

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

IN THE MATTER OF

CANADA LIFE LIMITED

and

IN THE MATTER OF

SCOTTISH FRIENDLY ASSURANCE SOCIETY LIMITED

AND IN THE MATTER OF SECTION 44 OF THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW,
2002

**LONG TERM INSURANCE BUSINESS
TRANSFER SCHEME**

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PART A - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 In this Guernsey Scheme (as defined below), the following words and expressions shall have the following meanings:

"Bailiwick of Guernsey" means the islands of Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou and Lihou;

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

- (a) the rights of the Transferor under or relating to this Guernsey Scheme, the Excluded Guernsey Policies, the Residual Guernsey Policies or the Residual Guernsey Policies Reassurance Arrangement;
- (b) any property of the Transferor that would be comprised in the Transferred Guernsey Assets but which the parties agree in writing prior to the Guernsey Effective Date shall not be transferred to the Transferee; and
- (c) the rights of the Transferor to any defence, claim, counterclaim, defence to counterclaim or right of set-off in respect of any of the rights referred to in paragraphs (a) to (b) inclusive above or in respect of any of the Excluded Guernsey Liabilities;

"Excluded Guernsey Business" means all the business, assets and liabilities of the Transferor which are not part of the Transferred Guernsey Business, including the Excluded Guernsey Assets, the Excluded Guernsey Liabilities and the Excluded Guernsey Policies;

"Excluded Guernsey Liabilities" means:

- (a) any liabilities arising from or relating to the Excluded Guernsey Assets and the Excluded Guernsey Policies;
- (b) any liabilities of the Transferor under or relating to this Guernsey Scheme, the Excluded Guernsey Policies, the Residual Guernsey Policies or the Residual Guernsey Policies Reassurance Arrangement; and
- (c) any liability of the Transferor that would be comprised in the Transferred Guernsey Liabilities but which the parties agree in writing prior to the Guernsey Effective Date shall not be transferred to the Transferee;

"Excluded Guernsey Policies" means:

- (a) any policies which the parties agree in writing prior to the Guernsey Effective Date are not to be included in the Data, including as a result of any data audit;
- (b) any policy which has ceased to be a Residual Guernsey Policy as a result of the termination of the Residual Guernsey Policies Reassurance Arrangement; and
- (c) any other policies which are not Transferred Guernsey Policies;

"**Guernsey**" means the Bailiwick of Guernsey;

"**Guernsey Effective Date**" means the time and date on which the Guernsey Scheme becomes operative in accordance with its terms;

"**Guernsey Long-Term Insurance Business**" means the business of effecting or carrying out long-term insurance contracts with Guernsey Policyholders, falling within the classes of insurance business set out in Schedule 1 to the Insurance Business Law;

"**Guernsey Order**" means an order made by the Royal Court pursuant to section 44 of the Insurance Business Law sanctioning this Guernsey Scheme and any order (including any subsequent order) in relation to this Guernsey Scheme made by the Royal Court pursuant to the Insurance Business Law;

"**Guernsey Policies**" means any policies of the Transferor comprised in the Data under which any liability remains unsatisfied or outstanding at the Guernsey Effective Date which comprise the business of effecting or carrying out long-term insurance contracts with Guernsey Policyholders, falling within the classes of insurance business set out in Schedule 1 to the Insurance Business Law, and the transfer of which to the Transferee requires the sanction of the Royal Court pursuant to section 44 of the Insurance Business Law;

"**Guernsey Policyholder**" means a Policyholder of the Transferor who has a current address in Guernsey;

"**Guernsey Scheme**" means this scheme made pursuant to section 44 of the Insurance Business Law in its original form or with or subject to any modification, addition or condition which may be approved or imposed;

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

"**Policy**" and "**Policyholder**" have the meanings set out in the Insurance Business Law;

"**Regulator**" means the Guernsey Financial Services Commission (and any successor to such authority);

"**Residual Guernsey Assets**" means:

- (a) any property of the Transferor that would be comprised in the Transferred Guernsey Business (including any right, benefit or power under any Transferred Guernsey Policy) but in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to section 44 of the Insurance Business Law at the Guernsey Effective Date;
- (b) any property of the Transferor that would be comprised in the Transferred Guernsey Business (including any rights, benefit or power under a Transferred Guernsey Policy) but where the Transferor and the Transferee agree in writing prior to the Guernsey Effective Date that its transfer should be delayed;
- (c) any property of the Transferor that would be comprised in the Transferred Guernsey Business which is outside the jurisdiction of the Royal Court or in respect of which the transfer pursuant to an order of the Royal Court is not recognised by the laws of the jurisdiction in which the property is situated or in respect of which further steps are necessary to effect the transfer pursuant to the laws of the jurisdiction in which such

property is situated (excluding any such property which is capable of being transferred, and is transferred, to the Transferee under the UK Scheme on the Effective Date or the Jersey Scheme on the Jersey Effective Date);

- (d) any property of the Transferor that would be comprised in the Transferred Guernsey Business but which cannot be transferred to or vested in the Transferee on the Guernsey Effective Date for any other reason (excluding any such property which is capable of being transferred, and is transferred, to the Transferee under the UK Scheme on the Effective Date or the Jersey Scheme on the Jersey Effective Date); and
- (e) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, or any other property or rights earned or received from time to time after the Guernsey Effective Date but prior to any relevant Subsequent Guernsey Transfer Date in respect of any such property referred to in paragraphs (a) to (e) of this definition;

"Residual Guernsey Liability" means any liability of the Transferor:

- (a) that would be comprised in the Transferred Guernsey Business but in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to section 44 of the Insurance Business Law on the Guernsey Effective Date; or
- (b) that would be comprised in the Transferred Guernsey Business but where the Transferor and the Transferee agree in writing prior to the Guernsey Effective Date that its transfer should be delayed; or
- (c) that would be comprised in the Transferred Guernsey Liabilities but which is outside the jurisdiction of the Royal Court or in respect of which the transfer pursuant to an order of the Royal Court is not recognised by the laws of any applicable jurisdiction or in respect of which further steps are necessary to effect the transfer pursuant to the laws of any applicable jurisdiction; or
- (d) that would be comprised in the Transferred Guernsey Liabilities but which cannot be transferred to or vested in the Transferee on the Guernsey Effective Date for any other reason; or
- (e) in respect of, attributable or otherwise connected to a Residual Guernsey Asset or any liability arising from any liabilities referred to in paragraphs (a) to (d) of this definition, including any liability to Taxation that arises at any time between the Guernsey Effective Date and the Subsequent Guernsey Transfer Date;

"Residual Guernsey Policies Reassurance Arrangement" means the reinsurance arrangement entered into between the Transferor and the Transferee which is described in paragraph 7 of the UK Scheme and incorporated into this Guernsey Scheme by paragraph 3 of the Guernsey Scheme under which the Transferee will provide reinsurance to the Transferor in respect of the Residual Guernsey Policies;

"Residual Guernsey Policy" means:

- (a) Guernsey Policies under which any liability remains unsatisfied or outstanding at the Guernsey Effective Date and which are not capable of being transferred pursuant to this Guernsey Scheme by reason of them transferring under the UK Scheme or the Jersey Scheme at the Effective Date (excluding any Guernsey Policies which are capable

of being, and are, transferred to the Transferee under the UK Scheme on the Effective Date or the Jersey Scheme on the Jersey Effective Date); or

- (b) which the Royal Court for any reason determines not to transfer by the Order,

but only until in respect of each such policy, the earlier of (i) the Subsequent Guernsey Transfer Date applicable to such policy at which point any such policy becomes a Transferred Guernsey Policy, or (ii) the termination of the Residual Guernsey Policies Reassurance Arrangement, at which point any such policies which are still Residual Guernsey Policies shall cease to be Residual Guernsey Policies and shall become Excluded Guernsey Policies;

"Royal Court" means the Royal Court of Guernsey;

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

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

"Transferee" means Scottish Friendly Assurance Society Limited, a friendly society registered and incorporated under the Friendly Societies Act 1992 with number 3 COLL (S) whose registered address is at Scottish Friendly House, 16 Blythswood Square, Glasgow G2 4HJ;

"Transferor" means Canada Life Limited, a company incorporated in England and Wales under registered number 973271 whose registered office is at Canada Life Place, Potters Bar, Hertfordshire EN6 5BA;

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

- (a) the rights, benefits and powers of the Transferor under or by virtue of the Transferred Guernsey Policies;

- (b) assets with a value equal to the amount held to meet payouts on the Transferred Guernsey Policies plus an additional margin for the uncertainty associated with meeting those payouts and an amount in respect of Tax assets and liabilities attributable to the Transferred Guernsey Business, in each case determined as at the Guernsey Effective Date on the basis agreed in writing between the Transferor and the Transferee;
- (c) all rights and claims (present or future, actual or contingent) against any third party to the extent relating to the Transferred Guernsey Business or arising as a result of the Transferor having carried on the Transferred Guernsey Business; and
- (d) any other assets which the parties agree in writing, whether before or after the Guernsey Effective Date, are to be transferred under this Guernsey Scheme,

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

"Transferred Guernsey Business" means:

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

and following each Subsequent Guernsey Transfer Date, the relevant Residual Guernsey Asset or Residual Guernsey Liability, but does not include any part of the Excluded Guernsey Business;

"Transferred Guernsey Liabilities" means:

- (a) all and any liabilities whatsoever of the Transferor under or in respect of the Transferred Guernsey Policies and the Transferred Guernsey Assets; and
- (b) any other liabilities which the parties agree in writing, whether before or after the Guernsey Effective Date, are to be transferred under this Guernsey Scheme,

but excluding any liabilities under or relating to the Excluded Guernsey Business and, prior to each Subsequent Guernsey Transfer Date, the relevant Residual Guernsey Liabilities and Residual Guernsey Policies;

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

"UK Scheme" means the insurance business transfer scheme pursuant to Part VII of FSMA for, amongst other things, the transfer of the entire long-term insurance business of the Transferor to the Transferee, a copy of which is contained in the Schedule, as it may be varied or amended from time to time in accordance with its terms; and

"United Kingdom" means the United Kingdom, as defined in Schedule 1 to the Interpretation Act 1978 of the United Kingdom.

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

1.2.1 words and expressions defined in the UK Scheme shall have the same meanings as are given to them in the UK Scheme; and

1.2.2 expressions used in the Guernsey Scheme which have meanings under the Insurance Business Law shall bear those meanings.

1.3 Without prejudice to the generality of paragraph 3.1 of this Guernsey Scheme, the principles of interpretation set out in paragraph 1.2 of the UK Scheme shall be incorporated by reference into and shall form part of this Guernsey Scheme as if reproduced herein, *mutatis mutandis*.

2. INTRODUCTION

2.1 Each of the Transferor and the Transferee carry on long term insurance business in the United Kingdom and in Jersey (amongst other places). Neither the Transferor nor the Transferee carry on long term insurance business in Guernsey but each qualifies as a recognised insurer under the Insurance Business Law.

2.2 The Transferor is a company incorporated in England and Wales with registered number 973271. The registered office of the Transferor is at Canada Life Place, Potters Bar, Hertfordshire EN6 5BA.

2.3 The Transferee is a friendly society registered and incorporated under the Friendly Societies Act 1992 with number 3 COLL (S). The registered office of the Transferee is at Scottish Friendly House, 16 Blythswood Square, Glasgow, G2 4HJ.

2.4 The purpose of the UK Scheme is to effect the transfer to the Transferee of certain of the Long Term Insurance Business carried on by the Transferor. The purpose of this Guernsey Scheme is to effect the transfer to the Transferee, subject to the terms of this Guernsey Scheme, of certain of the Guernsey Long Term Insurance Business and assets and liabilities relating to such business that would not otherwise transfer under the UK Scheme or the Jersey Scheme. Nothing in this Guernsey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Scheme or the Jersey Scheme.

2.5 It is proposed that, in accordance with this Guernsey Scheme, a Guernsey Order shall be made to effect the transfer of the Transferred Guernsey Business to the Transferee on and with effect from the Guernsey Effective Date on the same terms as the terms of the UK Scheme governing the transfer of the Transferred Business to the Transferor and as if the Transferred Guernsey Business were part of the Transferred Business as defined in the UK Scheme.

3. TRANSFER OF BUSINESS BY INCORPORATION OF THE UK SCHEME

3.1 The terms of the UK Scheme shall apply to the Transferred Guernsey Business, Transferred Guernsey Assets and the Transferred Guernsey Liabilities, in the same manner as they apply to the Transferred Business, the Transferred Assets and the Transferred Liabilities, and (save to the extent inconsistent with any of the provisions of the Guernsey Scheme) the terms of the UK Scheme (subject to the excluded paragraphs set out at Clause 3.2) shall be deemed to be part of the 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:

3.1.1 Court shall be read as the Royal Court;

3.1.2 Effective Date shall be read as Guernsey Effective Date;

3.1.3 Excluded Assets shall be read as Excluded Guernsey Assets;

- 3.1.4 Excluded Business shall be read as Excluded Guernsey Business;
 - 3.1.5 Excluded Liabilities shall be read as Excluded Guernsey Liabilities;
 - 3.1.6 Excluded Policies shall be read as Excluded Guernsey Policies;
 - 3.1.7 Order shall be read as Guernsey Order;
 - 3.1.8 Policies and Policyholder shall be read as Guernsey Policies and Guernsey Policyholder.
 - 3.1.9 Residual Assets shall be read as Residual Guernsey Assets;
 - 3.1.10 Residual Liability shall be read as Residual Guernsey Liability;
 - 3.1.11 Residual Policies shall be read as Guernsey Residual Policies;
 - 3.1.12 Residual Policies Reassurance Arrangement shall be read as Residual Guernsey Policies Reassurance Arrangement;
 - 3.1.13 Scheme shall be read as the Guernsey Scheme;
 - 3.1.14 Subsequent Transfer Date shall be read as Subsequent Guernsey Transfer Date;
 - 3.1.15 Transferred Assets shall be read as Transferred Guernsey Assets;
 - 3.1.16 Transferred Business shall be read as Transferred Guernsey Business;
 - 3.1.17 Transferred Policies shall be read as Transferred Guernsey Policies;
 - 3.1.18 Transferred Policyholders shall be read as Transferred Guernsey Policyholders;
 - 3.1.19 Transferred Liabilities shall be read as Transferred Guernsey Liabilities; and
 - 3.1.20 all references to the Data Protection Laws shall be read as including reference to the equivalent provisions of the Data Protection (Bailiwick of Guernsey) Law, 2017.
- 3.2 Paragraphs 2.4, 7.5, 10, 14.2, 14.3, 22 (*Effective Date*), 23 (*Modifications or Additions*), 26 (*Third Party Rights*) and 27 (*Governing Law*) of the UK Scheme shall not form part of and shall not be incorporated into this Guernsey Scheme.
- 3.3 This Guernsey Scheme is ancillary to 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 EFFECTIVE DATE**
- 4.1 This Guernsey Scheme shall become effective, and the Guernsey Effective Date shall occur simultaneously with, the UK Scheme becoming effective in accordance with its terms.
- 4.2 Unless this Guernsey Scheme shall become effective in its entirety on or before [00.01 BST] on [1 November 2019], it shall lapse.

5. **MODIFICATIONS OR ADDITIONS**

- 5.1 Subject to paragraph 5.5 of this Guernsey Scheme, the Transferee and the Transferor may consent for and on behalf of themselves and all other persons concerned to any modification of or addition to this Guernsey Scheme or to any further condition or provision affecting the same which, in each case prior to its sanction of this Guernsey Scheme, the Royal Court may approve or impose.
- 5.2 Subject to paragraphs 5.4 and 5.5 of this Guernsey Scheme, at any time after the sanction of this Guernsey Scheme, the Transferee and the Transferor shall be at liberty to apply jointly to the Royal Court for consent to amend its terms, provided that in any such case:
- 5.2.1 the Regulator shall be given written notice of the proposed amendment at least 28 days prior to the making of the application to the Royal Court and shall have the right to be heard at any hearing of the Royal Court at which such application is considered (including to make representations as to the appropriate publicity in relation to the proposed amendment);
- 5.2.2 the Transferee and the Transferor have complied with any directions given by the Royal Court as to publicity in relation to the proposed amendment; and
- 5.2.3 such application shall be accompanied by a certificate from an independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the security or reasonable expectations of the holders of Transferred Guernsey Policies or Residual Guernsey Policies or Excluded Guernsey Policies or policies of the Transferee.
- 5.3 If such approval is granted, the Transferee and the Transferor may amend the terms of this Guernsey Scheme in accordance with such consent.
- 5.4 Subject to paragraph 5.5 of this Guernsey Scheme, the consent of the Royal Court shall not be required in respect of amendments to this Guernsey Scheme that may be agreed by the Transferor and the Transferee in writing, and which are:
- 5.4.1 in relation to minor and/or technical amendments to the terms of this Guernsey Scheme (including amendments to correct manifest errors);
- 5.4.2 necessary to comply with such of the requirements of any applicable law, rule or regulation which have or will have any implications for the Transferor or Transferee in relation to the terms or operation of this Guernsey Scheme;
- 5.4.3 necessary to reflect any changes in generally accepted actuarial practices relating to the management of the Transferred Guernsey Policies; or
- 5.4.4 required to protect the rights and reasonable expectations of the policyholders of the Transferred Guernsey Policies,
- provided that the Regulator has been notified of the same at least 28 days in advance of the amendment being made and have not objected (unless the Regulator has confirmed non-objection prior to that date).
- 5.5 The consent of the Royal Court or the Regulator shall not be required in relation to the amendment or termination of the Residual Guernsey Policies Reassurance Arrangement provided

that such amendment or termination shall be in accordance with the provisions of paragraph 7 of the UK Scheme.

6. THIRD PARTY RIGHTS

Unless and to the extent otherwise provided in this Guernsey Scheme, nothing in this Guernsey Scheme shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Guernsey Scheme.

7. GOVERNING LAW

This Guernsey Scheme and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Guernsey law.

SCHEDULE: THE UK SCHEME