

IN THE ROYAL COURT OF GUERNSEY
ORDINARY 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 SECTION 44 OF THE INSURANCE
BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002**

GUERNSEY SCHEME

**for the transfer of part of the long term insurance business of The Equitable Life
Assurance Society to Utmost Life and Pensions Limited pursuant to section 44 of the
Insurance Business (Bailiwick of Guernsey) Law, 2002**

1. Interpretation

Definitions

- 1.1 In this scheme (the **Guernsey Scheme**), unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them, and other words and expressions used as defined terms in this Guernsey Scheme shall bear the meanings given to them in the UK Scheme:

Excluded Guernsey Policies means any Guernsey Policies that:

- (a) are Excluded Policies; or
- (b) are not capable of being transferred pursuant to section 44 of the Guernsey Law at the Guernsey Implementation Date to the extent that and for so long as it is not capable of being transferred; or
- (c) are Jersey Policies, to the extent that and for so long only as the Jersey Scheme has not yet received the requisite court approval and become effective in accordance with its terms;

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;

GFSC means the Guernsey Financial Services Commission;

Guernsey Business Records means any Business Records relating to the Transferring Guernsey Business;

Guernsey Law means the Insurance Business (Bailiwick of Guernsey) Law, 2002;

Guernsey Order means an order made by the Royal Court pursuant to section 44 of the Guernsey Law sanctioning this Guernsey Scheme and any order (including without limitation any subsequent order, which is ancillary thereto) in relation to this Guernsey Scheme made by the Royal Court pursuant to section 44 of the Guernsey Law;

Guernsey Implementation Date means the date on which this Guernsey Scheme will become effective in accordance with its terms in relation to the Guernsey Policies.

Guernsey Policy means a Transferring Policy which was:

- (a) effected or carried out as part of insurance business carried on in or from within Guernsey; or
- (b) written under Guernsey law; or
- (c) issued to a person resident in the Bailiwick of Guernsey,

and in respect of which any liability remains unsatisfied or outstanding at the Guernsey Implementation Date and which the Royal Court of Guernsey has jurisdiction to transfer pursuant to the Guernsey Law;

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

Jersey Policy means a Guernsey Policy which was effected or carried out as part of insurance business carried on in, or from within, Jersey and in respect of which any liability remains unsatisfied or outstanding on the Jersey Implementation Date and which the

Royal Court of Jersey has jurisdiction to transfer pursuant to the Insurance Business (Jersey) Law 1996;

Jersey Scheme means the scheme for the transfer of insurance business under the Insurance Business (Jersey) Law 1996;

Part 26 Scheme means the scheme of arrangement, attached as Schedule 2 to this Guernsey 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 Guernsey Liabilities means any liability under or in connection with the Transferring Guernsey Policies:

- (a) the transfer of which liability to the Transferee pursuant to this Guernsey Scheme requires, on the Guernsey 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 section 44 of the Guernsey 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 Guernsey Scheme for any other reason; or
- (c) which the Transferor and the Transferee shall agree in writing prior to the Guernsey Implementation Date should not be transferred pursuant to this Guernsey Scheme;

Royal Court means the Royal Court of Guernsey;

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

- (a) in respect of any Residual Guernsey 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 Guernsey Scheme is:
 - (i) obtained;
 - (ii) no longer required; or
 - (iii) dispensed with by Order of the Royal Court;
- (b) in respect of any Residual Guernsey Liability falling within paragraph (b) of the definition thereof, the date upon which the impediments to the transfer pursuant to the terms of this Guernsey Scheme have been removed;
- (c) in respect of any Residual Guernsey Liability falling within paragraph (c) of the definition thereof, the date on which the parties agree that the transfer of the relevant Residual Liability shall take effect;
- (d) in respect of any Excluded Guernsey Policy falling within paragraphs (a) of the definition thereof, the date of which the transfer of all rights, title interest in and obligations under such policy are fully effective in the Guernsey and under the law of any other country or territory to which it is subject; and

- (e) in respect of any Excluded Guernsey Policy falling within paragraphs (b) of the definition thereof, the Jersey Implementation Date;

Transferring Guernsey Business means all of the Transferring Business attributable to or in connection with the Guernsey Policies, to be transferred pursuant to this Guernsey Scheme, comprising the Transferring Guernsey Policies, the Transferring Guernsey Liabilities and the Residual Guernsey Liabilities;

Transferring Guernsey Liabilities means any and all 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 Guernsey 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 Guernsey Implementation Date but excluding, prior to the applicable Subsequent Guernsey Transfer Date the Residual Guernsey Liabilities;

Transferring Guernsey Policies means all insurance and reinsurance policies of the Transferor where the Transferor is insurer or reinsurer (as applicable) that are Guernsey Policies (including any expired, surrendered, lapsed, matured or reinstated policies) other than the Excluded Guernsey 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 the long term insurance business of the Transferor to the Transferee, a copy of which is contained in Schedule 1 to this Guernsey Scheme, as it may be varied or amended from time to time in accordance with its terms.

- 1.2 Subject to paragraph 1.1 above and except where the context requires otherwise, words and expressions used in the Guernsey Law or in any regulations made under it shall have the same meanings in this Guernsey Scheme.

Headings

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

References

- 1.4 Any reference in this Guernsey 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.
- 1.5 Any reference to the singular includes a reference to the plural and vice versa. Any reference to he, she or it includes the others.
- 1.6 Any reference to a time of day is a reference, unless otherwise expressly specified, to London time.
- 1.7 Any reference to this Guernsey Scheme shall include the Schedules hereto.

2. Introduction

The Transferor

- 2.1 The Transferor is an authorised person under section 31 and Part 4A of FSMA and its Part 4A permission includes (amongst others) permission to effect and carry out contracts of long-term insurance in the UK falling within classes of business I to IV and VI to VII

(inclusive), as set out in Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/554).

- 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. As the Transferor is incorporated in the UK, it is a "UK authorised person" for the purposes of Part VII FSMA.
- 2.3 The Transferor is permitted to effect and carry out contracts of long-term insurance in Guernsey by the GFSC. In Guernsey, the Transferor is licensed under Section 7 of the Guernsey Law to carry on long-term domestic insurance business.
- 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 is an authorised person under section 31 and Part 4A of FSMA and its Part 4A permission includes (amongst others) permission to effect and carry out contracts of long-term insurance in the UK falling within classes of business I to IV and VI to VII (inclusive), as set out in Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/554).
- 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. As the Transferor is incorporated in the UK, it is a "UK authorised person" for the purposes of Part VII FSMA.
- 2.7 The Transferee is not a licensed insurer in Guernsey but is permitted as a recognised insurer (as defined in Schedule 5 of the Guernsey Law) to conduct long term business in Guernsey of the type for which it is authorised in the UK.

The Guernsey Scheme

- 2.8 It is proposed that, by Order of the Royal Court in accordance with section 44 of the Guernsey Law (subject to the approval of the Jersey Court in respect of the transfer of the Jersey Policies) the Transferring Guernsey Business shall be transferred to the Transferee on the Guernsey Implementation Date on substantially 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 Guernsey Business were part of the Transferring Business as defined in the UK Scheme.

Operation of the UK Scheme, Guernsey Scheme and Jersey Scheme

- 2.9 If the transfer of any Guernsey Policies is sanctioned by the Royal Court pursuant to this Guernsey Scheme, with effect from the Guernsey Implementation Date:
- (a) the Transferring Guernsey Policies shall (subject to paragraph (b) below) be treated for all purposes of the UK Scheme as if they were Transferring Policies of the Transferor 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
- (b) to the extent that and for so long as the Jersey Scheme has not yet received the requisite court approval and become effective in accordance with its terms, the Jersey Policies shall be treated for the purposes of the Guernsey Scheme as Excluded Guernsey Policies and for the purposes of the UK Scheme as Excluded Policies.

- 2.10 If, as is anticipated, the transfer of any Jersey Policies is subsequently sanctioned by the Jersey Court pursuant to the Jersey Scheme, with effect from the Jersey Implementation Date, such policies shall be treated:
- (a) for all purposes of the UK Scheme as if they were Transferring Policies of the Transferor, 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
 - (b) for all purposes of the Guernsey Scheme as if they were Guernsey Transferring Policies of the Transferor, 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.
- 2.11 If the Royal Court does not sanction the Guernsey Scheme, despite having the jurisdiction to do so, prior to the Implementation Date, the Guernsey Policies (including the Jersey Policies, irrespective of whether the Jersey Scheme is sanctioned by the Jersey Court) shall, with effect from the Implementation Date, be deemed to be Excluded Policies under the UK Scheme and will remain with the Transferor (save as provided in the UK Scheme) and be reinsured by the Transferee pursuant to the Excluded Policies Reinsurance Agreement.
- 2.12 If the Jersey Court does not sanction the Jersey Scheme, despite having the jurisdiction to do so, prior to the Implementation Date, the Jersey Policies shall be deemed to be Excluded Guernsey Policies under the Guernsey Scheme, and be deemed to be Excluded Policies under the UK Scheme and will remain with the Transferor (save as provided in the UK Scheme and Guernsey Scheme) and be reinsured by the Transferee pursuant to the Excluded Policies Reinsurance Agreement.
- 2.13 Each of the Transferor and the Transferee has agreed to appear by Counsel at the hearing of the application to sanction this Guernsey 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 Guernsey Scheme.

3. Incorporation of the UK Scheme

- 3.1 Save as otherwise set out in this Guernsey 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 Guernsey 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 Guernsey Policies;
- (iii) Implementation Date shall be read as Guernsey Implementation Date;
- (iv) Order shall be read as Guernsey Order;
- (v) Residual Liabilities shall be read as Residual Guernsey Liabilities;
- (vi) Scheme shall be read as Guernsey Scheme;
- (vii) Subsequent Transfer Date shall be read as Subsequent Guernsey Transfer Date;
- (viii) Transferring Policies shall be read as Transferring Guernsey Policies;
- (ix) Transferring Liabilities shall be read as Transferring Guernsey Liabilities; and
- (x) Transferring Business shall be read as Transferring Guernsey Business.

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

3.3 [In the UK Scheme deemed to be part of this Guernsey 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 (c) shall be deleted;
- (i) paragraph 9.3 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 Guernsey Scheme is ancillary to the UK Scheme and is intended to transfer business carried on in or from within Guernsey and relating to such business that would not otherwise transfer under the UK Scheme. Nothing in this Guernsey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Scheme.

4. Guernsey Implementation Date

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

- (a) the Guernsey Order by the Royal Court sanctioning this Guernsey Scheme being made; and
- (b) the UK Scheme becoming effective on the Implementation Date in accordance with its terms.

5. Modification of this Guernsey Scheme

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

- (a) the GFSC 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 or adversely affect the benefit expectations of the holders of Transferring Guernsey Policies or existing policyholders of the Transferee.

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

- (a) approved, if applicable, by the Royal Court;
- (b) notified to the GFSC, 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 Guernsey 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 Guernsey 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 Guernsey 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 Guernsey Scheme (excluding the UK Scheme at Schedule 1 and the Part 26 Scheme at Schedule 2 to this Guernsey Scheme, amendments to which shall be governed by the terms of the UK Scheme and the Part 26 Scheme respectively) 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 Guernsey Policies; or
 - (v) required to protect the rights and reasonable expectations of the policyholders of the Transferring Guernsey Policies: and
- (b) the GFSC 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 GFSC without it indicating any objections thereto.

6. Evidence of Transfer

The production of a copy of the Guernsey Order (and, where applicable, the order of the Royal Court of Jersey 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 Jersey Schemes), shall for all purposes be evidence of the transfer to and vesting in the Transferee of (i) the Transferring Guernsey Business, the Transferring Guernsey Liabilities and the Transferring Guernsey Policies, on and from the Guernsey Implementation Date; and (ii) the Residual Guernsey Liabilities and Excluded Guernsey Policies, on and from the relevant Subsequent Guernsey Transfer Date.

7. Business Records

The Transferee hereby irrevocably grants to the Transferor access to the Guernsey Business Records that are transferred pursuant to the UK Scheme, to the extent necessary and until the Transferring Guernsey Business to which those records relate transfer pursuant to this Guernsey Scheme.

8. Governing Law

This Guernsey Scheme shall be governed by and construed in accordance with the laws of the Island of Guernsey.

SCHEDULE 1

UK Scheme

Schedule 2
Part 26 Scheme