

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

IN THE MATTER OF

ATHORA IRELAND PLC

(formerly AEGON IRELAND PLC)

and

IN THE MATTER OF

UTMOST IRELAND DAC

**AND IN THE MATTER OF AN APPLICATION PURSUANT TO
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:

"2015 Regulations" means the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015);

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

"Excluded Guernsey Assets" means all property, rights, powers and assets of the Transferor other than the Transferring Guernsey Business and the Guernsey Books and Records;

"Excluded Guernsey Liabilities" means any claims, demands, actions, suits, settlements, proceedings, losses, damages, liabilities, costs, interest, penalties and expenses of the Transferor, including in respect of Taxation whether suffered or incurred directly or indirectly save for the Transferring Guernsey Liabilities;

"Guernsey Additional External Link Arrangements" means any and all insured fund external link agreements / arrangements the terms of which are not in writing (and are therefore not included in Schedule 1 to the Irish Scheme), which are utilised by the Transferor for the purposes of facilitating the investment of assets related to (i) the Transferring Guernsey Business; and / or (ii) both the Transferring Guernsey Business and the ULG Business at the Guernsey Effective Time, including but not limited to, the agreements between the Transferor and the respective parties detailed below:

(i) Absolute Insight Funds plc;

(ii) Investec Asset Management Limited;

(iii) Kames Capital plc;

(iv) BNY Mellon Investment Management EMEA Limited;

(v) Royal London Asset Management Limited; and

(vi) Schroder Unit Trusts Limited;

"Guernsey" means the Bailiwick of Guernsey;

"Guernsey Books and Records" means all books, records and other information relating exclusively or primarily to the Transferring Guernsey Business and all information relating to customers, suppliers, agents and distributors and other information in each case relating exclusively to the Transferring Guernsey Business (including the employees in any jurisdiction who are wholly or mainly assigned to the Transferring Guernsey Business immediately before the Guernsey Effective Time) (other than the Guernsey Retained Records);

"Guernsey Common External Link Agreements" means the insured fund external link agreements utilised for the purposes of facilitating the investment of assets related to the Transferring Guernsey Business and the ULG Business entered between the Transferor and the respective parties detailed below:

- (i) Aberdeen Fund Managers Ltd
- (ii) Artemis Fund Managers Limited;
- (iii) Aviva Investors UK Fund Services Limited;
- (iv) AXA Investment Managers UK Limited;
- (v) Baillie Gifford & Co. Limited;
- (vi) Cazenove Investment Fund Management Limited;
- (vii) Fidelity;
- (viii) First State Investments Limited;
- (ix) GLG Partners Investment Funds Limited;
- (x) Henderson Investment Funds Limited;
- (xi) Invesco Fund Managers Limited;
- (xii) JP Morgan Funds Limited;
- (xiii) Jupiter Unit Trust Managers Limited;
- (xiv) Lazard Fund Managers Limited;
- (xv) M&G Securities Limited;
- (xvi) Old Mutual Investment Management Limited;
- (xvii) Threadneedle Investment Services Limited; and
- (xviii) UBS Global Asset Management Funds Limited,

as further detailed as a Seller Contract in Schedule 1 to the Irish Scheme, together with any other contracts entered into by the Transferor with any other fund manager following the date of this Guernsey Scheme which sets out the basis on which the Guernsey Offshore Bond Business Unit-Linked Assets are invested in those funds, at the Guernsey Effective Time (other than the Blackrock Agreement and the Guernsey Additional External Link Arrangements);

"Guernsey Effective Time" means the time and date when this Guernsey Scheme shall become operative in accordance with paragraph 4;

"Guernsey Offshore Bond Business Unit-Linked Assets" means the unit-linked assets backing the unit-linked liabilities held in respect of the Transferring Guernsey Policies;

"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 Policyholder" means a Policyholder holding a Guernsey Policy;

"Guernsey Retained Records" means any accounting and financial and other records of the Transferor relating to the Transferring Guernsey Business, which the Transferor is required by law to retain;

"Guernsey Sanctions Hearing" the hearing of the application to sanction this Guernsey Scheme;

"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;

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

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

"Irish Scheme" means the scheme for the transfer of insurance business for the purposes of Ireland's Assurance Companies Act 1909, the Insurance Act 1989, and the European Union (Insurance and Reinsurance) Regulations 2015, a copy of which is appended in the First Schedule to this Guernsey Scheme, with or subject to any modification, addition or change made or imposed from time to time in accordance with its terms;

"Jersey Scheme" means a scheme of transfer pursuant to Article 27 or Schedule 2 of the Jersey Insurance Business Law sanctioning the transfer of the Jersey Business, a copy of which is appended in the Second Schedule to this Guernsey Scheme, with or subject to any modification, addition or change made or imposed from the time to time in accordance with its terms;

"Jersey Insurance Business Law" means The Insurance Business (Jersey) Law, 1996;

"Jersey Royal Court" means the Royal Court of Jersey;

"Jersey Transfer Date" means the time and date the Jersey Scheme becomes operative;

"Residual Guernsey Asset" means any property or other rights falling within the definition of Transferring Guernsey Assets:

(i)

- (a) in respect of which the Royal Court has declined to sanction the transfer to the Transferee under the Insurance Business Law;
- (b) where the Transferor and the Transferee agree in writing that the transfer of such property should be delayed or such property should not be transferred at all;
- (c) which is outside the jurisdiction of the Royal Court or in respect of which its 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
- (d) which cannot be transferred or vested in the Transferee for any other reason,
- (e) together with any proceeds of sale or income or other accrual or return, whether or not in the form of cash, earned or received from time to time after the Guernsey Effective Time, in respect of any property to in paragraphs (i)(a) to (d) of this definition;

"Residual Guernsey Liabilities" means any liability whatsoever of the Transferor in respect of the Transferring Guernsey Assets:

- (a) that is attributable to or connected with a Residual Guernsey Asset and arises at any time before the Subsequent Guernsey Transfer Date applicable to the Residual Guernsey Asset;
- (b) in respect of which the Royal Court has declined to order the transfer to the Transferee under the Insurance Business Law;
- (c) which cannot be transferred or vested in the Transferee for any other reason as the Guernsey Effective Time; or
- (d) where the Transferor and the Transferee agree in writing that the transfer of such liability should be delayed or that such liability should not be transferred;

"Royal Court" means the Royal Court of Guernsey;

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

- (a) in respect of any Residual Guernsey Asset falling within paragraph (i)(a), (i)(c) or (i)(d) of the definition of Residual Guernsey Asset and of any Residual Guernsey Liability which is attributable to or connected with that Residual Guernsey Asset, or which falls within paragraph (b) or (c) of the definition of Residual Guernsey Liability, the date on which any impediment to its transfer shall have been removed or overcome; and
- (b) in respect of any Residual Guernsey Asset falling within paragraph (i)(b) or (ii) of the definition of Residual Guernsey Asset and of any Residual Guernsey Liability which is attributable to or connected with that Residual Guernsey Asset, and of any Residual Guernsey Liability falling within paragraph (d) of the definition of Residual Guernsey Liability, the date on which the Transferor and the Transferee agree the transfer should take effect;

"Transferring Guernsey Assets" means

- (i) all unit-linked assets backing the unit-linked liabilities held in respect of the Transferring Guernsey Policies;
- (ii) all cash backing the unit-linked liabilities held in respect of the Transferring Guernsey Policies;
- (iii) cash and cash equivalent (if any) in an amount equal to the amount of cash and cash equivalent required to be transferred to the Transferee at the Guernsey Effective Time to achieve an Estimated Tangible Net Asset Value of zero as set out in the "Cash and Cash Equivalent" line item in the Pre-Closing TNAV Statement; and
- (iv) the Transferring Guernsey Contracts;

"Transferring Guernsey Business" means the Transferring Guernsey Policies, including all rights and powers of the Transferor under or by virtue of the Transferring Guernsey Policies, the Transferring Guernsey Assets and the Transferring Guernsey Liabilities including without limitation the rights of the Transferor in respect of the Transferring Guernsey Contracts but excluding:

- (a) the Residual Guernsey Assets and the Residual Guernsey Liabilities;
- (b) the Excluded Guernsey Assets and the Excluded Guernsey Liabilities; and
- (c) the ULG Business;

"Transferring Guernsey Contracts" means (a) the Guernsey Common External Link Agreements; (b) such other contracts (other than the Guernsey Common External Link Agreements) to which the Transferor is a party which wholly relate to the Transferring Guernsey Business; and (cc) the Transferring Guernsey Policies;

"Transferring Guernsey Liabilities" means the entire amount of all debts, liabilities and obligations (whether actual, future or contingent and whether known or unknown at the Guernsey Effective Time) owed or to be performed by the Transferor to the Guernsey Policyholders or third parties arising out of or in connection with the Transferring Guernsey Policies or the Transferring Guernsey Assets, other than the Excluded Guernsey Liabilities and, until the Subsequent Guernsey Transfer Date, the Residual Guernsey Liabilities;

"Transferring Guernsey Policies" means the policies written by the Transferor up to and including the Effective Time under the product names Wealth Management Portfolio, Private Client Portfolio, Wealth Planning Account, Investment Portfolio, Money Market Portfolio, Estate Protection Plan and Flexible Investment Plan and which form part of the long term insurance business (as such expression is interpreted for the purpose of the Insurance Business Law) carried on by the Transferor at the Effective Time in or from within Guernsey, including all certificates, supplemental coverages, endorsements, riders and ancillary agreements in connection therewith and all rights, interests, benefits, powers, liabilities and obligations of the Transferor therein; and

"ULG Business" means (i) the business undertaken by the Transferor under the product names Aegon Secure DepotRente (Germany), Aegon Secure Kapital (Germany), 5 for Life (UK), Aegon Secure Lifetime Income (UK), Aegon Secure Capital (UK), Aegon Secure Income (UK), Aegon Secure Trustee Investment (UK) and Aegon Variabele Lijfrente (Netherlands) and (ii) the Reinsurance Business.

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

- 1.2.1 words and expressions defined in the Irish Scheme shall have the same meanings as are given to them in the Irish 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 Irish 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 Athora Ireland plc (formerly Aegon Ireland plc) (the "**Transferor**") is a life assurance company, incorporated in Ireland on 3 August 2001. It has its registered office and principal place of business at 2nd Floor, IFSC House, Custom House Quay, Dublin 1. The sole shareholder of the Transferor is Athora Life Re Ltd (being a company incorporated under the laws of Bermuda).

2.2 The Transferor is authorised by the Central Bank of Ireland (the "**Central Bank**") to undertake the business of life assurance in Class I (Life assurance and contracts to pay annuities on human life, but excluding Classes II and III), Class III (Contracts linked to investment funds) and Class VI

(Capital Redemption) (in accordance with the 2015 Regulations. This authorisation remains in full force and effect. The Transferor is also authorised to undertake life reinsurance business in the said classes.

- 2.3 Utmost Ireland Designated Activity Company (the "**Transferee**") is a life assurance company incorporated in Ireland on 11 March 1999 which registered number 303257. It has its registered office and principal place of business at Block 2, Harcourt Centre, Harcourt Street, Dublin 2. The sole shareholder of the Transferee is Harcourt Life Assurance Designated Activity Company (being a company incorporated under the laws of Ireland).
- 2.4 The Transferee is authorised by the Central Bank to undertake the business of life assurance in Class III (contracts linked to investment funds) and Class VI (capital redemption operations) in accordance with the 2015 Regulations. This authorisation remains in full force and effect.
- 2.5 It has been agreed by the board of directors of the Transferor to approve the draft Irish Scheme, the draft Jersey Scheme and the draft Guernsey Scheme, subject to the requirements of the Central Bank (in respect of the Irish Scheme) and the GFSC (in respect of the Guernsey Scheme) and the sanction of the High Court of Ireland (in respect of the Irish Scheme), the Jersey Royal Court (in respect of the Jersey Scheme) and the Royal Court (in respect of the Guernsey Scheme).
- 2.6 It is intended that the Transferee should acquire the Offshore Bonds Business carried on by the Transferor (being the Transferring Business) from the Transferor with effect as and from the Effective Time (including the Guernsey Effective Time) and in accordance with the terms and conditions set out in the Irish Scheme and the Guernsey Scheme.
- 2.7 The Transferor has notified the GFSC of the terms of this Guernsey Scheme in accordance with the Insurance Business Law.
- 2.8 The Transferor and the Transferee hereby agree to appear by Counsel on the hearing of the application to sanction this Guernsey Scheme and have undertaken to be bound by the Guernsey Scheme and to take all reasonable steps (including the execution of documents) which may be necessary or expedient to give effect to this Guernsey Scheme.
- 2.9 The Transferring Guernsey Business is part of the Transferring Business and it is intended that the Transferring Guernsey Business be transferred to the Transferee on substantially the same terms as the Irish Scheme. Accordingly it is proposed that a Guernsey Order of the Royal Court be sought for the sanction of this Guernsey Scheme.

3. **TRANSFER OF BUSINESS BY INCORPORATION OF THE IRISH SCHEME**

- 3.1 The terms of the Irish Scheme shall apply to the Transferring Guernsey Business, the Transferring Guernsey Assets and the Transferring Guernsey Liabilities in the same manner as they apply to the Transferring Business, the Transferring Assets and the Transferring Liabilities, and (save to the extent inconsistent with any of the provisions of the Guernsey Scheme) the terms of the Irish Scheme (subject to the excluded paragraphs of the Irish Scheme set out at paragraph 3.2 of this Guernsey Scheme) shall be incorporated in to and shall form part of the Guernsey Scheme as if reproduced herein, *mutatis mutandis*. For this purpose, the following definitions of the Irish Scheme shall be read and construed as follows:

3.1.1 Additional External Link Arrangements shall be read as Guernsey Additional External Link Arrangements;

3.1.2 Books and Records shall be read as Guernsey Books and Records;

- 3.1.3 Common External Link Agreements shall be read as Guernsey Common External Link Agreements;
 - 3.1.4 Court shall be read as the Royal Court;
 - 3.1.5 Effective Time shall be read as Guernsey Effective Time;
 - 3.1.6 Excluded Assets shall be read as Excluded Guernsey Assets;
 - 3.1.7 Excluded Liabilities shall be read as Excluded Guernsey Liabilities;
 - 3.1.8 Offshore Bond Business Unit-Linked Assets shall be read as Guernsey Offshore Bond Business Unit-Linked Assets;
 - 3.1.9 Order shall be read as Guernsey Order;
 - 3.1.10 Policyholders shall be read as Guernsey Policyholders;
 - 3.1.11 Residual Asset shall be read as Residual Guernsey Asset;
 - 3.1.12 Residual Liabilities shall be read as Residual Guernsey Liabilities;
 - 3.1.13 Retained Records shall be read as Guernsey Retained Records;
 - 3.1.14 Sanctions Hearing shall be read as Guernsey Sanctions Hearing;
 - 3.1.15 Scheme shall be read as Guernsey Scheme;
 - 3.1.16 Subsequent Transfer Date shall be read as Subsequent Guernsey Transfer Date;
 - 3.1.17 Transferring Assets shall be read as Transferring Guernsey Assets;
 - 3.1.18 Transferring Business shall be read as Transferring Guernsey Business;
 - 3.1.19 Transferring Contracts shall be read as Transferring Guernsey Contracts;
 - 3.1.20 Transferring Liabilities shall be read as Transferring Guernsey Liabilities; and
 - 3.1.21 Transferring Policies shall be read as Transferring Guernsey Policies.
- 3.2 Paragraphs 3.1 (*Effective Time*), 3.6 (*Modifications or additions*) and 3.10 (*Governing Law*) of the Irish Scheme shall not form part of and shall not be incorporated into this Guernsey Scheme.
- 3.3 This Guernsey Scheme is ancillary to the Irish Scheme. Nothing in this Guernsey Scheme shall operate so as to prevent or conflict with any transfer provided for by the Irish Scheme or the Jersey Scheme.
- 4. GUERNSEY EFFECTIVE TIME**
- 4.1 Subject to paragraph 4.2, this Guernsey Scheme shall become operative simultaneously with the Irish Scheme becoming operative or shall lapse in accordance with the terms of the Irish Scheme unless otherwise ordered by the Royal Court on the application of the Transferor and the Transferee.

- 4.2 Notwithstanding paragraph 5.1, in the event that the Royal Court imposes any modification of or addition to this Guernsey Scheme or any further condition or provision affecting the same, this Guernsey Scheme shall not become operative on the Guernsey Effective Time unless the Transferor and the Transferee consent to such modification, addition or condition.

5. MODIFICATIONS OR ADDITIONS

- 5.1 Subject to paragraph 5.5 of this Guernsey Scheme, the Transferor and the Transferee may consent for and on behalf of themselves, and may consent on behalf of all persons concerned (other than the GFSC) to any amendment, modification or addition to this Guernsey Scheme or to any other further condition or provision affecting this Scheme which the Court may approve or impose prior to the sanction of this Guernsey Scheme.

- 5.2 Subject to paragraphs 5.4 and 5.5 of this Guernsey Scheme, after the Guernsey Effective Time, the Transferee may vary the terms of this Scheme with the consent of the Royal Court, including, without limitation, if at any time, the provisions of this Guernsey Scheme, in the opinion of the board of directors of the Transferee, prove to be impossible, impracticable or inequitable to implement, provided that in any such case:

- 5.2.1 the GFSC shall be notified of and have the right to be heard at the hearing of the Royal Court at which such application is considered;
- 5.2.2 such application shall be accompanied by a report from an independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the interests of the Guernsey Policyholders affected by the proposed amendment; and
- 5.2.3 to the extent any such variation affects any right, obligation or interest of the Transferor, the Transferor has consented thereto.

- 5.3 If such approval is granted, the Transferee may amend the terms of this 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 relation to minor and/or technical amendments to the terms of this Guernsey Scheme (including amendments to correct manifest errors) that may be agreed by the Transferor and the Transferee in writing, provided that the GFSC has been notified of the same at least 28 days in advance of the amendment being made and has not objected (unless the GFSC has confirmed non-objection prior to that date).

- 5.5 Any action taken or to be taken, and any thing done or to be done, by or on behalf of the Transferor, the Transferee or any other person in connection with or in relation to the Schedule to this Guernsey Scheme which would (but for this paragraph 5.5 of this Guernsey Scheme) require the consent, approval or confirmation of no objection of or by the Royal Court, the GFSC or any other person, or require any notification to be made or any certification to be given by or to any person, shall not require such consent, approval or confirmation to be given, and shall not require the making of such notification or the giving of such certification, if such action is taken or such thing is done in accordance with the terms of the Irish Scheme.

6. 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.

FIRST SCHEDULE: THE IRISH SCHEME

SECOND SCHEDULE: THE JERSEY SCHEME