

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

IN THE MATTER OF NATIONAL PROVIDENT LIFE LIMITED

-and-

IN THE MATTER OF PEARL ASSURANCE PLC

-and-

**IN THE MATTER OF
THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002**

GUERNSEY SCHEME



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SCHEME

Scheme pursuant to the Insurance Business (Bailiwick of Guernsey) Law, 2002 for the transfer to Pearl Assurance Plc of certain of the long term business of National Provident Life Limited in respect of any policy comprised in that business issued to a person resident in the Bailiwick of Guernsey.

PART A - INTERPRETATION

1. DEFINITIONS

1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions bear the meanings respectively set opposite them:

"**Actuary**" means the person appointed by the relevant insurer from time to time to perform the duties set out in SUP 4.3.13R;

"**Bailiwick of Guernsey**" means the islands of Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou and Lihou;

"**Board**" means the board of directors from time to time of the relevant company;

"**Excluded Policies**" has the meaning ascribed to such expression in the UK Scheme;

"**Excluded Policies Reinsurance Agreement**" has the meaning ascribed to such expression in the UK Scheme;

"**Independent Expert**" has the meaning ascribed to such expression in the UK Scheme;

"**INSPRU**" means the Prudential Sourcebook for Insurers issued by the UK Regulator;

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

"**Long Term Business**" has the meaning ascribed by either Schedule 1 to the Insurance Law or, as the context may require, the business of effecting or carrying out long term insurance contracts as principal being contracts falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 of the United Kingdom;

"**NPLL**" means National Provident Life Limited, a company incorporated in England and Wales with registered number 3641947;

"**NPLL Actuary**" means the Actuary appointed by NPLL from time to time;

"**NPLL Board**" means the Board of NPLL;

"**Order**" means an order made by the Court pursuant to the Insurance Law sanctioning this Scheme;

"**Pearl**" means Pearl Assurance Plc, a company incorporated in England and Wales with registered number 1419;

"**Pearl Actuary**" means the Actuary appointed by Pearl from time to time;

"**Pearl Board**" means the Board of Pearl;

"**Pearl Fund**" means any or all (as applicable) of the funds established and maintained by Pearl pursuant to INSPRU 1.5.22R in respect of Long Term Business;

"**Policy**" means a Policy of NPLL which was issued to a resident of the Bailiwick of Guernsey and which the Royal Court of Guernsey has jurisdiction to transfer pursuant to section 44(1)(c) of the Insurance Law;

"**Residual Assets**" has the meaning ascribed to such expression in the UK Scheme;

"**Residual Liabilities**" has the meaning ascribed to such expression in the UK Scheme;

"**Subsequent Transfer Date**" has the meaning ascribed to such expression in the UK Scheme;

"**SUP**" means the Supervision Manual issued by the UK Regulator;

"**taxation**" has the meaning ascribed to such expression under the UK Scheme;

"**the Court**" means the Royal Court of Guernsey;

"**the Regulator**" means the Guernsey Financial Services Commission;

"**this Scheme**" means this Scheme in its original form or with or subject to any modification, addition, provision or condition which may be approved or imposed in accordance with paragraph 10 (*Modifications or Additions*);

"**Transfer Date**" means the time and Date specified in paragraph 8.1;

"**Transferred Assets**" has the meaning ascribed to such expression in the UK Scheme;

"**Transferred Business**" has the meaning ascribed to such expression in the UK Scheme;

"**Transferred Liabilities**" has the meaning ascribed to such expression in the UK Scheme;

"**Transferred Policies**" has the meaning ascribed to such expression in the UK Scheme;

"**UK Act**" means the Financial Services and Markets Act 2000 of the United Kingdom;

"**UK Court**" means the High Court of Justice of England;

"**UK Order**" means an order made by the UK Court pursuant to Section 111 of the UK Act sanctioning the UK Scheme and any order (including any subsequent order) in relation to the UK Scheme made by the UK Court pursuant to Section 112 of the UK Act;

"**UK Regulator**" means the United Kingdom Financial Services Authority or such other governmental, statutory or other authority as shall from time to time carry out such functions in relation to Long Term Business carried on in the United Kingdom as were at the date of the UK Scheme allocated to the Financial Services Authority under the UK Act;

"**UK Scheme**" means the scheme to be sanctioned by the UK Court, a copy of which is attached as Schedule 1, as the same may be modified in accordance with the terms thereof; and

"**UK Transfer Date**" has the meaning ascribed to the expression 'Transfer Date' under the UK Scheme.

1.2 In this Scheme:

1.2.1 "**property**" and "**asset**" includes (without limitation) property, assets, rights (including, without limitation, contingent rights as to the repayment of tax) and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits (including, without limitation, tax benefits), powers of any description and any interest whatsoever in any of the foregoing;

1.2.2 "**liabilities**" includes (without limitation) duties and obligations of every description (whether present or future, actual or contingent);

1.2.3 "**transfer**" includes (as the context may require) "**assign**", "**assignment**" or "**assignment**", "**dispose**" or "**disposal**" or "**convey**" or "**conveyance**";

1.2.4 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;

- 1.2.5 any reference 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;
- 1.2.6 any reference to any rules or regulations issued by the UK Regulator shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time;
- 1.2.7 expressions which have meanings under the Insurance Law shall bear those meanings;
- 1.2.8 the expressions "**holding company**", "**subsidiary**" and "**wholly-owned subsidiary**" shall have the same meanings as in the Companies Act 2006 of the United Kingdom;
- 1.2.9 any reference to this Scheme shall include the Schedule to it and references to paragraphs, Parts or a Schedule are to paragraphs or Parts of or the Schedule to this Scheme;
- 1.2.10 headings are inserted for convenience only and shall not affect the construction of this Scheme;
- 1.2.11 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;
- 1.2.12 if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- 1.2.13 any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.14 any reference to a document in the agreed form is to the form of the relevant document agreed between the relevant persons in accordance with this Scheme and initialled by or on behalf of each of them for the purpose of identification prior to the date on which the Court sanctions this Scheme;
- 1.2.15 the expression "**variation**" shall include any variation, supplement, deletion, replacement or termination, however effected; and
- 1.2.16 any reference to an amount shall be exclusive of any applicable value added or other tax.

PART B - INTRODUCTION

2. INTRODUCTION

- 2.1 NPLL is a company incorporated in England and Wales with registered number 3641947. The registered office of NPLL is situated at The Pearl Centre, Lynch Wood, Peterborough, Cambridgeshire, PE2 6FY, United Kingdom.
- 2.2 Pearl is a company incorporated in England and Wales with registered number 1419. The registered office of Pearl is situated at The Pearl Centre, Lynch Wood, Peterborough, Cambridgeshire, PE2 6FY, United Kingdom.
- 2.3 Each of NPLL and Pearl is an authorised person for the purposes of the UK Act.
- 2.4 It is proposed that the whole of the Transferred Assets, Transferred Liabilities, Residual Assets and Residual Liabilities, shall, in accordance with the UK Scheme, be transferred to Pearl by the UK Order.
- 2.5 It is proposed that the Transferred Policies shall, by the Order, be transferred to Pearl subject to and in accordance with section 44(1)(c) of the Insurance Law and be dealt with in accordance with this Scheme.
- 2.6 It is further proposed that if, on or before the Transfer Date, the Court has not approved this Scheme, on and from the UK Transfer Date, the Transferred Policies shall be reinsured to Pearl on the terms set out in the Excluded Policies Reinsurance Agreement.

PART C – TRANSFER

3. TRANSFER OF BUSINESS

On and with effect from the Transfer Date, each part of the Transferred Assets and Transferred Liabilities shall be transferred to and be vested in Pearl in accordance with this Scheme. Residual Assets and Residual Liabilities will transfer on and with effect from the Subsequent Transfer Date.

4. CONTINUITY OF PROCEEDINGS

On and with effect from the Transfer Date, any proceedings which are pending by or against NPLL in connection with the Transferred Policies shall be continued by or against Pearl and Pearl shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to NPLL in relation to those proceedings.

5. RIGHTS AND OBLIGATIONS UNDER TRANSFERRED POLICIES

5.1 On and with effect from the Transfer Date, Pearl shall become entitled to all the rights, benefits and powers of NPLL whatsoever subsisting on the Transfer Date under or by virtue of the Transferred Policies.

5.2 Subject to the terms of this Scheme, every person who is a holder of any of the Transferred Policies shall on and from the Transfer Date become entitled, in succession to, and to the exclusion of, any rights which he may have had against NPLL under any of the Transferred Policies, to the same rights against Pearl as were available to him against NPLL under such Transferred Policies and (as regards Transferred Policies under which premiums or other sums attributable or referable thereto continue to be payable by him) shall on and with effect from the Transfer Date account to Pearl for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.

5.3 Every person who holds a Transferred Policy shall, from and after the Transfer Date, in substitution for any liability or obligation owed by him thereunder to NPLL, be under the same liability to Pearl (in relation to any Excluded Policy, as agent of NPLL but subject to paragraph 6 of the UK Scheme).

5.4 If any person entitled to do so with respect to a Transferred Policy exercises any right or option granted under the terms of that Transferred Policy and either:

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

5.4.2 it is appropriate in the opinion of the Pearl Board, having regard to the advice of the Pearl Actuary, in order to comply with that right or option to issue a new Policy,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by Pearl of a Policy which complies with the terms of such right or option. Without prejudice to such entitlement, if Pearl 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, Pearl shall be entitled to offer to such person as an alternative (and, if accepted, in lieu thereof) the Policy commonly offered by Pearl which Pearl considers to be the nearest equivalent Policy, in accordance with the terms and conditions applicable to Policies of Pearl at that time, provided that the issue of such Policy by Pearl would not in the opinion of the Pearl Board, having regard to the advice of the Pearl Actuary, result in a liability or in an increase in liability to taxation of the holder of such Policy (or in the event that such liability or increase in liability would occur Pearl shall have the option to

indemnify the policyholder in full and issue another Policy pursuant to this paragraph) or otherwise fail to satisfy the reasonable expectations of the holder of such Policy.

- 5.5 All references in any Transferred Policy to NPLL, the NPLL Board or NPLL Actuary or any other officers or employees of NPLL shall from and after the Transfer Date be read as references to Pearl, the Pearl Board, the Pearl Actuary or any other officers or employees of Pearl or, where appropriate, agents of Pearl to which the administration or investment management of the relevant part of the business carried on by Pearl has been delegated. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by NPLL, the NPLL Board or the NPLL Actuary or any other officers or employees of NPLL in relation to any of the Transferred Policies shall, from and after the Transfer Date, be exercisable or required to be performed by Pearl, the Pearl Board, the Pearl Actuary or any other officers, employees or agents of Pearl.
- 5.6 Where the benefits of any Transferred Policy are held under the terms of a trust, such terms together with the terms of any rules applicable to any pension scheme in the case of any pension scheme under which benefits are referable to a Transferred Policy, shall operate and be construed on and from the Transfer Date on a basis which is consistent with the transfer of such Transferred Policy in accordance with the provisions of this Scheme. For the avoidance of doubt:
- 5.6.1 where the consent of NPLL is required under any such terms, the consent of Pearl shall, with effect from the Transfer Date, instead be treated as required; and
- 5.6.2 where a power to appoint trustees under such terms is conferred on NPLL, that power shall, with effect from the Transfer Date, instead be treated as conferred on Pearl.
- 5.7 On and with effect from the Transfer Date, Pearl shall, as principal, take over from NPLL the administration and negotiation of proposals for insurance which would have been Transferred Policies had NPLL determined to accept them (but whether or not Pearl does so determine) and Pearl shall bear all expenses and liabilities in relation thereto but nothing contained herein shall oblige Pearl to accept any proposal for insurance received by or on behalf of NPLL before the Transfer Date but not accepted by NPLL by that date.

6. PREMIUMS AND OTHER PAYMENTS

- 6.1 All premiums and other amounts attributable or referable to the Transferred Policies shall, on and after the Transfer Date, be payable to Pearl and shall be receivable by Pearl and shall be allocated to the fund to which the Policy to which they relate is allocated pursuant to paragraph 7 (*Allocation of Transferred Policies*).
- 6.2 Any mandate or other instruction in force on the Transfer Date (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 bank or other intermediary of premiums payable to NPLL under or in respect of any of the Transferred Policies shall thereafter take effect as if it had provided for and authorised such payment to Pearl.
- 6.3 Any mandate or other instruction in force on the Transfer Date as to the manner of payment of any sum payable by NPLL under any of the Transferred Policies, shall on and with effect from the Transfer Date, continue in force as an effective authority to Pearl.

PART D – FUND STRUCTURE

7. ALLOCATION OF TRANSFERRED POLICIES

With effect from the Transfer Date, all the Transferred Policies shall be allocated to the Pearl Fund to which they would have been allocated pursuant to paragraphs 14.1 and 14.2 of the UK Scheme on the UK Transfer Date.

PART E – MISCELLANEOUS

8. TRANSFER DATE

- 8.1 Subject to the UK Scheme becoming effective in accordance with its terms (subject to any modifications or additions thereto as the UK Court may approve or impose in accordance with paragraph 33 (*Modifications, Amendments or Additions to this Scheme*) of the UK Scheme and subject to paragraph 8.3, this Scheme shall become operative at [12.01am on 15 February 2010] (the "Transfer Date"), or on such other time and date as NPLL and Pearl may agree (being a date and time falling after the making of the Order sanctioning this Scheme).
- 8.2 Unless this Scheme shall become effective in its entirety on or before 11.59 p.m. on [31 May 2010] or such later date and/or time, if any, as the UK Court may allow upon the application of NPLL and Pearl, it shall lapse.
- 8.3 This Scheme shall not become operative on the Transfer Date unless on or prior thereto NPLL and Pearl (as appropriate) receive such tax clearances and confirmations (in terms of acceptance to each of NPLL and Pearl) from HM Revenue and Customs as each of NPLL and Pearl (acting reasonably) consider appropriate or the requirement for any such confirmation is waived in whole or in part by each of NPLL and Pearl with the approval of the Independent Expert.

9. COSTS AND EXPENSES

The costs and expenses of and incidental to the preparation and carrying into effect of this Scheme shall be borne in the same manner as if they had been costs and expenses associated with the UK Scheme.

10. MODIFICATIONS AMENDMENTS OR ADDITIONS TO THE SCHEME

- 10.1 NPLL and Pearl may consent for and on behalf of the parties hereto and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, in each case prior to its sanction of this Scheme, the Court may approve or impose.
- 10.2 At any time after the sanction of this Scheme, NPLL and Pearl shall be at liberty to apply to the Court for consent to amend its terms. If such consent is granted, NPLL and Pearl may amend the terms of this Scheme in accordance with such consent.
- 10.3 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors) that are agreed by NPLL and Pearl, provided that the Guernsey Financial Services Commission has been notified of the proposed amendments and has indicated that it does not object thereto. If such confirmation of non-objection is obtained, Pearl may amend the terms of this Scheme in accordance with such consent.

11. EVIDENCE OF TRANSFER

The production of a copy of the Order with any modifications, amendments and/or additions made under paragraph 10, shall for all purposes be evidence of the transfer to, and vesting in, Pearl on and with effect from the Transfer Date of the Transferred Business, the Transferred Assets, the Transferred Liabilities and the Transferred Policies.

12. GOVERNING LAW

This Scheme is governed by, and shall be construed in accordance with, Guernsey Law.

Dated this [•] 2009

SCHEDULE 1
UK SCHEME