

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

IN THE MATTER OF

AXA WEALTH LIMITED

- and -

PHOENIX LIFE LIMITED

- and -

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 44 OF THE INSURANCE
BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002**

GUERNSEY SCHEME

for the transfer of the whole of the business of

AXA Wealth Limited to Phoenix Life Limited

pursuant to section 44 of the Insurance Business (Bailiwick of Guernsey) Law, 2002

1. Interpretation

Definitions

- 1.1 In this scheme (the **Guernsey Scheme**), unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them, and other words and expressions used as defined terms in this Guernsey Scheme shall bear the meanings given to them in the UK Scheme:

Excluded Guernsey Policies means any Guernsey Policies that:

- (a) are not capable of being transferred pursuant to section 44 of the Guernsey Law at the Guernsey Transfer Date; and
- (b) any further Policy issued by the Transferor pursuant to the exercise of any right or option under such a Policy;

Guernsey Effective Date means 23.59 BST on 30 September 2017, except where it relates to the transfer of (i) any asset falling within paragraph (b) of the definition of Transferred Guernsey Assets or (ii) any liability falling within paragraph (b) of the definition of Transferred Guernsey Liabilities, in which case the Guernsey Effective Date shall be the date on which that Transferred Guernsey Asset or Transferred Guernsey Liability came into the ownership of, or became attributable to, the Transferor;

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

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

Guernsey Order means an order made by the Royal Court pursuant to section 44 of the Guernsey Law sanctioning this Guernsey Scheme and any order (including without limitation any subsequent order, which is ancillary thereto) in relation to this Guernsey Scheme made by the Royal Court pursuant to section 44 of the Guernsey Law;

GFSC means the Guernsey Financial Services Commission;

PRA means the UK Prudential Regulation Authority;

RAO means the UK Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended);

Residual Guernsey Assets means:

- (a) any property of the Transferor attributable to the Transferred Guernsey Business (including any right, benefit or power of the Transferor under any Transferred Guernsey Policy) in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to section 44 of the Guernsey Law;
- (b) any property of the Transferor attributable to the Transferred Guernsey Business (including any right or benefit under a Transferred Guernsey Policy) where the Transferor and the Transferee agree prior to the Guernsey Transfer Date or the Subsequent Guernsey Transfer Date applicable thereto that its transfer should be delayed or it should not be transferred at all;
- (c) any property of the Transferor attributable to the Transferred Guernsey Business which is outside the jurisdiction of the Royal Court or in respect of which the transfer pursuant to an order of the Royal Court is not recognised by the laws of the jurisdiction in which the property is situated (excluding any such property

which is capable of being transferred and is transferred to the Transferee under the UK Scheme on the Transfer Date);

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

Residual Guernsey Liabilities means:

- (a) any liability of the Transferor that would be comprised in the Transferred Guernsey Liabilities but in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to section 44 of the Guernsey Law at the Guernsey Transfer Date;
- (b) any liability of the Transferor that would be comprised in the Transferred Guernsey Liabilities but where the Transferor and the Transferee agree in writing prior to the Guernsey Transfer Date or the Subsequent Guernsey Transfer Date applicable thereto that its transfer should be delayed or it should not be transferred at all;
- (c) any liability of the Transferor that would be comprised in the Transferred Guernsey Liabilities but which is outside the jurisdiction of the Royal Court or in respect of which the transfer pursuant to an order of the Royal Court is not recognised by the laws of any applicable jurisdiction or in respect of which further steps are necessary to effect the transfer pursuant to the laws of any applicable jurisdiction (excluding any such liability which is capable of being transferred and is transferred to the Transferee under the UK Scheme on the Transfer Date);
- (d) any liability of the Transferor that would be comprised in the Transferred Guernsey Liabilities but which cannot be transferred to or vested in the Transferee on the Guernsey Transfer Date for any other reason (excluding any such liability which is capable of being transferred and is transferred to the Transferee under the UK Scheme on the Transfer Date); or
- (e) any liability of the Transferor in respect of a Residual Guernsey Asset or any liability arising from any liabilities referred to in paragraphs (a) to (d) of this definition, which arises after the Guernsey Transfer Date but prior to any relevant Subsequent Guernsey Transfer Date, including any liability to taxation;

Royal Court means the Royal Court of Guernsey;

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

- (a) in respect of any Residual Guernsey Asset falling within paragraph (a) of the definition thereof, and of any Residual Guernsey Liability which is attributable to or connected with that Residual Guernsey Asset or which falls within paragraph (a) of the definition thereof, the date on which the requisite consent, waiver or order to

enable the same to be transferred to the Transferee upon the terms of this Guernsey Scheme is:

- (i) obtained;
 - (ii) no longer required; or
 - (iii) dispensed with by Order of the Royal Court;
- (b) in respect of any Residual Guernsey Asset falling within paragraphs (b) or (f) of the definition thereof and of any Residual Guernsey Liability which is attributable to or connected with that Residual Guernsey Asset or which falls within paragraph (b) of the definition thereof, the date on which the Transferor and the Transferee agree that the transfer of the relevant Residual Guernsey Asset should take effect;
- (c) in respect of any Residual Asset falling within paragraph (c) or (d) of the definition of Residual Guernsey Assets, and of any Residual Guernsey Liability which is attributable to or connected with that Residual Guernsey Asset or which falls within paragraph (c) or (d) of the definition of Residual Guernsey Liability, the date on which any impediment to its transfer shall have been removed or overcome;
- (d) in respect of any assets representing the CRR Amount, the date on which, in the opinion of the board of directors of the Transferor, having obtained appropriate actuarial advice, such assets or part thereof are no longer required to be retained in the Transferor in order for the Transferor to be able to meet its Capital Resources Requirements;

Transferred Guernsey Assets means all and any Transferred Assets whatsoever and wherever situated comprised in or attributable to the Transferred Guernsey Business as at the Guernsey Transfer Date but excluding (i) the Residual Guernsey Assets and (ii) any rights, benefits and powers under or relating to the Excluded Guernsey Policies;

Transferred Guernsey Business means all of the Transferred Business that is Guernsey Business, comprising the Transferred Guernsey Policies, the Transferred Guernsey Assets, the Transferred Guernsey Liabilities, the Residual Guernsey Assets and the Residual Guernsey Liabilities, but excluding the Excluded Guernsey Policies;

Transferred Guernsey Liabilities means any and all Transferred Liabilities whatsoever and wherever situated, comprised in or attributable to the Transferred Guernsey Policies or arising in connection with or in relation to that business as at the Guernsey Effective Date, but excluding the Residual Guernsey Liabilities and any liabilities attributable to the Excluded Guernsey Policies;

Transferred Guernsey Policies means every Guernsey Policy written by the Transferor

- (a) under which any liability remains unsatisfied or outstanding at the Guernsey Transfer Date, including:
 - (i) Guernsey Policies written by the Transferor which have lapsed on or before the Guernsey Transfer Date and which are reinstated by the Transferee after the Guernsey Transfer Date; and
 - (ii) all proposals for insurance made to the Transferor and every offer or invitation for insurance made by the Transferor before the Guernsey Transfer Date which have not become Guernsey Policies in force by the Guernsey Transfer Date but which subsequently become Guernsey Policies; and

- (b) written at any time between the Guernsey Effective Date and the Guernsey Transfer Date which were not policies of the Transferor at 23.59 BST on 30 September 2017 but which would have fallen within part (a) of this definition of Transferred Guernsey Policies had they been policies of the Transferor at that time,

but excluding the Excluded Guernsey Policies;

UK Scheme means the insurance business transfer scheme pursuant to Part VII of the FSMA for, *inter alia*, the transfer of the whole of the business of the Transferor to the Transferee, a copy of which is contained in the Schedule to this Guernsey Scheme, as it may be varied or amended from time to time in accordance with its terms.

- 1.2 Subject to paragraph 1.1 above and except where the context requires otherwise, words and expressions used in the Guernsey Law or in any regulations made under it shall have the same meanings in this Guernsey Scheme.

Headings

- 1.3 Headings in this Guernsey Scheme are inserted for convenience only and shall not affect its construction.

References

- 1.4 Any reference in this Guernsey Scheme to an enactment, statutory provision or regulations shall be deemed to include a reference to the enactment or statutory provision or those regulations as from time to time amended, consolidated, modified, replaced or re-enacted by any statute or statutory provision.
- 1.5 Any reference to the singular includes a reference to the plural and vice versa. Any reference to he, she or it includes the others.
- 1.6 Any reference to a time of day is a reference, unless otherwise expressly specified, to London time.
- 1.7 Any reference to this Guernsey Scheme shall include the Schedule hereto.

2. Introduction

- 2.1 AXA Wealth Limited (the **Transferor**) was incorporated in England and Wales on 5 September 1975.
- 2.2 The Transferor is authorised by the PRA with permission under Part 4A of FSMA to effect and carry out contracts of long-term insurance in the United Kingdom in classes I, II, III, IV, VI and VII falling within Part II of Schedule 1 to the RAO.
- 2.3 Phoenix Life Limited (the **Transferee**) was incorporated in England and Wales on 30 June 1971.
- 2.4 The Transferee is authorised by the PRA with permission under Part 4A of FSMA to effect and carry out contracts of insurance within the United Kingdom in classes I, II, III, IV, VI and VII as set out in Part II of Schedule 1 to the RAO.
- 2.5 The Transferor and the Transferee each hold appropriate authorisations to carry on long term insurance business of the relevant description in the United Kingdom. The Transferor, in respect of the Transferred Guernsey Business, is permitted as a recognised insurer (as defined in Schedule 5 of the Insurance Law) to conduct long term business in Guernsey.
- 2.6 It is proposed that, by Order of the Royal Court in accordance with section 44 of the Guernsey Law, the Guernsey Scheme shall become operative on the Guernsey Transfer

Date, but with effect from the Guernsey Effective Date, on substantially the same terms as the terms of the UK Scheme governing the transfer of the Transferred Business to the Transferee and as if the Transferred Guernsey Business were part of the Transferred Business as defined in the UK Scheme.

2.7 The UK Scheme has the effect that:

- (a) if the transfer of any Transferred Guernsey Policies is sanctioned by the Royal Court pursuant to this Guernsey Scheme such policies shall be treated from the Guernsey Transfer Date for all purposes of the UK Scheme as if they were Transferred Policies with effect from the Effective Date and, to the extent necessary to comply with Part VII of FSMA, shall also be transferred pursuant to the terms of the UK Scheme; and
- (b) if the Royal Court does not sanction the Guernsey Scheme, despite having the jurisdiction to do so, prior to the Transfer Date, the Transferred Guernsey Policies shall, continue to be Excluded Policies under the UK Scheme and shall be reassured by the Transferee on the terms set out in the Excluded Policies Reassurance Arrangement as provided for under the terms of the UK Scheme.

2.8 Each of the Transferor and the Transferee has agreed to appear by Counsel at the hearing of the application to sanction this Guernsey Scheme and undertake to be bound thereby and to execute all such documents and to do all such acts and things as may be necessary or expedient to be executed or done by it for the purposes of giving effect to this Guernsey Scheme.

3. Incorporation of the UK Scheme

3.1 Save as otherwise set out in this Guernsey Scheme, the terms of:

- (a) Part C – Transfer (comprising paragraphs 3 to 10 inclusive in their entirety but excluding paragraph 6.4);
- (b) Part D – Fund Structure (comprising paragraphs 11 to 15 inclusive in their entirety but excluding paragraph 12.2); and
- (c) Paragraphs 21.2 to 21.6 inclusive (Transfer Date and Effective Date), Paragraph 22 (Costs and expenses) and paragraph 24 (Evidence of Transfer) of Part F – Miscellaneous Provisions,

of the UK Scheme shall be deemed to be part of this Guernsey Scheme as if reproduced herein *mutatis mutandis*. For this purpose, the following definitions of the UK Scheme shall be read and construed as follows:

- (i) AWL shall be read as the Transferor;
- (ii) Court shall be read as Royal Court;
- (iii) Effective Date shall be read as Guernsey Effective Date;
- (iv) Excluded Policies shall be read as Excluded Guernsey Policies;
- (v) Order shall be read as Guernsey Order;
- (vi) Phoenix shall be read as the Transferee;
- (vii) Residual Assets shall be read as Residual Guernsey Assets;
- (viii) Residual Liabilities shall be read as Residual Guernsey Liabilities;

- (ix) Scheme shall be read as Guernsey Scheme;
- (x) Subsequent Transfer Date shall be read as Subsequent Guernsey Transfer Date;
- (xi) Transfer Date shall be read as Guernsey Transfer Date;
- (xii) Transferred Asset(s) shall be read as Transferred Guernsey Asset(s);
- (xiii) Transferred Business shall be read as Transferred Guernsey Business;
- (xiv) Transferred Liability(ies) shall be read as Transferred Guernsey Liability(ies); and
- (xv) Transferred Policy(ies) shall be read as Transferred Guernsey Policy(ies).

3.2 This Guernsey Scheme is ancillary to the UK Scheme and is intended to transfer business carried on in or from within Guernsey and assets and liabilities relating to such business that would not otherwise transfer under the UK Scheme. Nothing in this Guernsey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Scheme.

4. Guernsey Transfer Date

- 4.1 The Guernsey Transfer Date shall occur simultaneously with the last of the following two conditions being met, namely:
- (a) the Guernsey Order by the Royal Court sanctioning this Guernsey Scheme being made; and
 - (b) the UK Scheme becoming operative in accordance with paragraph 21 of the UK Scheme.

5. Modification of this Guernsey Scheme

- 5.1 Subject to paragraphs 5.2 and 5.3, the Transferor and the Transferee may at any time before the Guernsey Transfer Date consent for and on behalf of the persons bound by this Guernsey Scheme and all other persons concerned to any modification or addition to this Guernsey Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Guernsey Scheme, the Royal Court may approve or impose (for the avoidance of doubt, without prejudice to the position which the Regulators or the GFSC may take in relation to any such modification or addition).
- 5.2 Subject to paragraph 5.3, at any time after the sanction of this Guernsey Scheme, the Transferee (or, if the Transferor is directly affected by the proposed amendment, the Transferee and the Transferor jointly) shall be at liberty to apply to the Royal Court for consent to amend its terms (save for the Schedule to this Guernsey Scheme, amendments to which shall be governed by the terms of the UK Scheme), provided that in any such case:
- (a) the GFSC shall be given written notice of the proposed amendment at least 28 days prior to the making of the application to the Royal Court and shall have the right to be heard at any hearing of the Royal Court at which such application is considered (including to make representations as to the appropriate publicity in relation to the proposed amendment);
 - (b) the Transferee has complied with any directions given by the Royal Court as to publicity in relation to the proposed amendment; and
 - (c) such application shall be accompanied by a certificate from an independent actuary to the effect that in his opinion the proposed amendment will not materially

adversely affect the security or reasonable expectations of the policyholders of the Transferee including the holders of the Transferred Guernsey Policies.

If such consent is granted, the Transferee and where applicable the Transferor may amend the terms of this Guernsey Scheme in accordance with such consent.

- 5.3 The consent of the Royal Court shall not be required in relation to minor and/or technical amendments (including amendments to correct manifest errors) to the terms of this Guernsey Scheme (excluding the Schedule to this Guernsey Scheme, amendments to which shall be governed by the terms of the UK Scheme) that may be proposed by the Transferee and, where applicable, agreed by the Transferor in writing, provided that the GFSC has been notified of the same at least 28 days in advance of the amendment being made and has not objected (unless the GFSC has confirmed non-objection prior to that date).

6. Governing Law

- 6.1 This Guernsey Scheme shall be governed by and construed in accordance with the laws of the Island of Guernsey.

SCHEDULE

UK Scheme