

CO DRAFT: 07.03.2019

**IN THE ROYAL COURT OF THE ISLAND OF JERSEY
SAMEDI DIVISION**

**IN THE MATTER OF
CANADA LIFE LIMITED**

and

**IN THE MATTER OF
SCOTTISH FRIENDLY ASSURANCE SOCIETY LIMITED**

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

**LONG TERM INSURANCE BUSINESS
TRANSFER SCHEME**

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PART A - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

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

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

- (a) the rights of the Transferor under or relating to this Jersey Scheme, the Excluded Jersey Policies, the Residual Jersey Policies or the Residual Jersey Policies Reassurance Arrangement;
- (b) any property of the Transferor that would be comprised in the Transferred Jersey Assets but which the parties agree in writing prior to the Jersey 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 Jersey Liabilities;

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

"Excluded Jersey Liabilities" means:

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

"Excluded Jersey Policies" means:

- (a) any policies which the parties agree in writing prior to the Jersey 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 Jersey Policy as a result of the termination of the Residual Jersey Policies Reassurance Arrangement; and
- (c) any other policies which are not Transferred Jersey Policies;

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

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

"Jersey Long-Term Insurance Business" means the business of effecting or carrying out long-term insurance contracts as principal, in or from within Jersey, falling within the classes of insurance business set out in Part 1 of Schedule 1 to the Insurance Business Law;

"Jersey Order" means an order made by the Royal Court pursuant to Schedule 2 to the Insurance Business Law and/or Article 27 of the Insurance Business Law sanctioning this Jersey Scheme and any order (including any subsequent order) in relation to this Jersey Scheme made by the Royal Court pursuant to the Insurance Business Law;

"Jersey Policies" means any policies of the Transferor comprised in the Data under which any liability remains unsatisfied or outstanding at the Jersey Effective Date which comprise the business of effecting or carrying out long-term insurance contracts as principal in or from within Jersey, falling within the classes of insurance business set out in Part 1 of Schedule 1 to the Insurance Business Law, and the transfer of which to the Transferee requires the sanction of the Royal Court pursuant to Article 27 of, and Schedule 2 to, the Insurance Business Law;

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

"Jersey Scheme" means this scheme made pursuant to Article 27 of and Schedule 2 to the Insurance Business Law in its original form or with or subject to any modification, addition or condition which may be approved or imposed;

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

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

"Residual Jersey Assets" means:

- (a) any property of the Transferor that would be comprised in the Transferred Jersey Business (including any right, benefit or power under any Transferred Jersey Policy) but in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to Article 27 of and Schedule 2 to the Insurance Business Law at the Jersey Effective Date;
- (b) any property of the Transferor that would be comprised in the Transferred Jersey Business (including any rights, benefit or power under a Transferred Jersey Policy) but where the Transferor and the Transferee agree in writing prior to the Jersey Effective Date that its transfer should be delayed;
- (c) any property of the Transferor that would be comprised in the Transferred Jersey 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 Guernsey Scheme on the Guernsey Effective Date);
- (d) any property of the Transferor that would be comprised in the Transferred Jersey Business but which cannot be transferred to or vested in the Transferee on the Jersey 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 Guernsey Scheme on the Guernsey 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 Jersey Effective Date but prior to any relevant Subsequent Jersey Transfer Date in respect of any such property referred to in paragraphs (a) to (e) of this definition;

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

- (a) that would be comprised in the Transferred Jersey Business but in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to Article 27 of and Schedule 2 to the Insurance Business Law on the Jersey Effective Date; or
- (b) that would be comprised in the Transferred Jersey Business but where the Transferor and the Transferee agree in writing prior to the Jersey Effective Date that its transfer should be delayed; or
- (c) that would be comprised in the Transferred Jersey 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 Jersey Liabilities but which cannot be transferred to or vested in the Transferee on the Jersey Effective Date for any other reason; or
- (e) in respect of, attributable or otherwise connected to a Residual Jersey 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 Jersey Effective Date and the Subsequent Jersey Transfer Date; or

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

"Residual Jersey Policy" means:

- (a) Jersey Policies under which any liability remains unsatisfied or outstanding at the Jersey Effective Date and which are not capable of being transferred pursuant to this Jersey Scheme by reason of them transferring under the UK Scheme or the Guernsey Scheme at the Effective Date (excluding any Jersey Policies which are capable of being, and are, transferred to the Transferee under the UK Scheme on the Effective Date or the Guernsey Scheme on the Guernsey 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 Jersey Transfer Date applicable to such policy at which point any such policy becomes a Transferred Jersey Policy, or

(ii) the termination of the Residual Jersey Policies Reassurance Arrangement, at which point any such policies which are still Residual Jersey Policies shall cease to be Residual Jersey Policies and shall become Excluded Jersey Policies;

"Royal Court" means the Royal Court of Jersey;

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

- (a) in respect of any Residual Jersey Asset falling within paragraph (a), (c) or (d) of the definition thereof and of any Residual Jersey 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 Jersey Asset falling within paragraphs (b) of the definition thereof and of any Residual Jersey 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 Jersey Asset falling within paragraph (e) of the definition thereof and of any Residual Jersey 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 Jersey Asset or Residual Jersey Liability is received, earned or incurred (as applicable) by the Transferor; and
- (d) in the case of any Residual Jersey Policy, the date on which all consents, orders, permissions or other requirements for the transfer or novation of such Residual Jersey 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 Jersey Assets" means all of the following whatsoever and wheresoever situated as at the Jersey Effective Date:

- (a) the rights, benefits and powers of the Transferor under or by virtue of the Transferred Jersey Policies;
- (b) assets with a value equal to the amount held to meet payouts on the Transferred Jersey 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 Jersey Business, in each case determined as at the Jersey 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 Jersey Business or arising as a result of the Transferor having carried on the Transferred Jersey Business; and
- (d) any other assets which the parties agree in writing, whether before or after the Jersey Effective Date, are to be transferred under this Jersey Scheme,

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

"Transferred Jersey Business" means:

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

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

"Transferred Jersey Liabilities" means:

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

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

"Transferred Jersey Policies" means the policies underwritten by the Transferor to the extent listed in the Data, but for the avoidance of doubt excluding the Excluded Jersey Policies and, prior to each Subsequent Jersey Transfer Date, the Residual Jersey 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 Jersey 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 Jersey 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 Jersey 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 Jersey 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 or from within 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 (Bailiwick of Guernsey) Law, 2002.

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. The Transferor has a Category A permit granted under Article 7 of the Insurance Business Law in respect of Long Term Insurance Business of a type falling within the following paragraphs of Part 1 of Schedule 1 to the Insurance Business Law: I (*life and annuity*), II (*marriage and birth*), III (*linked long term*), IV (*permanent health*), VI (*capital redemption*) and VII (*pension fund management*).

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. The Transferee has a Category A permit granted under Article 7 of the Insurance Business Law in respect of Long Term Insurance Business of a type falling with the following paragraphs of Part 1 of Schedule 1 to the Insurance Business Law: I (*life and annuity*), III (*linked long term*) and IV (*permanent health*)¹.

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 Jersey Scheme is to effect the transfer to the Transferee, subject to the terms of this Jersey Scheme, of certain of the Jersey Long Term Insurance Business carried on by the Transferor in or from within Jersey and assets and liabilities relating to such business 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 or the Guernsey Scheme.

2.5 It is proposed that, in accordance with this Jersey Scheme, a Jersey Order shall be made to effect the transfer of the Transferred Jersey Business to the Transferee on and with effect from the Jersey 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 Jersey 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 Jersey Business, Transferred Jersey Assets and the Transferred Jersey 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 Jersey 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

¹ **CO NOTE:** We understand that none of the Transferred Jersey Business will comprise of Class II (marriage and birth, VI (capital redemption) and VII (pension fund management) and so the Transferee is not required to be licenced under Jersey law to carry out such types of insurance business. Please let us know if otherwise.

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:

- 3.1.1 Court shall be read as the Royal Court;
 - 3.1.2 Effective Date shall be read as Jersey Effective Date;
 - 3.1.3 Excluded Assets shall be read as Excluded Jersey Assets;
 - 3.1.4 Excluded Business shall be read as Excluded Jersey Business;
 - 3.1.5 Excluded Liabilities shall be read as Excluded Jersey Liabilities;
 - 3.1.6 Excluded Policies shall be read as Excluded Jersey Policies;
 - 3.1.7 Order shall be read as Jersey Order;
 - 3.1.8 Policies and Policyholder shall be read as Jersey Policies and Jersey Policyholder.
 - 3.1.9 Residual Assets shall be read as Residual Jersey Assets;
 - 3.1.10 Residual Liability shall be read as Residual Jersey Liability;
 - 3.1.11 Residual Policies shall be read as Jersey Residual Policies;
 - 3.1.12 Residual Policies Reassurance Arrangement shall be read as Residual Jersey Policies Reassurance Arrangement;
 - 3.1.13 Scheme shall be read as the Jersey Scheme;
 - 3.1.14 Subsequent Transfer Date shall be read as Subsequent Jersey Transfer Date;
 - 3.1.15 Transferred Assets shall be read as Transferred Jersey Assets;
 - 3.1.16 Transferred Business shall be read as Transferred Jersey Business;
 - 3.1.17 Transferred Policies shall be read as Transferred Jersey Policies;
 - 3.1.18 Transferred Policyholders shall be read as Transferred Jersey Policyholders;
 - 3.1.19 Transferred Liabilities shall be read as Transferred Jersey 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 (Jersey) Law 2018.
- 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 Jersey Scheme.
- 3.3 This Jersey Scheme is ancillary to the UK Scheme. Nothing in this Jersey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Scheme.

4. **JERSEY EFFECTIVE DATE**

4.1 This Jersey Scheme shall become effective, and the Jersey Effective Date shall occur simultaneously with, the UK Scheme becoming effective in accordance with its terms.

4.2 Unless this Jersey 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 Jersey 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 Jersey Scheme or to any further condition or provision affecting the same which, in each case prior to its sanction of this Jersey Scheme, the Royal Court may approve or impose.

5.2 Subject to paragraphs 5.4 and 5.5 of this Jersey Scheme, at any time after the sanction of this Jersey 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 Jersey Policies or Residual Jersey Policies or Excluded Jersey Policies or policies of the Transferee.

5.3 If such approval is granted, the Transferee and the Transferor may amend the terms of this Jersey Scheme in accordance with such consent.

5.4 Subject to paragraph 5.5 of this Jersey Scheme, the consent of the Royal Court shall not be required in respect of amendments to this Jersey 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 Jersey 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 Jersey Scheme;

5.4.3 necessary to reflect any changes in generally accepted actuarial practices relating to the management of the Transferred Jersey Policies; or

5.4.4 required to protect the rights and reasonable expectations of the policyholders of the Transferred Jersey 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 Jersey 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 Jersey Scheme, nothing in this Jersey Scheme shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Jersey Scheme.

7. GOVERNING LAW

This Jersey 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 Jersey law.

SCHEDULE: THE UK SCHEME