

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

IN THE MATTER OF

SCOTTISH FRIENDLY ASSURANCE SOCIETY LIMITED

- and -

FAMILY ASSURANCE FRIENDLY SOCIETY LIMITED

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

GUERNSEY SCHEME

**for the transfer to Family Assurance Friendly Society Limited of the whole of the
Guernsey business of Scottish Friendly Assurance Society 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:

GFSC means the Guernsey Financial Services Commission;

Guernsey Data Protection Legislation means any law, statute, regulation, rule, order, ordinance, directive, code of practice, guidance or other binding requirement (as amended, consolidated, substituted or re-enacted from time to time) relating to the protection of individuals with regard to the Processing of Personal Data applicable in the Bailiwick of Guernsey, including but not limited to the Data Protection (Bailiwick of Guernsey) Law, 2017 and any code of practice, guidance, requirement or direction issued by the Office of the Data Protection Authority or any other competent regulatory authority from time to time;

Guernsey Effective Date means the time and date on which this Guernsey Scheme shall become effective in accordance with paragraph 4;

Guernsey Insurance Regulator means the GFSC;

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, 47 and/or 48 of the Guernsey Law;

Guernsey Policy means a Policy written in whole or in part by the Transferor:

- a) in respect of which any liability remains unsatisfied or outstanding at the Effective Date; and
- b) which was effected or carried out as part of the Transferor Guernsey Business;

Royal Court means the Royal Court of Guernsey;

Transferor Guernsey Business means all or any of the Transferor's long term insurance business (as such expression is interpreted for the purpose of the Guernsey Law) carried on with policyholders resident in the Bailiwick of Guernsey, the transfer of which requires the sanction of the Royal Court pursuant to section 44(1) of the Guernsey Law, but excluding the entirety of the undertakings and business of the Transferring Subsidiaries;

Transferring Guernsey Assets means all or any Transferring Assets relating to or forming part of the Transferor Guernsey Business as at the Guernsey Effective Date of whatever nature and in whatsoever capacity held (including as trustee) and whether or not capable of being transferred or assigned as they exist immediately before the Guernsey Effective Date;

Transferring Guernsey Contracts means all or any Transferring Contracts comprised in the long term insurance business carried on by the Transferor with policyholders resident in the Bailiwick of Guernsey at the Guernsey Effective Date;

Transferring Guernsey Engagements means all or any of the Transferring Engagements carried on with policyholders resident in the Bailiwick of Guernsey including, without prejudice to the generality of the foregoing:

- (a) the whole of the Transferor Guernsey Business carried on immediately before the Guernsey Effective Date;

- (b) all activities carried on in connection with or for the purposes of such business and including any proposals received by or on behalf of the Transferor for insurance not yet accepted as at the Guernsey Effective Date; and
- (c) the Transferring Guernsey Assets, the Transferring Guernsey Liabilities and the Transferring Guernsey Policies;

Transferring Guernsey Liabilities means all or any Transferring Liabilities of every kind and description (whether present or future, actual or contingent, lapsed, expired or reinstated) comprised in or attributable to the Transferor Guernsey Business immediately before the Guernsey Effective Date;

Transferring Guernsey Policies means every Guernsey Policy written or assumed by the Transferor before the Guernsey Effective Date under which any liability or contingent liability remains unsatisfied or outstanding immediately before the Guernsey Effective Date including, for the avoidance of doubt, any such Guernsey Policy that has lapsed on or before the Guernsey Effective Date and which is reinstated by the Transferee on or after the Guernsey Effective Date;

UK Act means the Friendly Societies Act 1992;

UK Instrument means the instrument of transfer contained in the Schedule to this Guernsey Scheme, as it may be varied or amended from time to time in accordance with its terms; and

UK Transfer has the meaning given to the term "Transfer" in the UK Instrument.

- 1.2 Other words and expressions used as defined terms in this Guernsey Scheme shall bear the meanings given to them in the UK Instrument.
- 1.3 Subject to paragraphs 1.1 and 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 "the incorporated terms of the UK Instrument" shall be read to mean "the same terms as the terms of the UK Instrument as incorporated into this Guernsey Scheme" in accordance with paragraph 3.
- 1.6 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.
- 1.7 Any reference to the singular includes a reference to the plural and vice versa. Any reference to he, she or it includes the others.
- 1.8 Any reference to a time of day is a reference, unless otherwise expressly specified, to London time.
- 1.9 Any reference to this Guernsey Scheme shall include the Schedule to it.

- 1.10 Unless the context otherwise requires, references to a "paragraph" are to a numbered paragraph of this Guernsey Scheme.

2. Introduction

- 2.1 Scottish Friendly Assurance Society Limited (the **Transferor**) was registered as a friendly society on 27 September 1862 and is an authorised person in accordance with section 31 of FSMA. The Transferor carries on long term insurance business in the United Kingdom, in Guernsey and in or from within Jersey (amongst other places).
- 2.2 Family Assurance Friendly Society Limited (the **Transferee**) was registered as a friendly society on 14 May 1975 and is an authorised person in accordance with section 31 of FSMA. The Transferee carries on long term insurance business in the United Kingdom.
- 2.3 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 United Kingdom.
- 2.4 It is proposed that, by order of the Royal Court in accordance with section 44 of the Guernsey Law, the Transferring Guernsey Engagements shall be transferred to the Transferee on the Guernsey Effective Date on the same terms as the terms of the UK Instrument governing the transfer of the Transferring Engagements to the Transferee and as if the Transferring Guernsey Engagements were part of the Transferring Engagements as defined in the UK Instrument.
- 2.5 The UK Instrument has the effect that:
- (a) if the transfer of any Transferring Guernsey Policies is sanctioned by the Royal Court pursuant to this Guernsey Scheme with effect from the Guernsey Effective Date, such policies shall be treated for all purposes of the UK Instrument as if they were Transferring Policies of the Transferor with effect from the Effective Date and, to the extent necessary to comply with the UK Act, shall also be transferred pursuant to the terms of the UK Instrument; and
 - (b) if the Royal Court does not sanction the transfer of any Transferring 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 UK Transfer does not become effective, then the Guernsey Effective Date will not occur. The UK Transfer is of the entirety of the Transferor's engagements and business and so requires confirmation from the Royal Court that this Guernsey Scheme has been approved in order that the UK Transfer may proceed.
- 2.6 Each of the Transferor and the Transferee have 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 Instrument

- 3.1 Save as otherwise set out in this Guernsey Scheme, the terms of:
- (a) Part B (*Transfer*) (other than paragraph 2.1.3);
 - (b) Part C (*Fund Structure, Allocations and New Business*) (other than paragraph 12.2.4);
 - (c) Part D (*Management of the SFAS Sub-Fund*); and

- (d) Clause 31 (Continuity of previous transfers), only to the extent that any Continuing Schemes and Instruments comprise business carried on with policyholders resident in the Bailiwick of Guernsey,

of the UK Instrument 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 Instrument shall be read and construed as follows:

- (a) Data Protection Legislation shall be read as Guernsey Data Protection Legislation;
- (b) Effective Date shall be read as Guernsey Effective Date;
- (c) Instrument shall be read as Guernsey Scheme;
- (d) Insurance Regulators shall be read as Guernsey Insurance Regulator;
- (e) Registration Certificate shall be read as Guernsey Order;
- (f) Transferring Assets shall be read as Transferring Guernsey Assets;
- (g) Transferring Contracts shall be read as Transferring Guernsey Contracts;
- (h) Transferring Engagements shall be read as Transferring Guernsey Engagements;
- (i) Transferring Liabilities shall be read as Transferring Guernsey Liabilities; and
- (j) Transferring Policies shall be read as Transferring Guernsey Policies.

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

- (a) in paragraph 2.1 of the incorporated terms of the UK Instrument, the words "section 86 of the Act" shall be read as "section 44 of the Guernsey Law";
- (b) in paragraph 31.3 of the incorporated terms of the UK Instrument the words "of Transfer" shall be deleted; and
- (c) references to numbered clauses and to parts are to the numbered clauses and parts of the UK Instrument.

3.3 In the definition of "Mis-selling Liabilities" which otherwise has the meaning given to it in the UK Instrument, the term "Regulatory Authority" shall mean "the Insurance Regulators, The Pensions Regulator, the Guernsey Financial Services Commission, the Financial Ombudsman Service, the Channel Islands Financial Ombudsman, the Information Commissioner, the Bank of England and the Advertising Standards Authority (but, for the avoidance of doubt, not any Tax Authority)".

3.4 This Guernsey Scheme is ancillary to the UK Instrument and is intended to perfect the transfer of business carried on with policyholders resident in the Bailiwick of Guernsey and assets and liabilities relating to such business. Nothing in this Guernsey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Instrument.

4. Guernsey Effective Date

This Guernsey Scheme shall become effective, and the Guernsey Effective Date shall occur simultaneously with the occurrence of the Effective Date as defined in the UK Instrument.

5. Modification of this Guernsey Scheme

- 5.1 Any modification (which term shall include any amendment, addition or deletion) of this Guernsey Scheme, including any modification of the UK Instrument to the extent that the terms so modified are incorporated into this Guernsey Scheme pursuant to paragraph 3, or to any further condition or provision effecting the same that the Royal Court may approve or impose, before the Guernsey Effective Date, shall only be effective with the prior written consent of the Transferor, the Transferee, the Independent Actuary and the GFSC and, following the making of the Guernsey Order, with the prior consent of the Royal Court, except to the extent permitted by paragraph 5.3.
- 5.2 Subject to paragraph 5.3, at any time after the Guernsey Effective Date, the Transferee shall be at liberty to apply to the Royal Court for consent to amend this Guernsey Scheme, including by modifying the UK Instrument to the extent that the terms so modified are incorporated into this Guernsey Scheme pursuant to paragraph 3 of this Guernsey Scheme, provided that in any such case such application shall be accompanied by a certificate from the Transferee's Chief Actuary and also from its With-Profits Actuary to the effect that, in each case, in their opinion the proposed amendment will not have a material adverse effect on the reasonable expectations or benefit security of the Transferee's Policyholders. If such consent is granted, the Transferee may amend the terms of the Guernsey Scheme in accordance with such consent.
- 5.3 The consent or confirmation of the Royal Court shall not be required in relation to:
- (a) minor and/or technical amendments to the terms of this Guernsey Scheme, including any such amendment resulting from a modification of the UK Instrument to the extent that the relevant terms are incorporated into this Guernsey Scheme pursuant to paragraph 3, provided that such amendments do not have a material adverse effect on the reasonable expectations or benefit expectations of the Transferee's Policyholders, the GFSC has been notified of the same in writing by the Transferee and has not raised any objection or query which has not been withdrawn within 45 days of such notification and the Transferee Board has received Actuarial Advice in relation to the amendments and their impact on the Transferee's Policyholders;
 - (b) amendments to the provisions of this Guernsey Scheme, including any such amendment resulting from a modification of the UK Instrument to the extent that the relevant terms are incorporated into this Guernsey Scheme pursuant to paragraph 3, which are reasonably considered by the Transferee Board to be necessary to ensure the provisions of this Guernsey Scheme operates in the intended manner in circumstances where the provision to which the proposed variation applies will be materially affected by a variation of the Guernsey Law (in this paragraph a **Regulatory Change**), provided that:
 - (i) the GFSC has been notified of the proposed amendments by the Transferee and has not objected thereto within 90 days of such notification; and
 - (ii) the Transferee's Chief Actuary and its With-Profits Actuary have each provided the Transferee with a report to the effect that in his opinion the implementation of the proposed amendments will not have a material adverse effect on the reasonable expectations or benefit security of the Transferee's Policyholders (which reports have been provided to the GFSC).

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 Instrument