

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

IN THE MATTER OF

THE EQUITABLE LIFE ASSURANCE SOCIETY

- and -

UTMOST LIFE AND PENSIONS LIMITED

**AND IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 27 OF AND SCHEDULE
2 TO THE INSURANCE BUSINESS (JERSEY) LAW, 1996**

JERSEY SCHEME

**pursuant to Article 27 of and Schedule 2 to the Insurance Business (Jersey) Law 1996
for the transfer of part of the long-term insurance business of (1) The Equitable Life
Assurance Society to (2) Utmost Life and Pensions Limited**

1. Interpretation

Definitions

1.1 In this scheme (the **Jersey Scheme**), unless inconsistent with the subject or context, the following expressions have the following meanings:

Excluded Jersey Policies means:

- (a) any Jersey Policies that are Excluded Policies; and
- (b) any other Jersey Policies which are not capable of being transferred pursuant to Article 27 of, and Schedule 2 to, the Jersey Law at the Jersey Implementation Date to the extent that and for so long as it is not capable of being transferred;

Excluded Policies Reinsurance Agreement means the reinsurance agreement to be entered into between the Transferor and the Transferee in respect of any Excluded Policies other than the German Policies and the Irish Policies on terms agreed between the Transferor and the Transferee;

Guernsey Scheme means the scheme for the transfer of insurance business under the Insurance Business (Bailiwick of Guernsey) Law, 2002, a copy of which is contained in Schedule 3 to this Jersey Scheme (without schedules);

Jersey Business Records means all Business Records relating to the Transferring Jersey Business;

Jersey Implementation Date means the time and date on which this Jersey Scheme will become effective in accordance with its terms in relation to the Jersey Policies;

Jersey Law means the Insurance Business (Jersey) Law 1996;

Jersey Order means an order made by the Royal Court pursuant to Article 27 of and Schedule 2 to the Jersey Law sanctioning this Jersey Scheme and any order (including any subsequent order, which is ancillary thereto) in relation to this Jersey Scheme made by the Royal Court pursuant to Schedule 2 to the Jersey Law;

JFSC means the Jersey Financial Services Commission;

Part 26 Scheme means the scheme of arrangement, attached as Schedule 2 to this Jersey Scheme, proposed to be undertaken between the Transferor and its Scheme Policyholders and Legacy Scheme Policyholders (each as defined in the Part 26 Scheme) pursuant to Part 26 of the Companies Act 2006;

Residual Jersey Liability means any liability under or in connection with the Transferring Jersey Policies:

- (a) the transfer of which liability to the Transferee pursuant to this Jersey Scheme requires, on the Jersey Implementation Date, the consent or waiver of any person (other than the Transferee, the Transferor or the Royal Court) and which the Royal Court either does not have jurisdiction to transfer to the Transferee pursuant to Article 27 of and Schedule 2 to the Jersey Law or which (despite having such jurisdiction) the Royal Court determines, notwithstanding such provision, not so to transfer but in any case only to the extent of that part of the Transferee interest in such liability in respect of which the transfer requires such consent and/or waiver or would result in such a right; or
- (b) which cannot be transferred to or vested to the Transferee pursuant to this Jersey Scheme for any other reason; or

- (c) which the Transferor and the Transferee shall agree in writing prior to the Jersey Implementation Date should not be transferred pursuant to this Jersey Scheme;

Royal Court means the Royal Court of Jersey;

Subsequent Jersey Transfer Date means, in relation to any Residual Jersey Liability or Excluded Jersey Policy, the date after the Jersey Implementation Date on which such Residual Jersey Liability or Excluded Jersey Policy is to be transferred to the Transferee namely:

- (a) in respect of any Residual Jersey Liability falling within paragraph (a) of the definition thereof, the date on which the requisite consent, waiver or order to enable the same to be transferred to the Transferee upon the terms of this Jersey Scheme is:
- (i) obtained;
 - (ii) no longer required; or
 - (iii) dispensed with by Order of the Royal Court;
- (b) in respect of any Residual Jersey Liability falling within paragraph (c) of the definition thereof, the date on which the parties agree that the transfer of the relevant Residual Jersey Liability shall take effect;
- (c) in respect of any Excluded Jersey Policy other than any such policy falling within paragraph (b) of the definition of Excluded Policies, the date on which the transfer of all rights, title, interest in and obligations under such policy are fully effective in Jersey and under the law of any other country or territory to which it is subject; and
- (d) in respect of any Excluded Policy falling within paragraph (b) of the definition thereof, the Guernsey Implementation Date.

Transferring Jersey Business means all or any of the Transferring Business carried on in or from within Jersey including the Transferring Jersey Policies, including Transferring Jersey Liabilities and Residual Jersey Liabilities but excluding Excluded Jersey Policies (if any);

Transferring Jersey Liabilities means all or any Transferring Liabilities (other than those liabilities listed in limbs c) and d) of the definition thereof) (including present or future, actual or contingent and prospective liabilities) whatsoever and wheresoever arising, attributable to or in connection with the Transferring Jersey Business, including all or any liabilities of the Transferor arising as a result of any act or omission of any appointed representative or intermediary for which the Transferor had assumed responsibility, in each case whether before, on or after the Jersey Implementation Date but excluding, prior to the applicable Subsequent Jersey Transfer Date, the Residual Jersey Liabilities;

Transferring Jersey Policies means all insurance and reinsurance policies of the Transferor where the Transferor is insurer or reinsurer (as applicable) that are Jersey Policies (including any expired, surrendered, lapsed, matured or reinstated policies) other than the Excluded Jersey Policies, including the rights, benefits and powers (whether actual or contingent) of the Transferor whatsoever under or by virtue of such policies;

UK Scheme means the insurance business transfer scheme pursuant to Part VII of the Financial Services and Markets Act 2000 for, *inter alia*, the transfer of part of the long term insurance business of the Transferor to the Transferee, a copy of which is contained in Schedule 1 to this Jersey Scheme, as it may be varied or amended from time to time in accordance with its terms;

- 1.2 Other words and expressions used as defined terms in this Jersey Scheme shall bear the meanings given to them in the UK Scheme.
- 1.3 Subject to paragraph 1.2 above and except where the context requires otherwise, words and expressions used in the Jersey Law or in any regulations made under it shall have the same meanings in this Jersey Scheme.

Headings

- 1.4 Headings in this Jersey Scheme are inserted for convenience only and shall not affect its construction.

References

- 1.5 Any reference in this Jersey Scheme to an enactment, statutory provision or regulations shall be deemed to include a reference to the enactment or statutory provision or those regulations as from time to time amended, consolidated, modified, replaced or re-enacted by any statute or statutory provision.
- 1.6 Any reference to the singular includes a reference to the plural and vice versa. Any reference to he, she or it includes the others.
- 1.7 Any reference to a time of day is a reference, unless otherwise expressly specified, to London time.
- 1.8 Any reference to this Jersey Scheme shall include the Schedule hereto.

2. Introduction

The Transferor

- 2.1 The Transferor was incorporated in England and Wales on 18 August 1892 as a mutual society and is an authorised person under section 31 and Part 4A of FSMA.
- 2.2 The Transferor is authorised by the Prudential Regulation Authority (**PRA**) and regulated by the Financial Conduct Authority (**FCA**) and the PRA and is registered on The Financial Services Register with firm reference number 110340.
- 2.3 The Transferor holds a Category A permit to carry on long term insurance business, in or from within Jersey, under the Jersey Law.
- 2.4 Additionally as an unlimited company without share capital under the Companies Acts 1862 to 1892, the Transferor is a "company" for the purposes of section 895 of the Companies Act 2006 and able to undertake the Part 26 Scheme.

The Transferee

- 2.5 The Transferee was incorporated in England and Wales on 12 January 2017 and is an authorised person under section 31 and Part 4A of FSMA.
- 2.6 The Transferee is authorised by the PRA and regulated by the FCA and the PRA and is registered on The Financial Services Register with firm reference number 775704.
- 2.7 The Transferee does not currently hold a Category A permit to carry on long term insurance business pursuant to the Jersey Law, but it is intended that it will apply for such a permit before the application to sanction the Jersey Scheme is heard before the Royal Court.

The Jersey Scheme

- 2.8 It is proposed that, by Order of the Royal Court in accordance with Article 27 of, and Schedule 2 to, the Jersey Law, the Transferring Jersey Business shall be transferred to the Transferee on the Jersey Implementation Date on the same terms as the terms of the UK Scheme governing the transfer of the Transferring Business to the Transferee and as if the Transferring Jersey Business were part of the Transferring Business as defined in the UK Scheme.

Operation of the UK Scheme and Guernsey Scheme

- 2.9 The UK Scheme and the Guernsey Scheme has the effect that:

- (a) if the transfer of any Transferring Jersey Policies is sanctioned by the Royal Court pursuant to this Jersey Scheme, with effect from the Jersey Implementation Date, such policies shall be treated:
 - (i) for all purposes of the UK Scheme as if they were Transferring Policies of the Transferor with effect from the Implementation Date and, to the extent necessary to comply with Part VII of FSMA, shall also be transferred pursuant to the terms of the UK Scheme; and
 - (ii) for all purposes of the Guernsey Scheme as if they were Guernsey Transferring Policies of the Transferor with effect from the Guernsey Implementation Date and, to the extent necessary to comply with section 44 of the Guernsey Scheme, shall also be transferred pursuant to the terms of the Guernsey Scheme,
- (b) if the Royal Court does not sanction the transfer of any Transferring Jersey Policies pursuant to this Jersey Scheme, despite having the jurisdiction to do so, or if this Jersey Scheme is sanctioned by the Royal Court but the transfer of any Transferring Jersey Policies does not become effective by the Jersey Implementation Date, then such policies shall, with effect from the Implementation Date, be deemed to be Excluded Guernsey Policies under the Guernsey Scheme, and be deemed to be Excluded Policies under the UK Scheme, and will be reinsured by the Transferee pursuant to the terms of the Excluded Policies Reinsurance Agreement.

- 2.10 Each of the Transferor and the Transferee has agreed to appear by Counsel at the hearing of the Representation to sanction this Jersey Scheme and undertake to be bound thereby and to execute all such documents and to do all such acts and things as may be necessary or expedient to be executed or done by it for the purposes of giving effect to this Jersey Scheme.

3. Incorporation of the UK Scheme

- 3.1 Save as otherwise set out in this Jersey Scheme, the terms of:

- (a) paragraph 3 (Transfer of the Transferring Business to the Transferee);
- (b) paragraph 4 (Continuity of Proceedings);
- (c) paragraph 5 (Premiums and Mandates);
- (d) paragraph 6 (Rights and Obligations under Transferring Policies);
- (e) paragraph 8 (Indemnities);
- (f) paragraph 9 (Allocations in respect of Transferring Business);
- (g) paragraph 10 (Linked Funds);

- (h) paragraph 11 (Maintenance of Transferee sub-funds);
- (i) paragraph 12 (Undertakings and covenants);
- (j) paragraph 22 (Costs and Expenses); and
- (k) paragraph 24 (Successors and Assigns),

of the UK Scheme shall be deemed to be part of this Jersey Scheme as if reproduced herein mutatis mutandis. For this purpose, the following definitions of the UK Scheme shall be read and construed as follows:

- (i) Court shall be read as Royal Court;
- (ii) Excluded Policies shall be read as Excluded Jersey Policies;
- (iii) Implementation Date shall be read as Jersey Implementation Date;
- (iv) Order shall be read as Jersey Order;
- (v) Residual Liabilities shall be read as Residual Jersey Liabilities;
- (vi) Scheme shall be read as Jersey Scheme;
- (vii) Subsequent Transfer Date shall be read as Subsequent Jersey Transfer Date;
- (viii) Transferring Policies shall be read as Transferring Jersey Policies; and
- (ix) Transferring Liabilities shall be read as Transferring Jersey Liabilities.

3.2 Without limiting paragraph 3.1 above, the Transferring Jersey Policies will be transferred to the Transferee on terms that incorporate the amendment to the Transferring Jersey Policies set out in the Part 26 Scheme.

3.3 In the UK Scheme deemed to be part of this Jersey Scheme as if reproduced herein mutatis mutandis:

- (a) In the first line of paragraph 3.1, the words "and Transferring Assets," shall be deleted;
- (b) paragraph 3.2 shall be deleted;
- (c) in the fifth and sixth lines of paragraph 3.6 the words "the Transferring Assets, the Residual Assets," shall be deleted;
- (d) in the third and fourth lines of paragraph 3.7, the words "or any Transferring Assets, the Residual Assets," shall be deleted;
- (e) in the second line of paragraph 4.1, the words ", the Transferring Assets" shall be deleted;
- (f) in paragraph 4.2, the words "Residual Asset or the relevant Residual Liability which relate to a Transferring Asset or a Residual Asset which is to be transferred on such Subsequent Transfer Date" shall be deleted;
- (g) in the fifth line of paragraph 5.2, the words "or Transferring Asset" shall be deleted;
- (h) paragraphs 9.2(a) and (b) shall be deleted;

- (i) paragraphs 9.3(a) and (b) shall be deleted;
- (j) paragraphs 9.4(a)(ii) shall be deleted;
- (k) in the second line of paragraph 9.6, the words "Transferring Asset," and ", Residual Asset" shall be deleted;
- (l) in the second line of paragraph 10.1(a), the words "Transferring Assets" shall be deleted;
- (m) in the last line of paragraph 10.1(c), the word "and" shall be deleted;
- (n) paragraph 10.1(d) shall be deleted; and
- (o) paragraphs 10.2 and 10.3 shall be deleted.

3.4 This Jersey Scheme is ancillary to the UK Scheme and the Guernsey Scheme and is intended to transfer business carried on in or from within Jersey that would not otherwise transfer under the UK Scheme or the Guernsey Scheme. Nothing in this Jersey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Scheme and the Guernsey Scheme.

4. Jersey Implementation Date

4.1 This Jersey Scheme shall become effective and the Jersey Implementation Date shall occur simultaneously with the last of the following conditions being met, namely:

- (a) the Order by the Royal Court sanctioning this Jersey Scheme being made;
- (b) the Guernsey Scheme becoming effective in accordance with its terms; and
- (c) the UK Scheme in relation to the Transferring Business of the Transferor becoming effective on the Implementation Date in accordance with its terms.

4.2 Subject to paragraph 4.1, this Jersey Scheme shall become effective on the Jersey Implementation Date.

5. Modification of this Jersey Scheme

5.1 The Transferor and the Transferee may at any time before the Jersey Implementation Date consent for and on behalf of the persons bound by this Jersey Scheme and all other persons concerned (other than the JFSC) to any modification or addition to this Jersey Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Jersey Scheme, the Royal Court may approve or impose, provided that where such amendment results in a significant change to this Jersey Scheme:

- (a) the JFSC shall be notified in advance and as soon as reasonably practicable, and shall have the right to request further information and comment on the proposed amendment; and
- (b) such amendment shall be accompanied by a certificate from an independent actuary to the effect that the proposed amendment will not materially adversely affect the benefit expectations of the holders of Transferring Jersey Policies or existing policyholders of the Transferee.

5.2 Subject to paragraph 5.3, any amendment to this Jersey Scheme (except the UK Scheme at Schedule 1 to this Jersey Scheme, amendments to which shall be governed by the terms of the UK Scheme) after the Jersey Implementation Date must be:

- (a) approved, if applicable, by the Royal Court;

- (b) notified in advance, and not less than six weeks prior to the proposed Royal Court hearing, to the JFSC, who shall have the right to attend and be heard at any hearing of the Royal Court (if applicable) at which such application is considered; and
- (c) accompanied by a certificate from an independent actuary to the effect that in his opinion (having considered the proposed amendments in the round), the proposed amendments to the Jersey Scheme will not have a material adverse effect on the policyholders in the Transferee, including by reference to:
 - (i) the effect of the proposed amendments to the Jersey Scheme on the security of those policyholders' contractual rights, including the likelihood and potential effects of the insolvency of the Transferee; and
 - (ii) the cost and tax effects of the proposed amendments to the Jersey Scheme, including in so far as they may affect the security of those policyholders' contractual rights or their reasonable benefit expectations.

5.3 Any amendment to this Jersey Scheme (excluding the UK Scheme at Schedule 1 to this Jersey Scheme, amendments to which shall be governed by the terms of the UK Scheme) will not require Royal Court approval where:

- (a) such amendment is:
 - (i) considered by the Transferee to be minor and/or technical; or
 - (ii) to correct manifest errors; or
 - (iii) required to reflect any change in any Applicable Law or in the interpretation or application of any Applicable Law which has or will have any implications for the Transferor or Transferee; or
 - (iv) necessary to reflect any changes in the actuarial practices relating to, or techniques for the management of, the Transferring Jersey Policies; or
 - (v) required to protect the rights and reasonable expectations of the policyholders of the Transferring Jersey Policies; and
- (b) the JFSC has been notified of such amendment and either:
 - (i) has indicated that it does not object to such amendment; or
 - (ii) a period of 28 days has passed commencing on the date of receipt of the relevant notification by the JFSC without it indicating any objections thereto.

6. Evidence of Transfer

The production of a copy of the Jersey Order in respect of the sanctioning of the Jersey Scheme with any modifications, amendments and/or additions made under paragraph 5 (and the equivalent provisions of the UK and Guernsey Schemes), shall for all purposes be evidence of the transfer to and vesting in the Transferee of (i) the Transferring Jersey Business, the Transferring Jersey Liabilities and the Transferring Jersey Policies, on and from the Jersey Implementation Date; and (ii) the Residual Jersey Liabilities and Excluded Jersey Policies, on and from the relevant Subsequent Jersey Transfer Date.

7. Jersey Business Records

The Transferee hereby grants to the Transferor access to the Jersey Business Records that are transferred pursuant to the UK Scheme, to the extent necessary and until the

Transferring Jersey Business to which those records relate transfers pursuant to this Jersey Scheme.

8. Governing Law

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

Schedule 1

UK Scheme

Schedule 2
Part 26 Scheme

Schedule 3
Guernsey Scheme