



**UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION**

**CERTIFIED COPY PETITION**

of

**AVIVA INSURANCE LIMITED**, a private company limited by shares, registered in Scotland, with number SC002116, and with its registered office at Pitheavlis, Perth, PH2 0NH

and

**AVIVA INSURANCE IRELAND DESIGNATED ACTIVITY COMPANY**, a designated activity company, registered in the Republic of Ireland, with number 605769, and with its registered office at One Park Place, Hatch Street, Dublin 2, Ireland

for

Sanction of an insurance business transfer scheme which is under Part VII of the Financial Services and Markets Act 2000 and under which part of the general insurance business of Aviva Insurance Limited is to be transferred to Aviva Insurance Ireland Designated Activity Company.

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## 1 INTRODUCTION

1.1 That the first Petitioner is Aviva Insurance Limited (“**AIL**”), a private company limited by shares which is registered in Scotland, with number SC002116, and with its registered office at Pitheavlis, Perth.

1.2.1 AIL is authorised by the Prudential Regulation Authority (the “**PRA**”) and the Financial Conduct Authority (the “**FCA**”), under the Financial Services and Markets Act 2000 (“**FSMA**”), to effect and carry out, within the United Kingdom (the “**UK**”), all contracts of general insurance, falling within the classes of general insurance business set out in Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the “**RAO**”).

1.2.2 Accordingly, AIL is a ‘*PRA authorised person*’, within the meaning of FSMA and the PRA is the ‘*appropriate regulator*’, in accordance with section 103A(1)(a) of FSMA, in relation to the Scheme.

1.3 The second Petitioner is Aviva Insurance Ireland Designated Activity Company (“**AIIDAC**”), a designated activity company which is registered in the Republic of Ireland (“**Ireland**”), with number 605769, and with its registered office at One Park Place, Hatch Street, Dublin 2.

1.4 AIIDAC is authorised by the Central Bank of Ireland (the “**CBI**”) as an insurance undertaking which is authorised to effect, and carry out, within Ireland, the business of non-life insurance within classes 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17 and 18 which are set out in Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015.

1.5.1 AIL and AIIDAC are both members of the same group of companies (the “**Aviva Group**”), the ultimate parent company of which is Aviva plc, a public limited company.

1.5.2 Aviva plc is registered in England and Wales with number 02468686 and has its registered office at St Helen's, 1 Undershaft, London.

1.6 In this application, the companies which comprise the Aviva Group are referred to as “**Group Companies**”.

1.7.1 In this application, the Petitioners seek jointly an order (the “**Sanction Order**”) sanctioning an insurance business transfer scheme (the “**Scheme**”) under Part VII of, and Schedule 12 to, FSMA (“**Part VII**” and “**Schedule 12**” respectively).

1.7.2 The hearing at which the Sanction Order is to be sought is referred to in this application as the “**Sanction Hearing**”.

1.7.3 In addition, the Petitioners jointly seek a first order in this application (the “**First Order**”).

- 1.7.4 The first hearing of this application, at which the First Order is to be sought, is referred to in this application as the “**First Hearing**”.
- 1.8.1 In outline, the Scheme is to provide for the transfer of part of AIL’s general insurance business to AIIDAC.
- 1.8.2 That is the part which is carried on (i) under Articles 145 and 146 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (as amended) (“**Solvency II**”), by way of “**Freedom of Establishment**” in certain states within the European Economic Area (the “**EEA**” and “**EEA States**”) and (ii) under Articles 147 to 149 of Solvency II, by way of “**Freedom of Services**” from the UK, but where the risk, or part of the risk, in the policy is situated in an EEA State other than the UK,.
- 1.9 Again in outline, the Scheme is intended to reorganise the general insurance business which AIL carries on in Ireland and other states of the European Union (the “**EU**”) and the EEA in anticipation of the UK’s withdrawal from the EU (“**Brexit**”).
- 1.10 The Scheme is set out in the Appendix to this application.
- 1.11 The background to the Scheme is addressed at Statement 5 and the Scheme itself is addressed at Statement 6.
- 1.12 In these circumstances, and acting through their respective boards of directors (the “**AIL Board**” and the “**AIIDAC Board**”, respectively), AIL and AIIDAC make this application under section 107(2)(c) of FSMA.
- 1.13 This Court has jurisdiction in respect of this application under sections 107(3)(c) and 107(4)(b) of FSMA.
- 1.14 As set out in Statement 1.1, AIL has its registered office in Scotland.
- 1.15 As has been accepted in inter alia every application to this Court under Part VII, the reference in section 107(4) to “*in Scotland*” is an abbreviated one to a company which is registered in Scotland.
- 1.16 A glossary of the defined terms which are used in this application is included in Schedule 4 to this application.
- 1.17.1 In particular, an insurance business transfer scheme, under Part VII and Schedule 12, is referred to in this application as an “**insurance scheme**”.
- 1.17.2 An insurance scheme which transfers general insurance business is referred to in this application as a “**general insurance scheme**” and an insurance scheme which

transfers long term insurance business is referred to as a “**long term insurance scheme**”.

- 1.18 The policies which AIL has written are referred to in this application as the “**AIL Policies**” and its policyholders as “**AIL Policyholders**”.
- 1.19 So far as material to this application, all the UK and EU statutory provisions which are referred to are set out in Schedule 5 to this application.

## 2 **THE AVIVA GROUP**

- 2.1 The Aviva Group provides long term insurance and savings, general and health insurance, and fund management products and services.
- 2.2 The Aviva Group was formed by the merger of CGU plc and Norwich Union plc on 30 May 2000.
- 2.3 CGU plc and Norwich Union plc were both major insurers, which were based in the UK and operated in both the long term insurance and the general insurance markets.
- 2.4 CGU plc was renamed CGNU plc on completion of the merger, and was renamed Aviva plc on 1 July 2002.
  - 2.5.1 For completeness, an application is to be made to the Companies Court for the sanction of a long term insurance scheme (the “**Present English Scheme**”), the purpose of which is similar to that of the Scheme.
  - 2.5.2 In outline, the Present English Scheme is to provide for the transfer of part of the long term insurance business of an Aviva Group company which is registered in England and Wales to another Aviva Group company which is registered in Ireland.

## 3 **AIL**

### *Corporate*

- 3.1 AIL was incorporated on 23 February 1891 as a company limited by shares and under the name The General Accident Assurance Corporation Limited. AIL adopted its present name with effect from 1 September 2006.
- 3.2 The share capital of AIL is £203,640,000, divided into 20,364 ordinary shares of £10,000 each, all of which have been issued and are fully paid.

- 3.3 The whole issued share capital of AIL is held, and beneficially owned, by Aviva Group Holdings Limited, which is registered in England and Wales and is a direct, wholly-owned subsidiary of Aviva plc.
- 3.4 For completeness, nothing in AIL's articles of association restricts, in any way, its entering into the Scheme.

### ***Business Overview***

- 3.5.1 AIL is the main Group Company which carries on general insurance and which is authorised in the UK.
- 3.5.2 AIL's business comprises primarily '*personal lines*' (including motor, property, liability and mobile devices), '*commercial lines*' (including motor, property and liability), health lines, and corporate and '*specialty risks*' (including property and liability cover for large corporate customers, property legal indemnity, corporate personal accident and goods in transit cover).
- 3.6 In 2011, the Aviva Group consolidated its general insurance business by transferring general insurance policies from several members of the Aviva Group into AIL.
- 3.7.1 The main legal process which achieved that consolidation was a general insurance scheme (the "**English Scheme**"), under which the general insurance businesses of seven Group Companies, which were registered in England and Wales, were transferred to AIL.
- 3.7.2 The English Scheme was sanctioned by the High Court of England and Wales (the "**Companies Court**") on 11 October 2011 and became effective on 14 November of that year.
- 3.8.1 An additional, but far smaller, legal process which achieved that consolidation was a general insurance scheme (the "**Scottish Scheme**"), under which the general insurance businesses of two Group Companies, which were registered in Scotland, namely CGU Bonus Limited and Scottish Boiler Limited, were transferred to AIL.
- 3.8.2 The Scottish Scheme was sanctioned by this Court on 10 October 2011 and also became effective on 14 November of that year.
- 3.8.3 The Scottish Scheme is the only general insurance scheme which has been sanctioned in this Court under Part VII and Schedule 12.
- 3.9.1 For completeness, a further, and also smaller, legal process which also achieved that consolidation was a scheme which was under the law of Jersey and under which the general insurance businesses in Jersey of seven Group Companies were transferred to AIL.

- 3.9.2 That scheme was sanctioned by the Royal Court of Jersey also on 10 October 2011 and also became effective on 14 November of that year.
- 3.10.1 In 2012, the general insurance business, and most of the assets and liabilities, of Aviva Insurance Europe SE, the Group Company which wrote the Aviva Group’s general insurance business in Ireland, was transferred to AIL.
- 3.10.2 The main legal process which implemented that transfer was an insurance business transfer scheme (the “**Irish Scheme**”) under the Irish Assurance Companies Act 1909 and the Irish Insurance Act 1989.
- 3.10.3 The Irish Scheme was sanctioned by the High Court of Ireland on 7 October 2012 and became effective on 30 November of that year.
- 3.11.1 AIL has a branch in Ireland (the “**Irish Branch**”), a former branch in France (the “**Former French Branch**”) and a former branch in Belgium (the “**Former Belgian Branch**”), each of which carries on, or carried on, the business of writing general insurance, on a Freedom of Establishment basis, in EEA States other than the UK.
- 3.11.2 The Former Belgian Branch was closed in December 2017 and the Former French Branch was closed in May 2018.
- 3.12 AIL also carries on, or has carried on, the business of writing from the UK, on a Freedom of Services basis, general insurance, covering risks which are situated, wholly or in part, in other EEA States.
- 3.13 Some AIL Policies are written through a network of approximately 2,179 brokers (“**Brokers**”), of which approximately 472 are in Ireland and 1,707 are based in the UK (“**UK Brokers**”), and through what are known as ‘*corporate partners*’ (“**Partners**”), four of which are in Ireland.
- 3.14 In outline, the Partners are entities whose main focus is not insurance, and principally include financial institutions, retailers and trade unions.
- 3.15 The most significant of the Partners in relation to the number of policies transferring under the Scheme is Dixons Carphone plc (“**DC**”). The AIL Policies which DC administers are ones of mobile device insurance for its customers.
- 3.16 Around 62% of AIL Policyholders have their relationship with their Partner or Broker. The remaining policyholders have a direct relationship with AIL or other Group Companies.
- 3.17.1 AIL has itself no employees. Its business in, and from, the UK (including the Freedom of Services business) and the business of the Irish Branch and the Former French Branch are administered using employees of Group Companies.

- 3.17.2 The business of the Former Belgian Branch is administered by NN Insurance Belgium SA/NV (“**NN Insurance Belgium**”).
- 3.17.3 NN Insurance Belgium is an insurance company which has its registered office and operational headquarters in Belgium and is authorised in Belgium.
- 3.18.1 There were, as at 31 December 2017, approximately 15.5 million AIL Policies in force.
- 3.18.2 The AIL Policies earned gross premiums in the year ending 31 December 2017 of approximately £5,211 million and had gross claims reserves, as at 31 December 2017, of approximately £6,576 million.
- 3.19.1 As an authorised insurance company, AIL is subject to regulatory capital requirements under Solvency II, as implemented in the UK by the PRA Handbook, to maintain *inter alia* ‘eligible own funds’ (otherwise referred to as capital), which is more than its ‘Solvency Capital Requirement’ (“**SCR**”).
- 3.19.2 As at 31 December 2017, AIL had an “**SCR Coverage Ratio**”, that is the amount of its eligible own funds in relation to its SCR, expressed as a percentage, of 198 per cent.
- 3.19.3 If the Scheme had taken effect as at 31 December 2017, AIL’s SCR Coverage Ratio would have been 195 per cent.

## 4 **AIIDAC**

### *Corporate*

- 4.1 AIIDAC was incorporated on 9 June 2017 as a designated activity company limited by shares and under the name Aviva OPP One Designated Activity Company. AIIDAC adopted its present name with effect from 10 July 2018.
- 4.2 The authorised share capital of AIIDAC is €100,000,000, divided into 100,000,000 ordinary shares of €1 each, of which 5,000,000 shares have been issued and are fully paid up. The 5,000,000 issued shares of AIIDAC are held, and beneficially owned, by AIL.
- 4.3 Nothing in AIIDAC’s constitution restricts in any way its entering into the Scheme.

### *Business Overview*

- 4.4 AIIDAC was incorporated as part of the Aviva Group’s planning in anticipation of Brexit.

- 4.5 In particular, AIIDAC is to be the authorised Irish general insurer which will accept that part of AIL’s insurance business which is to be transferred under the Scheme (the “**Transferred Business**”).
- 4.6 AIIDAC has conducted no prior business other than preparatory activities in connection with the Scheme.
- 4.7 AIIDAC has notified the CBI of its intention to exercise its right under Irish law and under FSMA, both of which implement Solvency II, to establish a branch establishment in the UK (the “**UK Branch**”).
- 4.8 Once the UK Branch is established, AIIDAC will have permission to carry on, from the UK Branch, certain regulated insurance business (including all relevant classes of general insurance business which are set out in Part 1 of Schedule 1 of the RAO).
- 4.9 In particular, AIIDAC will be authorised to carry on, in (and from) the UK, certain parts of the Transferred Business.
- 4.10 It is reasonably anticipated that the UK Branch will be established in the course of this application.
- 4.11.1 The Aviva Group has introduced capital into AIIDAC.
- 4.11.2 That capital has resulted in AIIDAC’s SCR Coverage Ratio being 135 per cent.
- 4.11.3 If the Scheme had taken effect as at 31 December 2017, AIIDAC’s SCR Coverage Ratio would have been 151 per cent.
- 4.12 For completeness, a designated activity company is, in outline, a form of private company, under the Irish Company legislation, and is appropriate for an authorised insurance company.

## 5 **THE BACKGROUND TO THE SCHEME**

- 5.1 Following the invocation by the UK of Article 50 of the Treaty on European Union on 29 March 2017, the UK has commenced negotiations on the terms of Brexit.
- 5.2 There is a risk that, upon or shortly following Brexit, AIL will lose its rights under the single market directives, including Solvency II, to carry out insurance business in the EEA, including the EU, on a Freedom of Services or Freedom of Establishment basis.
- 5.3 Accordingly, the purpose of the Scheme is to ensure that the Aviva Group retains the ability to provide services to AIL Policyholders following Brexit. That will minimise the potential impact of Brexit on the Aviva Group and provide certainty for AIL Policyholders.

- 5.4 By transferring certain AIL Policies to AIIDAC under the Scheme, those AIL Policies (the “**Transferred Policies**”), will continue to be effected by an entity which is authorised in the EU.
- 5.5.1 More specifically, the Transferred Policies will continue to be effected by AIIDAC on one of three bases.
- 5.5.2 The first two are either a Freedom of Services or a Freedom of Establishment basis.
- 5.5.3 The third basis is that AIIDAC will effect policies as an insurer in its home state of Ireland.

## 6 THE SCHEME

### *The Transferred Business*

- 6.1 The Scheme is to become effective at the “**Effective Time**”, namely 00:01 GMT on Friday 1 February 2019 or at any other time, or date, as may be specified in the Scheme and the Sanction Order.
- 6.2 In outline, the Scheme is to transfer the “**Transferred Business**” from AIL to AIIDAC.
- 6.3 The Transferred Business is to comprise the Transferred Policies (as set out at Statements 6.6 to 6.10), the Transferred Contracts (as set out at Statement 6.11 and 6.12), the Transferred Assets (as set out at Statements 6.13 to 6.17) and the Transferred Liabilities (as set out at Statements 6.18 to 6.22).
- 6.4 There are approximately 1.3 million Transferred Policies, with gross earned premiums in 2017 of approximately £514m and gross claims reserves as at 31 December 2017 of approximately £790m.
- 6.5 In this application, the holders of Transferred Policies are referred to as “**Transferred Policyholders**”.
- 6.6.1 In outline, the Transferred Policies are to comprise three categories.
- 6.6.2 The first category of Transferred Policies is to comprise the “**Irish Domestic Policies**”.
- 6.6.3 In outline, the Irish Domestic Policies are to comprise AIL Policies (or any constituent, and identifiable, parts of them) which have been effected by AIL on a Freedom of Establishment basis out of the Irish Branch.

- 6.6.4 Those Irish Domestic Policies include AIL Policies (or any constituent, and identifiable, parts of them) which have been effected by AIL, on a Freedom of Establishment basis, out of the Irish Branch, where AIL's records show that the risk (or part of the risk) is situated in the UK (the "**Reverse Flow Policies**").
- 6.7.1 The second category of Transferred Policies is to comprise the "**Irish FoS Policies**".
- 6.7.2 In outline, the Irish FoS Policies are to comprise certain specific categories of AIL Policies (or any constituent, and identifiable, parts of them) which are specified in the Scheme and which have been effected on a Freedom of Services basis, where AIL's records show that the risk (or part of the risk) is situated in Ireland.
- 6.8.1 The third category of Transferred Policies is to comprise the "**Other EEA Policies**".
- 6.8.2 In outline, the Other EEA Policies are to comprise, first of all AIL Policies which have been effected by AIL on a Freedom of Establishment basis out of the Former French Branch or the Former Belgian Branch.
- 6.8.3 In addition, the Other EEA Policies are to comprise certain specific categories of AIL Policies (or any constituent, and identifiable, parts of them) which are specified in the Scheme and which have been effected on a Freedom of Services basis, where AIL's records show that the risk (or part of the risk) is situated in an EEA State, other than the UK or Ireland.
- 6.9.1 In addition, the Other EEA Policies are to exclude '*inward reinsurance contracts*', under which AIL is the reinsurer, subject to one category of exceptions.
- 6.9.2 Those exceptions are those reinsurance contracts which have been written by the Former French Branch, as reinsurer, in relation to construction reinsurance risks and which have been ceded by '*pools*' of insurers (the "**French Inward Reinsurance Contracts**").
- 6.10.1 Where any constituent, and identifiable, part of an AIL Policy constitutes a Transferred Policy, but the whole AIL Policy does not constitute a Transferred Policy, that AIL Policy will be a "**Split Transferred Policy**".
- 6.10.2 Each Split Transferred Policy will be varied by the Scheme.
- 6.10.3 Each Split Transferred Policy will continue on its original terms with AIL, after the Effective Time, in relation to the part which is not a Transferred Policy.
- 6.10.4 Each Split Transferred Policy will constitute a new agreement with the Transferee, after the Effective Time, on the same terms as the original policy in relation to the part which is a Transferred Policy.

- 6.10.5 The Scheme provides, out of caution, that that splitting will not, in respect of any Split Transferred Policy, give rise to certain rights which might otherwise exist, such as rights of termination or variation.
- 6.11.1 In outline, the **“Transferred Contracts”** are to comprise contracts, other than AIL Policies, to the extent that those contracts relate to Transferred Business, or, to any activity which is carried on in connection with it.
- 6.11.2 The Transferred Contracts are also to include ‘*outwards reinsurance contracts*’ (or any constituent and identifiable parts of them), to the extent that they are between the AIL (as cedant) and any third party that is not a member of the Aviva Group (as reinsurer) and relate to Irish Domestic Policies (the **“Irish Domestic Reinsurance Contracts”**).
- 6.11.3 Furthermore, Transferred Contracts are to include ‘*supply chain*’ contracts.
- 6.11.4 They are contracts for the provision of goods or services (or both) by third parties, and which relate to the performance of AIL’s obligations under the Transferred Policies.
- 6.11.5 Transferred Contracts are also to include contracts with Brokers or Partners.
- 6.11.6 However, the Transferred Policies are not to include the **“Excluded Contracts”** which are described at Statements 6.28 to 6.31.
- 6.12.1 Where any constituent, and identifiable, part of a contract, other than an AIL Policy constitutes a Transferred Contract, but the contract does not in its entirety constitute a Transferred Contract, that contract will be a **“Split Transferred Contract”**.
- 6.12.2 Each Split Transferred Contract will be varied by the Scheme.
- 6.12.3 Each Split Transferred Contract will continue on its original terms with AIL, after the Effective Time, in relation to the part of the Split Transferred Contract which is not a Transferred Contract.
- 6.12.4 Each Split Transferred Contract will constitute a new agreement with the Transferee on the same terms as the original terms in relation to the part which is a Transferred Contract.
- 6.12.5 The Scheme provides, again out of caution, that that splitting will not, in respect of any Split Transferred Contract, give rise to certain rights which might otherwise exist, such as rights of termination or variation.
- 6.13 In outline, the **“Transferred Assets”** are, first of all, to include all rights of AIL under the Transferred Policies and Transferred Contracts, including all rights against third parties, which relate to any of the Transferred Policies or the Transferred Contracts.

- 6.14.1 In addition, the Transferred Assets are to include the “**Investment Assets**”.
- 6.14.2 In outline, the Investment Assets are assets of AIL, which together represent the value, which is to be agreed by AIL and AIIDAC, of the Transferred Liabilities.
- 6.15.1 The Transferred Assets are also to include the “**Operational Assets**”.
- 6.15.2 In outline, the Operational Assets are any operational assets, to the extent that they are owned by AIL’s Irish Branch.
- 6.16 The Transferred Assets are also to include the records, in whatever form, relating to the Transferred Policies and the Transferred Contracts.
- 6.17 However, the Transferred Assets are not to include the “**Excluded Assets**” which are described at Statements 6.24 to 6.27.
- 6.18 In outline, the “**Transferred Liabilities**” are, first of all, to include all of AIL’s liabilities under or in connection with the Transferred Assets, Transferred Policies or Transferred Contracts, including all rights of third parties which relate to, or arise as a result of, any of them.
- 6.19 In addition, the Transferred Liabilities are to include all of AIL’s liabilities to taxation which relate to any of the Transferred Policies and Transferred Contracts.
- 6.20 The Transferred Liabilities are also to include all of AIL’s liabilities which are connected to the sale, or administration, of any of the Transferred Policies and are not covered by the liabilities described in Statements 6.18 and 6.19 above.
- 6.21.1 Subject to Statement 6.35, the Transferred Liabilities are to include “**Conduct Liabilities**”.
- 6.21.2 In outline, Conduct Liabilities are liabilities which are connected with the sale, or administration, of an AIL Policy and where the actions or omissions of AIL (or another person involved in the sale or administration of that policy) may have constituted a breach of any applicable law or regulatory requirement.
- 6.22 However, the Transferred Liabilities are not to include the “**Excluded Liabilities**” which are described at Statement 6.32 to 6.36.

### ***The Excluded Business***

- 6.23.1 The “**Excluded Business**” is to comprise the Excluded Assets (as set out at Statements 6.24 to 6.27), the Excluded Contracts (as set out at Statements 6.28 to 6.31) and the Excluded Liabilities (as set out at Statements 6.32 to 6.36).
- 6.23.2 In outline, the Excluded Business comprises those parts of AIL’s business that are not to transfer under the Scheme.
- 6.24 In outline, the Excluded Assets are, first of all, to include all investment property of AIL, other than the Investment Assets.
- 6.25 In addition, the Excluded Assets are to include all interests in real property which are not comprised within the investment property.
- 6.26
- 6.26.1 The Excluded Assets are also to include all property which AIL and AIIDAC agree in writing before the Effective Time should not be transferred.
- 6.26.2 That exclusion is to be added out of caution and to give flexibility.
- 6.27 The Excluded Assets are also to include all records that AIL is required by law to retain.
- 6.28 In outline, the “**Excluded Contracts**” are to include certain contracts, or categories of contracts, which are specified in the Scheme, including those which are described at Statements 6.29 to 6.31 below.
- 6.29.1 The Excluded Contracts are to include all outwards reinsurance contracts (or any constituent, and identifiable, parts of them), to the extent that they relate to Irish FoS Policies or Other EEA Policies.
- 6.29.2 In addition, the Excluded Contracts are to include all outwards reinsurance contracts (or any constituent and identifiable part of those contracts) with a Group Company, to the extent that they relate to Irish Domestic Policies.
- 6.29.3 Those outwards insurance contracts are considered further at Statements 6.54 to 6.56.
- 6.30 The Excluded Contracts are to include all employment contracts.
- 6.31.1 The Excluded Contracts are also to include certain contracts and categories of contracts which are specified at Schedule 1 of the Scheme and which are described in this Statement 6.31.

- 6.31.2 The first of those Excluded Contracts is the guarantee and indemnity which has been given by Hibernian Aviva General Insurance Limited on 12 February 2009 and subsequently assumed by AIL in relation to the performance of obligations by Hibernian Aviva Group Plc under a stadium sponsorship agreement dated 12 February 2009.
- 6.31.3 The second of those contracts is the guarantee and indemnity which has been given by AIL on 17 January 2018 in relation to the performance of obligations by Aviva Group Services Ireland Limited under a stadium sponsorship agreement dated 17 January 2018.
- 6.31.4 The third of those contracts is the share purchase agreement which has been entered into by AIL, Aviva Health Group Ireland Limited and Irish Life Group Limited on 9 March 2016 in connection with the sale of Aviva Heath Ireland Limited.
- 6.31.5 The fourth of those categories of contracts consists of any agreement which has been entered into between AIL and Aviva Investors UK Fund Services Limited, Aviva Investors UK Funds Limited or Aviva Investors Global Services Limited, including the Investment Management Agreement and Operational Service Level Agreement between AIL and Aviva Investors Global Services Limited dated 1 April 2015.
- 6.31.6 The fifth of those contracts is the Non-Life Quota Share Reinsurance Agreement which has been entered into by AIL and Aviva International Insurance Limited on 31 December 2015.
- 6.31.7 The sixth of those contracts is the custody agreement which has been entered into by AIL and JPMorgan Chase Bank NA (London branch) on 5 January 2016.
- 6.31.8 The seventh of those contracts is a custody agreement which is expected to be entered into by AIL and HSBC Bank plc prior to the Sanction Hearing.
- 6.31.9 The eighth of those contracts are the Lease Agreements, and ancillary agreements, in relation to the premises at Blocks A&C, One Park Place, Upper Hatch Street, Dublin 2 dated 15 November 2006.
- 6.31.10 The ninth of those contracts is the indemnity which has been assumed by AIL to Park Place Properties Limited and Shoalwater Limited, dated 15 November 2006.
- 6.31.11 The tenth of those contracts is the Lease Agreement, and ancillary agreements, in relation to the premises at Block A, Galway West Business Park, Ragoon, County Galway dated 27 September 2012.
- 6.31.12 The final of those contracts is the Lease Agreement, and ancillary agreements, in relation to part of the 2nd Floor of Building 5200, Block 18, Cork Airport Business Park, Cork dated 11 May 2017.

6.32 In outline, the “**Excluded Liabilities**” are, first of all, to include all liabilities attributable to the Excluded Assets or Excluded Contracts.

6.33

6.33.1 In addition the Excluded Liabilities are to include all liabilities that AIL and AIIDAC agree in writing before the Effective Time are not to be transferred.

6.33.2 Again, that exclusion is to be added out of caution and to give flexibility.

6.34 The Excluded Liabilities are also to include all liabilities of AIL arising as a result of the implementation of the Scheme.

6.35.1 The Excluded Liabilities are also to include all Conduct Liabilities of AIL in respect of Irish FoS Policies or Other EEA Policies.

6.35.2 Only Conduct Liabilities in respect of the Irish Domestic Policies are to transfer.

6.35.3 Accordingly, AIL will retain the economic impact of any Conduct Liabilities in respect of business it carried on from the UK on a Freedom of Services basis, from the Former French Branch and from the Former Belgian Branch.

6.36 Each of the categories of Excluded Liabilities also includes any of those liabilities relating to tax.

### ***Residual Business***

6.37 Transferred Business which transfers at the Effective Time is referred to in the Scheme as “**Day One Business**”.

6.38 Transferred Business which is not, for some reason, transferred at the Effective Time is referred to as “**Residual Business**”.

6.39.1 Any Residual Business will be held by AIL on trust for AIIDAC until such time as the impediment to its transfer is resolved.

6.39.2 At that time, which is referred to as the “**Subsequent Transfer Date**”, that Residual Business shall be transferred from AIL to AIIDAC.

6.40.1 The Residual Business is also to include those Transferred Policies in respect of which the requirements of paragraphs 1(1)(ba), 1(2A) and 3A of Schedule 12 of FSMA have not been complied with.

6.40.2 Those requirements are addressed at Statement 10.

- 6.41.1 It is not currently expected that there will be any Residual Business, subject to one category of exceptions.
- 6.41.2 Those exceptions are to comprise proceedings which were initiated with the UK Financial Ombudsman Service (the “FOS”) prior to the Effective Time, and are ongoing at the Effective Time (the “Ongoing FOS Claims”).
- 6.41.3 The Ongoing FOS Claims are to be Residual Business in order to avoid disruption for those AIL Policyholders who have made Ongoing FOS Claims.
- 6.41.4 On the final determination of an Ongoing FOS Claim, any liability in respect of the Ongoing FOS Claim constituting a Transferred Liability will transfer to AIIDAC.

***Proceedings, Mandates, and Payments***

- 6.42 With effect from the Effective Time, any proceedings (except for proceedings which are related to the Residual Business) which have been commenced prior to the Effective Time, either by, or against, AIL, and which may give rise to a Day One Asset or Day One Liability, shall be continued by, or against, AIIDAC.
  - 6.43.1 Proceedings which are related to the Residual Business, such as the Ongoing FOS Claims, will continue against AIL.
  - 6.43.2 Once the Residual Business transfers to AIIDAC on a Subsequent Transfer Date, any further proceedings which relate to the same subject matter shall be continued against AIIDAC.
  - 6.44.1 The FOS is to continue to have jurisdiction over any proceedings which are commenced after the Effective Time against AIIDAC, which are in respect of acts, or omissions, of AIL in connection with Transferred Business prior to the Effective Time, and which would fall under the jurisdiction of the FOS prior to the Effective Time.
  - 6.44.2 In the Scheme, AIIDAC is to undertake to comply with certain provisions of the Dispute Resolution: Complaints (“DISP”) Sourcebook of the FCA Handbook.
  - 6.44.3 Those are provisions relating to the handling of complaints to the FOS insofar as they apply at the Effective Time to AIIDAC’s handling of certain complaints.
  - 6.44.4 Those complaints are ones which have been brought by holders of Transferred Policies against AIIDAC in connection with the acts or omissions of AIL prior to the Effective Time, and which have been referred to the FOS.
  - 6.44.5 In addition, AIIDAC is to undertake to comply promptly with any valid award, or direction, which is made by the FOS against AIIDAC under the jurisdiction of the FOS.

- 6.44.6 Similarly, AIIDAC is to comply promptly with any settlement which AIIDAC agrees with a complainant at an earlier stage of the procedures which are set out in section 3 of DISP as it is at the Effective Time.
- 6.45 In each case, AIIDAC's undertaking will only apply to the extent that such compliance is compatible with any rules, or regulations, which are issued by the CBI and are applicable to AIIDAC.
- 6.46.1 AIIDAC does not intend to resist any application to this Court by Transferred Policyholders or the FCA, in relation to breaches of the undertakings which are described at Statements 6.44.2, 6.44.5 and 6.44.6.
- 6.46.2 AIIDAC understands that a successful application could result in it being held in contempt of court.
- 6.47 With effect from the Effective Time, all premiums payable to AIL in respect of Transferred Policies which have transferred under the Scheme are to become payable to AIIDAC.
- 6.48 Save as may otherwise be agreed in writing between AIL and AIIDAC prior to the Effective Time and following the transfer of a Transferred Policy, any mandate, or other instruction, in force providing for the payment of premiums to AIL are to take effect as if it had provided for the payment to AIIDAC.

#### ***The Reinsurance Arrangements***

- 6.49 AIL and AIIDAC will enter into a 'quota share reinsurance agreement' (the "**Reinsurance Agreement**").
- 6.50 In outline, the Reinsurance Agreement is, first of all, to reinsure to AIL 85 per cent of AIIDAC's liabilities in respect of the Irish Domestic Policies (excluding the Reverse Flow Policies) and certain mobile device policies.
- 6.51 In addition, the Reinsurance Agreement is to reinsure to AIL 100 per cent of AIIDAC's liabilities in respect of the Irish FoS Policies, the Reverse Flow Policies and the Other EEA Policies, excluding the mobile device policies which are referred to in the preceding Statement.
- 6.52
- 6.52.1 The Reinsurance Agreement will be supported by a floating charge, which is to be granted by AIL in favour of AIIDAC and will be over certain of its fixed income assets.
- 6.52.2 The floating charge will provide that AIIDAC will rank *pari passu* with the direct AIL Policyholders upon its crystallisation.

- 6.53 In outline, the initial premium which is to be paid by AIIDAC to AIL under the Reinsurance Agreement will be set off against the obligation to transfer the Investment Assets, which are to form part of the Transferred Assets and are described in Statement 6.14.
- 6.54 In addition, and as set out at Statement 6.29, the Excluded Contracts are to include all outwards reinsurance contracts between AIL, as cedant, and a third party reinsurer that is not a Group Company (the “**Outwards Reinsurance Contracts**”) to the extent that they relate to Irish FoS Policies or Other EEA Policies.
- 6.55 The Outwards Reinsurance Contracts are also to include any constituent and identifiable parts of those reinsurance contracts.
- 6.56 The Outwards Reinsurance Contracts will continue to reinsure the obligations of AIL. However, those obligations will be under the Reinsurance Agreement rather than directly in respect of the Transferred Policies.
- 6.57 However, and as stated at Statement 6.11.2, the Irish Domestic Reinsurance Contracts are to be transferred by the Scheme.

#### *Variation*

- 6.58 Prior to the making of the Sanction Order, AIL and AIIDAC may consent, on behalf of the persons bound by the Scheme, to any variation of the Scheme.
- 6.59 After the Sanction Order, and subject to the power described in Statement 6.61, any variation of the Scheme must be approved by the Court and be notified in advance to the CBI, PRA and FCA, each of whom is to have the right to be heard by this Court.
- 6.60 The proposed variation must be accompanied by a certificate of an independent expert, whose appointment must also be approved by the CBI, that the proposed variation will not materially adversely affect the security, or reasonable expectations, of the policyholders of AIIDAC or AIL.
- 6.61 The approval of the Court will not be required in respect of any variation which is considered by AIIDAC as a variation: (a) to correct manifest errors; (b) of a minor or technical nature (or both); (c) to ensure the provisions of the Scheme operate as intended; (d) necessary to reflect changes in AIIDAC’s actuarial practices (provided that they conform to generally accepted actuarial practices); (e) required to protect the rights and reasonable expectations of the policyholders of AIIDAC or those of the AIL Policyholders; or (f) for which the Scheme makes specific provision.
- 6.62 The power to vary the Scheme without the approval of the Court is subject to the CBI, PRA and FCA having been notified of the variation in writing and not having objected to it.
- 6.63.1 For completeness, AIL and AIIDAC envisage that variations to the Scheme and the Reinsurance Agreement might have to be made before the Sanction Hearing.

- 6.63.2 In outline, AIL and AIIDAC envisage that such variations might first of all revise the definition in Schedule 2 to the Scheme of the Investment Assets and their amount. The Investment Assets are addressed at Statement 6.14.
- 6.63.3 In addition, AIL and AIIDAC envisage that such variations might revise the amount of the initial premium under the Reinsurance Agreement. As set out at Statement 6.53, the amount of the Investment Assets is to be in effect set off against the amount of that initial premium.
- 6.63.4 Again in outline, the variations envisaged would be made to remove what might be an inadvertent consequence of the accounting treatment of the Scheme and the Reinsurance Agreement as presently drafted. That possible consequence would be an adverse tax treatment, rather than a treatment which is neutral in terms of tax and which reflects the commercial position.
- 6.63.5 However, AIL and AIIDAC would not propose any variation which might adversely affect any Transferred Policyholder or Non-Transferred Policyholder.
- 6.63.6 Similarly, AIL and AIIDAC would not propose any such variation which would be inconsistent with the Scheme's description in the communications exercise as described in Statement 9.
- 6.63.7 The need for any variation would arise because of continuing discussions between AIL, AIIDAC, their tax advisors and the tax authorities in the UK and Ireland.
- 6.63.8 Finally, any such variations would require to be in effect agreed by the FCA and the PRA (together, the **"Regulators"**) and the CBI. In addition, they would be considered fully in the Supplementary Scheme Report.
- 6.63.9 In addition, the PRA has itself indicated that it is considering its position. It is possible the PRA may propose further changes to the Reinsurance Agreement.

#### 6.64 **Costs**

- 6.64.1 AIL and AIIDAC will each bear their own costs and expenses in relation to the preparation and carrying into effect of the Scheme.
- 6.64.2 Aviva Group Holdings Limited and Aviva plc intend to agree to allocate the costs of the Scheme between them.

## 7 **THE AIL BOARD AND THE AIIDAC BOARD**

- 7.1 The AIL Board and the AIIDAC Board are of the opinion that it would promote the interests of each of their respective companies to proceed with the Scheme.

- 7.2 In reaching that opinion, the AIL Board and the AIIDAC Board have taken into account the conclusions of the Independent Expert and have also considered, among other things, their respective obligations to their policyholders.
- 7.3.1 By the Effective Time, the AIIDAC Board will have been provided with a letter from AIL (the “**Letter of Intent**”).
- 7.3.2 The Letter of Intent will set out AIL’s intention that, following the Effective Time, AIL will provide financial support to AIIDAC.
- 7.3.3 That financial support will be that which is required to restore AIIDAC’s SCR Coverage Ratio to a specified level. It will be provided when AIIDAC notifies AIL that that ratio has fallen below a certain level.
- 7.3.4 The financial support is to be provided only where both the AIL Board and AIIDAC Board consider that management action by AIIDAC would not be sufficient to raise the SCR Coverage Ratio to the required level.
- 7.3.5 In addition, that financial support is provided only if certain other criteria set out in the Letter of Intent are met.
- 7.3.6 The Letter of Intent is not intended to create binding obligations in law for either AIL or AIIDAC. In particular, it is not a guarantee.
- 7.4.1 After the Effective Time, the AIIDAC Board will continue to monitor the Scheme to identify any unintended consequences, which might have an adverse effect on AIIDAC’s policyholders.
- 7.4.2 The AIIDAC Board will consider whether any variations to the Scheme are as a result necessary.

## 8 **THE INDEPENDENT EXPERT’S REPORT**

- 8.1 As required by section 109 of FSMA, Simon Sheaf (the “**Independent Expert**”), a Fellow of the Institute and Faculty of Actuaries and Head of General Insurance Actuarial and Risk at Grant Thornton, has prepared a report, which is dated 23 August 2018, on the terms of the Scheme (the “**Expert Report**”).
- 8.2.1 The appointment of the Independent Expert was approved by the PRA, under section 109(2) of FSMA.
- 8.2.2 That approval was given in a letter from the PRA dated 14 July 2017.

- 8.3.1 Before his appointment, the Independent Expert described to the PRA that he had a motor insurance policy with AIL.
- 8.3.2 The PRA concluded that the policy did not make the appointment inappropriate.
- 8.4 In the Expert Report, the Independent Expert analyses in detail the likely effect of the Scheme on the Transferred Policyholders, as well as its effect on AIL Policyholders which will not transfer under the Scheme (the “**Non-Transferred Policyholders**”).
- 8.5.1 The Independent Expert summarises his findings at section 2 of the Expert Report.
- 8.5.2 At paragraph 2.44 the Independent Expert sets out the following overall conclusions on the Scheme:
- “2.44 I conclude that I do not expect any group of policyholders or reinsurers to be materially adversely affected by the Scheme and therefore I see no reason why the Scheme should not proceed.”*
- 8.5.3 The Independent Expert repeats that conclusion in very similar language at paragraph 13.8 of the Expert Report.
- 8.6 The rest of the Independent Expert Report includes a number of more detailed conclusions, which are more conveniently set out in Schedule 3 to this application.
- 8.7.1 In addition to the Independent Expert Report, the Independent Expert is to prepare a supplementary report (the “**Supplementary Scheme Report**” for the Sanction Hearing.
- 8.7.2 In outline, the Independent Expert will consider in the Supplementary Report more up to date information on AIL and is expected to confirm there whether his conclusions on the Scheme remain valid.

## 9 THE NOTIFICATION

### *The Notice*

- 9.1 As required by regulation 3(2)(a) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (the “**Regulations**”), a notice (the “**Notice**”) has been prepared, which states that this application has been made.
- 9.2 As required by regulation 3(3)(b) of the Regulations, the Notice gives the address, as well as the webpage, which is referred to at Statement 9.42, and the telephone number, from which copies of the documents which are referred to at Statement 9.51 below may be obtained.

- 9.3 As required by regulation 3(3)(a) of the Regulations, the Notice has been approved by the PRA, having consulted with the FCA.

***Newspaper Publications – UK and Ireland***

- 9.4 As required by regulation 3(2)(a)(i) and (ii) of the Regulations, and in accordance with the First Order, the Notice will be published in the London, Edinburgh and Belfast Gazettes and two national newspapers in the UK, namely The Scotsman and The Daily Telegraph.

- 9.5 In addition, the Notice will also be published in the UK in the Daily Mail. That is intended to publicise the application more widely.

- 9.6 In addition, the Notice will be published in Ireland in the Iris Oifigiúil, the Irish official gazette, and once in each of the Irish Independent and the Irish Times, being two daily newspapers published in Ireland, all in compliance with the requirements of Irish law.

- 9.7.1 In addition, the Notice will also be published in specialist publications in Ireland in the business sectors for which policies to be transferred under the Scheme were written.

- 9.7.2 Those specialist publications are intended, in particular, to notify AIL Policyholders with ‘*long tail policies*’ of the Scheme. Those are policies in regards to which risk is incurred during the term of the policy but claims may not be reported until years later.

- 9.8.1 Regulation 3(2)(a)(iii) of the Regulations (“**Regulation 3(2)(a)(iii)**”) provides that, except where waived by the Court under regulation 4(2) of the Regulations (“**Regulation 4(2)**”), a notice stating that the application has been made must be published in two national newspapers in an EEA State, other than the UK, where, as regards any policy included in the proposed transfer (other than a policy which evidences a contract of reinsurance), the risk is situated in that EEA State.

- 9.8.2 The situation of the risks as regards a policy is explained at Statement 11.32.1.

- 9.9.1 A waiver is sought from the requirements of Regulation 3(2)(a)(iii).

- 9.9.2 That waiver is addressed at Statement 11.37, and the grounds on which it is sought are addressed at Statements 11.37 to 11.42.

- 9.10.1 Regulation 3(2)(a)(iv) of the Regulations (“**Regulation 3(2)(a)(iv)**”) provides that, except where waived by the Court under Regulation 4(2), a notice stating that the application has been made must be published in one business newspaper which is published or circulated in an EEA State, other than the UK, where, as regards any policy included in the proposed transfer which evidences a contract of reinsurance, that EEA State is the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into.

- 9.10.2 The publishing of the Notice in the European edition of the Financial Times referred to in paragraph (ii) of the Prayer, is also intended to satisfy the requirements of Regulation 3(2)(a)(iv) of the Regulations to notify the holders of the French Inward Reinsurance Contracts.
- 9.10.3 That is on the basis that that newspaper is a business newspaper which is circulated in France.
- 9.10.4 That is the EEA State in which the establishment of the policyholder to which these policies relate is situated at the date those contracts were entered into.

### ***The Policyholder Communications***

- 9.11 Regulation 3(2)(b) of the Regulations (“**Regulation 3(2)(b)**”) requires that formal notice that an application for a transfer of an insurance scheme has been made be sent to every ‘*policyholder*’ of the parties, unless that requirement is waived by the court, under Regulation 4(2).
  - 9.12.1 As explained in Statements 11.2 to 11.12, AIL is seeking a waiver from notifying the Non-Transferred Policyholders.
  - 9.12.2 AIL intends to send certain information, which is referred to in this Statement 9.12, to approximately 425 Non-Transferred Policyholders whose policies were written on a Freedom of Services basis and whose policies are not Irish FoS Policies or Other EEA Policies (the “**Non-Transferred FoS Policyholders**”).
  - 9.12.3 That information about the Scheme is to be sent to the Non-Transferred FoS Policyholders to explain to those AIL Policyholders, who may otherwise assume that they form part of the Transferred Policyholders, that their AIL Policies will remain with AIL.
  - 9.12.4 Approximately 12 of the Non-Transferred FoS Policyholders will be sent a communication including a brief statement that their AIL Policy will remain with AIL and referring to the webpage where further information about the Scheme can be found.
  - 9.12.5 In addition, approximately 416 of the Non-Transferred FoS Policyholders have policies covering international private medical insurance.
  - 9.12.6 Those Non-Transferred FoS Policyholders are due to receive a separate communication from AIL in relation to the renewal of their AIL Policy with Aetna International, an insurer outside of the Aviva Group, specialising in health insurance.

- 9.12.7 AIL proposes to include in that mailing a brief statement explaining that the AIL Policy will remain with AIL, and referring to the webpage, which is described at Statement 9.42 and where further information about the Scheme can be found.
- 9.12.8 Although the Non-Transferred FoS Policyholders who are referred to in Statements 9.12.4 and 9.12.5 will receive some information about the Scheme, they are still to be included in the waiver sought in respect of notifying the other Non-Transferred Policyholders as set out in Statements 11.2 to 11.12, as they will not receive the Notice.
- 9.13 The Notice will be sent to Transferred Policyholders, other than those in respect of whom a waiver is sought, as explained in Statements 11.16 to 11.29.
- 9.14 The Notice will be included within a short policyholder booklet (the “**Booklet**”).
- 9.15 The Booklet will also include a summary of the Scheme (the “**Scheme Summary**”), and will also refer to the procedure for objecting to the Scheme, including making objections in writing, or in person, at the Sanction Hearing.
- 9.16 In addition, the Booklet will give details of the webpage, which is referred to at Statement 9.42, and the “*telephone helpline*”, both of which will be established in connection with the Scheme.
- 9.17.1 The Booklet will also be accompanied by a personalised covering letter.
- 9.17.2 The covering letter will include a ‘*Questions and Answers*’ section.
- 9.18.1 A summary of the Expert Report will also be sent to the Transferred Policyholders.
- 9.18.2 The summary of the Expert Report indicates the opinion of the Independent Expert on the likely effects of the Scheme on the Transferred Policyholders and the Non-Transferred Policyholders.
- 9.19 The covering letter, the Booklet and the summary of the Expert Report are together to comprise the “**Mailing Pack**”.
- 9.20 Subject to the exceptions which are set out at Statement 11.16 to 11.29, AIL intends that the Mailing Pack will be sent to those Transferred Policyholders whose records it holds and whose current names and current addresses appear in the “*names and address*” fields of AIL’s electronic database (the “**Database**”), as at 15 August 2018 (the “**Record Date**”).
- 9.21.1 AIL holds records in the Database for those Transferred Policyholders whose policies have been written directly by AIL.

- 9.21.2 In addition AIL holds records in the Database for the Transferred Policyholders of those Irish Branch Policies which have been arranged through Brokers or Partners.
- 9.22 Those are the only current names and addresses for the Transferred Policyholders which it is reasonably practicable for AIL itself to obtain from its computerised records at the Record Date as set out at Statement 9.26.
- 9.23.1 It is anticipated that the Mailing Packs for those Transferred Policyholders whose records appear on the Database on the Record Date will be sent out between 31 August 2018 and 22 November 2018.
- 9.23.2 After the Record Date and until 22 November 2018 (the “**Cut-Off Date**”), AIL will endeavour to continue to send the Mailing Pack to Transferred Policyholders whose records are entered into the Database during that period.
- 9.24 After the Cut-Off Date, AIL does not intend to send the Mailing Pack to Transferred Policyholders whose records are entered into the Database.
- 9.25.1 It is intended that the Mailing Pack will be sent to Transferred Policyholders in the language which is usually used for communications with them.
- 9.25.2 Accordingly, the Mailing Pack is to be translated into German, French, Dutch, Swedish, Spanish and Portuguese.
- 9.25.3 It is not proposed to translate the Scheme, or the Expert’s Report, into any of those languages, unless a translation is requested by a Transferred Policyholder.

***The Notification by Brokers and Partners***

- 9.26.1 AIL intends that certain categories of the Transferred Policyholders are to be contacted by Brokers, or Partners, instead of by AIL directly.
- 9.26.2 First of all, that will be because AIL does not hold details of those AIL Policyholders.
- 9.26.3 Secondly, and in any case, it will be because those Transferred Policyholders are accustomed to receiving communications only from the Broker or Partner, instead of AIL.
- 9.26.4 The categories of those Transferred Policyholders are set out at Statements 9.27 to 9.33.
- 9.27.1 There are approximately 160 Transferred Policies which insure holiday homes in France, Ireland, Portugal and Spain, and which were sold through UK Brokers, as part of a policy of UK home insurance.

- 9.27.2 AIL will provide Mailing Packs to those UK Brokers who will wish to or will be asked to communicate directly with those Transferred Policyholders.
- 9.28.1 There are approximately 409 Transferred Policies which relate to ‘*Commercial Lines – Corporate and Specialty Risks*’, and most of which were sold through UK Brokers.
- 9.28.2 AIL will provide Mailing Packs to the Brokers, and ask them to notify those Transferred Policyholders directly.
- 9.29.1 There are approximately 40 Transferred Policies which relate to ‘*Commercial Lines – Schemes*’, and which are administered by Brokers operating under binding authorities from AIL.
- 9.29.2 AIL will provide Mailing Packs to the Brokers, and ask them to notify those Transferred Policyholders.
- 9.30.1 There are approximately 530 Transferred Policies which relate to ‘*Commercial Lines – Small Medium Enterprises*’, most of which were sold through UK Brokers.
- 9.30.2 AIL will provide Mailing Packs to the Brokers, and ask them to notify those Transferred Policyholders.
- 9.31.1 There are approximately 130 Transferred Policies which relate to Belgian lifetime hospitalisation and which are administered by NN Insurance Belgium.
- 9.31.2 AIL will provide Mailing Packs to NN Insurance Belgium, and ask NN Insurance Belgium to notify those Transferred Policyholders.
- 9.32.1 There are approximately 28 Transferred Policies which relate to hospitalisation which were written by the Former French Branch through one Broker in France.
- 9.32.2 AIL will provide Mailing Packs to the Broker, and ask it to notify the appropriate Transferred Policyholders.
- 9.33.1 In addition, there are approximately 575,000 Transferred Policies which relate to coverage for mobile handset insurance for customers of DC.
- 9.33.2 As said at Statement 3.15, that business is administered by DC.
- 9.34 A significant proportion of those Transferred Policyholders usually receive communications from DC by email.
- 9.35.1 DC will notify these Transferred Policyholders, using email, or post, as appropriate.

- 9.35.2 Where the customer is accustomed to communicating by email, that method will be used.
- 9.35.3 DC will also send those Transferred Policyholders the Mailing Pack by post, should the email not be delivered successfully.
- 9.36 That email will comprise a covering email with the same content as the covering letter in the Mailing Pack, and a link to the webpage which is described at Statement 9.42, from which the documents comprising the Mailing Pack can be downloaded.
- 9.37.1 AIL may be informed by a Broker or Partner whom it has asked to contact Transferred Policyholders as set out at Statements 9.27 to 9.36, that the Broker or Partner will not do so.
- 9.37.2 In those circumstances, AIL intends, where it has current names and current addresses for those Transferred Policyholders on its Database, to send the Mailing Packs to them, directly and in place of the Broker or Partner.

### *The Helpline*

- 9.38 AIL will make arrangements for a telephone helpline to be available to support telephone enquiries in relation to the Scheme.
- 9.39 Telephone calls received in relation to the Scheme will be referred to, and handled by, a specialist policyholder contact team, to ensure the consistency of response and the accuracy of data collection.
- 9.40 That team will receive specific training in relation to the Scheme.
- 9.41 That training will include the Part VII process, and training on the detail of the contents of the Mailing Pack, Questions and Answers and the process for objecting to the Scheme.

### *The Webpage*

- 9.42 In addition AIL will maintain a dedicated webpage (the “**Webpage**”) which will be found at [www.transfer.aviva.com](http://www.transfer.aviva.com).
- 9.43 The Webpage will provide on-line free access to the following documents (the “**Available Documents**”):
- (i) the Scheme (including the Scheme Summary);
  - (ii) the Expert Report;
  - (iii) a sample of each of the covering letters;

- (iv) the Booklet;
- (v) the summary of the Expert Report;
- (vi) the Notice;
- (vii) the statement setting out the terms of the Scheme and containing the summary of the Expert Report and
- (viii) a copy of this application.

9.44 The Webpage will be accessible from 31 August 2018 and for a period of no less than three months after the Effective Time.

9.45 The ‘*landing page*’ of the Webpage will be available, in addition to English, in German, French, Dutch, Swedish, Spanish and Portuguese.

#### ***The Notification of Reinsurers***

9.46 As required by regulation 3(2)(c) of the Regulations, AIL proposes to notify all reinsurers under the Irish Domestic Reinsurance Contracts, which are the only outwards reinsurance contracts to transfer under the Scheme, of the Scheme.

9.47.1 In addition, AIL proposes to notify reinsurers of the other Outward Reinsurance Contracts that there will be no change in the operation of those reinsurance contracts as a result of the Scheme.

9.47.2 That is so because, as said at Statement 6.54, the Irish FoS Policies and the Other EEA Policies to which these reinsurance contracts relate are to be reinsured from AIIDAC to AIL, under the Reinsurance Agreement.

#### ***The Notification of Counterparties***

9.48 AIL intends to notify counterparties of material Transferring Contracts of the Scheme.

9.49 These counterparties include the Brokers and Partners where their contract with AIL will be a Transferred Contract.

9.50 These counterparties will also include counterparties of material supply chain contracts which are referred to at Statement 6.11.3, along with material suppliers of goods and services to AIL, in each case so far as these are Transferred Contracts.

#### ***Documents***

9.51 As required by regulation 3(4) of the Regulations, any person who requests them will be given, free of charge, a copy of the Expert Report and a statement setting out the terms of the Scheme

and containing a summary of the Expert Report, and, in addition, the other Available Documents.

## 10 **THE EEA REGULATORY AUTHORITIES**

- 10.1 Paragraphs 1(1)(b), 1(2) and 3 of Schedule 12 to FSMA together provide that, as regards any of the policies to be transferred by a UK authorised insurer under an insurance scheme where the establishment from which the business is to be transferred is in an EEA State other than the UK, the insurance regulator in that EEA State must be notified of the proposed transfer
- 10.2 A certificate has to be given by the PRA that any such regulators have been notified of the proposed Scheme and that those regulators have responded to the notification, or, where they have not so responded, a period of three months, beginning with the notification, has elapsed.
- 10.3 In addition, Paragraphs 1(1)(ba), 1(2A) and 3A of Schedule 12 to FSMA together provide that, as regards any of the policies to be transferred under an insurance scheme which evidence a contract of insurance (other than reinsurance) where the contract was concluded in an EEA State other than the UK, the authority responsible for supervising persons who effect or carry out contracts of insurance in that EEA State must be notified of the proposed transfer.
- 10.4 A certificate has to be given by the PRA that any such supervisory authorities have been notified of the proposed Scheme and that such supervisory authorities have consented or, where they have not so consented, a period of three months, beginning with the notification, has elapsed.
- 10.5 It is understood that the PRA will confirm in writing that they will write to all other EEA regulators or supervisory authorities (as applicable) regarding the Scheme.
- 10.6 There is no reason to believe that any EEA regulator or supervisory authority will object to the transfer of the Transferred Policies under the Scheme.
- 10.7 In the event that an EEA supervisory authority were to object to the Scheme and did not withdraw that objection by the Sanction Hearing, those Transferred Policies would be Residual Business under the Scheme.
- 10.8 That Residual Business would be reinsured by AIIDAC with effect from the Effective Time until the applicable Subsequent Transfer Date.

## 11 THE WAIVERS

### *The Waiver from the Requirement to Notify Non-Transferred Policyholders*

- 11.1 As said at Statement 9.11, Regulation 3(2)(b) requires that the Notice is sent to each of the Non-Transferred Policyholders, unless the requirement is waived by the Court under Regulation 4(2).
- 11.2 For the reasons set out in Statements 11.3 to 11.12, a waiver is sought, in accordance with paragraph (vi) of the Prayer and under Regulation 4(2), in respect of the requirement under Regulation 3(2)(b) to notify all the Non-Transferred Policyholders.
- 11.3 First, all key information and documents relating to the Scheme will be available on the Webpage, as further described at Statement 9.43.
- 11.4 That information will also be available at certain of AIL's offices and on request in writing, as further described at Statement 9.51.
- 11.5 Those offices are, in Ireland, at (i) One Park Place, Hatch Street, Dublin 2; (ii) Block A, Galway West Business Park, Distributor Road, Knocknacarra, Galway; (iii) Avenue 5000, Cork Airport Business Park, Cork, T12 FDN3; and in the UK at (i) St Helen's, 1 Undershaft, London, EC3P 3DQ (ii) 8 Surrey Street, Norwich, NR1 3NG; and (iii) Pitheavlis, Perth, PH2 0NH.
- 11.6 The Notice will also be published in newspapers in accordance with Statements 9.4 to 9.7 and Statements 11.35 to 11.40.
- 11.7 Accordingly, information regarding the transfer is to be readily available to the Non-Transferred Policyholders by other methods.
- 11.8 In addition AIL has around 14.2 million individual Non-Transferred Policyholders.
- 11.9.1 The total direct cost of sending a Mailing Pack to all of the Non-Transferred Policyholders would be approximately £17.4m in total.
- 11.9.2 That cost includes the mailing, stationery, printing, postage by way of business class post, data extraction and estimated management time costs.
- 11.10 The Independent Expert has concluded at Sections 13.4 and 13.5 of the Expert Report that the Scheme is not likely to lead to a material adverse effect on the reasonable benefit expectations of either the Transferred Policyholders or on the Non-Transferred Policyholders.
- 11.11 The Independent Expert also states that the Scheme will not alter the service standards, and principles and practices which are used in the management of the AIL Policies.

- 11.12 Consequently, formal notification of the Non-Transferred Policyholders would be unnecessarily onerous and disproportionate to the minimal utility which they would derive from that notification.
- 11.13 The PRA and FCA are aware of the waiver and neither has indicated any objection to it.
- 11.14 An equivalent waiver was granted in the Scottish Scheme and in every long term insurance scheme which the Court has sanctioned.
- 11.15 In the circumstances, no Non-Transferred Policyholder is likely to be materially prejudiced by the waiver which is sought in accordance with paragraph (vi) of the Prayer.

***The Waivers from the Requirement to Notify all Transferred Policyholders***

- 11.16 A waiver is also sought, in accordance with paragraph (vii) of the Prayer and under Regulation 4(2), from the requirement of Regulation 3(2)(b) to send the Notice to those Transferred Policyholders for whom it is not reasonably practicable for AIL to obtain either a current name or current address (or both) from the Database, or otherwise from its computerised records, at the Record Date.
- 11.17 As said at Statement 9.20, AIL intends to send the Mailing Pack to those Transferred Policyholders whose names and addresses appear in the current name and address fields of the Database on the Record Date.
- 11.18 After the Record Date and until the Cut-Off Date, AIL will endeavour to continue to send the Mailing Pack to Transferred Policyholders whose records are entered into the Database during this period.
- 11.19.1 The first category of those Transferred Policyholders to whom the waiver would apply are commonly referred to as the ‘*Gone Aways*’.
- 11.19.2 While AIL updates its policyholders’ correspondence records from time to time upon receipt of appropriate instructions from AIL Policyholders, AIL relies on the accuracy of those instructions, and on the accuracy of the input of those instructions into its records.
- 11.19.3 AIL cannot have actual knowledge of the habitual residence of Transferred Policyholders. Some Transferred Policyholders may have moved, but not informed AIL, with the result that AIL no longer holds accurate correspondence records in respect of them.
- 11.20.1 The next category to whom the waiver would apply are legal assignees.
- 11.20.2 Where a person is a current legal assignee of an AIL Policyholder and their name and address does not appear on the Database on the Record Date, then the former AIL Policyholder will be sent the Mailing Pack.

- 11.21.1 The next category to whom the waiver would apply are attorneys, although that may be unnecessary, and the waiver is sought, in this respect, only out of caution.
- 11.21.2 Where details of a power of attorney which has been granted by an AIL Policyholder have been recorded on the Database, it is proposed to write to the attorney at the address maintained on the Database at the Record Date, instead of the AIL Policyholder.
- 11.21.3 That is because AIL's normal business process would require that it communicates with the attorney.
- 11.22.1 The next category to whom the waiver would apply are receivers or trustees in bankruptcy.
- 11.22.2 The Database does not normally contain, in the appropriate address field, addresses for receivers or trustees in bankruptcy who have been appointed in respect of an AIL Policy.
- 11.22.3 It is proposed that, where details of such receivers or trustees in bankruptcy are not contained in that field, the Mailing Pack will be sent to the bankrupt AIL Policyholder.
- 11.22.4 The Mailing Pack will remind the AIL Policyholders of the need to inform other interested parties of the Scheme.
- 11.23 In the circumstances, no Transferred Policyholders are likely to be adversely affected to any material extent by the waiver which is sought in accordance with paragraph (vii) of the Prayer. Further waivers are sought, in accordance with paragraph (viii) of the Prayer and under Regulation 4(2), from the requirements of Regulation 3(2)(b) to send the Notice to those Transferred Policyholders who are accustomed to receive communications from a Broker, or a Partner, in the circumstances which are described at Statement 11.24.10 and 11.24.11 below.
  - 11.24.2 As said at Statement 9.26, AIL intends that certain categories of Transferred Policyholders will be notified by Brokers or Partners, instead of by AIL directly.
  - 11.24.3 Where this is the case, AIL cannot compel Brokers, or Partners, to perform the mailing correctly, and by 22 November 2018.
  - 11.24.4 In addition, there are circumstances in which a Broker or Partner could decline to do so, and also decline to supply AIL with the data to enable it to carry out the mailing.
  - 11.24.5 Those circumstances may include the Broker, or Partner, notifying AIL that it wished to terminate its relationship with AIL. Nor can AIL ensure that the details contained in records are up-to-date or accurate.

- 11.24.6 For these reasons, there may be some Transferred Policyholders who are not notified.
- 11.24.7 In particular, one of those Partners has indicated to AIL that it is reviewing, and may terminate, its commercial relationship with AIL. That termination would be on 30 days' notice. If given, that notice would be likely to expire well after the Record Date.
- 11.24.8 The Partner concerned arranges for approximately 50,000 AIL Policies, which cover mobile devices only on a monthly basis. Any claims which were made on those policies would be, by the nature of the insurance cover for loss of or damage to mobile devices, made during, or shortly after, the period of cover.
- 11.24.9 Broadly equivalent waivers were granted in one long term insurance scheme which was sanctioned by this Court.
- 11.24.10 The first of those waivers is for those Transferred Policyholders for whom it is not reasonably practicable for the Broker, or the Partner, to obtain from its computerised records a current name and current address on the Record Date.
- 11.24.11 The second of those waivers is in respect of those Transferred Policyholders in respect of whom the Broker, or the Partner, declines to, or otherwise does not, send a Mailing Pack, including a Notice, before 22 November 2018.
- 11.24.12 In the circumstances, no Transferred Policyholder is likely to be adversely affected to a material extent by the waiver which is sought in accordance with paragraph (viii) of the Prayer.
- 11.25.1 A further waiver is sought, in accordance with paragraph (ix) of the Prayer, and under Regulation 4(2), from the requirements of Regulation 3(2)(b) to send the Notice to those AIL Policyholders who are the personal representatives of deceased AIL Policyholders.
- 11.25.2 The majority of changes to payments and other consequences of death which are notified by the Record Date will have been carried out by the Effective Date.
- 11.25.3 In the circumstances, no Transferred Policyholders are likely to be adversely affected to a material extent by that waiver.
- 11.26 A waiver is also sought in accordance with paragraph (x) of the Prayer, and under Regulation 4(2), in respect of any former AIL policyholders whose AIL Policy has expired as at the Record Date and where there is no open claim in respect of that AIL Policy.
- 11.26.2 Those former AIL Policyholders might be within Regulation 3(2)(b) if they have a claim with respect to that AIL Policy which has not yet been notified to AIL.

- 11.26.3 In the circumstances, the Independent Expert has concluded, as stated at paragraph 11.103 of the Expert Report that he considers it reasonable and proportionate for AIL to seek the waiver which is sought in accordance with paragraph (x) of the Prayer.
- 11.26.4 That is because the applicable procedures for servicing claims will be unchanged from both an operational perspective and from the perspective of potential claimants following the Scheme.
- 11.27.1 A waiver is also sought in accordance with paragraph (xi) of the Prayer, and under Regulation 4(2), where there is more than one AIL Policyholder who is a Transferred Policyholder under an AIL Policy, from sending the Mailing Pack to other than the first named AIL Policyholder.
- 11.27.2 The Mailing Pack will remind the AIL Policyholder of the need to inform other interested parties of the Scheme.
- 11.27.3 In the circumstances, no Transferred Policyholder is likely to be adversely affected to a material extent by that waiver.
- 11.28.1 A waiver is sought, in accordance with paragraph (xii) of the Prayer, in respect of AIL Policyholders who are resident in a country which is rated '*black*' on the Jurisdictions Index list compiled by the Aviva Financial Crime Team.
- 11.28.2 In outline, those countries are considered by the Aviva Group to be ones in which there is a high risk of doing business or greater diligence is first required.
- 11.28.3 An equivalent waiver has been granted by the Companies Court in a recent insurance scheme involving the Aviva Group.
- 11.28.4 That waiver is sought out of caution as it is not expected there would be Transferred Policyholders in any such country. AIL will not write to any policyholders resident in such countries.
- 11.28.5 In the circumstances, no Transferred Policyholders are likely to be adversely affected to a material extent by that waiver.
- 11.29.1 A waiver is sought, in accordance with paragraph (xiii) of the Prayer, in respect of a number of Transferred Policyholders who have indicated to AIL that, for personal reasons, they do not wish to be mailed at the address held for them on the Database.
- 11.29.2 The waiver is sought to enable AIL to respect those Transferred Policyholders' wishes.
- 11.29.3 In the circumstances, no Transferred Policyholders are likely to be materially prejudiced by that waiver.

11.30 As quoted at paragraph 13 of Schedule 3, the Independent Expert, having reviewed the proposed notification of the Scheme, concluded at paragraph 11.119 that the proposed approach was proportionate and reasonable.

11.31 The PRA and FCA are aware of all the waivers which are described at Statements 11.16 to 11.29 and neither has indicated any objection to any of them.

***Waiver in respect of advertisements in EEA newspapers***

11.32

11.32.1 As said at Statement 9.8, Regulation 3(2)(a)(iii) requires that, except where waived under Regulation 4(2), the Notice must be published in two national newspapers in each EEA State other than the UK where the risk as regards a Transferred Policy is situated in that EEA State.

11.32.2 The risk as regards a Transferred Policy is determined according to paragraph 6(3) of Schedule 12 to FSMA.

11.32.3 In outline, if the insurance relates to a building or to a building and its contents, the risk is situated in the EEA State in which the building is situated.

11.32.4 If the insurance relates to a vehicle, the risk is situated in the EEA State of registration.

11.32.5 In the case of policies of a duration of four months, or less, covering travel or holiday risks, the risk is situated in the EEA State in which the policyholder took out the policy.

11.32.6 In any other policy, if the policyholder is an individual, the risk is situated in the EEA State in which he has his habitual residence at the date when the contract is entered into.

11.32.7 Otherwise, the risk is situated in the EEA State in which the establishment of the policyholder is situated at that date.

11.33 AIL has identified that there are Transferred Policies which appear to have risks which are situated in 29 EEA States, other than the UK.

11.34 In addition, AIL have identified more than 100 Transferred Policies with risks which are situated in each of the following EEA States: Ireland, Germany, France, Belgium, Netherlands, Portugal, Spain and Sweden.

11.35

- 11.35.1 It is proposed to publish the Notice in each of these EEA States in the two national publications which are set out in Part 1 of Schedule 2 to this application and in the language in which that publication is published.
- 11.35.2 As said at Statement 9.6, the Notice will also be published in the Irish official gazette.
- 11.36 The Notice is also to be published once in the European edition of the Financial Times.
- 11.37.1 Accordingly, a waiver is sought in respect of the requirements of Regulation 3(2)(a)(iii).
- 11.37.2 That waiver is sought in respect of 21 EEA States where AIL has identified fewer than 100 Transferred Policies with risks which are situated there.
- 11.37.3 Those EEA States are Austria, Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Romania, Slovakia and Slovenia.
- 11.37.4 That waiver is sought on the basis that, subject to the other waivers, the Transferred Policyholders whose address is in any of those EEA States will be sufficiently notified by being sent the Mailing Packs and by the publication of the Notice in the European edition of the Financial Times.
- 11.38 That waiver has been disclosed to the PRA and FCA and they have not indicated any objection to it.
- 11.39 Equivalent waivers have been granted in many of the long term insurance schemes which this Court has sanctioned.
- 11.40 For completeness, where any supervisory authority of any EEA State requests that an additional notice, or other document, be published in that EEA State, that publication will also be carried out.
- 11.41 As quoted in paragraph 13 of Schedule 3, the Independent Expert concluded at paragraphs 11.115 and 11.116 that the proposed approach was proportionate and reasonable.
- 11.42 In these circumstances, no AIL Policyholder or, in particular, Transferred Policyholder, will be adversely affected to a material extent by the waiver, which is sought under regulation 4(2) of the Regulations, and in accordance with paragraph (v) of the Prayer.

***The Present English Scheme***

- 11.43 For completeness, the context of the overall waivers which are to be sought in the Present English Scheme, particularly in respect of the requirements of Regulation 3(2)(b), would be substantially similar to the individual waivers which are sought in this application.

## 12 **OBJECTIONS**

12.1 AIL will put in place detailed arrangements to deal with objections to, or even queries about, the Scheme, which are made by telephone or email.

12.2.1 In particular, every person who makes an objection will receive a reply.

12.2.2 That reply will explain the process for objecting to the Scheme, whether by way of Answers or, informally, at the Sanction Hearing, either in writing or in person.

## 13 **AIIDAC'S AUTHORISATION AND MARGIN OF SOLVENCY**

13.1.1 As said at Statement 1.4, AIIDAC has the authorisation from the CBI to effect and carry out, within Ireland, the business of non-life insurance within classes 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17 and 18 as set out in Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015.

13.1.2 That is the authorisation which is required for the Transferred Business to be carried on in the place where it is to be transferred, namely Ireland.

13.1.3 In addition, as said at Statement 4.8, once the UK Branch is established AIIDAC will have permission to carry on certain regulated insurance business (including all relevant classes of general insurance business which are set out in Part 1 of Schedule 1 of the RAO) from the UK Branch.

13.1.4 That is the authorisation which is required for the Transferred Business which is to be carried on from the UK Branch to be carried on in the UK.

13.2 In addition, a certificate will, in the course this application, be obtained from the CBI, certifying that, taking the proposed Scheme into account, AIIDAC possesses, or will before the Effective Time possess, the necessary margin of solvency.

13.3 The certificate will be given under section 111(2)(a) of FSMA and paragraphs 1(1)(a), 2(1)(a), 2(2)(a), 2(4), 2(5) and 2(6)(a) of Schedule 12.

## 14 **THE REGULATORS' REPORTS**

14.1 It is reasonably believed that each of the Regulators will, in accordance with their practice in insurance schemes, submit to this Court two reports on the Scheme (together, the "**Regulators' Reports**").

## 14.2

- 14.2.1 It is understood that the first set of the Regulators' Reports has been sent directly to the Court in advance of the First Hearing.
- 14.2.2 The first of the Regulators' Reports is by the PRA (the "**PRA Report**"). It is understood that the PRA Report has been submitted directly to the Court on 24 August 2018.

## 14.3

- 14.3.1 In that PRA Report, the PRA confirmed its approval of the appointment of the Independent Expert and the form of the Independent Expert Report.
- 14.3.2 The PRA also confirmed there, as required by regulation 3(3)(a) of the Regulations, its approval of the Notice which is required to be published under regulation 3(2) of the Regulations.
- 14.3.3 The PRA's approval is in its capacity as the '*appropriate regulator*' under section 103A(1)(a) of FSMA, and was given in a letter dated 22 August 2018.

## 14.4

- 14.4.1 In addition, the PRA Report also addressed the waivers which are to be sought from the requirements of the Regulations and which are described at Statement 11.
- 14.4.2 The PRA Report confirmed there that it does not object to those waivers. At Annex II to the PRA Report, the PRA refers to the waivers, albeit in general terms. In effect, the PRA endorses the FCA's reasoning, which is to be set out in its first Regulators' Report.
- 14.4.3 For completeness, the PRA also refers in the PRA Report to its continuing consideration of the Reinsurance Agreement.

## 14.5

- 14.5.1 The second of the first set of Regulators' Reports is that from the FCA (the "**FCA Report**"). It is understood that the FCA Report was submitted directly to this Court on 29 August 2018.
- 14.5.2 Paragraphs 5 and 32 of the FCA Report sets out the FCA's conclusion that it does not object to the waivers which are sought.
- 14.5.3 Paragraphs 24 to 31 of the FCA Report set out the FCA's reasons for that conclusion in relation to each of those waivers. The FCA's reasons refer to the considerations which are set out at Statement 11 in support of those waivers.

- 14.5.4 For completeness, paragraphs 7 and 34 of the FCA Report also states that the FCA has not yet reached a view, namely a final view, as to whether it is to object to the Scheme.
- 14.6 It is reasonably expected that the second set of the Regulators' Reports will be available only shortly before the Sanction Hearing.
- 14.7 It is reasonably expected that those two Regulators' Reports will address the merits of the Scheme and any informal objections to it.
- 14.8
- 14.8.1 In addition, the FCA has published guidance on its approach to insurance schemes (the "**FCA Guidance**").
- 14.8.2 The FCA Guidance is covered in Chapter 18 of the Supervision section of the FCA Handbook, guidance in connection with insurance business transfer schemes and in the FCA's Final Guidance 18/4 on the FCA's approach to the review of Part VII insurance business transfers.
- 14.8.3 The FCA Guidance covers *inter alia* the period between notification of policyholders and the hearing to sanction an insurance scheme and the waivers from the requirements of the CBTROA Regulations.
- 14.9.1 For completeness, it is reasonably expected that the CBI will not prepare a report on the Scheme.
- 14.9.2 Instead, the CBI will only provide the certificate which will certify that SL Intl will have the necessary margin of solvency and which is addressed at Statement 13.2.

## 15 **SANCTION OF THE SCHEME**

- 15.1 The Scheme satisfies the conditions set out in section 105(2)(a) of FSMA, namely that it provides for the transfer to another body of the business carried on in at least one member state by a UK authorised person, which has permission to effect contracts of insurance.
- 15.2 In addition, the Scheme is not an '*excluded scheme*', as defined in the five cases in section 105(3) of FSMA.
- 15.3 The Scheme is, therefore, an '*insurance business transfer scheme*', within the meaning of Section 105(1) of FSMA.

- 15.4 In addition, the Independent Expert concludes in the Expert Report that he does not expect any group of AIL Policyholders, or reinsurers, to be materially adversely affected by the Scheme and therefore sees no reason why the Scheme should not proceed.
- 15.5 In all the circumstances, it is appropriate for this Court to sanction the Scheme, under sections 111(2) and (3) of FSMA.
- 15.6 It is sought that the order sanctioning the Scheme will also provide, under sections 112(2)(a) and 112(2A) of FSMA, for the transfer under the Scheme of certain property and liabilities of AIL, notwithstanding that that property and those liabilities would not otherwise be capable of being transferred.
- 15.7 It is reasonably believed that the Regulators' Reports will contain no information which might make it inappropriate to sanction the Scheme.

## 16 **THE PERIOD OF NOTICE**

- 16.1 SUP 18.2.46G of the FCA Handbook states that 'the regulators would not normally consider adequate a period of less than six weeks between sending notices to policyholders and the date of the Court hearing'.
- 16.2 The Petitioners require technically to seek, therefore, to extend the period of notice for Answers to this application from 21 days to 42 days, in terms of Rules of Court 14.4(6)(b) and 14.6 (2).

## 17 **THE POST SANCTION NOTICES**

- 17.1 Section 114(2) of FSMA provides, in effect that, as regards those Transferred Policies in which the risk is situated in an EEA State (other than the UK), this Court must direct in the Sanction Order that notice of it having been made must be published by the transferee in each of those EEA States.
- 17.2 Section 114(3) of FSMA provides, in effect, that the notice in each of those EEA states must specify such period as this Court directs during which a Transferred Policyholder may, under the law of that EEA State, exercise any right, under that law, to cancel that Transferred Policy.
- 17.3 The practice of this Court is to specify the period, if any, under the law of that EEA State for the exercise of any such any right.
- 17.4 As regards Ireland, a direction is sought that the notices are to be given in the *Iris Oifigiúil* and the Irish Times.

- 17.5 As regards the other EEA States which are referred to in Statement 11.34, a direction is sought that the notices are to be given in the newspapers which are listed in Part 2 of Schedule 2 to this application and (where relevant) in the European edition of the Financial Times.
- 17.6 As regards each of the EEA States referred to in Statement 11.37.3, a direction is sought that the notices are to be given only in the European edition of the Financial Times.
- 17.7 For completeness, Section 114A of FSMA provides that the Court may direct the transferee to publish a notice of the Sanction Order having been made in each EEA State where, as regards any Transferred Policy which evidences a contract of reinsurance, the policyholder to which the policy relates is situated at the date when the contract was entered into.
- 17.8 As said at Statement 6.9, the only Transferred Policies which are ones of inward reinsurance are the French Inward Reinsurance Contracts.
- 17.9 The publishing of a notice in the French newspaper which is referred to in Part 2 of Schedule 2, and in the European edition of the Financial Times, in accordance with the direction sought which is described in Statement 17.5, is also intended to satisfy the requirement for a notice to be published pursuant to Section 114A of FSMA in respect of the French Inward Reinsurance Contracts.

## 18 **THE REPORTER**

18.1 The appointment of J C A Voge, WS, Edinburgh, is sought as reporter to this application, in accordance with paragraph (xv) of the prayer of this application.

18.2.1 Mr Voge is a very experienced practitioner and reporter.

18.2.2 In particular, Mr Voge was the reporter on the Scottish Scheme. His work on the Scottish Scheme, as well as his wider and considerable experience of acting as reporter in insurance schemes sanctioned by this Court makes him qualified to act as reporter in this application. Mr Voge's appointment would, therefore, assist the Court in its consideration of this application.

18.3 Mr Voge has confirmed that he is able and willing to act, on terms acceptable to the Petitioners.

## 19 **GENERAL**

19.1 This application is made under Part VII and Schedule 12, in particular section 107 of FSMA, and the relevant Rules of this Court, including Rules 14.4(6)(b) and 14.6(2).

**MAY IT THEREFORE** please Your Lordships:

- (i) to order this Petition by Aviva Insurance Limited (“**AIL**”) and Aviva Insurance Ireland Designated Activity Company (“**AIIDAC**”) for the sanction of an insurance business transfer scheme (the “**Scheme**”) under Part VII and Schedule 12 of the Financial Services and Markets Act 2000 (“**FSMA**”), a copy of which is set out in the Appendix and under which part of the general insurance business of AIL is to be transferred to AIIDAC, to be intimated on the Walls in common form;
- (ii) to order a notice of this application (the “**Notice**”), in accordance with regulation 3(2)(a) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (the “**Regulations**”), to be advertised:
  - (a) in the United Kingdom (the “**UK**”), once in each of the London, Edinburgh and Belfast Gazettes and The Scotsman and the Daily Telegraph;
  - (b) in the Republic of Ireland, once in each of the Iris Oifigiúil, the Irish Independent and The Irish Times; and
  - (c) in relation to the seven other states of the European Economic Area (the “**EEA**”) which are set out in Part 1 of Schedule 2, once in each of the newspapers which are set out in that Part, and once in the European edition of the Financial Times.
- (iii) to order that this Petition be served on the parties who are designed in Schedule 1 of this Petition, together with a copy of the Expert Report which is described in Statement 8.1, a version of the Booklet (including a copy of the Notice) which is described in Statement 9.14 and the statement setting out the terms of the Scheme and containing a summary of the Expert Report which is described in Statements 9.15 and 9.43 of this Petition;
- (iv) to direct that 15 August 2018 (the “**Record Date**”) be the date at which the names and addresses of policyholders, and reinsurers, of AIL be determined for the purposes of regulations 3(2)(b) and 3(2)(c) of the Regulations;
- (v) to waive, under regulation 4(2) of the Regulations, (“**Regulation 4(2)**”) the requirements of regulation 3(2)(a)(iii) of the Regulations in respect of the following states of the EEA, namely: Austria, Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Romania, Slovakia, and Slovenia;
- (vi) to waive, under Regulation 4(2), the requirements of regulation 3(2)(b) of the Regulations (“**Regulation 3(2)(b)**”), insofar as they relate to the sending of the Notice to those of AIL’s policyholders, who are defined in the Petition as the “**Non-Transferred Policyholders**”;
- (vii) to waive, under Regulation 4(2), the requirements of Regulation 3(2)(b), insofar as they relate to the sending of the Notice to those of AIL’s policyholders, who are defined in Petition as the “**Transferred Policyholders**”, for whom it is not reasonably practicable for AIL to obtain

either a current name, or current address (or both), from the “**Database**” (as defined in the Petition) and for whom it is not reasonably practicable for AIL otherwise to obtain from its other computerised records;

- (viii) to waive, under Regulation 4(2), the requirements of Regulation 3(2)(b), insofar as they relate to the sending of the Notice to those Transferred Policyholders who are accustomed to receive communications from one of AIL’s “**Brokers**” or “**Partners**” (each as defined in the Petition) and (a) for whom it is not reasonably practicable for the Brokers or Partners concerned to obtain either a current name, or current address (or both), from that Broker’s or Partner’s computerised records; or (b) in respect of whom, the Brokers or Partners concerned, decline to, or otherwise do not, send the Notice;
- (ix) to waive, under Regulation 4(2), the requirements of Regulation 3(2)(b), insofar as they relate to the sending of the Notice to those of Transferred Policyholders who are personal representatives of deceased policyholders of AIL;
- (x) to waive, under Regulation 4(2), the requirements of Regulation 3(2)(b), insofar as they relate to the sending of the Notice to any former AIL policyholders whose AIL policy has expired as at the Record Date, and where there is no ‘*open claim*’ in respect of that AIL policy;
- (xi) to waive, under Regulation 4(2), the requirements of Regulation 3(2)(b), insofar as they relate to the sending of the Notice to other than the first named Transferred Policyholder, where there is more than one policyholder under that AIL policy;
- (xii) to waive, under Regulation 4(2), the requirements of Regulation 3(2)(b), insofar as they relate to the sending of the Notice (whether by AIL or by AIL’s Brokers or Partners) to any Transferred Policyholders who are resident in a country which is rated ‘*black*’ on the ‘*Jurisdictions Index*’ list which has been compiled by the Aviva Financial Crime Team;
- (xiii) to waive, under Regulation 4(2), the requirements of Regulation 3(2)(b), insofar as they relate to the sending of the Notice (whether by AIL or by AIL’s Brokers or Partners) to those Transferred Policyholders who have indicated to AIL that, for personal reasons, they do not wish to receive mail at the address held for them on the Database;
- (xiv) to allow any person claiming an interest to lodge Answers to the Petition, if so advised, within 42 days after that intimation, advertisement and service;
- (xv) to appoint Mr J C A Voge, WS, Edinburgh, as the reporter to the process; and to remit to that reporter to enquire into the facts and circumstances set out in the Petition and the regularity of the procedure;

thereafter, upon resuming consideration of the Petition, with or without Answers,

- (xvi) to approve the report of the reporter;
- (xvii) to pronounce an order, under section 111 of FSMA, sanctioning the Scheme;

- (xviii) to pronounce an order, under section 112(1)(a) of FSMA, transferring to AIIDAC, with effect from the Effective Time (as defined in the Scheme), that part of the undertaking, property and liabilities of AIL to which the Scheme applies (which is defined in the Scheme as the **“Transferred Business”**);
- (xix) to pronounce an order, under section 112(1)(a) of FSMA, transferring to AIIDAC, with effect from the Effective Time (as defined in the Scheme), the **“Transferred Assets”** and the **“Transferred Liabilities”** (each as defined in the Scheme), which order shall not become effective in respect of any **“Residual Assets”** and **“Residual Liabilities”** of AIL (each as defined in the Scheme) until the relevant **“Subsequent Transfer Date”** (as defined in the Scheme);
- (xx) to pronounce an order, under sections 112(2)(a), 112(2)(c), 112(2A) and 112(2B) of FSMA, that the transfer shall be valid and binding on all persons having an interest, or right, in any of the Transferred Assets, notwithstanding any restriction on transferring or otherwise dealing with the same, and that that transfer shall take effect as if: (a) there were no requirement to obtain the consent of any person; and (b) there were no contravention or interference with any such interest or right;
- (xxi) to pronounce an order, under section 112(2)(c) of FSMA, for the continuation by (or against) AIIDAC of any pending legal proceedings by (or against) AIL at the Effective Time, as provided for in the Scheme, which order shall not become effective in respect of any such legal proceedings relating to any Residual Assets or Residual Liabilities until the relevant Subsequent Transfer Date;
- (xxii) to allow AIL and AIIDAC to apply, under section 112(1)(d) of FSMA, for any orders in relation to such incidental, consequential and supplementary matters as are necessary to secure that the Scheme shall be fully and effectively carried out;
- (xxiii) to order that two certified copies of the orders which are to be made under paragraphs (xvii) to (xxi) of this Prayer, together with a copy of the Scheme, be deposited with the Prudential Regulation Authority within 10 days of that order;
- (xxiv) to direct that the order which is to be made under paragraph (xvii) of this Prayer be advertised:
  - (a) in the UK, in the London, Edinburgh and Belfast Gazettes and the Scotsman and the Daily Telegraph;
  - (b) in the Republic of Ireland, in the Iris Oifigiúil and the Irish Times;
  - (c) in relation to the seven other states of the EEA which are set out in Part 2 of Schedule 2, once in each of the newspapers which are set out in that Part and (d) in the European edition of the Financial Times;
- (xxv) to direct AIIDAC, under section 114(3) of FSMA, to specify in each of the advertisements which are referred to in paragraph (xxiv) of this Prayer the period, if any, during which a

Transferred Policyholder may, under the law of that state of the EEA (other than the UK) in which the risk as regards the Transferred Policy is situated, exercise any right, under that law, to cancel that policy; and

- (xxvi) to decern; or to do further, or otherwise, in the premises as to Your Lordships shall seem proper.

ACCORDING TO JUSTICE, ETC.

**SCHEDULE 1**  
**SCHEDULE FOR SERVICE**

Service in common form is sought upon:

- 1        The Prudential Regulation Authority  
          20 Moorgate  
          London  
          EC2R 6DA
  
- 2        The Financial Conduct Authority  
          12 Endeavour Square  
          London  
          E20 1JN

**SCHEDULE 2**  
**EEA STATES AND NEWSPAPERS**

**PART 1**

- 1 Germany, in Frankfurter Allgemeine Zeitung (English and German editions) and Die Welt;
- 2 France, in Le Figaro and Le Monde;
- 3 Belgium, in De Standaard and Le Soir;
- 4 The Netherlands, in De Telegraaf and NRC Handelsblad;
- 5 Portugal, in Público and Expresso;
- 6 Spain, in El País and El Mundo; and
- 7 Sweden, in Sydsvenskan and Dagens Nyheter.

**PART 2**

- 1 Germany, in Frankfurter Allgemeine Zeitung (English and German editions);
- 2 France, in Le Figaro;
- 3 Belgium, in De Standaard;
- 4 The Netherlands, in De Telegraph;
- 5 Portugal, in Público Portugal;
- 6 Spain, in El País;
- 7 Sweden, in Sydsvenskan;

**SCHEDULE 3**  
**THE EXTRACTS FROM THE INDEPENDENT EXPERT REPORT**

1 Paragraphs 2.29 to 2.30 of the Expert Report are in these terms:

“2.29 *I have identified two distinct groups of policyholders. These are:*

- *The transferring AIL policyholders (“the Transferring Portfolio”)*
- *The policyholders remaining in AIL (“the Remaining Portfolio”).*

2.30 *I conclude that the Scheme will not have a material adverse impact on the security of the policyholders within the Transferring Portfolio. Note that this conclusion is subject to AIL honouring its intention to provide financial support to AIIDAC should AIIDAC’s coverage ratio against its SCR fall below a specified threshold, as discussed in paragraph 9.26. (The limitations of AIL’s aforementioned intention and my opinion in respect of the security that this provides to AIIDAC are discussed in paragraphs 9.26 and 9.27.) Although the transferring policyholders would be moving to a smaller entity with less capital, following the Scheme, AIIDAC will have reasonable coverage over both its regulatory and ORSA capital requirements. Furthermore, in my opinion it is highly likely that the transferring policyholders will have the benefit of AIL’s aforementioned intention (discussed further in paragraphs 9.26 and 9.27). In addition, the terms of the security in connection with the AIIDAC-AIL Quota Share arrangement have the effect of aligning the transferring policyholders and the policyholders that remain with AIL in relation to a distribution of the assets of AIL in the event of AIL’s insolvency. As a result, the transferring policyholders will still retain reasonable access to the security offered by AIL’s capital base.”*

2 ‘ORSA’ is the ‘Own Risk and Solvency Assessment’ which both AIL and AIIDAC are required to complete under Solvency II, while the ‘AIIDAC-AIL Quota Share’ arrangement is the Reinsurance Agreement.

3 Paragraphs 9.26 and 9.27 referred to at paragraph 2.30 are in the following terms:

“9.26 *I have also been provided with a draft letter that AIL’s Board of Directors intends to issue to AIIDAC that indicates AIL’s intention to provide financial support to AIIDAC, subject to certain conditions, in the event that AIIDAC’s coverage ratio against its SCR falls below a specified threshold, measured in accordance with the Aviva Group’s guidance in respect of Solvency Risk Appetite, and AIIDAC is not able to restore this coverage ratio through management actions and other means within a period of six months. In this scenario, AIL intends to provide sufficient financial support to AIIDAC to restore its coverage ratio against the SCR to a specified level measured in accordance with the Aviva Group’s guidance in respect of Solvency Risk Appetite that is broadly equivalent to AIIDAC’s minimum coverage ratio as described in paragraph 8.70.*

9.27 *I understand from AIL that this letter is not legally binding and would not be expected to have any impact on AIIDAC's balance sheet or SCR (unless, of course, AIL actually provides financial support). However, there could be significant adverse reputational consequences for the Aviva Group should AIIDAC get into financial difficulties and AIL not honour the commitment in the letter. It follows that, in my view, there would be a substantial incentive for AIL to honour the commitment and a very high likelihood that it would do so."*

4 Paragraphs 2.31 to 2.34 of the Expert Report are in these terms:

*"2.31 With respect to the Remaining Portfolio, I do not expect any material adverse impact on policyholder security as a result of the Scheme. Given the materiality of the Scheme in the context of AIL's overall portfolio, the Scheme will not materially affect AIL's capital base or coverage over both its regulatory and ORSA capital requirements. In addition, I am satisfied that the terms of the AIIDAC-AIL Quota Share arrangement will not reduce the level of security available to the policyholders remaining in AIL.*

*2.32 There will be no substantial change in the standards of service experienced by either group of policyholders. For the Transferring Portfolio, claims handling and policy administration services will continue to be outsourced to the same service providers. For the Remaining Portfolio, there will be no changes.*

*2.33 I do not expect any material adverse impact to either group of policyholders as a result of a different investment strategy following the Scheme.*

*2.34 I do not expect any material adverse impact to either group of policyholders resulting from changes in ongoing expense levels as a result of the Scheme."*

5 The 'Remaining Portfolio' is how the Independent Expert refers to the Non-Transferred Policyholders.

6 Paragraphs 2.36 and 2.37 of the Expert Report set out as follows as regards the position in the event of an insolvency:

*"2.36 In the event of insolvency, I expect that some of the transferring policyholders will be in a worse position in respect of access to a compensation scheme following the Scheme. However, in my opinion, to the extent that the Scheme does create an adverse impact on the transferring policyholders' access to compensation, this will be less detrimental to them than the impact should the Scheme not go ahead ...*

*"2.37 For the remaining policyholders, there will be no change to the access to a compensation scheme."*

7 Paragraph 2.39 of the Expert Report is in these terms:

*“2.38 I do not expect any material adverse impact to the transferring policyholders as a result of a different financial regulatory environment following the Scheme.”*

8 Paragraph 2.43 of the Expert Report is in these terms:

*“2.43 I expect no material adverse impact on the current and historic reinsurers of AIL as a result of the Scheme.”*

9 Paragraphs 9.16 to 9.19 of the Expert Report are in these terms:

*“9.16 ... AIL has substantial Own Funds in comparison to its regulatory and ORSA capital requirements prior to the Scheme.*

*9.17 ... the Scheme does not materially change AIL’s capital position. AIL’s surplus of Own Funds in relation to its SCR will reduce following the Scheme from £1,258.9m to £1,225.4m; however the Own Funds following the transfer are still substantial. ... AIL’s coverage ratios against the SCR and ORSA reduce following the Scheme; however the reductions are not substantial and will not materially affect the solvency position of AIL.*

*9.18 It follows that, in my opinion, the Scheme will not materially change the likelihood of AIL being able to meet policyholder obligations.*

*9.19 ... AIIDAC will have substantial Own Funds in comparison to its regulatory capital requirements following to the Scheme.”*

10 In addition, the Expert Report sets out at paragraph 9.31 and 9.32 the following:

*“9.31 Further to this, I have been informed by AIL that in relation to the reinsurance agreement between AIL and AIIDAC, AIL (as chargor) will grant a floating charge to AIIDAC (as chargee) over certain fixed income assets to secure AIL’s obligations under the reinsurance agreement. A clause within the floating charge will restrict AIIDAC’s recovery under the floating charge to such amount as AIIDAC would have been entitled to recover had AIIDAC been an ordinary policyholder (rather than a secured creditor) of AIL. The purpose of this is to align the transferring policyholders, who are reinsured by AIL, with the policyholders that remain with AIL in relation to a distribution of AIL’s assets in the event of the insolvency of AIL. I understand that this legal provision is designed to treat the transferring policyholders and the remaining policyholders equitably ...*

*“9.32 I am conscious that similar provisions have been used on a number of earlier Part VII transfers and that those schemes, including the provisions, have been approved by the Court. In addition, I have received legal advice from an appointed Queen’s Counsel (“QC”) who was instructed jointly by AIL’s solicitors, myself and another*

*Independent Expert. The QC's advice confirmed that the Provision achieves its aim of ensuring that, in effect, the transferring and remaining policyholders are aligned in relation to a distribution of AIL's assets in the event of the insolvency of AIL as is the case prior to the Scheme. Based on this advice and the information provided to me, I am satisfied that the application of the Provision within the AIIDAC-AIL Quota Share security documents is appropriate and that it will not materially disadvantage either the remaining or transferring policyholders when compared to the pre-Scheme position."*

11 Paragraphs 9.35 and 9.36 of the Expert Report are in these terms:

*"9.35 To summarise the above:*

- The stress and scenario testing undertaken by AIIDAC indicates that it will have sufficient capital following the Scheme in all but extreme circumstances.*
- Following the Scheme the transferring policyholders will benefit from a significantly higher coverage ratio in relation to the ORSA capital requirements.*
- The stress testing that I have undertaken supports my conclusion that AIIDAC will have substantial Own Funds following the Scheme in comparison to its regulatory and ORSA capital requirements.*
- The transferring policyholders will also benefit from a significantly higher coverage ratio against regulatory capital requirements calculated using an unapproved Internal Model.*
- AIL will issue a letter to AIIDAC setting out AIL's intention to provide financial support to AIIDAC in the event that AIIDAC's coverage ratio against its SCR falls below a specified threshold.*
- The AIIDAC-AIL Quota Share will be effected which will transfer the majority of the insurance risk associated with the Transferring Portfolio to AIL.*
- The AIIDAC-AIL Quota Share arrangement benefits from the Provision described above in the event of the insolvency of AIL.*

*9.36 Based on these considerations, I believe the likelihood of AIIDAC encountering significant financial difficulties to be remote. Consequently, I conclude that, despite the fact that the transferring policyholders will be moving to a smaller entity with a significantly lower surplus of Own Funds in relation to its SCR, the Scheme will not have a material adverse impact on the security of those policyholders."*

12 Paragraph 9.44 concludes as follows:

*“9.44 Given this, I further conclude that the Scheme will not have a detrimental impact on the security of the policyholders remaining in AIL.”*

13 In respect of the proposed notifications of the Scheme, the Expert Report is in these terms:

*“Ireland GI branch business*

*11.79 With respect to policyholders of the Ireland GI branch business, I understand from AIL that it intends to notify all policyholders where the policy is still in effect on 15 August 2018 (“the Cut-off Date”) and any further policyholders with an open claim on this date...”*

*“11.82 I believe that the above approach to notifying policyholders of the Ireland GI Branch to be reasonable.”*

*“MDI business*

*11.83 This business is administered by a number of binding authorities and, as such, AIL does not hold individual policyholder records for these policies. I understand from AIL that it intends to provide communication content to the binding authorities so that they can notify policyholders directly. The communications will be provided in respect of all policyholders with policies in effect on the Cut-off Date and any further policyholders with an open claim as at this date.*

*11.84 I believe this approach to be reasonable.”*

*“Other FOS business*

*11.85 The majority of this business is intermediated by a broker or an AIL sales partner. I understand from AIL that, for such policies, it intends to provide communication content so that the relevant intermediary can notify policyholders directly.*

*11.86 I understand that for this business the intention is for AIL to notify all policyholders with policies in effect on the Cut-off Date and any further policyholders with an open claim as at this date.*

*11.87 In my view, this approach is reasonable.”*

*“Transferring policies that have expired and are without an open claim*

*11.88 I understand from AIL that it is seeking a waiver from the requirement to notify transferring policyholders where the transferring policy expired prior to the Cut-off Date and where there is no open claim in respect of the policy. The Scheme’s Effective Time is five-and-a-half months after the Cut-off Date, therefore these policies would have been expired for a period of five-and-a-half months or more by the Effective Time of the Scheme.”*

*“11.97 Given the low number of claims expected to emerge from expired policies within the transferring portfolio, the high costs of notifying these cohorts and the fact that the claims handling process will be identical from the claimant’s perspective following the Scheme, I believe that it is reasonable and proportionate for AIL to seek the waiver discussed in paragraph 11.88.”*

*“Transferring policies that incept after the notification cut-off date*

*11.98 AIL has informed me that the policyholder notifications will continue to take place up to eight weeks prior to the Effective Time of the Scheme. Between the Cut-off Date and this date, new policyholders and claimants not captured by the original list of policyholders and claimants as at 15 August 2018 will also be notified of the Scheme.”*

*“11.100 I believe that AIL’s proposed policyholder communication strategy as described in paragraphs 11.98 and 11.99 above is proportionate and reasonable.”*

*“Waivers*

*Waiver from the requirement to notify all Transferring Policyholders”*

*“11.102 ... AIL has informed me that it is seeking a waiver from the requirement to notify transferring policyholders where the transferring policy expired prior to the Cut-off Date and where there is no open claim in respect of the policy.*

*11.103 For the reasons set out in paragraph 11.97, I believe that it is reasonable and proportionate for AIL to seek this waiver.*

*11.104 In addition, AIL will apply for a waiver in respect of Transferring Policyholders that are intermediated by a sales partner and where, despite it being agreed that the sales partner will notify its policyholders, it fails to do so before the Cut-Off Date. I understand that, in the scenario AIL is made aware of the sales partner’s failure to notify any policyholders, and is able to obtain the contact details of the affected policyholders, AIL will notify the policyholders directly. It follows that the waiver will only be used in situations where either Aviva is unaware of a sales partner’s failure to notify policyholders, or Aviva is aware of the failure but is unable to obtain the policyholders’ contact details.*

*11.105 My opinion is that it is proportionate and reasonable for AIL to seek this waiver.*

*11.106 AIL will also apply for a waiver in respect of Transferring Policyholders who are resident in a country which is subject to international sanctions. I have been informed by AIL that this waiver is sought as a precaution as AIL did not write any business in these countries so would expect few, if any, policyholders to be resident in any such country.”*

11.107 ...Given this, and the fact that I do not expect there to be many policyholders, my opinion is that it is proportionate and reasonable for AIL to seek this waiver.

11.108 In addition, AIL will apply for a waiver in respect of policyholders that have indicated, for reasons that pertain to their personal safety, that they do not wish to be mailed at the address held for them by AIL. Such requests for exclusion from communications would have been advised to AIL through a personal visit, a call or through written correspondence with AIL.

11.109 Given that such policyholders have explicitly asked not to be contacted for reasons that pertain to their personal safety, my opinion is that it is proportionate and reasonable for AIL to seek this waiver.

#### *Waiver from the requirement to notify the Remaining Policyholders*

11.110 AIL is seeking a waiver from the requirement to notify its approximately 15 million policyholders and potential claimants which are not transferring to AIIDAC for the following reasons:

- *The Transferring Portfolio is not material in the context of AIL's overall portfolio*
- *As part of AIL's communication strategy, AIL will be placing two adverts in the UK national press with information about the Scheme.*

11.111 My opinion is that it is proportionate and reasonable for AIL to seek this waiver given the materiality of the Scheme in comparison to AIL's existing business."

11.112 ... there will be small numbers of policies written on a FOS basis that will not be included in the Transferring Portfolio. These policyholders may come across AIL's advertisements on the Scheme and assume as a result that they will be included in the Scheme. Although these policyholders will be included in the waiver described in paragraph 11.110, to avoid misunderstanding, AIL has informed me that it intends to advise them that the Scheme is taking place, but that their policy will not be included, along with the reason for not including it. In my opinion, it is appropriate to notify these policyholders about the Scheme in this manner.

"11.115 I believe that it is reasonable and proportionate for AIL to advertise the Scheme in only one national newspaper in each EEA state where AIL has less than 100 transferring policyholders given the small number of policyholders in these states.

11.116 I also believe that it is reasonable and proportionate for AIL to not advertise the Scheme in EEA states where AIL has fewer than 100 transferring policyholders and where there is no reasonable likelihood of future claimants, given the small number of policyholders in these states and the low likelihood of the emergence of future claims.

## *Documentation*

11.117 *I have reviewed the drafts of the proposed communications materials and in my opinion:*

- *The material is straightforward, provides sufficient information for the policyholders to understand and details any required actions, where relevant*
- *It explains to the policyholders their right to object and the ways in which they can exercise this right*
- *The access to the available documentation and relevant information is clear.*

11.118 *In addition to the communications discussed above, all of the material related to the Scheme will be published on <https://transfer.aviva.com>, a webpage developed in connection with the Scheme.*

## *Opinion*

11.119 *Given the size and implications of the Scheme, I believe that the proposed approach to policyholder and claimant notifications is proportionate and reasonable.”*

*“11.124 Given the size and implications of the Scheme, I believe that the proposed approach to reinsurer notifications is proportionate and reasonable.”*

14 For completeness, section 13 of the Expert Report is entitled ‘*Conclusions*’. Paragraphs 13.3 to 13.8 are in the terms set out below:

*“13.3 I have concluded that there will be some loss of cover for a subgroup of the transferring policyholders with regards to compensation cover. To the extent that the Scheme does create an adverse impact on the transferring policyholders’ access to compensation, I have concluded that this will be less detrimental to them than the impact should the Scheme not go ahead.*

*13.4 Other than this, I have concluded that there will be no material change to the service provided to the transferring policyholders and, subject to the intention in paragraph 9.20 being honoured if necessary, no material adverse impact on the security provided to them.*

*13.5 In addition, I have concluded that there will be no material change to the security or service provided to the policyholders remaining in AIL. Therefore, I do not expect that the policyholders remaining in AIL would be materially adversely affected by the Scheme.*

*13.6 In addition, I have concluded that reinsurers of AIL will not be adversely affected by the Scheme.*

- 13.7 *Prior to the Scheme, AIIDAC will have no reinsurers and as a result the Scheme does not impact any existing reinsurers of AIIDAC.*
- 13.8 *Given the above, I do not expect any group of policyholders or reinsurers to be materially adversely affected by the Scheme and therefore I see no reason why the Scheme should not proceed.”*

**SCHEDULE 4**  
**THE INDEX OF DEFINED TERMS**

In this Petition each of the following words and expressions shall have the following meanings:

<b>“AIIDAC”</b>	has the meaning given in Statement 1.3;
<b>“AIIDAC Board”</b>	has the meaning given in Statement 1.12;
<b>“AIL”</b>	has the meaning given in Statement 1.1;
<b>“AIL Board”</b>	has the meaning given in Statement 1.12;
<b>“AIL Policies”</b>	has the meaning given in Statement 1.18;
<b>“AIL Policyholders”</b>	has the meaning given in Statement 1.18;
<b>“Available Documents”</b>	has the meaning given in Statement 9.43;
<b>“Aviva Group”</b>	has the meaning given in Statement 1.5.1;
<b>“Booklet”</b>	has the meaning given in Statement 9.14;
<b>“Brexit”</b>	has the meaning given in Statement 1.9;
<b>“Brokers”</b>	has the meaning given in Statement 3.13;
<b>“CBI”</b>	has the meaning given in Statement 1.4;
<b>“Conduct Liabilities”</b>	comprises the liabilities described at Statement 6.21;
<b>“Companies Court”</b>	has the meaning given in Statement 3.7.2;
<b>“Cut-Off Date”</b>	has the meaning given in Statement 9.23.2;
<b>“Database”</b>	has the meaning given in Statement 9.20
<b>“Day One Business”</b>	has the meaning given in Statement 6.37;
<b>“DC”</b>	has the meaning given in Statement 3.15;
<b>“DISP”</b>	has the meaning given in Statement 6.44.2;
<b>“EEA”</b>	has the meaning given in Statement 1.8.2;

<b>“EEA States”</b>	has the meaning given in Statement 1.8.2;
<b>“Effective Time”</b>	has the meaning given in Statement 6.1;
<b>“English Scheme”</b>	has the meaning given in Statement 3.7.1;
<b>“EU”</b>	has the meaning given in Statement 1.9;
<b>“Excluded Assets”</b>	comprises the assets described in Statements 6.24 to 6.27;
<b>“Excluded Business”</b>	comprises the Excluded Assets, Excluded Liabilities and Excluded Contracts as described in Statement 6.23.1;
<b>“Excluded Contracts”</b>	comprises the contracts described in Statements 6.28 to 6.31;
<b>“Excluded Liabilities”</b>	comprises the liabilities described in Statements 6.32 to 6.36;
<b>“Expert Report”</b>	has the meaning given in Statement 8.1;
<b>“FCA”</b>	has the meaning given in Statement 1.2.1;
<b>“FCA Guidance”</b>	has the meaning given in Statement 14.8;
<b>“FCA Report”</b>	has the meaning given in Statement 14.5.1;
<b>“FSMA”</b>	has the meaning given in Statement 1.2.1;
<b>“First Order”</b>	has the meaning given in Statement 1.7.3;
<b>“First Hearing”</b>	has the meaning given in Statement 1.7.4;
<b>“Former Belgian Branch”</b>	has the meaning given in Statement 3.11.1;
<b>“Former French Branch”</b>	has the meaning given in Statement 3.11.1;
<b>“FOS”</b>	has the meaning given in Statement 6.41.2;
<b>“Freedom of Establishment”</b>	has the meaning given in Statement 1.8.2;
<b>“Freedom of Services”</b>	has the meaning given in Statement 1.8.2;
<b>“French Inward Reinsurance Contracts”</b>	has the meaning given in Statement 6.9.2;
<b>“general insurance scheme”</b>	has the meaning given in Statement 1.17.2;

<b>“Group Companies”</b>	has the meaning given in Statement 1.6;
<b>“Group Company”</b>	has the meaning given in Statement 1.6;
<b>“Independent Expert”</b>	has the meaning given in Statement 8.1;
<b>“insurance scheme”</b>	has the meaning given in Statement 1.17.1;
<b>“Investment Assets”</b>	comprises the assets described at Statement 6.14;
<b>“Ireland”</b>	has the meaning given in Statement 1.3;
<b>“Irish Branch”</b>	has the meaning given in Statement 3.11.1;
<b>“Irish Domestic Policies”</b>	comprises the policies described in Statement 6.6;
<b>“Irish Domestic Reinsurance Contracts”</b>	has the meaning given in Statement 6.11.2;
<b>“Irish FoS Policies”</b>	comprises the policies described in Statement 6.7;
<b>“Irish Scheme”</b>	has the meaning given in Statement 3.10.2;
<b>“Letter of Intent”</b>	has the meaning given in Statement 7.3.1;
<b>“long term insurance scheme”</b>	has the meaning given in Statement 1.17.2;
<b>“Mailing Pack”</b>	has the meaning given in Statement 9.19;
<b>“NN Insurance Belgium”</b>	has the meaning given in Statement 3.17.2;
<b>“Non-Transferred Policyholders”</b>	has the meaning given in Statement 8.4;
<b>“Non-Transferred FoS Policyholders”</b>	has the meaning given in Statement 9.12.2;
<b>“Notice”</b>	has the meaning given in Statement 9.1;
<b>“Ongoing FOS Claims”</b>	has the meaning given in Statement 6.41.2;
<b>“Operational Assets”</b>	comprises the assets described at Statement 6.15;
<b>“Other EEA Policies”</b>	comprises the policies described in Statement 6.8;

<b>“Outwards Reinsurance Contracts”</b>	has the meaning given in Statement 6.54;
<b>“Partners”</b>	has the meaning given in Statement 3.13;
<b>“Part VII”</b>	has the meaning given in Statement 1.7.1;
<b>“Present English Scheme”</b>	has the meaning given in Statement 2.5;
<b>“PRA”</b>	has the meaning given in Statement 1.2.1;
<b>“PRA Report”</b>	has the meaning given in Statement 14.2.2;
<b>“RAO”</b>	has the meaning given in Statement 1.2.1;
<b>“Record Date”</b>	has the meaning given in Statement 9.20;
<b>“Regulation 3(2)(a)(iii)”</b>	has the meaning given in Statement 9.8.1;
<b>“Regulation 3(2)(a)(iv)”</b>	has the meaning given in Statement 9.10.1;
<b>“Regulation 3(2)(b)”</b>	has the meaning given in Statement 9.11;
<b>“Regulation 4(2)”</b>	has the meaning given in Statement 9.8.1;
<b>“Regulations”</b>	has the meaning given in Statement 9.1;
<b>“Regulators”</b>	has the meaning given in Statement 6.63.8;
<b>“Regulators’ Reports”</b>	has the meaning given in Statement 14.1;
<b>“Reinsurance Agreement”</b>	has the meaning given in Statement 6.49;
<b>“Residual Business”</b>	has the meaning given in Statement 6.38;
<b>“Reverse Flow Policies”</b>	comprises the policies described in Statement 6.6.4;
<b>“Sanction Hearing”</b>	has the meaning given in Statement 1.7.2;
<b>“Sanction Order”</b>	has the meaning given in Statement 1.7.1;
<b>“Schedule 12”</b>	has the meaning given in Statement 1.7.1;
<b>“Scheme”</b>	has the meaning given in Statement 1.7.1;

<b>“Scheme Summary”</b>	has the meaning given in Statement 9.15;
<b>“SCR”</b>	has the meaning given in Statement 3.19.1;
<b>“SCR Coverage Ratio”</b>	has the meaning given in Statement 3.19.2;
<b>“Scottish Scheme”</b>	has the meaning given in Statement 3.8.1;
<b>“Subsequent Transfer Date”</b>	has the meaning given in Statement 6.39.2;
<b>“Supplementary Scheme Report”</b>	has the meaning given in Statement 8.7.1;
<b>“Solvency II”</b>	has the meaning given in Statement 1.8.2;
<b>“Split Transferred Contract”</b>	has the meaning given in Statement 6.12.1;
<b>“Split Transferred Policy”</b>	has the meaning given in Statement 6.10.1;
<b>“Transferred Assets”</b>	comprises the assets described in Statements 6.13 to 6.17;
<b>“Transferred Business”</b>	has the meaning given in Statement 4.5;
<b>“Transferred Contracts”</b>	comprises the contracts described in Statements 6.11 and 6.12;
<b>“Transferred Liabilities”</b>	comprises the liabilities described in Statements 6.18 to 6.22;
<b>“Transferred Policies”</b>	has the meaning given in Statement 5.4;
<b>“Transferred Policyholders”</b>	has the meaning given in Statement 6.5;
<b>“UK”</b>	has the meaning given in Statement 1.2.1;
<b>“UK Branch”</b>	has the meaning given in Statement 4.7;
<b>“UK Brokers”</b>	has the meaning given in Statement 3.13; and
<b>“Webpage”</b>	has the meaning given in Statement 9.42.

**SCHEDULE 5**  
**THE RELEVANT LEGISLATION AND REGULATORY PROVISIONS**

**THE FINANCIAL SERVICES AND MARKETS ACT 2000**

**103A Meaning of “the appropriate regulator”**

- (1) In this Part “the appropriate regulator” means—
- (a) in relation to a ring-fencing transfer scheme or a scheme (other than a ring-fencing transfer scheme) in respect of which the transferor concerned is a PRA authorised person, the PRA;
  - (b) in any other case, the FCA.

...

**105. Insurance business transfer schemes.**

- (1) A scheme is an insurance business transfer scheme if it—
- (a) satisfies one of the conditions set out in subsection (2);
  - (b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
  - (c) is not an excluded scheme.
- (2) The conditions are that—
- (a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance (“the transferor concerned”) is to be transferred to another body (“the transferee”);

...

- (3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

CASE 1 Where the transferor concerned is a friendly society.

CASE 2 Where—

- (a) the transferor concerned is a UK authorised person;

- (aa) the transferor concerned is not a reinsurance undertaking;
- (b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and
- (c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

CASE 3 Where—

- (a) the transferor concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance against risks arising in an EEA State; and
- (c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

CASE 4 Where—

- (a) the business to be transferred under the scheme is the whole of the business of the transferor concerned;
- (b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee, and
- (c) all of the policyholders who will be affected by the transfer have consented to it.

CASE 5 Where—

- (a) the business of the transferor concerned consists solely of the effecting or carrying out of contracts of reinsurance;
  - (b) the business to be transferred is the whole or part of that business;
  - (c) the scheme does not fall within Case 4;
  - (d) all of the policyholders who will be affected by the transfer have consented to it;
- and
- (e) a certificate has been obtained under paragraph 2 of Schedule 12 in relation to the proposed transfer.

...

**107. Application for order sanctioning transfer scheme.**

- (1) An application may be made to the court for an order sanctioning an insurance business transfer scheme, a banking business transfer scheme, a reclaim fund business transfer scheme or a ring-fencing transfer scheme.
- (2) An application may be made by–
  - (a) the transferor concerned;
  - (b) the transferee; or
  - (c) both.
- (2A) An application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.
- (2B) In deciding whether to give consent, the PRA must have regard to the scheme report prepared under section 109A in relation to the ring-fencing transfer scheme.
- (3) The application must be made–
  - (a) if the transferor concerned and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
  - (b) if the transferor concerned and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
  - (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to the transferor concerned.
- (4) “Court” means–
  - (a) the High Court; or
  - (b) in Scotland, the Court of Session.

**109 Scheme reports: insurance business transfer schemes.**

- (1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).
- (2) A scheme report may be made only by a person–

- (a) appearing to the appropriate regulator to have the skills necessary to enable him to make a proper report; and
  - (b) nominated or approved for the purpose by the appropriate regulator.
- (3) A scheme report must be made in a form approved by the appropriate regulator.
- (4) Where the appropriate regulator is the PRA, it must consult the FCA before—
  - (a) nominating or approving a person under subsection (2)(b), or
  - (b) approving a form under subsection (3).
- (5) Subsection (6) applies where the appropriate regulator is the FCA and either—
  - (a) the transferee is a PRA-authorised person, or
  - (b) the authorised person concerned or the transferee has as a member of its immediate group a PRA-authorised person.
- (6) The FCA must consult the PRA before—
  - (a) nominating or approving a person under subsection (2)(b), or
  - (b) approving a form under subsection (3).

**111. Sanction of the court for business transfer schemes.**

- (1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme, a banking business transfer scheme, a reclaim fund business transfer scheme or a ring-fencing transfer scheme.
- (2) The court must be satisfied that—
  - (a) in the case of an insurance business transfer scheme or a banking business transfer scheme, the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
  - (aa) in the case of a reclaim fund business transfer scheme, the appropriate certificate has been obtained (as to which see Part 2A of that Schedule);
  - (ab) in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);

- (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

**112. Effect of order sanctioning business transfer scheme.**

- (1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—
  - (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the transferor concerned;
  - (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
  - (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the transferor concerned;
  - (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.
- (2) An order under subsection (1)(a) may—
  - (a) transfer property or liabilities whether or not the transferor concerned otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to property which was held by the transferor concerned as trustee;
  - (c) make provision as to future or contingent rights or liabilities of the transferor concerned, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
  - (d) make provision as to the consequences of the transfer in relation to any occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) operated by or on behalf of the transferor concerned.
- (2A) Subsection (2)(a) is to be taken to include power to make provision in an order—
  - (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;

- (b) for a transfer of property or liabilities to take effect as if there were—
  - (i) no such requirement to obtain a person's consent or concurrence, and
  - (ii) no such contravention, liability or interference with any interest or right,as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

(2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor concerned is entitled to the property or subject to the liabilities in question.

(2C) Nothing in subsection (2A) or (2B) is to be read as limiting the scope of subsection (1).

...

#### **114. Rights of certain policyholders.**

- (1) This section applies in relation to an insurance business transfer scheme if—
  - (a) the transferor concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
  - (b) the court has made an order under section 111 in relation to the scheme; and
  - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance), the State of the commitment or the EEA State in which the risk is situated (“the EEA State concerned”).
- (2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.
- (3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.
- (4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—
  - (a) the notice required under that subsection is not published; or
  - (b) the policyholder cancels the policy during the period specified in the notice given under that subsection.
- (5) The law of the EEA State concerned governs—

- (a) whether the policyholder has a right to cancel the policy; and
  - (b) the conditions, if any, subject to which any such right may be exercised.
- (6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

**114A Notice of transfer of reinsurance contracts.**

- (1) This section applies in relation to an insurance business transfer scheme if—
- (a) the transferor concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
  - (b) the court has made an order under section 111 in relation to the scheme; and
  - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into (“the EEA State concerned”).
- (2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.

**Schedule 12 Transfer schemes: certificates**

**1.**

- (1) For the purposes of section 111(2) the appropriate certificates, in relation to an insurance business transfer scheme, are—
- (a) a certificate under paragraph 2;
  - (b) if sub-paragraph (2) applies, a certificate under paragraph 3;
  - (ba) if sub-paragraph (2A) applies, a certificate under paragraph 3A;
  - (c) if sub-paragraph (3) applies, a certificate under paragraph 4;
  - (d) if sub-paragraph (4) applies, a certificate under paragraph 5;
  - (e) if sub-paragraph (5) applies, the certificates under paragraph 5A.
- (2) This sub-paragraph applies if—

- (a) the transferor concerned is a UK authorised person which has received authorisation under Article 14 of the Solvency 2 Directive from the appropriate regulator; and
  - (b) the establishment from which the business is to be transferred under the proposed insurance business transfer scheme is in an EEA State other than the United Kingdom.
- (2A) This sub-paragraph applies if—
- (a) the transferor concerned is a UK authorised person which has received authorisation under Article 14 of the Solvency 2 Directive from the appropriate regulator; and
  - (b) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the contract was concluded in an EEA State other than the United Kingdom.
- (3) This sub-paragraph applies if—
- (a) the transferor concerned has received authorisation under Article 162 of the Solvency 2 Directive from the appropriate regulator;
  - (b) the proposed transfer relates to business which consists of the effecting or carrying out of contracts of long-term insurance; and
  - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), an EEA State other than the United Kingdom is the State of the commitment.
- (4) This sub-paragraph applies if—
- (a) the transferor concerned has received authorisation under Article 162 of the Solvency 2 Directive from the appropriate regulator;
  - (b) the business to which the proposed insurance business transfer scheme relates is business which consists of the effecting or carrying out of contracts of general insurance; and
  - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the risk is situated in an EEA State other than the United Kingdom.
- (5) This sub-paragraph applies if—
- (a) the transferor concerned has received authorisation under Article 162 of the Solvency 2 Directive from the appropriate regulator; and

- (b) the proposed transfer is to a branch or agency, in an EEA State other than the United Kingdom, authorised under that Article.

## **Certificates as to margin of solvency**

### **2.**

- (1) A certificate under this paragraph is to be given–
  - (a) by the relevant authority; or
  - (b) in a case in which there is no relevant authority, by the appropriate regulator.
- (2) A certificate given under sub-paragraph (1)(a) is one certifying that, taking the proposed transfer into account–
  - (a) the transferee possesses, or will possess before the scheme takes effect, the necessary margin of solvency; or
  - (b) there is no necessary margin of solvency applicable to the transferee.
- (3) A certificate under sub-paragraph (1)(b) is one certifying that appropriate regulator has received from the authority which it considers to be the authority responsible for supervising persons who effect or carry out contracts of insurance in the place to which the business is to be transferred certification that, taking the proposed transfer into account–
  - (a) the transferee possesses or will possess before the scheme takes effect the margin of solvency required under the law applicable in that place; or
  - (b) there is no such margin of solvency applicable to the transferee.
- (4) “Necessary margin of solvency” means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law which it is the responsibility of the relevant authority to apply.
- (5) “Margin of solvency” means the excess of the value of the assets of the transferee over the amount of its liabilities.
- (6) “Relevant authority” means–
  - (a) if the transferee is an EEA firm falling within paragraph 5(d) or (da) of Schedule 3, its home state regulator;
  - (aa) if the transferee is a non-EEA branch, the supervisory authority of the EEA State in which the transferee is situated or, where appropriate, the supervisory authority of an EEA State which supervises the state of solvency of the entire business of the

transferee's agencies and branches within the EEA in accordance with Article 167 of the Solvency 2 Directive;

- (b) if the transferee is a Swiss general insurer, the authority responsible in Switzerland for supervising persons who effect or carry out contracts of insurance;
  - (c) if the transferee is an authorised person not falling within paragraph (a), (aa) or (b)—
    - (i) the PRA, if the transferee is a PRA-authorised person with a Part 4A permission or with permission under Schedule 4;
    - (ii) the FCA, if the transferee is a person with a Part 4A permission or with permission under Schedule 4 but is not a PRA-authorised person.
- (7) In sub-paragraph (6), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed scheme takes effect.
- (7A) “Supervisory authority” has the same meaning as in the Solvency 2 Directive.
- (8) “Swiss general insurer” means a body—
- (a) whose head office is in Switzerland;
  - (b) which has permission to carry on regulated activities consisting of the effecting and carrying out of contracts of general insurance; and
  - (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.
- (9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 162 of the Solvency 2 Directive.

### **Certificates as to consultation**

#### **3.**

A certificate under this paragraph is one given by the appropriate regulator and certifying that the host State regulator has been notified of the proposed scheme and that—

- (a) that regulator has responded to the notification; or
- (b) that it has not responded but the period of three months beginning with the notification has elapsed.

### **3A. Certificates as to consent**

A certificate under this paragraph is one given by the appropriate regulator and certifying that in respect of each contract concluded in an EEA State other than the United Kingdom the authority responsible for supervising persons who effect or carry out contracts of insurance in the EEA State in which that contract was concluded has been notified of the proposed scheme and that—

- (a) the authority has consented to the proposed scheme; or
- (b) the authority has not responded but the period of three months beginning with the notification has elapsed.

...

### **Interpretation of Part I**

#### **6.**

...

- (3) References to the EEA State in which a risk is situated are—
  - (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to the EEA State in which the building is situated;
  - (b) if the insurance relates to a vehicle of any type, to the EEA State of registration;
  - (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the EEA State in which the policyholder took out the policy;
  - (d) in a case not covered by paragraphs (a) to (c)—
    - (i) if the policyholder is an individual, to the EEA State in which he has his habitual residence at the date when the contract is entered into; and
    - (ii) otherwise, to the EEA State in which the establishment of the policyholder to which the policy relates is situated at that date.

...

**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONTROL OF BUSINESS TRANSFERS) (REQUIREMENTS ON APPLICANTS) REGULATIONS 2001**

**Transfer of an insurance business**

**3.**

- (1) An applicant under section 107 of the Act for an order sanctioning an insurance business transfer scheme (“the scheme”) must comply with the following requirements.
- (2) A notice stating that the application has been made must be—
  - (a) published—
    - (i) in the London, Edinburgh and Belfast Gazettes;
    - (ii) in two national newspapers in the United Kingdom;
    - (iii) where, as regards any policy (other than a policy which evidences a contract of reinsurance) included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment or the State in which the risk is situated, in two national newspapers in that EEA State; and
    - (iv) where, as regards any policy included in the proposed transfer which evidences a contract of reinsurance, an EEA State other than the United Kingdom is the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into, in one business newspaper which is published or circulated in that EEA State;
  - (b) sent to every policyholder of the parties ; and
  - (c) sent—
    - (i) to every reinsurer of the authorised person concerned (within the meaning of section 105(2) of the Act) any of whose contracts of reinsurance (in whole or part) are to be transferred by the scheme; or
    - (ii) in a case where such a contract has been placed with or through a person authorised to act on behalf of the reinsurer, then to that person; or
    - (iii) in a case where such a contract has been placed with more than one reinsurer, then to the person or persons authorised to act on behalf of those reinsurers or groups of reinsurers.

- (3) The notices mentioned in paragraph (2) must—
  - (a) be approved by the appropriate regulator prior to publication (or, as the case may be, being sent); and
  - (b) contain the address from which the documents mentioned in paragraph (4) may be obtained.
- (4) A copy of the report and a statement setting out the terms of the scheme and containing a summary of the report must be given free of charge to any person who requests them.
- (5) A copy of the application, the report and the statement mentioned in paragraph (4) must be given free of charge to the appropriate regulator and, if the FCA is not the appropriate regulator, the FCA.
- (6) In the case of any such scheme as is mentioned in section 105(5) of the Act, copies of the documents listed in subsection (3) of section 911 (inspection of documents (merger)) or subsection (3) of section 926 (inspection of documents (division)), as the case may be, of the Companies Act 2006 must be given to the appropriate regulator and, if the FCA is not the appropriate regulator, the FCA by the beginning of the period referred to in paragraph 3(e) of that Schedule.

#### 4.

- (1) Subject to paragraph (2) or (3), the court may not determine an application under section 107 for an order sanctioning an insurance business transfer scheme—
  - (a) where the applicant has failed to comply with the requirements in regulation 3(2), (3) or (6); and
  - (b) until a period of not less than twenty-one days has elapsed since the appropriate regulator was given the documents mentioned in regulation 3(5).
- (2) The requirements in regulation 3(2)(a)(ii), (iii) and (iv), (b) and (c) may be waived by the court in such circumstances and subject to such conditions as the court considers appropriate.
- (3) The requirement in regulation 3(2)(a)(iv) must be waived where an applicant demonstrates that he has notified all policyholders of contracts of reinsurance.

...

**THE DIRECTIVE 2009/138/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 25 NOVEMBER 2009 ON THE TAKING UP AND PURSUIT OF THE BUSINESS OF INSURANCE AND REINSURANCE (AS AMENDED) (SOLVENCY II)**

*Establishment by Insurance Undertakings*

**Article 145          Conditions for branch establishment**

1. Member States shall ensure that an insurance undertaking which proposes to establish a branch within the territory of another Member State notifies the supervisory authorities of its home Member State.

Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

2. Member States shall require every insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:
  - (a) the Member State within the territory of which it proposes to establish a branch;
  - (b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;
  - (c) the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (the authorised agent);
  - (d) the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

With regard to Lloyd's, in the event of any litigation in the host Member State arising out of underwritten commitments, the insured persons shall not be treated less favourably than if the litigation had been brought against businesses of a conventional type.

3. Where a non-life insurance undertaking intends its branch to cover risks in class 10 in Part A of Annex I, not including carrier's liability, it shall produce a declaration that it has become a member of the national bureau and the national guarantee fund of the host Member State.

4. In the event of a change in any of the particulars communicated under point (b), (c) or (d) of paragraph 2, an insurance undertaking shall give written notice of the change to the supervisory authorities of the home Member State and of the Member State where that branch is situated at least one month before making the change so that the supervisory authorities of the home Member State and the supervisory authorities of the Member State where that branch is situated may fulfil their respective obligations under Article 146.

## **Article 146      Communication of information**

1. Unless the supervisory authorities of the home Member State have reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements in accordance with Article 42 of the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in Article 145(2), communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.

The supervisory authorities of the home Member State shall also attest that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129.

2. Where the supervisory authorities of the home Member State refuse to communicate the information referred to in Article 145(2) to the supervisory authorities of the host Member State they shall state the reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

3. Before the branch of an insurance undertaking starts business, the supervisory authorities of the host Member State shall, where applicable, within two months of receiving the information referred to in paragraph 1, inform the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, that business must be pursued in the host Member State. The supervisory authority of the home Member State shall communicate this information to the insurance undertaking concerned.

The insurance undertaking may establish the branch and start business as from the date upon which the supervisory authority of the home Member State has received such a communication or, if no communication is received, on expiry of the period provided for in the first subparagraph.

## **Section 2**

### **Freedom to provide services: by insurance undertakings**

#### **Subsection 1**

## **General provisions**

### **Article 147      Prior notification to the home Member State**

Any insurance undertaking that intends to pursue business for the first time in one or more Member States under the freedom to provide services shall first notify the supervisory authorities of the home Member State, indicating the nature of the risks or commitments it proposes to cover.

### **Article 148      Notification by the home Member State**

1. Within one month of the notification provided for in Article 147, the supervisory authorities of the home Member State shall communicate the following to the Member State or States within the territories of which an insurance undertaking intends to pursue business under the freedom to provide services:
  - (a) a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with Articles 100 and 129;
  - (b) the classes of insurance which the insurance undertaking has been authorised to offer;
  - (c) the nature of the risks or commitments which the insurance undertaking proposes to cover in the host Member State.

At the same time, the supervisory authorities of the home Member State shall inform the insurance undertaking concerned of that communication.

2. Member States within the territory of which a non-life insurance undertaking intends, under the freedom to provide services, to cover risks in class 10 in Part A of Annex I other than carrier's liability may require that insurance undertaking to submit the following:
  - (a) the name and address of the representative referred to in Article 18(1)(h);
  - (b) a declaration that it has become a member of the national bureau and national guarantee fund of the host Member State.
3. Where the supervisory authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down therein, they shall state the reasons for their refusal to the insurance undertaking within that same period.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

4. The insurance undertaking may start business as from the date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.

**Article 149**      **Changes in the nature of the risks or commitments**

Any change which an insurance undertaking intends to make to the information referred to in Article 145 shall be subject to the procedure provided for in Articles 147 and 148.

**THE EUROPEAN UNION (INSURANCE AND REINSURANCE) REGULATIONS 2015  
(IRELAND)**

*Schedule 1*      *Classes of non-life insurance*

*Part 1*      *Classes*

1.      Accident (including industrial injury and occupational diseases)—
  - (a)      fixed pecuniary benefits,
  - (b)      benefits in the nature of indemnity,
  - (c)      combinations of the 2, and
  - (d)      Injury to passengers.
  
2.      Sickness—
  - (a)      fixed pecuniary benefits,
  - (b)      benefits in the nature of indemnity, and
  - (c)      combinations of the 2.
  
3.      Land vehicles (other than railway rolling stock).  
  
All damage to or loss of—
  - (a)      land motor vehicles, and
  - (b)      land vehicles other than motor vehicles.
  
4.      Railway rolling stock.  
  
All damage to or loss of railway rolling stock.
  
5.      Aircraft.

All damage to or loss of aircraft.

6. Ships (sea, lake and river and canal vessels).

All damage to or loss of—

- (a) river and canal vessels,
- (b) lake vessels, and
- (c) sea vessels.

7. Goods in transit (including merchandise, baggage, and all other goods).

All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces.

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to—

- (a) fire,
- (b) explosion,
- (c) storm,
- (d) natural forces other than storm,
- (e) nuclear energy, and
- (f) land subsidence.

9. Other damage to property.

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. Motor vehicle liability.

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. Aircraft liability.

All liability arising out of the use of aircraft (including carrier's liability).

12. Liability for ships (sea, lake and river and canal vessels).

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. General liability.

All liability other than the liabilities referred to in classes 10, 11 and 12.

14. Credit—

- (a) insolvency (general),
- (b) export credit,
- (c) instalment credit,
- (d) mortgages, and
- (e) agricultural credit.

15. Suretyship—

- (a) suretyship (direct), and
- (b) suretyship (indirect).

16. Miscellaneous financial loss—

- (a) employment risks,
- (b) insufficiency of income (general),
- (c) bad weather,
- (d) loss of benefits,
- (e) continuing general expenses,
- (f) unforeseen trading expenses,
- (g) loss of market value,
- (h) loss of rent or revenue,
- (i) other indirect trading loss,

(j) other non-trading financial loss, and

(k) other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence as described in Article 2(2) of the Directive.

**Part 2 Authorisations for more than one class of insurance**

The following names shall be given to authorisations which simultaneously cover the following classes:

(a) Classes 1 and 2: “accident and health insurance”;

(b) Classes 1(d), 3, 7 and 10: “motor insurance”;

(c) Classes 1(d), 4, 6, 7 and 12: “marine and transport insurance”;

(d) Classes 1(d), 5, 7 and 11: “aviation insurance”;

(e) Classes 8 and 9: “insurance against fire and other damage to property”;

(f) Classes 10, 11, 12 and 13: “liability insurance”;

(g) Classes 14 and 15: “credit and suretyship insurance”;

(h) All classes, at the choice of the Member States, which shall notify the other Member States and the Commission of their choice.

...

**RULES OF THE COURT OF SESSION**

**Form of petitions**

**14.4**

...

(6) Where it is sought in a petition-

- (a) to dispense with intimation, service or advertisement, or
- (b) to shorten or extend the period of notice, the appropriate order shall be craved in the prayer, and the grounds on which the order is sought shall be set out in the statement of facts.

...

#### **Period of notice for lodging answers**

#### **14.6**

...

- (2) An application may be made by motion to shorten or extend the period of notice.

...

### **THE FINANCIAL CONDUCT AUTHORITY HANDBOOK: SUPERVISION**

#### ***SUP 18: Transfers of Business***

#### ***18.2.46 G***

The regulators are entitled to be heard by the court on any application for a transfer. A consideration for the regulators in determining whether to oppose a transfer would be their view on whether adequate steps had been taken to tell policyholders and, as appropriate, other affected persons, about the transfer and whether they had adequate information and time to consider it. The regulators would not normally consider adequate a period of less than six weeks between sending notices to policyholders and the date of the court hearing. Therefore it would be sensible, before requesting from the court a waiver of the publication requirements or the requirement to send statements direct to policyholders, to consult the regulators on their views about what waivers might be appropriate and what substitute arrangements might be made. The regulators will take into account the practicality and costs of sending notices to policyholders (especially for firms in financial difficulty), the likely benefits for policyholders of receiving notices and the efficacy of other arrangements proposed for informing policyholders (including additional advertising or, where appropriate, electronic communication).

...

**APPENDIX  
THE SCHEME**

**IN THE COURT OF SESSION**

**AVIVA INSURANCE LIMITED**

and

**AVIVA INSURANCE IRELAND DAC**

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**SCHEME**

pursuant to Part VII of the Financial Services and Markets Act 2000

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## PART A – DEFINITIONS AND INTERPRETATION

### 1 Definitions and interpretation

1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions shall bear the following meanings:

**2011 Schemes** means each of:

- (a) the English insurance business transfer scheme between Aviva International Insurance Limited, Aviva Insurance UK Limited, CGU Underwriting Limited, Hamilton Insurance Company Limited, London and Edinburgh Insurance Company Limited, Ocean Marine Insurance Company Limited, World Auxiliary Insurance Corporation Limited and the Transferor, as sanctioned by the High Court on 11 October 2011 and effective on 14 November 2011;
- (b) the Scottish insurance business transfer scheme between CGU Bonus Limited, Scottish Boiler and General Insurance Company Limited and the Transferor, as sanctioned by the Court of Session on 10 October 2011 and effective on 14 November 2011; and
- (c) the Jersey insurance business transfer scheme between Aviva International Insurance Limited, Aviva Insurance UK Limited, CGU Bonus Limited, Hamilton Insurance Company Limited, London and Edinburgh Insurance Company Limited, Ocean Marine Insurance Company Limited, Scottish Boiler and General Insurance Company Limited and the Transferor, as sanctioned by the Royal Court of Jersey on 10 October 2011 and effective on 14 November 2011;

**2012 Scheme** means the Irish scheme of transfer between Aviva Insurance Europe SE and the Transferor, as sanctioned by the Irish High Court on 7 October 2012 and effective on 30 November 2012;

**Back-Book Premium** has the meaning given to it in the Quota Share Reinsurance Agreement;

**Back-Book True-Up Amount** has the meaning given to it in the Quota Share Reinsurance Agreement;

**Board** means, in respect of a company, the board of directors of that company from time to time;

**Brexit** has the meaning given to it in paragraph 2.3;

**Business Day** means a day (other than a Saturday or Sunday or public holiday in the United Kingdom, any part of the United Kingdom or the Republic of Ireland) on which banks are open in Edinburgh and Dublin for general commercial business;

**CBI** means the Central Bank of Ireland;

**Commercial FoS Policies** means property investors Policies, corporate property Policies, construction Policies, corporate liability Policies, group personal accident and travel Policies, management liability Policies, financial crime Policies, engineering Policies, professional indemnity Policies, latent defects Policies, surety Policies, marine Policies, commercial combined Policies, property owners Policies, motor trade Policies, motor courtesy car Policies and motor fleet Policies, but excluding any such Policies written on a pooled basis;

**Conduct Liability** means, in respect of any Policy, a liability that results from the sale or ongoing administration of the Policy in circumstances where actions and/or omissions of the Transferor (or any other persons or entities which were involved in such sale or administration, including any relevant predecessor of the Transferor, Intermediary or appointed representative) constituted, or are alleged to have constituted, a breach of relevant Regulatory Requirements and which liability would not otherwise have been incurred;

**Contract** means a contract, commitment, agreement, indenture, note, bond, mortgage, loan, instrument, lease, licence or equivalent arrangement, but shall not include any Policy;

**Court** means the Court of Session in Scotland;

**Day One Assets** means all Transferred Assets that are not Residual Assets;

**Day One Business** means together:

- (a) the Day One Policies;
- (b) the Day One Contracts;
- (c) the Day One Assets; and
- (d) the Day One Liabilities,

and all activities carried on in connection therewith;

**Day One Contracts** means all Transferred Contracts that are not Residual Contracts;

**Day One Liabilities** means all Transferred Liabilities that are not Residual Liabilities;

**Day One Policies** means all Transferred Policies that are not Residual Policies;

**EEA State** has the meaning set out in paragraph 8, Part 1 of Schedule 3 to FSMA;

**Effective Time** means the time and date on which this Scheme shall take effect in accordance with paragraph 13;

**Encumbrance** means a mortgage, charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind, or any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar economic effect;

**Excluded Assets** means:

- (a) all investment property of the Transferor;
- (b) all interests in real property, wherever situated, and which are not comprised within investment property;
- (c) all shares in Aviva Direct Ireland Limited held by the Transferor;
- (d) all books, records, files and papers that the Transferor is required by Regulatory Requirements to retain; and
- (e) all other property of the Transferor where the Transferor and Transferee agree prior to the Effective Time that such property should not be transferred at all;

**Excluded Contracts** means:

- (a) all Contracts and Policies of reinsurance set out in Schedule 1;
- (b) all Policies of reinsurance between the Transferor (as cedant) and any third party (including a member of the Transferor's Group) (as reinsurer), or any constituent and identifiable part of such a Policy, to the extent that it relates to an Irish FoS Policy or an Other EEA Policy;
- (c) all Policies of reinsurance between the Transferor (as cedant) and a member of the Transferor's Group (as reinsurer), or any constituent and identifiable part of such a Policy, to the extent that it relates to the Irish Domestic Policies; and
- (d) all Contracts of employment;

**Excluded Liabilities** means:

- (a) all liabilities of the Transferor which are attributable to Excluded Assets or Excluded Contracts;
- (b) all liabilities of the Transferor arising as a consequence of the implementation of this Scheme, whenever incurred;
- (c) all Conduct Liabilities of the Transferor in respect of the Irish FoS Policies and the Other EEA Policies; and

(d) all liabilities of the Transferor where the Transferor and Transferee agree prior to the Effective Time that such liabilities shall not be transferred at all,

including, for the avoidance of doubt, any such liabilities relating to Tax;

**FCA** means the Financial Conduct Authority;

**FCA Glossary** means the Glossary of the FCA Handbook;

**FCA Handbook** means the handbook of rules and guidance issued by the FCA from time to time pursuant to FSMA;

**Final Asset Amount** has the meaning given to it in paragraph 1.2 of Schedule 2;

**Freedom of Establishment** the right of an insurer in an EEA State to carry on business in an EEA State other than its Home State, pursuant to articles 145-146 of Directive 2009/138/EC;

**Freedom of Services** means the right of an insurer in an EEA State to carry on business in an EEA State other than its Home State, pursuant to articles 147-149 of Directive 2009/138/EC;

**FSMA** means the Financial Services and Markets Act 2000;

**General Insurance Business** has the meaning given to it in the PRA Glossary;

**Group** means in respect of any person:

- (a) that person;
- (b) its holding companies from time to time;
- (c) its subsidiaries from time to time; and
- (d) each of the subsidiaries from time to time of any such holding company;

**Home State** means, in relation to an insurance undertaking, the EEA State in which the registered office of the insurance undertaking is situated (if any);

**Independent Expert** means Mr Simon Sheaf of Grant Thornton or any other person approved to act as independent expert in relation to this Scheme pursuant to section 109(2)(b) of FSMA;

**Intermediary** means a broker, agent, employee benefit consultant, independent financial adviser or other intermediary that is not an appointed representative (as defined in the FCA Glossary) and party to an agreement with the Transferor to distribute the Transferor's products in respect of the Transferred Business at any relevant time;

**Investment Assets** has the meaning given to it in paragraph 2.1 of Schedule 2;

**Investment Asset Amount** has the meaning given to it in paragraph 1.1 of Schedule 2;

**Irish Domestic Policies** means:

- (a) all Policies effected by the Transferor on a Freedom of Establishment basis out of the Transferor's branch in the Republic of Ireland and in respect of which a liability remains unsatisfied or outstanding at the Effective Time, including any such Policies (or parts of Policies) in respect of which the Transferor's records show that the risk is situated in the United Kingdom;
- (b) all Policies which: (i) have lapsed prior to the Effective Time; (ii) would, had they not lapsed prior to the Effective Time, have fallen within limb (a) of this definition; and (iii) are reinstated by the Transferee after the Effective Time; and
- (c) all proposals for insurance received by or on behalf of the Transferor before the Effective Time which: (i) have not become Policies in force at the Effective Time; (ii) would, had the proposals become Policies in force at the Effective Time, have fallen within limb (a) of this definition; and (iii) become Policies after the Effective Time;

**Irish FoS Policies** means:

- (a) all Commercial FoS Policies and Retail FoS Policies (including constituent and identifiable parts of such Policies) effected by the Transferor out of its Home State, and in respect of which: (i) the Transferor's records show that the risk is situated in the Republic of Ireland; and (ii) a liability remains unsatisfied or outstanding at the Effective Time, but excluding any such Policies of reinsurance;
- (b) all Policies (including constituent and identifiable parts of Policies) which: (i) have lapsed prior to the Effective Time; (ii) would, had they not lapsed prior to the Effective Time, have fallen within limb (a) of this definition; and (iii) are reinstated by the Transferee after the Effective Time; and
- (c) all proposals for insurance received by or on behalf of the Transferor before the Effective Time which: (i) have not become Policies in force at the Effective Time; (ii) would, had the proposals become Policies in force at the Effective Time, have fallen within limb (a) of this definition; and (iii) become Policies after the Effective Time;

**Ongoing FOS Claims** means Proceedings which (i) were initiated against the Transferor with the UK Financial Ombudsman Service prior to the Effective Time, and (ii) have not been finally determined at the Effective Time;

**Operational Assets** means the operational property, if any, owned by the Transferor's branch in the Republic of Ireland (for example, any office equipment or furniture);

**Order** means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme (or any part of it) and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

**Other EEA Policies** means:

- (a) all Policies of the following categories effected by the Transferor on a Freedom of Establishment basis out of the Transferor's former branch in France, and in respect of which a liability remains unsatisfied or outstanding at the Effective Time:
  - (i) health/accident "hospitalisation" Policies;
  - (ii) construction guarantee bonds; and
  - (iii) construction inwards reinsurance risks ceded by pools,but excluding any such Policies of inwards reinsurance (other than those referred to in limb (iii) above of this paragraph (a) of this definition, which shall be included);
- (b) all "hospitalisation" Policies effected by the Transferor on a Freedom of Establishment basis out of the Transferor's former branch in Belgium, and in respect of which a liability remains unsatisfied or outstanding at the Effective Time, but excluding any such Policies of inwards reinsurance;
- (c) all Commercial FoS Policies and Retail FoS Policies (including constituent and identifiable parts of such Policies) effected by the Transferor out of its Home State, and in respect of which: (i) the Transferor's records show that the risk is situated in an EEA State other than the United Kingdom or the Republic of Ireland; and (ii) a liability remains unsatisfied or outstanding at the Effective Time, but excluding any such Policies of inwards reinsurance;
- (d) all Policies (including constituent and identifiable parts of Policies) which: (i) have lapsed prior to the Effective Time; (ii) would, had they not lapsed prior to the Effective Time, have fallen within limb (a), (b) or (c) of this definition; and (iii) are reinstated by the Transferee after the Effective Time; and
- (e) all proposals for insurance received by or on behalf of the Transferor before the Effective Time which: (i) have not become Policies in force at the Effective Time; (ii) would, had the proposals become Policies in force at the Effective Time, have fallen within limb (a), (b) or (c) of this definition; and (iii) become Policies after the Effective Time;

**Policy** has the meaning set out in the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361) and "policyholder" shall be construed accordingly;

**PRA** means the Prudential Regulation Authority;

**PRA Glossary** means the Glossary of the PRA Rulebook;

**PRA Rulebook** means the book of rules applicable to insurance firms subject to Solvency II issued by the PRA from time to time pursuant to FSMA;

**Proceedings** means an action or other legal or administrative proceedings or step (whether direct or indirect, by way of a claim, demand, legal proceedings, execution of judgement, arbitration, complaint or otherwise howsoever) whether pending, current or future, including:

- (a) all judicial, quasi-judicial, administrative and regulatory reviews and processes;
- (b) all complaints and claims made to any ombudsman, including the UK Financial Ombudsman Service;
- (c) arbitration;
- (d) mediation; and
- (e) all other dispute resolution procedures (whether or not they involve submission to any court);

**Quota Share Reinsurance Agreement** means the agreement entitled “Quota Share Reinsurance Agreement” entered into between the Transferor and the Transferee on [●];

**RAO** means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);

**Regulatory Requirements** means all applicable laws, statutes, regulations, rules, orders, directives, requirements, guidance, standards, guidelines and industry codes of practice in each case having legal effect stipulated by any legal, governmental or regulatory body with powers of direction over the relevant entity, including the rules of any stock exchange or listing authority, in each case existing and in force from time to time, wherever relevant in the context;

**Residual Assets** means:

- (a) all Transferred Assets where the Court has not sanctioned their transfer to the Transferee at the Effective Time under section 112(2) of FSMA;
- (b) all Transferred Assets where their transfer is outside the territorial jurisdiction of the Court, or where their transfer pursuant to an order of the Court is not recognised under the laws of the jurisdiction in which the property is situated, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction in which such property is situated;

- (c) all Transferred Assets which cannot be transferred to or vested in the Transferee at the Effective Time for any other reason;
- (d) all Transferred Assets where the Transferor and Transferee agree prior to the Effective Time that their transfer should be delayed; and
- (e) all proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Time but prior to the relevant Subsequent Transfer Date in respect of any such property referred to in paragraphs (a) to (d) of this definition;

**Residual Business** means together:

- (a) the Residual Policies;
- (b) the Residual Contracts;
- (c) the Residual Assets; and
- (d) the Residual Liabilities,

and all activities carried on in connection therewith;

**Residual Contracts** means:

- (a) all Transferred Contracts where the Court has not sanctioned their transfer to the Transferee at the Effective Time under section 112(2) of FSMA;
- (b) all Transferred Contracts where their transfer is outside the territorial jurisdiction of the Court, or where their transfer pursuant to an order of the Court is not recognised under the laws of the jurisdiction which govern such Contract, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction which govern such Contract;
- (c) all Transferred Contracts which cannot be transferred to or vested in the Transferee at the Effective Time for any other reason; and
- (d) all Transferred Contracts where the Transferor and Transferee agree prior to the Effective Time that their transfer should be delayed;

**Residual Liabilities** means:

- (a) all Transferred Liabilities that are attributable to or connected with a Residual Asset, Residual Contract or Residual Policy and that arise at any time before the Subsequent Transfer Date applicable to that Residual Asset;

- (b) all Transferred Liabilities where the Court has not sanctioned their transfer to the Transferee at the Effective Time under section 112(2) of FSMA;
- (c) all Transferred Liabilities where their transfer is outside the territorial jurisdiction of the Court, or where their transfer pursuant to an order of the Court is not recognised under the laws of the jurisdiction in which the liability is situated, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction in which such liability is situated;
- (d) all Transferred Liabilities to the extent arising out of Ongoing FOS Claims;
- (e) all Transferred Liabilities which cannot be transferred to or vested in the Transferee at the Effective Time for any other reason; and
- (f) all Transferred Liabilities where the Transferor and Transferee agree prior to the Effective Time that their transfer should be delayed;

**Residual Policies** means:

- (a) all Transferred Policies where, for the purpose of section 111(2) of FSMA and paragraphs 1(1)(ba) and 1(2A) of Schedule 12 to FSMA, the PRA has not provided the certificate referred to in paragraph 3A of Schedule 12 to FSMA prior to the making of the Order;
- (b) all Transferred Policies where the Court has not sanctioned their transfer to the Transferee at the Effective Time under section 112(2) of FSMA;
- (c) all Transferred Policies where their transfer is outside the territorial jurisdiction of the Court, or where their transfer pursuant to an order of the Court is not recognised under the laws of the jurisdiction which govern such Policy, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction which govern such Policy;
- (d) all Transferred Policies which cannot be transferred to or vested in the Transferee at the Effective Time for any other reason; and
- (e) all Transferred Policies where the Transferor and Transferee agree prior to the Effective Time that their transfer should be delayed;

**Retail FoS Policies** means “Distinct 75” and “Distinct 150” holiday home Policies, mobile device insurance Policies, and “Creditor” Policies;

**Scheme** means this scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with paragraph 13;

**Solvency II** means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (as amended);

**Split Transferred Contracts** means any Contract or Policy of reinsurance where a constituent and identifiable part of such Contract or Policy of reinsurance, but not the entire Contract or Policy of reinsurance, constitutes a Transferred Contract;

**Split Transferred Policy** means any Policy where a constituent and identifiable part of such Policy, but not the entire Policy, constitutes a Transferred Policy;

**Subsequent Transfer Date** means, in relation to a Residual Policy, Residual Contract, Residual Asset or Residual Liability, the date after the Effective Time on which it is or is to be transferred to the Transferee, namely:

- (a) the date on which all impediments to its transfer shall have been removed or overcome;
- (b) the date on which the Transferor and the Transferee agree the transfer should take effect; or
- (c) the date on which such Residual Asset is received or earned by the Transferor; or
- (d) in relation to any Ongoing FOS Claim, the date on which the Ongoing FOS Claim is finally determined,

(as applicable);

**Tax** means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the United Kingdom, Republic of Ireland or elsewhere, payable to or imposed by any authority responsible for the collection or management of any such tax, levy, duty, charge, impost, withholding or other amount; and
- (b) all charges, interest, penalties and fines incidental or relating to any sum falling within (a) above or which arise as a result of the failure to pay that sum on the due date or to comply with any obligation relating to it;

**Third Party Right** has the meaning given to it in paragraph 10.2(a);

**Transferee** has the meaning given to it in paragraph 2.2;

**Transferor** has the meaning given to it in paragraph 2.1;

**Transferred Assets** means:

- (a) all rights, benefits and powers of the Transferor under or by virtue of the Transferred Policies;
- (b) all rights, benefits and powers of the Transferor under or by virtue of the Transferred Contracts;
- (c) all rights and claims (in contemplation, present or future, actual or contingent) against any third party not within paragraphs (a) or (b) above of this definition to the extent that such right or claim relates to any of the Transferred Policies or the Transferred Contracts, or arises as a result of the Transferred Policies or the Transferred Contracts;
- (d) all Investment Assets;
- (e) all Operational Assets (if any); and
- (f) all books, records, files and papers, whether in hard copy or computer format, relating to the Transferred Policies and the Transferred Contracts, including claims and underwriting files, sales and promotional literature, manuals and data, sales and purchase correspondence and lists of present and former customers,

but excluding any Excluded Assets;

**Transferred Business** means together:

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

and all activities carried on in connection therewith;

**Transferred Contracts** means all Contracts and all Policies of reinsurance that are between the Transferor (as cedant) and any third party that is not a member of the Transferor's Group (as reinsurer) (and any constituent and identifiable parts of such Contracts or Policies of reinsurance) to the extent that such Contracts or Policies of reinsurance (or such parts of such Contracts or Policies of reinsurance) relate to Transferred Business or any activity carried on in connection therewith, but excluding any Excluded Contracts;

**Transferred Liabilities** means:

- (a) all liabilities of the Transferor under or in connection with the Transferred Policies;

- (b) all liabilities of the Transferor under or in connection with the Transferred Contracts;
- (c) all third party rights and claims (present or future, actual or contingent) against the Transferor not within paragraphs (a) or (b) above of this definition to the extent that such rights and claims relate to the Transferred Assets, Transferred Policies or Transferred Contracts, or arise as a result of the Transferred Assets, Transferred Policies or Transferred Contracts;
- (d) all liabilities of the Transferor in respect of Tax to the extent attributable to the Transferred Assets, Transferred Policies or Transferred Contracts (pursuant to this Scheme or otherwise); and
- (e) all liabilities of the Transferor to the extent connected with the sale and ongoing administration of the Transferred Policies and not within the foregoing paragraphs of this definition, including any and all Conduct Liabilities relating to the Transferred Policies,

but excluding any Excluded Liabilities;

**Transferred Policies** means:

- (a) the Irish Domestic Policies;
- (b) the Irish FoS Policies; and
- (c) the Other EEA Policies;

**True-Up Amount** has the meaning given to it in paragraph 12;

**True-Up Assets** the property of the Transferee selected by the Transferee (in the case of paragraph 12.2(a)) or the property of the Transferor selected by the Transferor (in the case of paragraph 12.2(b)) in either case having a value of the True-Up Date equal to the absolute value of the True-Up Amount;

**True-Up Date** means a date selected by the Transferee (in the case of paragraph 12.2(a)) or the Transferor (in the case of paragraph 12.2(b)) not being more than five (5) Business Days after the Transferor has determined the True-Up Amount in accordance with paragraph 12.1;

**True-Up Deadline** means the date falling twenty (20) Business Days after the approval of the 2018 year-end accounts of the Transferor by the Transferor's Board;

**UK Branch** has the meaning given to it in paragraph 2.2; and

**UK Financial Ombudsman Service** means Financial Ombudsman Service Limited, the body corporate established under paragraph 2(1) of Schedule 17 to FSMA to administer the ombudsman scheme provided for under Part XVI of FSMA.

1.2 In this Scheme:

- (a) “**holding company**” and “**subsidiary**” shall have the same meanings as in the Companies Act 2006;
- (b) “**liabilities**” shall include all liabilities, claims, damages, proceedings, demands, orders, suits, costs, losses and expenses of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety;
- (c) “**property**” shall include (without limitation) property, assets, rights and powers of every description (whether present or future, actual or contingent) and includes (i) property held on trust, (ii) benefits and powers of any description, and (iii) any interest whatsoever in any of the foregoing;
- (d) “**transfer**” shall include (as the context may require) “**assign**”, “**assignment**” or “**assignment**”, “**dispose**”, “**disposition**” or “**disposal**” or “**convey**” or “**conveyance**”;
- (e) “**variation**” shall include any variation, supplement, deletion, replacement or termination, however effected;
- (f) any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa;
- (g) any reference in this Scheme to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation. Where such reference is to an enactment, a statutory provision or any subordinate legislation that has been repealed and not amended, replaced or re-enacted, then the Transferee’s Board shall determine the most appropriate replacement arrangements (if any);
- (h) any reference to any rules, regulations or guidance made by the PRA, FCA and/or CBI (as applicable) shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time. Where such reference is to any rules, regulations or guidance that have been repealed and not amended, replaced or re-enacted, then the Transferee’s Board shall determine the most appropriate replacement arrangements (if any);

- (i) any reference to any regulator (including the PRA, FCA and CBI) shall be deemed to include a reference to any successor regulators;
- (j) any reference to this Scheme shall include the Schedules to it and references to paragraphs, sub-paragraphs, Parts or Schedules are to paragraphs, sub-paragraphs or Parts of or Schedules to this Scheme;
- (k) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (l) any reference to a person shall include a reference to a body corporate, a partnership, an unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- (m) unless otherwise specified, if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- (n) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (o) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words; and
- (p) any reference to an amount shall be exclusive of any applicable value added tax or other Tax.

## PART B – INTRODUCTORY PROVISIONS

### 2 Parties and background

- 2.1 Aviva Insurance Limited (the “**Transferor**”) is a company registered in Scotland with registered number SC002116. The registered office of the Transferor is at Pitheavlis, Perth, PH2 0NH, Scotland. The Transferor is a “UK authorised person” as defined in section 105(8) of FSMA, with permissions to carry out contracts of general insurance in the UK under all classes of General Insurance Business set out in Part 1 to Schedule 1 of the RAO.
- 2.2 Aviva Insurance Ireland DAC (the “**Transferee**”) is a designated activity company incorporated in the Republic of Ireland with registered number 605769. The registered office of the Transferee is at One Park Place, Hatch Street, Dublin 2, Ireland. The Transferee is authorised by the CBI as an insurance undertaking authorised to effect and carry out, within Ireland, the business of non-life insurance within classes 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17 and 18 as set out in Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015 [The Transferee has exercised its right under Irish and English laws implementing Solvency II to establish a branch establishment in the UK (such branch being the “**UK Branch**”), and as such is a PRA-authorised person and has permission to carry on certain regulated insurance business (including all relevant classes of General Insurance Business set out in Part 1 to Schedule 1 of the RAO) from its branch in the UK.]
- 2.3 Following the invocation of Article 50 of the Treaty on European Union by the United Kingdom on 29 March 2017, the United Kingdom has commenced negotiations for the terms of its withdrawal from the European Union (“**Brexit**”). The legal terms of Brexit are not yet known, but there is a risk that, upon or shortly following Brexit, the Transferor will lose its rights under the single market directives, including Solvency II, to carry out General Insurance Business in other EEA States on a Freedom of Services or Freedom of Establishment basis.
- 2.4 It is therefore proposed that, subject to the sanction of the Scheme by the Court, the Transferred Business carried on by the Transferor shall, in accordance with this Scheme, be transferred to the Transferee. The Transferred Business includes, for the avoidance of doubt, some of the business that was transferred to the Transferor pursuant to the 2011 Schemes and/or the 2012 Scheme.
- 2.5 The Transferor and the Transferee have each agreed to be represented by Counsel on the hearing of the application to sanction the Scheme.

## PART C – TRANSFER

### 3 Transfer of the Transferred Business

- 3.1 Subject to paragraph 3.2, each part of the Transferred Business shall be transferred to and be vested in the Transferee in accordance with this Scheme, so that:
- (a) at and with effect from the Effective Time, each Day One Asset and all the interest of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all applicable Encumbrances affecting such property and shall cease to be the property of the Transferor;
  - (b) at and with effect from the Effective Time, each Day One Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the Transferor;
  - (c) on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest of the Transferor in it shall, by the Order and without further act or instrument, be transferred to and be vested in the Transferee, subject to all applicable Encumbrances affecting such property and shall cease to be the property of the Transferor;
  - (d) on and with effect from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the Transferor.
- 3.2 The obligation of the Transferor to transfer the Investment Assets to the Transferee pursuant to this Scheme shall be set off against the obligation of the Transferee under the Quota Share Reinsurance Agreement to pay the Back-Book Premium to the Transferor, such that: (a) a proportion of the Investment Assets equal in value to the Back-Book Premium shall be used to settle the Back-Book Premium; and (b) the payment of the Back-Book Premium shall be satisfied by the retention of such Investment Assets by the Transferor.
- 3.3 The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Time to the Day One Assets and, at any Subsequent Transfer Date, to each Residual Asset then transferred. The Transferor shall not be liable for any charges, expenses, costs, claims, losses or any other liabilities in connection with any Day One Asset or Residual Asset that arise after the Effective Time, save as otherwise agreed between the parties in writing (including under any existing agreement between the Transferor and the Transferee in force at the date this Scheme takes effect) or as set out in this Scheme.

- 3.4 The Transferor and the Transferee shall take all such steps, and execute all such documents, as may be necessary or desirable:
- (a) to effect and/or perfect the transfer to and vesting in the Transferee of any Transferred Asset pursuant to this Scheme;
  - (b) to correct any errors in the identity or amount of the property so transferred; and
  - (c) to effect and/or perfect the transfer to and assumption by the Transferee of any Transferred Liability pursuant to this Scheme.
- 3.5 At and with effect from the Effective Time, the Transferee shall succeed to all rights, liabilities and obligations of the Transferor in respect of any personal data which relates to the Transferred Business. In any consent given by a data subject in respect of such data, any reference to the Transferor (or to any member of the Transferor's Group) shall be deemed to include a reference to the Transferee (and to any member of the Transferee's Group). For the avoidance of doubt, this paragraph shall override any statutory or contractual requirements in relation to such personal data.
- 3.6 Following the transfer of a Transferred Policy to the Transferee pursuant to this Scheme:
- (a) if that Policy is an Irish Domestic Policy or an Irish FoS Policy, then that Policy shall be carried on by the Transferee in the Republic of Ireland as its Home State, on neither a Freedom of Services basis nor a Freedom of Establishment basis (provided that any such Policy (or any part of such a Policy) may be allocated to and carried on from the UK Branch if (i) it is an Irish FoS Policy, or (ii) it is an Irish Domestic Policy in respect of which the Transferor's records show that the risk of the Policy (or any part of the Policy) is situated in the United Kingdom); and
  - (b) if that Policy is an Other EEA Policy, then that Policy shall be carried on by the Transferee in the relevant EEA State on a Freedom of Services basis. For the avoidance of doubt, Policies written by the Transferor on a Freedom of Establishment basis out of the Transferor's former branches in Belgium and France shall, following their transfer to the Transferee pursuant to this Scheme, be carried on by the Transferee on a Freedom of Services basis (and, accordingly, the Transferee shall not be required to establish branches in either Belgium or France).
- 3.7 For the avoidance of doubt, and without prejudice to the generality of paragraph 3.1:
- (a) an offer or invitation to treat made to or by the Transferor prior to the Effective Time in relation to the Transferred Business shall be construed and have effect after the Effective Time as an offer or invitation to treat made to or by the Transferee;

- (b) any existing indemnity, power of attorney, authority, declaration or consent given to or by the Transferor relating to any part of the Transferred Business (including, for the avoidance of doubt, the Transferred Policies) shall have effect from the Effective Time as if given to or by the Transferee;
- (c) any Transferred Asset which was held by the Transferor (whether alone or jointly with others) as a trustee, custodian or in a similar fiduciary capacity shall, with effect from the Effective Time (or relevant Subsequent Transfer Date, as the case may be), be held by the Transferee (alone or jointly, as the case may be, and in the capacity of a trustee, custodian or in a similar fiduciary capacity, as the case may be) subject to the rights, powers and duties previously applicable to the relevant trust, custodian or other fiduciary arrangement in question;
- (d) any security in respect of the Transferred Business held immediately prior to the Effective Time by the Transferor, or by a nominee or agent of or a trustee for the Transferor, as security for the payment or discharge of any liability shall, on and from that day be held by the Transferee (or by that nominee, agent or trustee for the Transferee, as the case may be) and be available to the Transferee (whether for its own benefit or for the benefit of any other person) as security for the payment or discharge of that liability; and
- (e) the Transferee shall be entitled to rely on and enforce any consent, waiver, representation, statement or estoppel given or made to the Transferor by a person in relation to the Transferred Business prior to the Effective Time as though such consent, waiver, representation, statement or estoppel had been given or made to the Transferee and to the same extent that the Transferor would have been able to rely on or enforce the same.

3.8 Each Split Transferred Contract shall be varied such that, from the Effective Time (or, where a Split Transferred Contract is a Residual Contract, after the relevant Subsequent Transfer Date), it shall:

- (a) continue on its original terms with the Transferor (subject to such amendments required to split the Split Transferred Contract in accordance with this paragraph 3.8) in relation to the constituent and identifiable part of the Split Transferred Contract which does not constitute a Transferred Contract; and
- (b) shall constitute a new agreement with the Transferee on the same terms as the original terms (subject to such amendments required to split the Split Transferred Contract in accordance with this paragraph 3.8) in relation to the constituent and identifiable part of the Split Transferred Contract which constitutes a Transferred Contract,

provided that (i) the terms of both parts of a Split Transferred Contract shall, taken together, operate to ensure that the counterparty is no better or worse off as a result of this paragraph

3.8; (ii) the method for allocating income and expenses in respect of such parts of Split Transferred Contracts shall be determined by agreement between the Transferor and the Transferee taking into account such matters as the Transferor and the Transferee consider relevant; and (iii) such splitting shall not constitute an event of default, suspension or otherwise give rise to a right of termination, early termination or unilateral variation (however described) under the terms of any such Split Transferred Contract.

3.9 Each Split Transferred Policy shall be varied such that, from the Effective Time (or, where a Split Transferred Policy is a Residual Policy, after the relevant Subsequent Transfer Date), it shall:

- (a) continue on its original terms with the Transferor (subject to such amendments required to split the Split Transferred Policy in accordance with this paragraph 3.9) in relation to the constituent and identifiable part of the Split Transferred Policy which does not constitute a Transferred Policy; and
- (b) shall constitute a new agreement with the Transferee on the same terms as the original terms (subject to amendments required to split the Split Transferred Policy in accordance with this paragraph 3.9) in relation to the constituent and identifiable part of the Split Transferred Policy which constitutes a Transferred Policy,

provided that (i) the terms of both parts of a Split Transferred Policy (including the allocation of deductibles, limits and any other applicable policy limitations between such parts) shall, taken together, operate to ensure that the policyholder is no better or worse off as a result of this paragraph 3.9; (ii) the method for allocating premiums, losses and related expenses in respect of such parts of Split Transferred Policies shall be determined by agreement between the Transferor and the Transferee taking into account such matters as the Transferor and the Transferee consider relevant (including the allocation of deductibles, limits and other applicable policy limitations between such parts); and (iii) such splitting shall not constitute an event of default, suspension or otherwise give rise to a right of termination, early termination or unilateral variation (however described) under the terms of any such Split Transferred Policy.

#### **4 Continuity of Proceedings**

4.1 At and with effect from the Effective Time, any Proceedings which:

- (a) have been commenced prior to the Effective Time, or which are commenced at or after the Effective Time, against the Transferor; and
- (b) would give rise to a Day One Liability in the event of the Proceedings being resolved in the claimant's favour,

shall be continued or commenced against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to such Proceedings.

4.2 At and with effect from the Effective Time, any Proceedings which:

- (a) have been commenced prior to the Effective Time, or which are commenced at or after the Effective Time, by the Transferor; and
- (b) would give rise to a Day One Asset in the event of the Proceedings being resolved in the Transferor's favour,

shall be continued or commenced by the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to such Proceedings.

4.3 Any judgment, settlement, order or award obtained by or against the Transferor whether before or after the Effective Time to the extent that it relates to any part of the Day One Business and which is not fully satisfied before the Effective Time shall, on that date and to the extent to which it was enforceable by or against the Transferor immediately prior to such date (or, if later, the date on which the judgment, settlement, or award is obtained), become enforceable by or against the Transferee (to the exclusion of the Transferor).

4.4 All documents which would before the Effective Time have been evidence in respect of Proceedings referred to in paragraphs 4.1 and 4.2 for or against the Transferor shall from the Effective Time be evidence in respect of the same matter for or against the Transferee.

4.5 At and with effect from the Effective Time, the Transferee shall owe to the policyholders of the Day One Business and/or to any other relevant person(s) the same duties of confidentiality and privacy (whether pursuant to Regulatory Requirements or contract) as those which the Transferor owed in respect of the Day One Business immediately prior to the Effective Time.

4.6 At and with effect from the Effective Time, any Proceedings in respect of the Day One Business that are commenced in error against the Transferor shall be deemed to have been commenced and shall continue against the Transferee without the need for further order, whether for substitution of the parties or otherwise.

4.7 The provisions of paragraphs 4.1 to 4.6 inclusive shall also apply *mutatis mutandis* to all Proceedings in relation to Residual Business (with references to the Effective Time amended to the relevant Subsequent Transfer Date and references to Day One Liabilities, Day One Assets and Day One Business amended to, respectively, Residual Liabilities, Residual Assets and Residual Business).

4.8 In respect of any Proceedings which are commenced after the Effective Time against the Transferee in respect of acts or omissions of the Transferor in connection with Transferred Business prior to the Effective Time, the Transferee undertakes to:

- (a) comply with the relevant provisions of the Dispute Resolution: Complaints (“DISP”) Sourcebook of the FCA Handbook relating to the handling of complaints referred to the UK Financial Ombudsman Service as such rules apply at the Effective Time and insofar as they apply to the Transferee’s handling of complaints (i) brought by holders of Transferred Policies against the Transferee in connection with the actions of the Transferor prior to the Effective Time; and (ii) referred to the UK Financial Ombudsman Service; and
- (b) comply promptly with any valid award or direction made by the UK Financial Ombudsman Service against the Transferee under the jurisdiction of the UK Financial Ombudsman Service and with any settlement which the Transferee agrees with a complainant at an earlier stage of the procedures as set out in DISP 3 of the FCA Handbook, as such rules and such jurisdiction apply at the Effective Time,

to the extent that such compliance is compatible with any rules or regulations issued by the CBI that are applicable to the Transferee.

4.9 Notwithstanding paragraph 18, holders of Transferred Policies may enforce the provisions of paragraph 4.8(b) against the Transferee. Neither the Transferor nor the Transferee shall require the consent of any such policyholder to amend this Scheme pursuant to paragraph 16.

## **5 Treatment of Transferred Policies**

5.1 At and with effect from the Effective Time, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor whatsoever under or by virtue of the Day One Policies.

5.2 Any person who is a policyholder of any of the Day One Policies shall at and with effect from the Effective Time become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Day One Policies to the same rights against the Transferee subject to the terms of this Scheme as were available to him against the Transferor under such Policies and (as regards Day One Policies under which premiums or other sums attributable or referable thereto continue to be payable) shall at and with effect from the Effective Time account to the Transferee for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.

5.3 If any person exercises any right or option which is granted at law or under the terms of a Day One Policy and either:

- (a) the right or option provides for a new, additional or replacement Policy to be issued; or

- (b) it is appropriate, in the opinion of the Transferee, to issue a new Policy in order to comply with that right or option,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by the Transferee of a Policy which complies with the terms of such right or option. However (without prejudice to the right of such person to have the right or option satisfied by the issue by the Transferee of such a Policy) if the Transferee is not at the time of the exercise of such right or option writing Policies complying exactly with the Policy to which the right or option refers, the Transferee shall be entitled to offer to such person as an alternative (and, if accepted, in lieu thereof) a Policy commonly offered by the Transferee (or any other member of the Transferee's Group) which the Transferee considers to be the nearest equivalent Policy by reference to the terms and conditions applicable to Policies of the Transferee at that time.

- 5.4 All references in any Day One Policy to the Transferor or any officers, employees, committees, function holders or agents of the Transferor shall with effect from the Effective Time be read as references to the Transferee or any officers, employees, committees or function holders of the Transferee or agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has been delegated (as appropriate). In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor or any officers, employees, committees, function holders or agents of the Transferor in relation to any of the Day One Policies shall, from and after the Effective Time, be exercisable or required to be performed by the Transferee or any officers, employees, committees, function holders or agents of the Transferee.
- 5.5 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Day One Policy pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction howsoever arising (including at law, in equity, tort, delict or by contract) on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified or to treat any obligations or liabilities as discharged, modified or released.
- 5.6 Save as may otherwise be agreed between the Transferor and the Transferee from time to time, the Transferee shall at and with effect from the Effective Time, as principal, take over from the Transferor the administration and negotiation of proposals for insurance which would become Day One Policies, if the Transferee determined to accept them (but whether or not the Transferee does so determine). The Transferee shall bear all expenses and liabilities in relation thereto. Nothing contained herein shall oblige the Transferee to accept any proposal for insurance received by or on behalf of the Transferor before the Effective Time but not accepted by the Transferor by the Effective Time.

- 5.7 All references in a Day One Policy to the group of companies of which the Transferor is or has been a member shall, where the context requires, be (or continue to be) read and construed with effect from the Effective Time as references to the group of companies of which the Transferee is a member from time to time.
- 5.8 The Transferee shall be entitled to any defences, claims, counterclaims, rights of set-off and rights of subrogation under the Day One Policies which would have been available to the Transferor.
- 5.9 The provisions of paragraphs 5.1 to 5.8 inclusive shall also apply *mutatis mutandis* to all Residual Policies (with references to the Effective Time amended to the relevant Subsequent Transfer Date).

## **6 Treatment of Transferred Contracts**

- 6.1 At and with effect from the Effective Time, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor whatsoever under or by virtue of the Day One Contracts.
- 6.2 Any person who is a counterparty of any of the Day One Contracts shall at and with effect from the Effective Time (but subject to the terms of this Scheme) become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Day One Contracts to the same rights against the Transferee as were available to him against the Transferor under such Day One Contracts.
- 6.3 All references in any Day One Contract to the Transferor or any officers, employees or agents of the Transferor shall from and after the Effective Time be read as references to the Transferee or any officers or employees of the Transferee or agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has been delegated (as appropriate). In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor or any officers, employees or agents of the Transferor in relation to any of the Day One Contracts shall, from and after the Effective Time, be exercisable or required to be performed by the Transferee or any officers, employees or agents of the Transferee.
- 6.4 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Day One Contract pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction howsoever arising (including but not limited to, at law, in equity, tort or by contract) on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified or to treat any obligations or liabilities as discharged, modified or released.

- 6.5 All references in a Day One Contract to the group of companies of which the Transferor is or has been a member shall, where the context requires, be (or continue to be) read and construed with effect from the Effective Time as references to the group of companies of which the Transferee is a member from time to time.
- 6.6 The Transferee shall be entitled to any defences, claims, counterclaims, rights of set-off and rights of subrogation under the Day One Contracts which would have been available to the Transferor.
- 6.7 The provisions of paragraphs 6.1 to 6.6 inclusive shall also apply *mutatis mutandis* to all Residual Contracts (with references to the Effective Time amended to the relevant Subsequent Transfer Date).

## **7 Reinsurance of Residual Policies**

- 7.1 Subject always to applicable Regulatory Requirements, the Transferee shall reinsure the Transferor with effect from and after the Effective Time against all liabilities of the Transferor under, and all other amounts paid or payable by the Transferor in respect of, any Residual Policy until the applicable Subsequent Transfer Date.
- 7.2 The premium payable by the Transferor to the Transferee in respect of the reinsurance pursuant to paragraph 7.1 shall be deemed to have been satisfied by the transfer of the Investment Assets to the Transferee pursuant to this Scheme.
- 7.3 The Transferee shall discharge its reinsurance obligation pursuant to paragraph 7.1 by discharging the liabilities referred to in that paragraph on behalf of the Transferor or, failing that, by indemnifying the Transferor in respect of such liabilities.
- 7.4 The Transferee shall not indemnify the Transferor against, and shall not be obliged to discharge any liability of the Transferor referred to in paragraph 7.1, to the extent that the Transferor is entitled to recover the same from any third party (including under any applicable guarantee, contract of insurance or contract of reinsurance) unless, and only to the extent that, the Transferor has failed to recover, or the Transferee has instructed the Transferor in writing not to attempt to recover, any such amount.

## **8 Premiums, mandates and other payments**

- 8.1 All premiums payable to the Transferor in respect of the Day One Policies shall at and with effect from the Effective Time be payable to the Transferee.
- 8.2 Save as may otherwise be agreed between the Transferor and the Transferee prior to the Effective Time, any mandate or other instruction in force at the Effective Time (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing

order) and providing for the payment by a banker or other intermediary of premiums payable to the Transferor under or in respect of any of the Day One Policies or Day One Contracts shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.

8.3 Save as may otherwise be agreed between the Transferor and the Transferee prior to the Effective Time, any mandate or other instruction in force at the Effective Time as to the manner of payment of any sum payable by the Transferor under any of the Day One Policies or Day One Contracts shall, at and with effect from the Effective Time, continue in force as an effective authority to the Transferee in place of the Transferor.

8.4 The provisions of paragraphs 8.1 to 8.3 inclusive shall also apply *mutatis mutandis* to all Residual Policies and Residual Contracts (with references to the Effective Time amended to the relevant Subsequent Transfer Date).

## **9 Declaration of trust and wrong pocket**

9.1 The Transferor shall, from the Effective Time until the relevant Subsequent Transfer Date, hold the Residual Business as trustee for the Transferee. The Transferor shall be subject to the Transferee's directions in respect of the Residual Business, until such part of the Residual Business is transferred to or otherwise vested in the Transferee (or is disposed of, whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof). The Transferee shall have the authority (with authority to sub-delegate) to act as the attorney of the Transferor in respect of the Residual Business for all such purposes.

9.2 In the event of any property being received by the Transferor after the Effective Time in respect of the Day One Transferred Business, the Transferor shall, as soon as is reasonably practicable after its receipt and to the extent to which it is able to do so, transfer such property to, or in accordance with the directions of, the Transferee.

9.3 In the event of any property being received by the Transferor after the Effective Time in respect of the Residual Business, the Transferor shall hold such property as trustee for the Transferee in accordance with paragraph 9.1.

9.4 The Transferee shall indemnify the Transferor against any reasonable out-of-pocket charges, costs, expenses, claims and other liabilities arising in respect of any obligation under or in connection with this paragraph 9.

## **10 Indemnities**

10.1 At and with effect from the Effective Time, the Transferee shall discharge on the Transferor's behalf or, failing that, shall indemnify the Transferor against:

- (a) any charges, costs, expenses, claims and other liabilities arising in respect of Transferred Liabilities;
- (b) any charges, costs, expenses and claims arising in respect of any relevant Third Party Rights continued by the Transferor in accordance with the instructions of the Transferee (subject to which the Transferor shall take such steps as the Transferee shall require in order to pursue such Third Party Rights); and
- (c) any stamp, registration, notarisation, documentary or similar tax and duty arising in respect of the transfer of the Transferred Business.

10.2 For the avoidance of doubt, the Transferee shall not be required under paragraph 10.1 to discharge or indemnify the Transferor for:

- (a) any liability if and to the extent that such liability is the subject of an indemnity from any third party in favour of the Transferor (including by way of insurance) or a claim or right against any third party which has not transferred to the Transferee as part of the Transferred Business (a “**Third Party Right**”), unless, and then only to the extent that, the Transferor shall have failed to recover any such amount pursuant to such Third Party Right;
- (b) any Excluded Liabilities; or
- (c) for any charges, costs, expenses and claims or any other liabilities arising in respect of any Excluded Liabilities.

10.3 Where the Transferor is entitled to receive an amount pursuant to an indemnity contained in paragraph 7.3, 9.4 or 10.1, it shall be entitled to receive such amount as, after payment of or provision for any liability to Tax in respect of the amount receivable, will result in the receipt of an amount equal to the value of the liability to be indemnified against.

10.4 The Transferor shall indemnify the Transferee against all liabilities, losses, claims and expenses in respect of the Transferred Liabilities:

- (a) to the extent that they are otherwise recoverable by the Transferor pursuant to a Third Party Right; or
- (b) in connection with any defect (whether in title or otherwise) in relation to, or any diminution in the value of, any property transferred to the Transferee to the extent that the loss resulting therefrom is recoverable pursuant to a Third Party Right,

provided that the indemnity in this paragraph 10.4 shall be limited to such amounts as the Transferor shall recover pursuant to such Third Party Right (net of the costs of any such recovery, including as to Tax).

## 11 Determination of the Investment Assets

- 11.1 The Transferor and the Transferee shall comply with the provisions of Schedule 2 in relation to the determination of the Investment Assets.

## 12 True-Up Amount

- 12.1 As soon as reasonably practicable following approval of the 2018 year-end accounts of the Transferor by the board of the Reinsurer (and in any event prior to the True-Up Deadline), the Transferor shall determine and certify:

- (a) the Final Asset Amount;
- (b) the aggregate value, as at the Effective Time, of the Investment Assets; and
- (c) the amount by which the figure certified under paragraph (a) exceeds or is less than the figure certified under paragraph (b) (such amount, which will be positive if it exceeds that figure or negative if it is less than that figure, being the **"True-Up Amount"**).

- 12.2 On and with effect from the True-Up Date, and subject to paragraph 12.3:

- (a) if the True-Up Amount is negative, then the True-Up Assets and all interest of the Transferee therein shall, by the Order and without further act or instrument, be transferred from the Transferee to, and be vested in, the Transferor; and
- (b) if the True-Up Amount is positive, then the True-Up Assets and all interest of the Transferor therein shall, by the Order and without any further act or instrument, be transferred from the Transferor to, and be vested in, the Transferee.

- 12.3 The Transferor or Transferee (as the case may be) shall set off any obligation to transfer the True-Up Assets to the other Party pursuant to paragraph 12.2 against any right that it has to receive the Back-Book True-Up Amount from the other Party under the Quota Share Reinsurance Agreement, and *vice versa*.

## **PART D - MISCELLANEOUS PROVISIONS**

### **13 Effective Time**

- 13.1 Subject to paragraph 13.1, this Scheme shall become effective at 00:01 GMT on Friday 1 February 2019 or such other time and date as may be specified in the Order.
- 13.2 In the event that the Court imposes any modification of or addition to this Scheme, or any further condition or provision effecting the same, this Scheme shall not become effective on the Effective Date unless each of the Transferor and the Transferee consents to such modification, addition or condition.

### **14 Effect of transfer**

- 14.1 The transfer and vesting of the Transferred Business shall not:
- (a) invalidate or discharge any contract, security or other thing;
  - (b) require further registration in respect of any security or charge;
  - (c) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise be the case under any instrument or contract or arrangement to which the Transferor is bound;
  - (d) entitle any party to a Policy, Contract or arrangement to which the Transferor is a party to vary, amend, disclaim, repudiate or terminate such contract or arrangement when, in the absence of this transfer, that party would not otherwise be entitled to vary, amend, disclaim, repudiate or terminate it;
  - (e) save as provided elsewhere in this Scheme, confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, under a contract on any party to such contract to which the Transferor is a party where such greater or lesser rights, benefits or obligations would not otherwise have been conferred or imposed; or
  - (f) affect the enforceability, priority or ranking of any Encumbrance.

### **15 Costs and expenses**

- 15.1 Except as may otherwise be agreed in writing, the Transferor and the Transferee shall each bear their own costs and expenses in relation to the preparation and carrying into effect of this Scheme.

## **16 Variations**

- 16.1 Prior to the making of the Order, the Transferor and the Transferee together may consent for and on behalf of the persons bound by this Scheme, and all other persons concerned, to any variation of this Scheme.
- 16.2 Subject to paragraph 16.2(b), after the making of the Order any variation of this Scheme must:
- (a) be approved by the Court;
  - (b) be notified, with at least six weeks' notice in advance of any hearing of the Court at which such application is considered (if applicable), to the CBI, the PRA and the FCA, who shall have the right to attend and be heard at such hearing of the Court (if applicable); and
  - (c) be accompanied by a certificate from an independent expert (such independent expert to be selected and appointed by the Board of the Transferee with the approval of the CBI) to the effect that, in his or her opinion, the proposed variation will not materially and adversely affect the security or reasonable expectations of the policyholders of the Transferee or the Transferor.
- 16.3 Notwithstanding paragraph 16.2, Court approval will not be necessary in relation to any variation of this Scheme which is considered by the Transferee as a variation:
- (a) to correct manifest errors;
  - (b) of a minor and/or technical nature;
  - (c) to ensure that the provisions of this Scheme operate in a way which is consistent with the Scheme in circumstances where the provision to which the proposed variation applies will, or is likely to, be materially affected by a variation or a proposed variation to Regulatory Requirements;
  - (d) necessary to reflect any changes in the Transferee's actuarial practices provided that these conform to generally accepted actuarial practices;
  - (e) required to protect the rights and reasonable expectations of the policyholders of the Transferee or the Transferor; or
  - (f) for which specific provision is made elsewhere in this Scheme (provided that such specific provision is fully complied with),

provided that the CBI, the PRA and the FCA have been notified in writing of the same and have not objected thereto within a period of three (3) months commencing from the date of the relevant notification.

**17 Evidence of transfer**

17.1 The production of a copy of the Order with any modifications, amendments and/or additions made under paragraph 16, and a copy of a certificate by a director or company secretary of the Transferee that the Scheme has taken effect shall for all purposes be evidence of the transfer to, and vesting in, the relevant Transferee:

- (a) at and with effect from the Effective Time, of the Day One Business; and
- (b) on and with effect from each Subsequent Transfer Date, of the relevant Residual Business.

**18 Third party rights**

18.1 It is not intended that any person who is not a party to this Scheme may enforce any of its terms, whether by virtue of the Contracts (Rights of Third Parties) Act 1999, the Contract (Third Party Rights) (Scotland) Act 2017, or otherwise.

**19 Successors and assigns**

19.1 This Scheme will bind and endure to the benefit of the successors and assigns of each of the Transferor and the Transferee.

**20 Governing law**

20.1 This Scheme is governed by and shall be construed in accordance with Scots law.

Dated this [●] day of [●].

**Schedule 1**  
**List of Excluded Contracts**

- The guarantee and indemnity given by Hibernian Aviva General Insurance Limited on 12 February 2009 and subsequently assumed by the Transferor in favour of the Football Association of Ireland, the Irish Rugby Football Union and Lansdowne Road Stadium Development Company Limited in relation to the performance of obligations by Hibernian Aviva Group Plc (and successors) under a stadium sponsorship agreement dated 12 February 2009.
- The guarantee and indemnity given by the Transferor on 17 January 2018 in favour of the Football Association of Ireland, the Irish Rugby Football Union and New Stadium Designated Activity Company in relation to the performance of obligations by Aviva Group Services Ireland Limited under a stadium sponsorship agreement dated 17 January 2018.
- The share purchase agreement entered into by the Transferor, Aviva Health Group Ireland Limited and Irish Life Group Limited on 9 March 2016 in connection with the sale of Aviva Heath Ireland Limited.
- Any agreement entered into between the Transferor and Aviva Investors UK Fund Services Limited, Aviva Investors UK Funds Limited or Aviva Investors Global Services Limited, including the Investment Management Agreement (and Operational Service Level Agreement) between the Transferor and Aviva Investors Global Services Limited dated 1 April 2015.
- The Non-Life Quota Share Reinsurance Agreement entered into by the Transferor and Aviva International Insurance Limited on 31 December 2015.
- The custody agreement entered into by the Transferor and JPMorgan Chase Bank NA (London branch) on 5 January 2016.
- The custody agreement entered into by the Transferor and HSBC Bank plc on [●].
- The Lease Agreements entered into by Hibernian General Insurance Limited, Hibernian Life & Pensions Limited, Hibernian Group Plc and Park Place Properties Limited in relation to the premises at Blocks A&C, One Park Place, Upper Hatch Street, Dublin 2 dated 15 November 2006 and ancillary agreements/documentation. The interest of Hibernian General Insurance Limited under the Lease Agreements transferred to Aviva Insurance Europe SE and subsequently to the Transferor by Deeds of Assignment dated 30 November 2012.
- The indemnity given by Hibernian Aviva General Insurance Limited and Hibernian Aviva Life & Pensions Limited (the interest of Hibernian Aviva General Insurance Limited having

subsequently been assumed by the Transferor) to Park Place Properties Limited and Shoalwater Limited, dated 15 November 2006.

- The Lease Agreement entered into by Aviva Insurance Europe SE, John Morrissey (acting by the Receiver) and Tom Kavanagh (Receiver) in relation to the premises at Block A, Galway West Business Park, Ragoon, County Galway dated 27 September 2012 and ancillary agreements/documentation. The Lease Agreement transferred from Aviva Insurance Europe SE to the Transferor by a Deed of Assignment dated 30 November 2012.
- The Lease Agreement entered into by the Transferor and Westbrook Housing Company Limited in relation to the premises at Part of the 2nd Floor of Building 5200, Block 18, Cork Airport Business Park, Cork dated 11 May 2017 and ancillary agreements/documentation.

**Schedule 2**  
**Investment Assets**

**1 The Investment Asset Amount**

1.1 The “**Investment Asset Amount**” shall be an amount equal to €[●], being the best estimate (as at the date of sanction of this Scheme) of the Parties of the Final Asset Amount, based on the best information available to the Parties at the time.

1.2 The “**Final Asset Amount**” shall be an amount equal to:

$$\text{Economic Reserves} + (\text{Risk Appetite Factor} \times \text{Reserve Cost of Capital})$$

where:

- (a) “**Economic Reserves**” means, as at the Effective Time, an amount equal to the probability-weighted average of future cash flows of the Transferred Policies, taking account of the time value of money, using the relevant risk-free interest rate term structure in line with the “Group Solvency II Best Estimate Liabilities (Non-Life) Manual” (as amended from time to time and any successors thereto) and calculated on a consistent basis with the Transferor’s “Solvency II Quantitative Reporting Template” (as amended from time to time and any successors thereto) as at the Effective Time (*expressed in EUR*);
- (b) “**Risk Appetite Factor**” means, as at the Effective Time, the risk appetite loading applicable to full run-off of capital using a consistent basis to that in the Aviva Group “Economic Capital Risk Appetite” document (as amended from time to time and any successors thereto) (*expressed as a percentage*);
- (c) “**Reserve Cost of Capital**” means, as at the Effective Time, the cost of holding the diversified economic capital requirement relating to the Economic Reserves to ultimate, gross of tax and including relevant reserve, annuity and latent risks, reinsurance default risk and non-hedgeable inflation risk from the Transferor’s most recent economic capital work (with run off of the business in line with expected payment profile), and discounted at the risk free rate as at the Effective Time or the cost of holding such other capital requirements as are relevant as at the Effective Time (*expressed in EUR*).

**2 The Investment Assets**

2.1 The Transferor and the Transferee shall discuss and identify such property of the Transferor as is equal to the value of the Investment Asset Amount and which the parties agree shall:

- (a) form part of the Transferred Assets; and
  - (b) subject to paragraph 3.2, be transferred to the Transferee pursuant to this Scheme,
- (the “**Investment Assets**”).

2.2 Where the parties reach agreement in relation to the identity of the Investment Assets, details of those assets shall be set down in writing and shall be deemed to be the Investment Assets. If the parties fail to reach agreement in relation to the identity of the Investment Assets by 17:30 on Friday 11 January 2019, then the identity of the Investment Assets shall be determined by the chief financial officer of Aviva plc (from time to time). The determination of the identity of the Investment Assets by the chief financial officer of Aviva plc shall be binding on both parties.