 6, plus all subsequent premium or other payments received by the Transferor in respect of such Residual Policies less any fees, expenses or charges deducted from the amounts received by the Transferor in respect thereof.

- 5.3 The Transferor hereby appoints the Transferee to administer, adjudicate and settle all claims relating to any Residual Policy and permits the Transferee to sub-delegate such administration, adjudication and settlement to a third party, subject to claims handling guidelines to be agreed between the parties.
- 5.4 The Transferor and the Transferee shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, the Transferee of any Residual Policy in accordance with the terms of this Scheme, including, for the purposes of clarity, obtaining any required consent or waiver.
- 5.5 With effect on and from each Subsequent Transfer Date, each Residual Policy to which such Subsequent Transfer Date applies and all the Residual Assets and Residual Liabilities relating to such Residual Policy, shall to the extent not previously transferred, by the Order and without further act or instrument be transferred to, and be vested in, the Transferee, whereupon it shall constitute a Transferring Policy, Transferring Asset or Transferring Liability (as the case may be) under this Scheme.
- 5.6 If any Residual Policy is novated by written agreement to the Transferee, the property and liabilities relating to such Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Policy shall thereafter be dealt with by the Transferee under the provisions of this Scheme in all respects as if such Residual Policy were a Transferring Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy.

6 Declaration of Trust by the Transferor

- 6.1 The Transferor shall with effect on and from the Effective Date, until the relevant Subsequent Transfer Date or for so long as is legally permissible (but save to the extent that giving effect to such a trust would have the effect of transferring any interest falling within the definition of Residual Assets or Excluded Assets), hold the Residual Assets as trustee and in trust for the Transferee absolutely.
- 6.2 The Transferor shall be subject to the Transferee's direction in respect of any such Residual Asset until it is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof). The Transferee shall

have authority (with authority to sub-delegate) to act as the attorney of the Transferor in respect of any such Residual Asset for all such purposes.

- 6.3 In the event of any payment (including any reinsurance recoveries) being made to, property being received by, or a right being conferred upon the Transferor in relation to any Residual Asset, the Transferor shall as soon as is reasonably practicable notify the Transferee and following 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 the Transferee or otherwise in accordance with the reasonable directions of the Transferee and the Transferee shall on demand indemnify the Transferor against any reasonable costs properly incurred by it to complete such transaction.

7 Indemnities in favour of the Transferor

- 7.1 With effect on and from the Effective Date, the Transferee shall discharge on behalf of the Transferor or, failing that, indemnify the Transferor against:

- (a) all Transferring Liabilities whether the same shall arise prior to or following the Effective Date but, where such Transferring Liabilities are the subject of a policy of indemnity insurance or a claim or right of recovery against a third party which constitutes a Residual Asset that has not yet transferred to the Transferee, the Transferee shall not discharge on behalf of or indemnify the Transferor to the extent that the Transferor has successfully claimed under such a policy or against such third party. The Transferee shall indemnify, and keep indemnified, the Transferor against any cost or Liability it may incur in taking such action; and
- (b) save as otherwise provided in this Scheme or the agreements referred to herein, any other cost, claim, loss, damages, Liability or expense (whatsoever) incurred in connection with the Transferring Business (other than regulatory capital costs) including, without limitation, the conduct of the trust arrangements, and the conduct of claims under paragraph 9, whether the same shall arise prior to or following the Effective Date.

- 7.2 Where the Transferor is entitled to receive an amount pursuant to the indemnities contained in paragraph 7.1, it shall be entitled to receive such amount on the basis that the amount payable by the Transferee pursuant to such obligation (the **Payment**) shall be calculated in such a manner as will ensure that the Transferor is in the same position as that in which it would have been if the matter giving rise to the Payment had not occurred, including by taking into account:

- (a) any taxation required to be deducted or withheld by the Transferee from the Payment;
- (b) the amount of any additional taxation which becomes payable by the Transferor as a result of the Payment being subject to taxation in the hands of the Transferor; and

- (c) the amount of any tax relief which is obtained by the Transferor or another member of its Group, to the extent that such tax relief is attributable to the matter giving rise to the Payment or as a result of receiving the Payment,

(which taxation and tax relief is to be determined, by taking into account its value, certainty of its availability and timing of its utilisation, by the Transferor, acting reasonably and in good faith, to the reasonable satisfaction of the Transferee).

- 7.3 For the avoidance of doubt, the Transferor shall not be entitled to obtain payment or indemnity more than once in respect of any shortfall or other event or any other circumstances which give rise to a claim under this Scheme or any other related agreement between the parties.

8 Outwards Reinsurance Agreements

- 8.1 Notwithstanding anything in paragraphs 3 or 4:

- (a) any commutations entered into by the Transferor (whether globally or on any other basis) with any of its reinsurers or retrocessionaires before the Effective Date shall not in any way affect any reinsurance, retrocession or similar protection entered into by the Transferee before the Effective Date; and
- (b) any commutations entered into by the Transferee (whether globally or on any other basis) with any of its reinsurers or retrocessionaires before the Effective Date shall not in any way affect any reinsurance, retrocession or similar protection transferred from the Transferor to the Transferee pursuant to this Scheme.

- 8.2 To the extent that the risk under any Residual Policy has been ceded to a third party under an Outwards Reinsurance Agreement, any payment in respect of such risk made to the Policyholder by the Transferee on behalf of the Transferor under the relevant Residual Policy or to the Transferor under the reinsurance arrangement set out in paragraph 5 shall be deemed to be a payment by the Transferee for the purposes of such Outwards Reinsurance Agreement, and shall give rise to a claim by the Transferee thereunder as if it were the reinsured under the relevant Outwards Reinsurance Agreement.

9 Continuity of Proceedings

- 9.1 With effect on and from the Effective Date, any Proceedings in connection with or relating to the Transferring Business (or any part of it) (including in respect of the Transferring Assets and the Transferring Liabilities) which have been issued, served, are pending, current or threatened or any other claims or complaints which may be brought in the future (including those not yet in contemplation) by, or on behalf of, or against the Transferor in connection with the Transferring

Business (or any part of it) (including in respect of the Transferring Assets and the Transferring Liabilities) shall be continued by or against the Transferee (in place of the Transferor) who shall be entitled to all defences, claims, counterclaims, rights of set-off rights of subrogation and any other rights that would have been available to the Transferor in relation thereto.

- 9.2 Paragraph 9.1 shall apply, *mutatis mutandis* to Proceedings in connection with any Residual Policies, Residual Asset or Residual Liability as if references therein to the Effective Date were to the Subsequent Transfer Date applicable to such Residual Policy, Residual Asset or Residual Liability (as the case may be).
- 9.3 All documents which would before the Effective Date have been evidence in respect of any matter for or against the Transferor shall be admissible in evidence in respect of the same matter for or against the Transferee.
- 9.4 With effect on and from the Effective Date, the Transferee shall be entitled to direct the Transferor as to the conduct of any on-going Proceedings referred to in paragraph 9.1 or 9.2 and the Transferee shall have full authority (with authority to sub-delegate) to act on behalf of the Transferor in respect of any such Proceedings.
- 9.5 Any judgment, settlement, order or award obtained by or against the Transferor which relates to any part of the Transferring Business, the Transferring Assets or the Transferring Liabilities and which is not fully satisfied before the Effective Date or (in relation to the Residual Assets or Residual Liabilities) the Subsequent Transfer Date (as the case may be) shall, on that date and to the extent to which it was enforceable by or against the Transferor immediately prior to such date, become enforceable by or against the Transferee (to the exclusion of the Transferor).

10 Payment mandates

- 10.1 All premiums and other payments payable to the Transferor attributable or referable to the Transferring Policies shall from the Effective Date be payable to the Transferee in place of the Transferor.
- 10.2 Any mandate, standing order or other instruction or authority in force on the Effective Date (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 payment by a bank or other intermediary of premiums or any other amount payable under any Transferring Policy shall continue in force as an effective mandate, instruction or authority to the Transferee in place of the Transferor.
- 10.3 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferor of any sum payable under any Transferring Policy shall continue in force as an effective mandate, instruction or authority to the Transferee in place of the Transferor.

10.4 In the case of premiums or other amounts attributable or referable to Residual Policies the provisions of paragraphs 10.1 to 10.3 shall apply to each such Residual Policy with effect from the relevant Subsequent Transfer Date as if references in those paragraphs to Transferring Policies were to such Residual Policies.

11 Privacy and data protection

11.1 In this paragraph 11, terms shall be construed in accordance with the definitions in the Data Protection Legislation.

11.2 With effect on and from the Effective Date, the Transferee shall:

- (a) succeed to all rights, Liabilities and obligations of the Transferor in respect of data which relates to the Transferring Business and which is subject to the Data Protection Legislation;
- (b) become the data controller of any data which relates to the Transferring Business and which is subject to the Data Protection Legislation in place of the Transferor and shall be deemed to have been the data controller of all such data at all material times when data was processed; and
- (c) in respect of data which relates to the Transferring 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 data and shall be bound by any specific notice given or request made by the data subject which was binding on the Transferor and which required the Transferor not to use data for marketing purposes.

11.3 In any consent given by a data subject or notice given to the data subject in respect of such data as is mentioned in paragraph 11.2, any reference to the Transferor (or to any member of their Group) shall be deemed to include a reference to the Transferee (and to any member of the Transferee's Group) provided however that where any data subjects referred to in paragraph 11.2 continue also to be data subjects of the Transferor after the Effective Date then any consent given by a data subject or notice given to the data subject shall also continue to apply to the Transferor (or to any member of its Group).

11.4 Where, prior to the Effective Date, a Transferring Policyholder has provided Marketing Preferences to each of the Transferor and the Transferee, the Transferee's record of the Transferring Policyholder's Marketing Preference shall be deemed to apply with effect on and from the Effective Date whether or not it is the same as any Marketing Preference given by the Transferring Policyholder to the Transferor.

11.5 Where a Transferring Policyholder has made a Data Subject Request to the Transferor before the Effective Date and, where applicable, the Transferor has not responded with a copy of the

personal data controlled by it in accordance with the Data Protection Legislation before the Effective Date, the Transferee shall respond to the request, in accordance with the Data Protection Legislation, where applicable by providing copies of the personal data that were held by the Transferor immediately before the Effective Date and transferred as part of the Transferring Assets.

PART D – MISCELLANEOUS PROVISIONS

12 Effective Date

- 12.1 Subject to paragraph 12.2, this Scheme shall become effective at 23:59 GMT on 30 April 2023 or such other time and date as the Transferor and the Transferee, acting by their respective boards, may agree in writing (being a date and time falling after the making of the Order sanctioning this Scheme).
- 12.2 This Scheme shall lapse if it does not become effective on or before the later of:
- (a) 23:59 GMT on 30 June 2023; and
 - (b) such date as the Court may allow on the application of the Transferor and the Transferee.
- 12.3 Notwithstanding paragraphs 12.1 and 12.2, this Scheme shall not become effective unless any modification of or addition to this Scheme or any further condition or provision affecting the same imposed by the Court (or recommended by the Court with a view to it being imposed) has been consented to by the Transferor and the Transferee.
- 12.4 This Scheme shall not become effective on the Effective Date unless on or prior thereto the Order shall have been made.

13 Costs and Expenses

All costs and expenses, including fees and disbursements of legal and financial advisers and accountants, incurred in connection with this Scheme and the transactions contemplated by this Scheme shall be paid by the Transferor and the Transferee in equal proportions.

14 Modifications, Amendments or Additions

- 14.1 The Transferor and the Transferee may consent on their own behalf and on behalf of all other persons concerned (other than the PRA or the FCA) to any modification, amendment or addition to this Scheme or to any further condition or provision affecting the same which the Court may approve or impose prior to or after the sanction of this Scheme.
- 14.2 Subject to paragraph 14.3, at any time after the sanction of this Scheme, the Transferee and, if in existence at the relevant time, the Transferor shall be at liberty to apply to the Court for consent to amend paragraphs 1 to 12 inclusive, provided that in any such case:
- (a) the PRA and the FCA shall be notified in advance and in good time of (and, in any event, not less than six weeks prior to), and shall have the right to be heard at, any hearing of the Court at which such application is considered;

- (b) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from the Independent Expert or another independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the Transferring Policyholders or the policyholders of the Transferee; and
- (c) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from the Actuaries of each of the Transferor (if still in existence at such time) and the Transferee to the effect that in his or her opinion the proposed amendment will not materially adversely affect the Transferring Policyholders or the policyholders of the Transferee,

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

14.3 The Transferee and, if in existence at the relevant time, the Transferor may amend this Scheme without further sanction of the Court to correct a manifest error or minor or technical amendment (including to reflect changes required by law or regulation, including changes in generally accepted actuarial practice) provided that:

- (a) the PRA and the FCA have been notified of the proposed amendment, and
- (b) a period of twenty eight (28) days commencing on the date of an acknowledgement of receipt of the relevant notification by both the PRA and the FCA has passed without the PRA or the FCA indicating any objection thereto.

15 Gross-up

Where the Transferor is entitled to receive an amount pursuant to an indemnity in this Scheme, it shall be entitled to receive such amount so that, after payment of or provision for any Liability to Tax in respect of the amount receivable, will result in the receipt of an amount equal to the full value of the Liability to be indemnified against.

16 Contracts (Rights of Third Parties) Act 1999

A person not party to this Scheme may not enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

17 Successors and Assigns

This Scheme will bind and enure to the benefit of the successors and assigns of each of the Transferor and the Transferee.

18 Evidence of transfer

- 18.1 The production of a copy of the Order with any modifications made under paragraph 14, for all purposes shall be evidence of the transfer to, and vesting in, the Transferee of the Transferring Business in accordance with the Order and the provisions of this Scheme.
- 18.2 In order to enable the Transferee to complete any title to any property or interest in land transferred to, and vested in, it by virtue of this Scheme and, without prejudice to paragraphs 3 to 12 inclusive and 14, by notice of title or otherwise, or to deduce title, this Scheme and/or the Order, with any modifications made under paragraph 14, together with any document ancillary thereto (including a certificate of any officer or employee of the Transferee identifying the relevant property or interest in land) shall be deemed to be, and may be used as, a general disposition, conveyance or as the case may be, assignment, of such property or interest in favour of the Transferee.

19 Governing Law

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

Dated [●] April 2023.

**Schedule 1
Excluded Properties**

[Note: to be inserted]