

THE HIGH COURT

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COMMERCIAL

2020 No. 265 COS

[2020 No. 117 COM]

**TUESDAY THE 8<sup>TH</sup> DAY OF DECEMBER 2020**

**BEFORE MR JUSTICE BARNIVILLE**

**IN THE MATTER OF OMEGA LIFE DESIGNATED ACTIVITY COMPANY**

**AND IN THE MATTER OF MONUMENT ASSURANCE LUXEMBOURG S.A.**

**AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909**

**AND IN THE MATTER OF THE INSURANCE ACT 1989**

**AND IN THE MATTER OF THE EUROPEAN UNION (INSURANCE AND REINSURANCE)  
REGULATIONS 2015**

The Petition presented on 21 August 2020 seeking sanction for the scheme of transfer annexed thereto by the directors of Omega Life Designated Activity Company (hereinafter referred to as “**Omega**”, the “**Petitioner**” or the “**Transferor**” as relevant) coming on for hearing this day pursuant to the Order herein dated 1 September 2020. Defined terms used herein shall have the meanings as assigned to them in the Scheme (as defined below), save where otherwise provided.

**AND UPON** reading the said Petition, the Notice of Motion dated 21 August 2020, the Grounding Affidavit of Derek Fagan sworn on 19 August 2020, the affidavit of Aidan Holton sworn on 19 August 2020, the Notice of Motion for entry into the Commercial List dated 21 August 2020, the Certificate of Solicitor of Elaine Long of Matheson Solicitors dated 19 August 2020, the Second Affidavit of Derek Fagan sworn on 19 August 2020, the Affidavit of Service of Elaine Long sworn on 30 September 2020, the Verifying Affidavit of Derek Fagan sworn on 26 November 2020, the Affidavit of Diego Fontana sworn on 26 November 2020, the affidavit of Aidan Holton sworn on 26 November 2020 and the documents and exhibits referred to in said Affidavits including the final scheme of transfer (a copy of which is exhibited at “DF1”) to the Verifying Affidavit of Derek Fagan sworn on 26 November 2020) (the “**Scheme**”)

AND UPON hearing Counsel for the Petitioner

AND there being no appearance in Court by or on behalf of any other party

IT IS ORDERED as follows:

- (1) That the Scheme be sanctioned pursuant to the provisions of Section 13 of the Assurance Companies Act 1909 (as amended), Regulation 41 of the European Union (Insurance and Reinsurance) Regulations 2015 and Section 36 of the Insurance Act 1989 (as amended);
- (2) That notwithstanding any provision to the contrary in the Scheme, the Scheme shall take effect at 23:59 on 31 December 2020 (CET Luxembourg time) (and for the avoidance of doubt, this date and time shall by virtue of this Order and without the need for any further act or instrument be the Scheme Effective Date for the purposes of the Scheme (and the Scheme shall be construed accordingly));
- (3) That pursuant to Section 36 of the Insurance Act 1989, the following ancillary provisions for implementing the Scheme shall be sanctioned by virtue of this Order without the need for any further act or instrument:
  - (i) that with effect from the Scheme Effective Date the Transferring Business which includes the Transferring Policies, Transferring Assets, Transferring Liabilities, and rights of the Transferor in respect of the Transferring Contracts will be transferred by the Transferor to the Monument Assurance Luxembourg S.A. (the “**Transferee**”);
  - (ii) that with effect from the Scheme Effective Date the Transferring Assets, shall be transferred to and vested in the Transferee and shall cease to be assets of the Transferor;
  - (iii) that with effect from the Scheme Effective Date that all rights, benefits and powers conferred on or vested in the Transferor and the liabilities imposed on the Transferor by or under the Transferring Contracts shall be transferred to the Transferee;
  - (iv) that with effect from the Scheme Effective Date that all premiums or amounts attributable or referable to the Transferring Policies or the Transferring Contracts shall be payable to the Transferee;
  - (v) that with effect from the Scheme Effective Date that the Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Transferring Contracts, which would have been available to the Transferor;
  - (vi) that with effect from the Scheme Effective Date all references in any Transferring Contract to the Transferor, the Petitioners, or any other officers, employees or agents of the Transferor shall be read as references

to the Transferee, the board of directors of the Transferee, or any other officers, employees or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration carried on by the Transferee 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 the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Contracts shall, from and after the Scheme Effective Date be exercisable or required to be performed by the Transferee, the board of directors of the Transferee or any other officers, employees or agents of the Transferee;

- (vii) that with effect from the Scheme Effective Date that the Transferring Liabilities shall be transferred to and shall become the liabilities of the Transferee and shall cease to be liabilities of the Transferor;
- (viii) that with effect from the Scheme Effective Date that any mandate or other instruction in force on the Scheme Effective 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 under or in respect of any of the Transferring Contracts or the Transferring Policies shall take effect as if it had provided for and authorised such payment to the Transferee;
- (ix) that with effect from the Scheme Effective Date that any mandate or other instruction in force at the Scheme Effective Date in respect of any of the Transferring Contracts or the Transferring Policies as to the manner of payment of any benefit or other amount by the Transferor shall (and in the case of a Transferring Policy (as defined in the Scheme) which constitutes a Residual Asset (as defined in the Scheme) or in the case of a Transferring Contract (as defined in the Scheme) which constitutes a Residual Contract (as defined in the Scheme), from the respective Subsequent Transfer Date (as defined in the Scheme)), continue in force as an effective authority to the Transferee;
- (x) that with effect from the Scheme Effective Date that any judicial, quasi-judicial, arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim which are pending by or against the Transferor in connection with the Transferring Business shall be continued by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to any such proceedings;

- (xi) that with effect from the Scheme Effective Date that all premiums attributable or referable to the Transferring Policies shall be payable to the Transferee;
- (xii) on and with effect from each Subsequent Transfer Date, all actual and potential proceedings by or against the Transferor in connection with the Residual Assets (as defined in the Scheme), the Residual Contracts (as defined in the Scheme) or the Residual Liabilities (as defined in the Scheme) shall be continued by or against the Transferee, and the Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to such Residual Assets, Residual Contracts and Residual Liabilities;
- (xiii) that with effect from the Scheme Effective Date all data (including personal data) held by or on behalf of the Transferor in relation to the Transferring Business (as defined in the Scheme) shall be transferred to the Transferee (such that the Transferee shall be deemed to be the data controller in respect of the personal data);
- (xiv) that with effect from the Scheme Effective Date the Books and Records (as defined in the Scheme), which may include Transferring Policyholder Data (as defined in the Scheme) protected under the Data Protection Legislation (as defined in the Scheme), shall be transferred to the Transferee (such that the Transferee shall be deemed to be the data controller of the Transferring Policyholder Data), and may be used by the Transferee for, and disclosed by the Transferor to, and used by, any agent or contractor of the Transferee to the same extent that it was used by the Transferor and its agents or contractors prior to the Scheme Effective Date for all purposes in connection with the Transferring Contracts or the Transferring Policies including, in particular, administration thereof and all matters relevant or incidental thereto;
- (xv) that with effect from the Scheme Effective Date to the extent that an authority has been given to the Transferor in connection with a Transferring Policy or a Transferring Contract by a policyholder or counterparty thereto or by any other relevant person, whether pursuant to Data Protection Legislation or otherwise, such authority shall be deemed to have been given to the Transferee;
- (xvi) that on or from the Scheme Effective Date any document evidencing or constituting a policy contained within the Transferring Policies issued by the Transferor or the right of any person to participate in benefits secured by the Transferring Policies effected with the Transferor or references to the Transferor or any short form or abbreviation of the name of the

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Transferor and/or to rights, powers, duties and/or obligations imposed on the Transferor shall to the extent necessary to give full effect to the Scheme be read, construed and treated as references to the Transferee and/or to the rights, powers, duties and/or obligations imposed on the Transferee subject to and in accordance with the Scheme; and

- (xvii) that with effect from each Subsequent Transfer Date, the Residual Assets and / or Residual Liabilities will transfer in accordance with the terms of the Scheme.

Liberty to apply

**MARIANNE WHITE  
REGISTRAR**

**Date of Perfection: 08<sup>th</sup> December 2020**

Matheson,  
Solicitors for the Petitioners