

**IN THE ROYAL COURT OF GUERNSEY**

**ORDINARY DIVISION**

**IN THE MATTER OF**

**THE PRUDENTIAL ASSURANCE COMPANY LIMITED**

**- and -**

**ROTHESAY LIFE PLC**

**- and -**

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

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**GUERNSEY SCHEME**

**for the transfer of part of the business of The Prudential Assurance Company Limited to  
Rothesay Life Plc pursuant to section 44 of the Insurance Business (Bailiwick of  
Guernsey) Law, 2002**

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## 1. Interpretation

### Definitions

1.1 In this scheme (the **Guernsey Scheme**), unless inconsistent with the subject or context, the following expressions have the following meanings:

**Excluded Guernsey Assets** means the Excluded Assets and any and all other assets of the Transferor other than the Transferred Guernsey Assets and the Residual Guernsey Assets, and such Excluded Guernsey Assets shall include:

- (a) the rights of the Transferor to any defences, claims, counterclaims, defences to counterclaims and rights of set off to the extent related to the Excluded Guernsey Liabilities;
- (b) the rights, benefits or power of the Transferor under or relating to each Relevant Reinsurance Agreement solely insofar as such rights, benefits or power relate to any Excluded Guernsey Liabilities referred to in limb (l) of the definition of Excluded Liabilities;
- (c) the rights of the Transferor under or relating to the Excluded Guernsey Policies; and
- (d) any property of the Transferor that would be comprised in the Transferred Guernsey Assets but where the Transferor and the Transferee agree in writing prior to the Guernsey Transfer Date that it should not be transferred pursuant to this Guernsey Scheme;

**Excluded Guernsey Liabilities** means the Excluded Liabilities and:

- (a) any and all liabilities of the Transferor under or arising from the Guernsey Scheme;
- (b) any and all Losses that would be comprised in the Transferred Guernsey Liabilities but which the Parties agree in writing, prior to the date on which the Royal Court grants an order which sanctions the Guernsey Scheme, shall not be transferred to the Transferee; and
- (c) any and all liabilities of the Transferor under or relating to the Excluded Guernsey Policies;

**Excluded Guernsey Policies** means:

- (a) any Guernsey Policies which are Excluded Policies (other than under limb (c)(i) of the definition of Excluded Policies); and
- (b) any other Guernsey Policies which are not capable of being transferred pursuant to section 44 to 48 of the Guernsey Law at the Guernsey Transfer Date;

**GFSC** means the Guernsey Financial Services Commission;

**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 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;

**Guernsey Policies** means all and any Policies written by the Transferor:

- (a) in respect of which any liability remains unsatisfied or outstanding at the Transfer Date; and
- (b) which was issued to a person resident in the Bailiwick of Guernsey and which the Royal Court has jurisdiction to transfer pursuant to section 44(1) of the Guernsey Law;

**Guernsey Transfer Date** means the time and date ascribed to it in paragraph 4.1 of this Guernsey Scheme;

**PRIL Guernsey Scheme** means the Guernsey scheme pursuant to section 44 of the Guernsey Law under which Prudential Retirement Income Limited transferred to the Transferor its long term business (which required the sanction of the Guernsey Court pursuant to section 44(1) of the Guernsey Law);

**Residual Guernsey Assets** means:

- (a) any property of the Transferor that would be comprised in the Transferred Guernsey Business (including any right, benefit or power under any Transferred Guernsey Policy or a Relevant Reinsurance Agreement) but for a refusal by the Royal Court to order the transfer to the Transferee pursuant to section 44 of the Guernsey Law at the Guernsey Transfer Date;
- (b) any other property of the Transferor that would be comprised in the Transferred Guernsey Business (including any right, benefit or power under a Transferred Guernsey Policy or a Relevant Reinsurance Agreement) but for any agreement between the Transferor and the Transferee prior to the Guernsey Transfer Date that its transfer should be delayed or should not be transferred at all;
- (c) any property of the Transferor that would be comprised in the Transferred Guernsey Business (including any right, benefit or power under any Transferred Guernsey Policy or a Relevant Reinsurance Agreement) but for the fact that it is outside the jurisdiction of the Royal Court or in respect of which the transfer pursuant to an order of the Royal Court is not recognised by the laws of the jurisdiction in which the property is situated or in respect of which further steps are necessary to effect the transfer pursuant to the laws of the jurisdiction in which such property is situated;
- (d) any property of the Transferor that would be comprised in the Transferred Guernsey Business (including any right, benefit or power under any Transferred Guernsey Policy or a Relevant Reinsurance Agreement) but which cannot be transferred to or vested in the Transferee on the Guernsey Transfer Date for any other reason;
- (e) Residual Guernsey Policy Records; or
- (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 (d) of this definition;

**Residual Guernsey Liability** means any liability of the Transferor:

- (a) that is attributable to or connected with a Residual Guernsey Asset (including any right, benefit or power under any Transferred Guernsey Policy or a Relevant Reinsurance Agreement) and arises at any time before the Subsequent Guernsey Transfer Date applicable to that Residual Guernsey Asset;

- (b) that would be comprised in the Transferred Guernsey Business but for the refusal by the Royal Court to order the transfer to the Transferee pursuant to section 44 of the Guernsey Law on the Guernsey Transfer Date;
- (c) that would be comprised in the Transferred Guernsey Business but for the fact that it cannot be transferred to or vested in the Transferee for any other reason on the Guernsey Transfer Date; or
- (d) that would be comprised in the Transferred Guernsey Business (including any right, benefit or power under a Transferred Guernsey Policy or a Relevant Reinsurance Agreement) but for any agreement between the Transferor and the Transferee prior to the Guernsey Transfer Date that its transfer should be delayed,

but, for the avoidance of doubt, excluding the Excluded Guernsey Liabilities;

**Residual Guernsey Policy** means any Transferred Guernsey Policy in respect of which liabilities under such Transferred Guernsey Policy are Excluded Guernsey Liabilities;

**Residual Guernsey Policy Record** means any Record relating to an Excluded Guernsey Policy;

**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 transferred to the Transferee, namely:

- (a) in respect of any Residual Guernsey Asset falling within paragraph (a), (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 (b) or (c) of the definition of Residual Guernsey Liability, the date on which any impediment to its transfer shall have been removed or overcome;
- (b) in respect of any Residual Guernsey Asset falling within paragraph (b) of the definition of Residual Guernsey Assets and of any Residual Guernsey Liability falling within paragraph (d) of the definition of Residual Guernsey Liability which is attributable to or connected with that Residual Guernsey Asset, the date on which the relevant Transferor and Transferee agree the transfer should take effect; and
- (c) in respect of a Residual Guernsey Policy Record, the date on which the Excluded Guernsey Policy to which such Residual Guernsey Policy Record relates is novated or transferred to the Relevant Reinsurer;
- (d) in respect of any Residual Guernsey Asset falling within paragraph (f) of the definition of Residual Guernsey Assets, the Business Day after the date on which such Residual Guernsey Asset is received by the Transferee in accordance with paragraph 8.3 of the UK Scheme, as deemed part of this Guernsey Scheme pursuant to paragraph 3.1 of this Guernsey Scheme;

**Transferred Guernsey Assets** means all and any Transferred Assets relating to or forming part of the Transferred Guernsey Policies but excluding the Excluded Guernsey Assets and, prior to the applicable Subsequent Guernsey Transfer Date, the Residual Guernsey Assets and any rights, benefits and property under or relating to the Excluded Guernsey Policies;

**Transferred Guernsey Business** means all and any of the Transferred Guernsey Policies, the Transferred Guernsey Assets, the Transferred Guernsey Liabilities, and following each

Subsequent Guernsey Transfer Date, the relevant Residual Guernsey Assets or Residual Guernsey Liabilities;

**Transferred Guernsey Liabilities** means all and any Transferred Liabilities under or in respect of the Transferred Guernsey Policies, but excluding the Excluded Guernsey Liabilities;

**Transferred Guernsey Policies** means Transferred Policies that are Guernsey Policies, but excluding any Excluded Guernsey Policies;

**UK Scheme** means the insurance business transfer scheme pursuant to Part VII of the Financial Services and Markets Act 2000 for, *inter alia*, the transfer of certain long term insurance business of the Transferor to the Transferee, a copy of which is contained in the Schedule to this Guernsey Scheme (excluding the DVD, which is referred to in the definition of Transferred Policies therein), as it may be varied or amended from time to time in accordance with its terms.

- 1.2 Other words and expressions used as defined terms in this Guernsey Scheme shall bear the meanings given to them in the UK Scheme.
- 1.3 Subject to paragraph 1.2 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**

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

#### **References**

- 1.5 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.
- 1.6 Any reference to the singular includes a reference to the plural and vice versa. Any reference to he, she or it includes the others.
- 1.7 Any reference to a time of day is a reference, unless otherwise expressly specified, to London time.
- 1.8 Any reference to this Guernsey Scheme shall include the Schedule hereto.

## **2. Introduction**

- 2.1 The Prudential Assurance Company Limited (the **Transferor**) was incorporated in England and Wales on 1 June 1881 and is a UK authorised person as defined in section 178(4) of FSMA.
- 2.2 Rothesay Life Plc (the **Transferee**) was incorporated in England and Wales on 26 February 2007 and is a UK authorised person as defined in section 178(4) of FSMA.
- 2.3 The Transferor and the Transferee each hold appropriate authorisations to carry on long term insurance business of the relevant description in the UK.
- 2.4 The Transferor and the Transferee are not licensed insurers in the Bailiwick of Guernsey but are both permitted as recognised insurers (as defined in Schedule 5 of the Guernsey

Law) to conduct long term business in the Bailiwick of Guernsey of the type for which they are each authorised in the UK.

- 2.5 It is proposed that, by Order of the Royal Court in accordance with section 44 of the Guernsey Law, the Transferred Guernsey Business shall be transferred to the Transferee on the Guernsey Transfer Date on 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.
- 2.6 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 with effect from the Guernsey Transfer Date, such policies shall be treated for all purposes of the UK Scheme as if they were Transferred Policies with effect from the Transfer Date and, to the extent necessary to comply with Part VII of the Financial Services and Markets Act 2000, shall also be transferred pursuant to the terms of the UK Scheme; and
  - (b) if the Royal Court does not sanction the transfer of any Transferred Guernsey Policies pursuant to this Guernsey Scheme, despite having the jurisdiction to do so, or if this Guernsey Scheme is sanctioned by the Royal Court but the transfer of any Transferred Guernsey Policies does not become effective by the Guernsey Transfer Date, then such policies shall, with effect from the Guernsey Transfer Date, be Excluded Policies under the UK Scheme and shall be fully reinsured by the Transferee without limit in time or amount on the terms set out in the Reinsurance Agreement until the applicable Guernsey Transfer Date.
- 2.7 The Transferor and Transferee have agreed to appear by Counsel at the hearing of the Representation 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 Part C (*Transfer of the Business*) 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) Excluded Assets shall be read as Excluded Guernsey Assets;
  - (ii) Excluded Liabilities shall be read as Excluded Guernsey Liabilities;
  - (iii) Excluded Policies shall be read as Excluded Guernsey Policies;
  - (iv) Order shall be read as Guernsey Order;
  - (v) Policy shall be read as Guernsey Policy;
  - (vi) Residual Assets shall be read as Residual Guernsey Assets;
  - (vii) Residual Liability shall be read as Residual Guernsey Liability;
  - (viii) Residual Policy shall be read as Residual Guernsey Policy;
  - (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 Assets shall be read as Transferred Guernsey Assets;
- (xiii) Transferred Business shall be read as Transferred Guernsey Business;
- (xiv) Transferred Liabilities shall be read as Transferred Guernsey Liabilities;
- (xv) Transferred Policies shall be read as Transferred Guernsey Policies;

3.2 In the UK Scheme deemed to be part of this Guernsey Scheme as if reproduced herein mutatis mutandis:

- (a) paragraph 3.2(a) shall be deleted;
- (b) in paragraph 3.6(b), the term "Transferred Asset" shall be read as "Transferred Asset (as defined in the UK Scheme)";
- (c) in paragraph 3.6(b)(A), the words "falling within limbs (a) to (d) of the definition thereof" shall be deleted;
- (d) in paragraph 6.1, the words "limbs (a), (b) and (d) of the definition of Excluded Policies" shall be read as "Excluded Policies falling within limbs (a), (b) and (d) of the definition of Excluded Policies (as defined in the UK Scheme) and the Excluded Guernsey Policies within limb (b) of the definition of Excluded Guernsey Policies"; and
- (e) in paragraph 6.1, the words "Excluded Policies falling within limb (c) of the definition of Excluded Policies for so long as they have not been transferred in accordance with the Jersey Scheme or the Guernsey Scheme (as applicable)" shall be read as "Excluded Policies falling within limb (c) of the definition of Excluded Policies (as defined in the UK Scheme) for so long as they have not been transferred in accordance with the Jersey Scheme".

3.3 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 This Guernsey Scheme shall become effective, and 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 occurrence of the Transfer Date in respect of the UK Scheme.

4.2 If the Transferor and the Transferee agree that the transfer to the Transferee of the Transferred Guernsey Business should become effective on or after 00.01 GMT on [15 March] 2022, the Transferor and Transferee must apply to the Royal Court for a further order, specifying any time and date on or after 00.01 GMT on [15 March] 2022 which, subject to the consent of the Royal Court, shall then become the Guernsey Transfer Date for the purposes of this Guernsey Scheme and this Guernsey Scheme shall then become operative on and from the time and date so specified, provided that:

- (a) the GFSC shall be notified in advance and as soon as reasonably practicable, and shall have the right to be heard at, any hearing of the Court at which such application is considered;
- (b) such application shall be accompanied by a certificate from an independent actuary to the effect that the proposed amendment will not materially adversely affect the holders of the Transferred Guernsey Policies or existing policyholders of the Transferor or the Transferee, including as to their benefit expectations;
- (c) an independent actuary shall be provided with the most up-to-date financial information (audited and/or unaudited, as may be appropriate) available to the Transferor and the Transferee in respect of that party; and
- (d) a notice of the making of such order is published on the website of the Transferor within 5 days of the making of such further order.

## **5. Modification of this Guernsey Scheme**

- 5.1 The Transferor and Transferee may consent for and on behalf of all other persons concerned (other than the GFSC) to any modification of or addition to this Guernsey Scheme except the Schedule to this Guernsey Scheme (modifications of or additions to which shall be governed by the terms of the UK 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.
- 5.2 Subject to paragraph 5.5, at any time after the sanction of this Guernsey Scheme, the Transferee and the Transferor shall be at liberty to apply jointly to the Royal Court for consent to amend its terms except for the Schedule to this Guernsey Scheme (modifications of or additions to which shall be governed by the terms of the UK Scheme), provided that in any such case:
- (a) the GFSC shall be notified at least 30 Business Days in advance (unless the GFSC agrees to a shorter notice period) of any hearing of the Royal Court at which such application is considered, such period to commence on the earlier of i) the date (or the latest date) on which the GFSC gives notice of receipt of the notification of the amendment to the Transferee or the Transferor (as the case may be); and ii) the date which falls three Business Days following delivery of the notification of the amendment to the GFSC by the Transferee or the Transferor, and the GFSC shall have the right to be heard at such hearing; and
  - (b) such application shall be accompanied by a certificate from an independent actuary to the effect that in his opinion (having considered the proposed amendments in the round), the proposed amendments to the Guernsey Scheme will not have a material adverse effect on the policyholders of the Transferee, including by reference to:
    - (i) the effect of the proposed amendments to the Guernsey Scheme on the security of those policyholders' contractual rights, including the likelihood and potential effects of the insolvency of the Transferee;
    - (ii) the likely effects of the proposed amendments to the Guernsey Scheme on matters such as investment management, new business strategy, administration, governance, expense levels and valuation bases in so far as they may affect (x) the security of those policyholders' contractual rights; (y) level of service provided to those policyholders; or (z) the reasonable benefit expectations of those policyholders; and
    - (iii) the cost and tax effects of the proposed amendments to the Guernsey Scheme, including in so far as they may affect the security of those policyholders' contractual rights or their reasonable benefit expectations.



- 5.3 If such consent is granted, the Transferee and the Transferor may amend the terms of this Guernsey Scheme except the Schedule to this Guernsey Scheme (modifications of or additions to which shall be governed by the terms of the UK Scheme) in accordance with such consent.
- 5.4 The consent of the Royal Court or the GFSC shall not be required in relation to the amendment or termination of the Reinsurance Agreement.
- 5.5 Notwithstanding paragraph 5.2, any amendment to this Guernsey Scheme except the Schedule to this Guernsey Scheme (modifications of or additions to which shall be governed by the terms of the UK Scheme) will not require the approval of the Royal Court where such amendment is:
- (a) a minor and/or technical amendment to terms (including amendments to correct manifest errors) that may be agreed by the Transferee and the Transferor;
  - (b) required to reflect any change in Applicable Law which has or will have any implications for the Transferor or Transferee in relation to the terms or operation of this Guernsey Scheme;
  - (c) necessary to reflect any changes in the generally accepted actuarial practices relating to the Transferred Guernsey Policies; or
  - (d) required to protect the rights and reasonable expectations of the policyholders of the Transferred Guernsey Policies,

provided that:

- (i) the GFSC has been notified of the same at least 28 days in advance (unless the GFSC agrees to a shorter notice period) of the amendment being made, such period to commence on the earlier of (A) the date (or the latest date) on which the GFSC gives notice of receipt of the notification of the amendment to the Transferee or the Transferor (as the case may be); and (B) the date which falls three Business Days following delivery of the notification of the amendment to the GFSC by the Transferee or the Transferor (the **Notification Period**); and
  - (ii) the GFSC has indicated, by the end of the Notification Period, that it does not object thereto.
- 5.6 Subject to paragraph 5.7 below the PRIL Guernsey Scheme shall cease to have effect in relation to the Transferred Guernsey Policies at the Guernsey Transfer Date save as expressly set out in this Guernsey Scheme.
- 5.7 Paragraph 5.6 shall be without prejudice to:
- (a) any rights or liabilities arising under the PRIL Guernsey Scheme and which remain to be fulfilled or which are capable of being exercised immediately prior to the Guernsey Transfer Date; and
  - (b) any action taken pursuant to, or provisions implemented under, the PRIL Guernsey Scheme prior to the Guernsey Transfer Date.

## 6. Governing Law

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

**SCHEDULE**

**UK Scheme**