



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

Before Mr Justice Miles

On the 27th day of October 2023

CR-2023-001842

**IN THE MATTER OF
AETNA INSURANCE COMPANY LIMITED
AND
IN THE MATTER OF
AWP P&C SA
AND
IN THE MATTER OF
PART VII OF THE FINANCIAL SERVICES
AND MARKETS ACT 2000**

ORDER

UPON THE APPLICATION by Part 8 claim form issued on 28 June 2023 (the “**Claim Form**”) of Aetna Insurance Company Limited (the “**Transferor**”), whose registered office is at The Hub, Fowler Avenue, Farnborough Business Park, Farnborough, Hampshire, England, GU14 7JF and AWP P&C SA, whose registered office is at 7 Rue Dora Maar, 93400, Saint-Ouen, Paris, France (the “**Transferee**”), who operates in the United Kingdom through a branch with registered branch number BR015275 and a registered office at Mondial House 102 George Street, Croydon, Surrey CR9 6HD (the Transferor and the Transferee together, the “**Claimants**”), which Claim Form seeks the sanction of an insurance business transfer scheme

as set out in the Schedule hereto (the “**Scheme**”) pursuant to Part VII of the Financial Services and Markets Act 2000 (“**FSMA**”) and other ancillary orders;

AND UPON HEARING Andrew Thornton, KC, Counsel for the Claimants via Microsoft Teams;

AND UPON READING the Claim Form and the supporting evidence;

AND UPON READING the reports of the Independent Expert dated 27 June 2023 and 19 October 2023 and the reports of the Prudential Regulation Authority (the “**PRA**”) dated 30 June 2023 and 24 October 2023 and the Financial Conduct Authority (the “**FCA**”) dated 29 June 2023 and 24 October 2023;

AND UPON the Court being satisfied that the appropriate certificate has been obtained as referred to in section 111(2)(a) of FSMA and paragraphs 1 and 2 of Part I of Schedule 12 to FSMA;

AND UPON IT APPEARING that a copy of the application, the report and the statement referred to in regulation 3(4) of The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625) as amended (the “**Regulations**”) has been given free of charge to the PRA and the FCA in accordance with regulation 3(5) of the Regulations and that a period of more than 21 days has elapsed since the PRA and the FCA were given those documents;

AND UPON the Court considering that, in all the circumstances, it is appropriate to sanction the Scheme;

THIS COURT HEREBY SANCTIONS the Scheme in the form annexed at the Schedule hereto pursuant to section 111(1) of FSMA and adopts the defined terms used therein for the purposes of this Order;

AND IT IS ORDERED THAT all the terms of the Scheme shall as and from the dates and times therein provided take effect under section 112 of FSMA without further act or instrument as if each were separately set out in this Order. Without prejudice to the generality of the foregoing:

1. the transfers of the Transferring Business provided for by paragraph 4 of the Scheme and the transfers of property and liabilities (as defined by sections 112(12) and (13) of FSMA respectively) provided for by paragraphs 5 and 6 of the Scheme shall take effect pursuant to section 112(1)(a) of FSMA and vest or transfer as provided for by section 112(3) of FSMA as a result of this Order;
2. the provisions in paragraph 10 of the Scheme relating to the continuation of proceedings shall take effect pursuant to section 112(1)(c) of FSMA; and
3. the provisions of all other paragraphs and clauses of the Scheme not referred to above shall take effect pursuant to section 112(1)(d) of FSMA.

AND IT IS FURTHER ORDERED THAT:

4. In accordance with section 112(10) of FSMA, the Transferee shall within 10 days from the date of this Order, or such longer period as the PRA shall allow, deposit two office copies of this Order with the PRA;
5. The production of a copy of this Order shall, for all purposes, be evidence of the transfer to, and vesting in, the Transferee of the Transferring Business in accordance with this Order and the Scheme; and
6. There shall be permission for the Claimants to apply for such orders or directions as may be expedient or necessary for the purposes set out in section 112 of FSMA and generally.

Service of the Order:

This Court has provided a sealed copy of this order to the serving party,

Willkie Farr & Gallagher (UK) LLP
1 Ropemaker Street
London EC2Y 9AW
United Kingdom

Schedule – The Scheme

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MARKETS ACT 2000

INSURANCE BUSINESS TRANSFER SCHEME

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PART A: DEFINITIONS AND INTERPRETATION

1. Definitions and Interpretation

1.1 In this insurance business transfer scheme, unless the context otherwise requires, the following words or phrases have the following meanings:

“**Act**” means the Financial Services and Markets Act 2000, as amended, together with the rules and regulations implemented pursuant thereto;

“**Aetna Parent Reinsurance Agreement**” means the reinsurance agreement entered into between Aetna Life Insurance Company, Aetna Insurance (Hong Kong) Limited, Aetna Health Insurance Company of Europe (DAC), the Transferor and AICLSB, in relation to, *inter alia*, the Transferring Business, dated 21 December 2022;

“**AICLSB**” means Aetna Insurance Company Limited (Singapore Branch), being the Singapore branch of the Transferor, with registration number T08FC304L and registered address at 80 Robinson Road, #23-02 Singapore 068898;

“**Asset**” or “**Assets**” means any assets, property, rights or powers of any kind or description, wherever located, whether tangible or intangible, present or future, actual or contingent, that are owned, leased or licensed including all rights, benefits and powers under any contract and all rights, claims and powers against any third party;

“**AWP UK**” means the UK branch of the Transferee, registered in the United Kingdom with registered branch number BR015275 and a registered office at Mondial House 102 George Street, Croydon, Surrey CR9 6HD;

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

“**Data Protection Legislation**” means any law, enactment, regulation or order concerning the processing of data relating to living individuals, including the UK GDPR, the UK Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, in each case to the extent applicable to the activities or obligations in respect of each of the Transferor or Transferee at the relevant date of determination;

“**Effective Date**” means the date and time on which this Scheme takes effect in accordance with Clause 13;

“Encumbrance” means any mortgage, charge, pledge, lien, option, restriction, assignment, right to acquire, right of pre-emption or any other form of right, interest, preference, security or encumbrance of any nature in favour of a third party or any agreement, arrangement or obligation to create any of them;

“Excluded Agreements” means all contracts, agreements, arrangements or other instruments entered into by or on behalf of the Transferor or AICLSB that relate to AICLSB or the Excluded Policies and any broker, distribution, agency or other third party agreements (other than the Provider Contract Indemnities);

“Excluded Assets” means all property of the Transferor that is comprised in or attributable to the Excluded Policies or the Excluded Agreements or that otherwise does not constitute a Transferring Asset, including:

- a) the rights, benefits and powers (whether actual or contingent) of AICLSB whatsoever under or by virtue of the Excluded Policies and the Excluded Agreements;
- b) all cash balances and other assets to support the policy liabilities and reserves in connection with the Excluded Policies; and
- c) the Excluded Records, including without limitation, all rights, title and interest of AICLSB in the Excluded Records;

“Excluded Business” means:

- a) the Excluded Policies;
- b) the Excluded Assets;
- c) the Excluded Liabilities;
- d) the Excluded Agreements;
- e) any rights or liabilities of the Transferor under or relating to the Aetna Parent Reinsurance Agreement; and
- f) any other Assets or Liabilities of the Transferor that do not constitute Transferring Business;

“Excluded Liabilities” means all the liabilities (including contingent and prospective liabilities) whatsoever and wheresoever arising, comprised in, attributable to or in connection with the Excluded Assets, the Excluded Policies or the Excluded Agreements (including all payable balances in connection with the Excluded Policies) or that otherwise do not constitute Transferring Liabilities;

“Excluded Policies” means all policies of insurance and reinsurance which were ever written, issued or assumed by or novated to AICLSB, directly or through an agent, independently or as a member of a pool, any other similar obligation covering or having the effect of covering short term accident and health insurance liability, whether expired, current or capable of renewal, as at the Effective Date, and any endorsements, extensions or amendments thereto;

“Excluded Records” means all relevant data, files and records relating to the Excluded Policies or the Excluded Agreements or that otherwise do not constitute Transferring Records, in every case of or belonging to and in the possession of or under the control of the Transferor, AICLSB or third party service providers, and which shall include physical hard-copy and electronic records of the Excluded Policies, risks, claims, case reserves and physical hard copy records of commutations, correspondence with brokers/cedants/policy owners;

“FCA” means the United Kingdom’s Financial Conduct Authority or any previous or successor regulator or regulators as shall from time to time carry out such functions as were at the date of this Scheme allocated to the Financial Conduct Authority under the Act in the United Kingdom;

“High Court” means the High Court of Justice in London;

“Independent Expert” means Brian Morrissey of KPMG Ireland, the independent expert approved by the PRA for the purposes of this Scheme or any other independent expert nominated or approved pursuant to section 109(2)(b) of the Act;

“Insurance Regulator” means the PRA and/or FCA, as applicable;

“Liability” or **“Liabilities”** means any claim, debt, liability, losses, damages, costs (including legal costs and experts’ fees and the cost of remediation), payment, redress, agreed settlement, buyback, commutation, compromise, duty or obligation of any kind or description (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due);

“Mis-selling” means the marketing or sale of a Policy in circumstances where there were actions or omissions of the Transferor (or any other persons or entities which were involved in the sale of the Policy, including any intermediary or appointed representative, for whose actions or omissions the Transferor is or was liable), which constituted a breach of, or failure to comply with, applicable law or regulation;

“Order” means an order of the High Court pursuant to section 111 of the Act sanctioning this Scheme and any order (including any subsequent order which is ancillary thereto) in relation to this Scheme made by the High Court making provision under section 112 of the Act;

“Policy” and **“Policyholder”** have the meanings set out in section 424(2) of the Act and Regulation 2 and Regulation 3 respectively of the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001 (S.I. 2001/2361);

“PRA” means the Bank of England in its capacity as the Prudential Regulation Authority or any previous or successor regulator or regulators as shall from time to time carry out such functions as were at the date of this Scheme allocated to the Prudential Regulation Authority under the Act in the United Kingdom;

“Proceedings” means any judicial, quasi-judicial, administrative or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings (whether current, threatened or pending) for the resolution of a dispute or claim (whether current or future, including those not yet in contemplation) by, against, with or in relation to the Transferor in respect of, or in connection with, the Transferring Business, in respect of which the Transferor is plaintiff, claimant, applicant, defendant or respondent;

“Provider Contract Indemnity” means the indemnity agreement entered into between the Transferor and service providers within the Aetna group (the **“Service Entities”**), whereby the Transferor indemnifies the Service Entities (and other entities specifically stated therein) in respect of claims costs arising under the Transferring Policies required to be reimbursed to third party health care providers or network providers in respect of, or in connection with, the Transferring Business;

“RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), as amended;

“**Residual Asset**” means those Transferring Assets which do not transfer to the Transferee pursuant to the Order as at the Effective Date for any reason whatsoever and are not otherwise transferred, including:

- a) any Residual Policy and the rights, benefits and powers (including contractual, tortious and statutory rights) of the Transferor under or by virtue of any of the Residual Policies;
- b) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy):
 - i) the transfer of which to the Transferee requires, at the Effective Date, either:
 - A) the consent of any person (other than the Transferor, the Transferee or the High Court); or
 - B) the waiver by any person of any right to acquire, or to be offered the right to, or to offer to, acquire or procure the acquisition by some other person of, all or any part of such Asset, being a right which directly or indirectly arises or is exercisable as a consequence of such transfer being proposed or taking effect,

but only to the extent of that part of the interest of the Transferor in such Asset, the transfer of which requires such consent or waiver; and
 - ii) which the High Court does not have jurisdiction to transfer pursuant to section 112(1)(a) of the Act (either at all or free of such right as is mentioned in paragraph (b)(i)(B) of this definition) or which, despite having such jurisdiction, the High Court determines, notwithstanding section 112(2A) of the Act, not to so transfer or the transfer of which is not recognised by the laws of any relevant jurisdiction in which such Transferring Asset is situated;
- c) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy) which the Transferor and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date;

- d) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy), which cannot, for any other reason, be transferred to or vested in the Transferee pursuant to this Scheme; and
- e) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, from time to time earned on or received after the Effective Date in respect of any such Assets referred to in paragraphs (a) to (d) of this definition;

“Residual Liabilities” means those Transferring Liabilities which do not transfer to the Transferee pursuant to the Order as at the Effective Date for any reason whatsoever and are not otherwise transferred, including:

- a) the transfer of which Liability to the Transferee pursuant to this Scheme requires, as at the Effective Date, the consent or waiver of any person (other than the Transferor, the Transferee or the High Court) and which the High Court either does not have jurisdiction to transfer to the Transferee pursuant to section 112(1)(a) of the Act or which (despite having such jurisdiction) the High Court determines, notwithstanding section 112(2A) of the Act, not to transfer; or
- b) which the Transferor and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date; or
- c) which is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset; or
- d) which cannot be transferred to or vested in the Transferee pursuant to this Scheme for any other reason;

“Residual Policies” means those Transferring Policies which do not transfer to the Transferee pursuant to the Order as at the Effective Date for any reason whatsoever and which are not otherwise transferred, including a Transferring Policy in respect of which:

- a) its transfer is expressly refused by a regulatory body or court of law having jurisdiction to do so;

- b) the High Court has declined to order the transfer to the Transferee on the Effective Date, including where the Order requires further steps be taken to make the transfer fully effective;
- c) the Transferor and the Transferee agree prior to the Effective Date that its transfer is to be delayed until after the Effective Date; or
- d) which cannot be transferred to the Transferee pursuant to this Scheme for any other reason;

“**Scheme**” means the insurance business transfer scheme within the meaning of section 105 of the Act set out in this document with or subject to any modification, addition or condition approved or imposed in accordance with Clause 14;

“**Subsequent Transfer Date**” means, in relation to any Residual Asset or Residual Liability, the date after the Effective Date on which such Residual Asset or Residual Liability is to be transferred, 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 in writing that the transfer shall take effect; or
- c) the date on which such Residual Asset is received or earned by the Transferor;

“**Transferee**” means AWP P&C SA, registered as a foreign company in England and Wales with foreign company number FC030280, with a registered office at 7 Rue Dora Maar, 93400 Saint-Ouen, Paris, France;

“**Transferor**” means Aetna Insurance Company Limited, a company incorporated and registered in England & Wales with registered number 05956141, whose registered office is at The Hub, Fowler Avenue, Farnborough Business Park, Farnborough, Hampshire, England, GU14 7JF;

“**Transferring Assets**” means any and all of the following whatsoever and wheresoever situated, comprised in or attributable to the Transferring Policies as at the Effective Date, including (without prejudice to the generality of the foregoing):

- a) the rights, benefits, authorities and powers of the Transferor under or by virtue of the Transferring Policies;
- b) the rights, benefits, authorities and powers of the Transferor under the Provider Contract Indemnity;
- c) the assets or cash deposits comprising the insurance provisions and reserves associated with the Transferring Policies;
- d) all rights of recovery (including the right to continue or bring a legal claim) against any party which arises as a result of the Transferor underwriting or paying a claim under any of the Transferring Policies; and
- e) the Transferring Records including, without limitation, all rights, title and interest to the extent of the Transferor in such records,

excluding the Excluded Assets;

“Transferring Business” means the Transferring Policies, the Transferring Assets and the Transferring Liabilities, excluding the Excluded Business;

“Transferring Liabilities” means all Liabilities of the Transferor of every kind and description (whether present or future, actual or contingent, lapsed, expired or reinstated) comprised in or attributable to the Transferring Policies and/or the Transferring Assets, including Liabilities in respect of the Provider Contract Indemnity and Liabilities in respect of any claim for Mis-selling by any current or former Policyholder who holds a Transferring Policy or has held a Transferring Policy prior to the Effective Date, excluding the Excluded Liabilities;

“Transferring Policy” means any Policy or reinsurance policy, including any endorsements or amendments thereto, underwritten by the Transferor under which any liability or contingent liability remains unsatisfied or outstanding at the Effective Date, excluding the Excluded Policies;

“Transferring Records” means all documents, files and other records (held in whatever medium) referable to the Transferring Business in the possession or control of the Transferor, any member of the Transferor’s group or any service provider in respect of the Transferring Policies, up to the Effective Date as agreed in writing between the Transferor and Transferee, excluding the Excluded Records; and

“**UK GDPR**” means the General Data Protection Regulation 2016/679 as it forms part of retained EU law (as defined in the European Union (Withdrawal) Act 2018), as amended from time to time.

1.2 In this Scheme unless the context otherwise requires or expressly provides:

1.2.1 references to Clauses and Schedules are to Clauses in and Schedules to this Scheme;

1.2.2 “**property**” includes money, goods, things in action, land and every description of property and assets wherever situated and also obligations and every description of interest, whether present, future or actual, vested or contingent, arising out of, or incidental to, property and includes property held on trust;

1.2.3 “**rights**” includes benefits, powers and claims of every description (whether present, future, actual or contingent) including without limitation rights to the repayment of taxation, duties or other imposts in respect of the period after the Effective Date;

1.2.4 “**transfer**” includes (as the context may require) “**assign**”, “**assignment**” or “**assignment**”, “**dispose**” or “**disposal**” or “**convey**” or “**conveyance**”;

1.2.5 “**reinsurance**” includes (as the context may require) retrocession, and “**reinsure**” and “**reinsurer**” shall be construed accordingly;

1.2.6 references to the “**UK**” are references to the United Kingdom;

1.2.7 the singular includes the plural and vice versa and any reference to one gender includes the other;

1.2.8 headings are for convenience only and shall not affect the interpretation of this Scheme;

1.2.9 save as expressly provided otherwise, 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 after the date of this Scheme and to any instrument or order made from time to time after the date of this Scheme under such enactment, statutory provision or subordinate legislation;

- 1.2.10 any reference to any rules or regulations issued by any regulator shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time;
- 1.2.11 any reference to a person shall include a reference to any individual, company, firm, partnership, joint venture, association, organisation, trust or agency, whether or not having a separate legal personality;
- 1.2.12 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;
- 1.2.13 any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.14 the expression variation or varied shall include any variation, supplement, deletion, replacement or termination, however effected; and
- 1.2.15 any reference to including shall mean including without limitation.

PART B: INTRODUCTION

2. Purpose

The purpose of this Scheme is to effect the transfer of the Transferring Business of the Transferor, including all Assets and Liabilities therein, but excluding the Excluded Business, to the Transferee, subject to the terms of this Scheme.

3. The Parties

- 3.1 The Transferor is a company incorporated and registered in England & Wales with registered number 05956141, whose registered office is at The Hub, Fowler Avenue, Farnborough Business Park, Farnborough, Hampshire, England, GU14 7JF. It is regulated by the PRA and FCA and registered on the FCA register with the reference number 458505.
- 3.2 The Transferee is registered as a foreign company in England and Wales with foreign company number FC030280, with a registered office at 7 Rue Dora Maar, 93400 Saint-Ouen, Paris, France. The Transferee is authorised by the French Prudential Supervision and Resolution Authority (ACPR), the French financial services regulatory authority.
- 3.3 The Transferee carries out insurance business in the United Kingdom via its UK branch, AWP UK. AWP UK is registered in the United Kingdom with registered branch number BR015275 and a registered office at Mondial House 102 George Street, Croydon, Surrey CR9 6HD. AWP UK is regulated by the PRA and FCA and registered on the FCA register with the reference number 534384. The Transferring Business will be allocated in full to AWP UK.
- 3.4 As at the date of this Scheme and in accordance with sections 105(1) and 105(2) of the Act, the Transferor is an authorised person who has permission to effect or carry out contracts of insurance. The Transferor has permission, *inter alia*, to carry on general insurance business in the United Kingdom in classes 1-2, 13 and 17-18 of Part I of Schedule 1 of the RAO.
- 3.5 The Transferee is currently operating in the UK through AWP UK and is regulated by the PRA and the FCA to carry out general insurance business in the United Kingdom, with permission, *inter alia*, to effect and carry out contracts of general insurance in the United Kingdom in classes 1-2, 13 and 17-18 of Part I of Schedule 1 of the RAO.

PART C: TRANSFER OF BUSINESS

4. Transfer of Transferring Business

4.1 On and with effect from the Effective Date, the Transferring Business and all the estate and interest of the Transferor in the Transferring Business shall, by the Order, and without any further act or instrument, be transferred to, and be vested in, the Transferee and shall cease to be the property of the Transferor, in accordance with and subject to the terms of this Scheme.

4.2 On and with effect from the Effective Date, the Transferring Business will be allocated in full to AWP UK.

4.3 On and with effect from each Subsequent Transfer Date, any Residual Assets and Residual Liabilities will also be allocated in full to AWP UK.

5. Transfer of the Transferring Policies, Transferring Assets, Residual Policies and Residual Assets

5.1 On and with effect from the Effective Date:

5.1.1 the Transferring Policies; and

5.1.2 the Transferring Assets,

and, in each case, all the property, title, rights, interest and powers of the Transferor in them shall, by the Order, and without any further act or instrument, be transferred to, and be vested in, the Transferee, subject to all Encumbrances (if any) affecting such Transferring Assets and Transferring Policies, and shall cease to be the property of the Transferor, in accordance with and subject to the terms of this Scheme.

5.2 On and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and, in each case, all property, title, rights, interest and powers of the Transferor in such Residual Asset shall, by the Order, and without any further act or instrument, be transferred to, and be vested in, the Transferee, subject to all Encumbrances (if any) affecting such Residual Asset, and shall cease to be the property of the Transferor, in accordance with and subject to the terms of this Scheme.

5.3 On and with effect from the applicable Subsequent Transfer Date, the provisions of this Scheme shall apply to the relevant Residual Assets (including the Residual Policies) as if references to

Transferring Policies were references to such Residual Policies, as if references to Transferring Assets were references to such Residual Assets and as if references to the Effective Date were to the relevant Subsequent Transfer Date.

5.4 The Transferee shall accept, without investigation or requisition, such title as the Transferor shall have at the Effective Date to the Transferring Policies and Transferring Assets and at each Subsequent Transfer Date to the Residual Policies and Residual Assets then transferred.

5.5 On the Effective Date the Transferor shall, to the extent in its possession or control, deliver or cause to be delivered to the Transferee the Transferring Records which are capable of being transferred by delivery.

6. Transfer of the Transferring Liabilities and Residual Liabilities

6.1 On and with effect from the Effective Date, the Transferring Liabilities and all the estate and interest of the Transferor in them shall, by the Order and without any further act or instrument, be transferred to, and become Liabilities of, the Transferee and shall cease to be Liabilities of the Transferor, in accordance with and subject to the terms of this Scheme.

6.2 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, in accordance with and subject to the terms of this Scheme.

6.3 On and with effect from the applicable Subsequent Transfer Date, the provisions of this Scheme shall apply to the relevant Residual Liabilities as if references to Transferring Liabilities were references to such Residual Liabilities and as if references to the Effective Date were to the relevant Subsequent Transfer Date.

7. Declaration of trust and Residual Policies Reinsurance

7.1 The Transferor shall on and with effect from the Effective Date hold its rights under each Residual Policy and each Residual Asset on trust for the Transferee absolutely until:

7.1.1 the applicable Subsequent Transfer Date;

7.1.2 the date on which it is agreed by the Transferor and the Transferee in writing that it is not expedient to effect a transfer of the relevant Residual Policy or Residual Asset

and/or such Residual Policy or Residual Asset is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of the disposal thereof); or

7.1.3 such other date as the Transferor and the Transferee shall otherwise agree in writing, and until then the Transferee shall indemnify the Transferor in accordance with Clause 9.1.

7.2 Until the first to occur of the events referred to in Clauses 7.1.1 to 7.1.3 the Transferee shall have full and irrevocable authority to act as the attorney of the Transferor in respect of its rights under the Residual Policies and the Residual Assets for all purposes and shall have the power to give directions to the Transferor for any lawful purpose in connection with such rights; and such authority and power shall include, without limitation, authority and power in relation to the exercise, enforcement, variation, commutation, compromise, settlement or transfer of such rights.

7.3 Subject to Clause 7.4, and without prejudice to the rights, benefits, powers, obligations or liabilities of any party to the Aetna Parent Reinsurance Agreement, the Residual Policies, if any, shall not be transferred to the Transferee and the liabilities under the Residual Policies shall remain liabilities of the Transferor, but shall, on and with effect from the Effective Date, be fully reinsured to the Transferee on the following basis:

7.3.1 all Liabilities of the Transferor attributable to the Residual Policies and all other amounts paid or payable by the Transferor in respect of the Residual Policies shall be reinsured in their entirety by the Transferee on and with effect from the Effective Date;

7.3.2 the liability of the Transferee on and with effect from the Effective Date shall be such that the rights, benefits and powers provided to Policyholders of Residual Policies shall, to the extent possible, be the same as the rights, benefits and powers which would have been provided to such Policyholders if the Residual Policies had been Transferring Policies;

7.3.3 the Transferee shall assume from the Transferor the administration of the Residual Policies and shall bear all expenses and liabilities in relation thereto, save where: (i) such assumption shall be in breach of applicable law or regulation; or (ii) otherwise agreed in writing between the Transferor and the Transferee; and

7.3.4 the premiums payable by the Transferor to the Transferee in connection with the reinsurance described in this Clause 7.3 shall be deemed to have been paid to the

Transferee by reason of the transfer of the Transferring Assets to the Transferee pursuant to the Scheme.

7.4 If any Residual Policy is novated to the Transferee, the rights and liabilities relating to such Residual Policy shall, to the extent not previously transferred, by the Order and without further act or instrument be transferred to the Transferee and such Residual Policy shall thereafter be dealt with by the Transferee under the provisions of this Scheme in all respects as if such Residual Policy were a Transferring Policy.

8. Further provisions in relation to the Transferring Business

8.1 On and with effect from the Effective Date, the Transferee shall become entitled, subject to the terms of this Scheme, to all the rights, discretions, authorities, benefits and powers of the Transferor whatsoever subsisting on the Effective Date under, or by virtue of, the Transferring Policies, the Provider Contract Indemnity and any other agreement or instrument relating to the Transferring Business that the Transferor is a party to or has the benefit of and shall be entitled to any and all defences, claims, counterclaims and rights of set-off which would have been available to the Transferor under or in respect of the Transferring Policies, the Provider Contract Indemnity or such agreements or instruments.

8.2 On and with effect from the Effective Date, every person who is a Policyholder of a Transferring Policy or a party to, or has the benefit of, the Provider Contract Indemnity shall become entitled, in succession to and to the exclusion of any rights which that person may have had against the Transferor under such Transferring Policy or Provider Contract Indemnity, to the same rights against the Transferee (subject to the terms of this Scheme) as were available to that person against the Transferor under such Transferring Policy or Provider Contract Indemnity.

8.3 On and with effect from the Effective Date, every person who is a party to a Transferring Policy, the Provider Contract Indemnity or any other agreement or instrument relating to the Transferring Business shall, in substitution for any liability or obligation owed thereunder to the Transferor, be under the same liability or obligation to the Transferee and shall account to the Transferee for any sums attributable or referable thereto as and when the same become due and payable.

8.4 All references in: (i) any agreement relating to the Transferring Business that the Transferor is a party to or has the benefit of; (ii) any agreement relating to the Transferring Business that the Transferor is not a party to or does not have the benefit of; or (iii) any other document or

instrument or elsewhere relating to the Transferring Business, whether in writing or not, to the Transferor, the Transferor's Board or any other officers, employees or agents of the Transferor shall, on and with effect from the Effective Date and subject to the terms of this Scheme, be read as references to the Transferee, the Transferee's Board or any other officers, employees or agents of the Transferee respectively. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or required to be performed by the Transferor, the Transferor's Board or any other officers, employees or agents of the Transferor in relation to any agreement relating to the Transferring Business that the Transferor is a party to or has the benefit of, any agreement relating to the Transferring Business that the Transferor is not a party to or does not have the benefit of or any other document or instrument or elsewhere relating to the Transferring Business, whether in writing or not, shall, on and with effect from the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee's Board or any other officers, employees or agents of the Transferee respectively, as appropriate.

8.5 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferring Asset, Residual Asset, Transferring Liability or Residual Liability 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 on transferring, assigning or otherwise dealing with the same or any requirements for counterparty consent or waiver and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction or requirement and does not give rise to any right of pre-emption, any right to terminate, modify, acquire or claim an interest or right, to treat an interest or right as exercised, to treat an interest or right as terminated or modified or to treat any obligations or liabilities as discharged, modified or released.

8.6 Without prejudice to paragraph 8.5, neither the transfer of the Transferring Business nor this Scheme nor anything done or omitted to be done in connection with the transfer of the Transferring Business or this Scheme shall, in relation to the Transferring Business, whether before or after the Effective Date:

8.6.1 invalidate, discharge or result in the termination of any agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;

8.6.2 where necessary to be done or omitted to be done, constitute a breach of or default, event of default, potential event of default, termination event, mandatory prepayment event, enforcement event, perfection event or other similar event or condition (however

described) under, or allow any person to terminate, any agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;

8.6.3 require any registration, re-registration or filing or amendment to any existing registration or filing in respect of any agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;

8.6.4 require any person to perform any new or additional obligation or to take any new or additional step or action, including the giving of any notice, the obtaining of any consent, approval or determination, the accession to any agreement, the payment of any fee, cost, expense, interest or other amount, the granting of any new or additional Encumbrance or the transfer of any asset or property;

8.6.5 entitle or require any person to exercise any right or remedy, to reduce, suspend, delay, alter or discharge its rights or obligations, to accelerate, terminate, suspend, delay, alter or discharge the performance of any rights or obligations or otherwise to vary, amend, disclaim, repudiate or terminate any agreement, instrument or Encumbrance; or

8.6.6 affect the enforceability, priority or ranking of any Encumbrance.

8.7 In the event of any payment being made to, property being received by or right being conferred upon the Transferor after the Effective Date in respect of the Transferring Business, any of the Transferring Policies or any of the Transferring Assets, the Transferor shall, as soon as is reasonably practicable after its receipt and to the fullest extent legally permissible, pay over the full amount of that payment or (to the extent that it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee.

9. Indemnities

9.1 On and from the Effective Date the Transferee shall observe and perform the Transferor's obligations under the Transferring Policies and the Residual Policies and, without prejudice to the Aetna Parent Reinsurance Agreement and any agreement pursuant to which any member of the Transferor's group has agreed or will or may agree to indemnify any member of the Transferee's group, shall indemnify and keep indemnified the Transferor against and in respect of any liability, loss or expense incurred by or demand made against the Transferor and arising in respect of the Transferring Liabilities or Residual Liabilities that are not, or are not capable of being, transferred by this Scheme or by a vesting order pursuant to section 112(1) of the Act

(whether made before, on or after the Effective Date) until the relevant liability is transferred to or becomes a liability of the Transferee.

9.2 The Transferee shall not indemnify the Transferor against and shall not be obliged to discharge the Transferor from any liability of the Transferor to the extent that the Transferor is entitled to recover the same from any person (including by way of insurance).

10. Legal Proceedings and Continuity

10.1 Any Proceedings shall be commenced and/or continued by, against, with or in relation to the Transferee on and from the Effective Date. The Transferee shall be entitled to all defences, claims, counterclaims, defences to counterclaims and rights of set-off that were or would have been available to the Transferor in relation to or in connection with such Proceedings and the Transferor shall have no liability under those Proceedings and, for the avoidance of doubt, the Transferee, in its absolute discretion, may discontinue any such Proceedings brought by the Transferor.

10.2 Until the relevant Subsequent Transfer Date, any relevant Proceedings shall be continued by, against, with or in relation to the Transferor and the Transferee shall have the right to direct the conduct of any legal Proceedings which at the Effective Date are pending by or against the Transferor in relation to the Residual Assets, Residual Liabilities or Residual Policies.

10.3 Any Proceedings after the Effective Date in respect of the Transferring Business commenced in error against the Transferor shall be deemed to have been commenced and shall be continued against the Transferee without the need for further order, whether for substitution of parties or otherwise.

10.4 Any judgment, decree, settlement, order or award obtained by or against the Transferor to the extent related to Proceedings which, had they been ongoing as of the Effective Date, would have been subject to Clause 10.1 and which is not fully satisfied before the Effective Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, on and from that date, become enforceable by or against the Transferee without the need for further order.

11. Premiums, Mandates etc.

11.1 Any and all premiums and other sums attributable or referable to the Transferring Policies shall, on and from the Effective Date, be payable to the Transferee.

- 11.2 Any mandate (including any direct debit mandate), standing order or other instruction or authority in force on the Effective Date, including any instruction given to a bank by its customer in the form of a direct debit or standing order, and providing for payment by a bank or other intermediary of premiums or other sums payable to the Transferor under or in respect of any Transferring Policy or other contract, agreement or instrument that forms part of the Transferring Business shall thereafter take effect as if it had provided for and authorised such payment to the Transferee, including with respect to the manner of such payment.
- 11.3 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferor of any sum payable under any Transferring Policy or any other contract, agreement or instrument which forms part of the Transferring Business shall continue in force as an effective mandate, instruction or authority to or of the Transferee.

12. Personal Data

12.1 On and with effect from the Effective Date, the Transferee shall:

- 12.1.1 succeed to all rights, liabilities and obligations of the Transferor in respect of any personal data which relates to the Transferring Business and which is subject to Data Protection Legislation;
- 12.1.2 become the data controller in place of the Transferor of any personal data which relates to the Transferring Business and which is subject to Data Protection Legislation and shall be deemed to have been the controller of all such data at all material times when personal data was processed;
- 12.1.3 in respect of any personal data which relates to the Transferring Business, be under the same duty by virtue of any law as the Transferor was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on the Transferor and which required a Transferor not to use the personal data for marketing purposes; and
- 12.1.4 without prejudice to Clause 12.1.3, in any consent given by a data subject in respect of such data as is mentioned in this Clause 12, any reference to the Transferor shall be deemed to include a reference to the Transferee.

12.2 In Clause 12.1, the expressions “**controller**”, “**personal data**”, “**data subject**” and “**processed**” shall have the meanings given in the applicable Data Protection Legislation.

PART D: MISCELLANEOUS

13. The Effective Date

13.1 Subject to Clause 13.2 and Clause 13.3, this Scheme shall take effect at 00:01 (London time) on 1 December 2023 or such later date and time as the Transferor and the Transferee may agree in writing (not being later than 23:59 on 30 June 2024).

13.2 If this Scheme does not take effect on or before 23:59 on 30 June 2024 or such later date as the Transferee and the Transferor may agree and the Court may allow, it shall lapse.

13.3 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 unless each of the Transferor and the Transferee consents to such modification, addition or condition.

14. Modification

14.1 The Transferor and Transferee may consent for and on behalf of themselves and all other persons concerned (other than the Insurance Regulators) to any amendment of or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the High Court may approve or impose.

14.2 Subject to Clause 14.3, at any time after sanction of this Scheme by the High Court, the Transferee may, with the prior written consent of the Transferor, apply to the High Court for consent to any amendment of or addition to this Scheme or to any further condition or provision affecting the same (a “**Modification**”), provided that:

- (a) notification of any proposed Modification has been given to the Insurance Regulators and they have not objected thereto within 28 days of such notification;
- (b) each of the Insurance Regulators shall have the right to be heard at any hearing of the High Court at which such application is considered; and
- (c) any such application shall be accompanied by a certificate from an independent actuary to the effect that in their opinion the proposed Modification will not materially and adversely affect the security or the reasonable expectations of the Policyholders of the Transferring Policies or Residual Policies or policies of the

Transferee, in each case as they stood before the implementation of the proposed Modification.

14.3 The approval of the High Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors) that may be agreed by the Transferee and the Transferor in writing, provided that the Insurance Regulators have been notified of the same at least 28 days in advance of the amendment being made and have not objected (unless the Insurance Regulators have each confirmed non-objection prior to that date).

15. Evidence of transfer

The production of a copy of the Order and this Scheme, with any modifications made under Clause 14, for all purposes shall be conclusive evidence of the transfer to, and vesting in, the Transferee of the Transferring Business.

16. Successors and assigns

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

17. Costs

All costs and expenses relating to the preparation and effecting of this Scheme and the application for the sanction of this Scheme, including the costs of the PRA, FCA, Independent Expert and counsel, shall be borne by the Transferor.

18. Further Assurance

The Transferor and the Transferee shall, as and when appropriate, each take such steps and execute such documents as may be desirable or required to effect or perfect the transfer to, and vesting in, the Transferee of each Transferring Asset or Residual Asset, to effect or perfect the transfer to and assumption by the Transferee of each Transferring Liability or Residual Liability and to correct any errors in the identity or amount of the Assets and Liabilities so transferred as soon as reasonably practicable following discovery of such errors, in each case in accordance with this Scheme.

19. Third Parties

A person who is not a party to this Scheme may not enforce any term of this Scheme, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

20. Governing Law

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

27 October 2023