

IN THE COURT OF SESSION

AVIVA INSURANCE LIMITED

and

AVIVA INSURANCE IRELAND DAC

SCHEME

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

546519264

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PART A – DEFINITIONS AND INTERPRETATION

1 Definitions and interpretation

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

2011 Schemes means each of:

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

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

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

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

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

Brexit has the meaning given to it in paragraph 2.3;

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

CBI means the Central Bank of Ireland;

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

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

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

Court means the Court of Session in Scotland;

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

Day One Business means together:

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

and all activities carried on in connection therewith;

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

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

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

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

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

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

Excluded Assets means:

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

Excluded Contracts means:

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

Excluded Liabilities means:

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

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

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

FCA means the Financial Conduct Authority;

FCA Glossary means the Glossary of the FCA Handbook;

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

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

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

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

FSMA means the Financial Services and Markets Act 2000;

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

Group means in respect of any person:

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

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

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

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

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

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

Irish Domestic Policies means:

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

Irish FoS Policies means:

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

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

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

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

Other EEA Policies means:

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

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

PRA means the Prudential Regulation Authority;

PRA Glossary means the Glossary of the PRA Rulebook;

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

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

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

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

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

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

Residual Assets means:

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

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

Residual Business means together:

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

and all activities carried on in connection therewith;

Residual Contracts means:

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

Residual Liabilities means:

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

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

Residual Policies means:

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

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

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

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

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

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

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

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

(as applicable);

Tax means:

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

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

Transferee has the meaning given to it in paragraph 2.2;

Transferor has the meaning given to it in paragraph 2.1;

Transferred Assets means:

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

but excluding any Excluded Assets;

Transferred Business means together:

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

and all activities carried on in connection therewith;

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

Transferred Liabilities means:

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

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

but excluding any Excluded Liabilities;

Transferred Policies means:

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

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

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

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

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

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

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

1.2 In this Scheme:

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

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

PART B – INTRODUCTORY PROVISIONS

2 Parties and background

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

PART C – TRANSFER

3 Transfer of the Transferred Business

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

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

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

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

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

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

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

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

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

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

4 Continuity of Proceedings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Treatment of Transferred Policies

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

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

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

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

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

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

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

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

6 Treatment of Transferred Contracts

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

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

7 Reinsurance of Residual Policies

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

8 Premiums, mandates and other payments

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

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

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

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

9 Declaration of trust and wrong pocket

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

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

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

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

10 Indemnities

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

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

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

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

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

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

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

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

11 Determination of the Investment Assets

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

12 True-Up Amount

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

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

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

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

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

PART D - MISCELLANEOUS PROVISIONS

13 Effective Time

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

14 Effect of transfer

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

15 Costs and expenses

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

16 Variations

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

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

17 Evidence of transfer

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

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

18 Third party rights

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

19 Successors and assigns

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

20 Governing law

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

Dated this [●] day of [●].

Schedule 1
List of Excluded Contracts

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

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

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

Schedule 2
Investment Assets

1 The Investment Asset Amount

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

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

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

where:

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

2 The Investment Assets

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

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

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