

THE HIGH COURT

2020 Record No.

COS

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

PETITION

TO THE HIGH COURT

The Humble Petition of the directors of Omega Life Designated Activity Company ("**Omega**") (whose respective names and addresses are set out in the **First Schedule** here to) shows as follows:

Section 1: Omega

1. Omega is a life assurance company under registered number 307509, having its registered office at 26 Upper Pembroke Street, Dublin 2. Omega was incorporated in the State on 8 June 1999 under the laws of Ireland as Vicenza Life Limited, a private limited company. On 12 April 2011, it changed its name to Cattolica Life Limited. On 13 July 2016, Omega converted to a designated activity company under part 16 of the Companies Act 2014. On 9 June 2020, it changed its name to Omega Life Designated Activity Company.
2. The constitution of Omega provides that the objects for which Omega is established are, *inter alia*,:
 - (a) to "carry on in any part of the world the business of an insurance company transacting ordinary life insurance business" (Article 3 (A)(1)) ;
 - (b) to re-insure or counter-insure any of the risks undertaken by Omega (Article 3 (A)(2));

- (c) to “*transact the business of a life insurance company, including the sale and purchase or re-purchase of annuities and reversionary interests, and life or other interests of uncertain duration or commencement, and endowments for children, and all other business appertaining to or commonly transacted by life insurance companies*” (Article 3 (A)(25)); and
 - (d) to “*do all such other things as are incidental or conducive to the attainment of the above objects or any of them*” (Article 3 (A)(27)).
3. Omega is empowered by Article 3 (A)(19) of its memorandum of association to “*sell or otherwise dispose of or transfer the business, property, rights and assets of the Company or any branch or part thereof, for such consideration payable in cash or in the shares, stocks, debentures, or securities of any other company, or partly in each of such modes of payments, or for such other consideration as may be deemed proper subject to and in accordance with law.*”
 4. Omega is authorised by the Central Bank of Ireland (the “**Central Bank**”) to carry on life insurance business under Class I (*Life assurance and contracts to pay annuities on human life, but excluding Classes II and III*), Class III (*Contracts linked to investment funds*) and Class IV (*Permanent health insurance contracts*) as set out in Schedule 2 of the European Union (Insurance and Reinsurance) Regulations 2015 (the “**2015 Regulations**”).
 5. As of 4 June 2020, the sole shareholder of Omega is Monument Re Limited, being a company incorporated under the laws of Bermuda, having its registered office at Crown House, 4 Par-la-Ville Road, Hamilton HM08, Bermuda.

Section 2: Background

6. Omega, an Irish registered insurer which is regulated by the Central Bank, agreed to sell its Transferring Business (the “**Transferring Business**”, as defined in the scheme of transfer scheduled to this Petition (the “**Scheme**”)) to Monument Assurance Luxembourg S.A. (“**MAL**”), which is a Luxembourg life assurance undertaking.
7. The terms of the transfer of the Transferring Business (which includes the Transferring Policies, the Transferring Contracts, the Transferring Assets and the Transferring Liabilities) are set out in the Scheme.
8. The Transferring Business comprises the life insurance business falling within Class I (*Life assurance and contracts to pay annuities on human life, but excluding Classes II*

and III), Class III (*Contracts linked to investment funds*) and Class IV (*Permanent health insurance contracts*) as set out in Schedule 2 of the 2015 Regulations. All of the Transferring Policies fall within Omega's Class III authorisation.

9. It is intended that the legal interest in the Transferring Business will transfer to MAL with effect from the 23:59 on 31 December 2020 (the "**Scheme Effective Date**").

Section 3: The Transferee

10. MAL is a life assurance company organised under the laws of the Grand Duchy of Luxembourg under registration number B73935, having its registered office at 5, rue Eugène Ruppert, L-2453 Luxembourg.
11. MAL was incorporated under the laws of Luxembourg as a public limited company on 8 February 2000 under the name ASPECTA Assurance International Luxembourg S.A. Its name was changed to Monument Assurance Luxembourg S.A. on 11 October 2018.
12. The objects for which MAL was incorporated are detailed in Article 2 of its Articles as, *inter alia*:

Art 2. *The purpose of this company is the conduction of any insurance transactions, co-insurances or reinsurance transactions in the Grand Duchy of Luxembourg and internationally for their own account within the field of "life insurance", i.e.*

1) *Insurance and reinsurance transactions*

- *in the event of death;*
- *in the event of survival, with or without reinsurance;*
- *in the event of an endowment life insurance;*
- *in relation to any other securities additionally included in a life insurance, which – after an illness or an accident, that is in the case of disability – allow for a payment in addition to the main payment that is not considered to be compensation;*

2) *Capitalisation business;*

3) *The management of collective pension funds;*

And of all general transactions of financial nature, transactions of movables, and real estate business, investment in the business, subscriptions, purchases and sales of securities or shares, formation of companies and potentially any other trades or industrial activities that are directly linked to the abovementioned purpose of the company or that may facilitate the fulfilment and development of said purpose.

The above is effective under the restrictions the law puts on insurance companies.

13. MAL is licensed by the Luxembourg Minister of Finance and supervised by the Luxembourg Commissariat aux Assurances to undertake and carry on life insurance business in Class I (*Life insurance and contracts to pay annuities on human life, but excluding Classes II and III*), Class II (*Marriage assurance, birth assurance*), Class III (*Contracts linked to investment funds*), Class VI (*Capital Redemption Operations*) and Class VII (*Management of group pension funds*) as set out in Schedule 2 of the 2015 Regulations.
14. MAL's licence from the Luxembourg Minister of Finance is sufficiently wide to entitle it to acquire and carry on the Transferring Business that has heretofore been carried on by Omega pursuant to the 2015 Regulations.
15. MAL is authorised to acquire the Transferring Business pursuant to Article 2(3) of its Articles which provides that "*The management of collective pension funds and of all general transactions of financial nature, transactions of movables, and real estate business, investment in the business, subscriptions, purchases and sales of securities or shares, formation of companies and potentially any other trades or industrial activities that are directly linked to the abovementioned purpose of the company or that may facilitate the fulfilment and development of said purpose.*"
16. The sole shareholder of MAL is Cannon Strategic Holdings Limited, being a company incorporated under the laws of the United Kingdom, having its registered office at 1 Kings Street, London, United Kingdom, EC2V 8AU.

Section 4: The Proposed Transfer

17. It has been resolved by the board of directors of Omega on 27 July 2020 and by the meeting of the members of MAL on 1 July 2020 in accordance with their respective internal governance requirements, that subject to the sanction of this Honourable Court and subject to receiving the approval of the relevant supervisory authorities, the Transferring Business will be transferred by Omega to MAL on the Scheme Effective Date. MAL owns 3 branches in Italy, Spain and Germany. The structuring of the administration of the Transferring Business is under consideration and is being discussed with the Central Bank and the Commissariat Aux Assurances. Consideration is being given to the Transferring Business being managed by the Italian Branch of MAL.

18. The primary commercial purpose of the Scheme is to make provision for the transfer of the Transferring Business from Omega to MAL. Monument Re Limited is the sole shareholder of Omega and both Omega and MAL are ultimately part of the Monument group of companies (the “**Monument Group**”). Under the terms of the Scheme as and from the Scheme Effective Date, MAL will assume the Transferring Business. The transfer permits MAL to complement its existing book of business and will enable Omega to cease carrying on insurance business, surrender its authorisation to the Central Bank and ultimately, begin the process of being placed in members’ voluntary liquidation in accordance with the Companies Act 2014 in 2021.
19. The Member State of the European Union / European Economic Area (the “**EEA**”) in which Transferring Policies were concluded for the purposes of the 2015 Regulations was Italy.
20. Following the conclusion of the Transferring Policies, a small number of Transferring Policyholders subsequently relocated to France, Spain and Germany in the EEA and to the following third countries: Switzerland, China, Australia, Argentina, South Africa, and the United States. Accordingly, there are Transferring Policyholders resident in the following EEA Member States:
- (a) Italy;
 - (b) France;
 - (c) Spain; and
 - (d) Germany.
- (being the “**Member States of the Commitment**”).
21. For completeness, I should note that Omega is in the process of transitioning customer servicing administration from AON Italia S.r.l (“**Aon**”) to Quality Insurance Services Luxembourg S.a.r.l. (Italian branch) (“**QIS**”) (which will be renamed Monument Assurance Services Luxembourg S.à r.l.). MAL currently outsource most of its operations to QIS. The appointment of QIS as service provider to Omega will ensure continuity for all policyholders of MAL going forward. This transition is expected to complete on or around 17 November 2020. Accordingly, any Transferring Policyholders who have a query on the Proposed Transfer or indeed in relation to their policy will be advised to contact Aon up to 17 November 2020 and to contact QIS from 18 November 2020. This will be reflected in the policyholder FAQ document

which will be issued to Transferring Policyholders (as detailed below). Omega will work with Aon and QIS to ensure a smooth transition in this regard.

Section 5: Report of Independent Actuary

22. Pursuant to section 13(3)(b) of the 1909 Act, Brian Morrissey of KPMG an independent actuary (the “**Independent Actuary**”) has prepared a report dated 17 August 2020 (the “**Report**”).
23. The Report sets out the Independent Actuary’s opinion of the likely effects of the Scheme on the Policyholders and which includes (i) the Transferring Policyholders and (ii) the Transferee Policyholders (as both are defined in the Scheme).
24. A conclusion of the key findings of the Independent Actuary are set out at section 2.1.5 of the Report.
25. In completing the Report, the Independent Actuary examined the consequences and potential consequences of the Scheme. The Independent Actuary identified the groups of policyholders effected and considered (i) the impact of the Scheme on the security of each group of policyholders, (ii) the impact of the Scheme on the benefit expectations of each group of policyholders and (iii) other aspects of the impact of the Scheme including policyholder service and any changes in administration or other arrangements.
26. Having considered the impact of the Scheme on both the Transferring Policyholders and Transferee Policyholders, the Independent Actuary noted that in his opinion (i) the Scheme will not have a material adverse effect on the reasonable benefit expectations of any of the Policyholders involved; and (ii) the risk to policyholder security is remote. Therefore, it is the Independent Actuary’s view, Policyholders will not be materially adversely affected by the proposed Scheme.

The Solvency Coverage Ratio of Omega and MAL (Section 8.2 of the Report)

27. The Independent Actuary considered the relative capital strength of Omega and MAL respectively prior to and post the transfer in respect of the Policyholders. The analysis is based on the most recent audited financial information as at 31 December 2019, including regulatory returns to the Central Bank, projected financial information and interim results prepared by Omega and MAL in 2020.

28. The projected capital and solvency position of MAL pre- and post-transfer is set out in Table A below. This is based on pro-forma results as at 31 December 2019 and for comparison purposes, includes the solvency position of Omega.

Table A: MAL Pro-forma Solvency Position as at 31 December 2019 (€m)				
Component	Omega – pre transfer	Omega – business to be transferred*	MAL – pre transfer	MAL – post transfer
<i>Before intra-group reinsurance</i>				
Own Funds	18.7	1.8	30.3	30.8
SCR	4.8	4.7	5.1	9.5
Excess Own Funds over SCR	13.9	-2.9	25.2	21.4
Solvency Coverage Ratio	388%	38%	595%	325%

29. The Independent Actuary notes that post-transfer, MAL's level of Own Funds is expected to increase from €30.3 million to €30.8 million as a result of the transfer of the Omega assets and liabilities to the MAL balance sheet. The Independent Actuary notes in section 8.2.2. of the Report that *"[t]he combined view is slightly lower than the sum of the two companies due to the allowance for the consideration agreed between both parties and the increase in the risk margin of c. €0.5 million (i.e. when the risk drivers are combined and then applied to the combined Solvency Coverage Ratio ("SCR"), the resulting risk margin is larger than the sum of the individual companies' risk margins)." The Independent Actuary notes that "MAL's SCR is expected to increase from €5.1 million to €9.5 million." The increase is a result of the increased market risk exposure introduced by the Omega portfolio. The Independent Actuary notes *"[t]he combined view is lower due to a reduction in the counterparty default risk and a positive diversification effect."* The level of Own Funds falls by a small amount, from €25.2 million to €21.4 million however, it is acknowledged by the Independent Actuary that *"MAL's solvency coverage is still above its internal capital management target level at 325% and well in excess of regulatory minimum levels."**
30. Both pre- and post-transfer, the Independent Actuary notes the Transferee Policyholders *"have a strong regulatory position in terms of meeting the minimum regulatory requirements and its own capital management targets."*
31. The Independent Actuary notes the *"above results do not reflect the reinsurance agreements that MAL management expect to put in place in respect of the Omega policies."* According to the Independent Actuary, while MAL management intend to put reinsurance cover in place, plans are not well developed in this regard. The

Independent Actuary considered the overall assessment of the Scheme if the reinsurance cover were to be put in place at the Scheme Effective Date. The Report notes that if *“the planned reinsurance is allowed for, then the impacts are less material – the increase in Own Funds and capital requirements are smaller, with a less significant impact on solvency coverage.”* According to the Independent Actuary *“[t]his is useful to note from the perspective of the [Transferee Policyholders], as the planned reinsurance is similar in nature to the existing reinsurance structures that are already in place.”*

32. In relation to the Transferring Policyholders, the Independent Actuary notes that pre-transfer, *“the Omega policyholders have a strong regulatory capital position with a solvency coverage ratio of 388%. However, the strong regulatory capital position reflects the management action included to transfer the policies within 18 months.”* According to the Independent Actuary, this is a key consideration as, without the management action, *“Omega would be impacted with diseconomies of scale and the high costs of the TPA in place and its solvency would be threatened if these were reflected in full.”* The Report states that from Omega’s ORSA process, it is not possible to perform a solvent run off the business without such actions. The Independent Actuary notes that *“policyholders, in the absence of the management action, implicit in the regulatory basis and the resulting transfer are part of a relatively weak entity.”*
33. The Independent Actuary concludes, in relation to the capital requirements that:
- i. The Scheme will not have a material adverse effect on the financial security of the Transferring Policyholders and the Transferee Policyholders; and
 - ii. The level of Own Funds and solvency coverage in MAL post-transfer is well in excess of the regulatory minimum and is above the internal target levels set by MAL.

Capital Targets of Omega and MAL (Section 8.2.3 of the Report)

34. In respect of capital targets, the Independent Actuary notes that both Omega and MAL *“have defined a level of target capital in excess of the overall Solvency II SCR. Omega seeks to maintain sufficient capital to allow it to operate for a period of 18 months before SCR coverage would fall to a 150% coverage ratio. MAL’s objective is to maintain a regulatory solvency ratio above or equal to 135%.”* The Report notes that, as a percentage of the SCR, MAL’s approach is to target a level (135% of SCR)

which is lower than that of Omega (150% of SCR). However, MAL has a higher level of excess Own Funds over SCR in absolute terms (€25.2 million versus €13.9 million). The approach adopted is similar in both entities and there will be no revisions in approach as a result of the Scheme.

Business Plan and Projected Solvency (Section 8.2.4 of the Report)

35. The Independent Actuary considered the business plan and projected solvency for Omega and MAL respectively, and noted that the Scheme has no material impact on Omega's projected solvency. For MAL, the Independent Actuary did not identify any concerns with regard to MAL's projected solvency after the transfer.

Sensitivity Testing (Section 8.2.5 of the Report)

36. The Independent Actuary considered the sensitivity of the Scheme on Omega and MAL to various risk issues and no material issues were identified.

Risk Profile (Section 8.2.6 of the Report)

37. The Independent Actuary considered the primary differences arising due to the mix of the businesses of Omega and MAL and the impact it would have on the Policyholders. The Independent Actuary does not believe that the Transferring Policyholders are disadvantaged by the Scheme as *"managing this risk is MAL's specialty and forms a core part of its business plan going forward."* Similarly, Transferee Policyholders are not disadvantaged as a result of the Scheme.

Conclusion on the Impact of the Scheme on the Security of Policies (Section 8.4 of the Report)

38. The Independent Actuary considered the following key elements when assessing the security of the Transferring Policyholders and Transferee Policyholders: (i) regulatory regime requirements; (ii) capital resources available; (iii) risk profile; (iv) capital profile; and (v) risk and capital mitigation plans. Based on the Independent Actuary's consideration of these key elements, the risk of Policyholders' benefits being adversely affected in terms of financial security is remote. Therefore, the Transferring Policyholders and Transferee Policyholders will not be materially affected by the Scheme.

Fair Treatment of Policyholders (Section 9 of the Report)

39. The Independent Actuary also considered the effects of the Scheme on the fair treatment of the Policyholders, focusing on the following aspects:

- (a) Security to benefits – the Scheme will not have a material adverse effect in terms of benefits being secure and being paid as they fall due.
- (b) Fund range – there will be no change to current investment funds available to Transferring Policies or to existing MAL policies (taking into consideration applicable local regulatory requirements).
- (c) Entitlement to benefits – existing practices in respect of surrender, maturity, transfer, death or conversion to be paid-up will remain in place post-transfer. The Report further notes that claims which are settled as part of the normal course of business will be dealt with in the same way post-transfer. Fund rebates which are currently received by certain Transferring Policyholders will continue to be paid (pursuant to policy terms and conditions). For disputed claims, the Report notes that the claims governance processes within Omega and MAL are similar and the approach will not be impacted by the Scheme.
- (d) Policy terms and conditions – the Report notes that there will be no change to policy terms and conditions of the Transferring Policies or to existing MAL policies.
- (e) Service standards – it is MAL’s intention to maintain the existing relationship with IPSI for circa 6 months after the Scheme Effective Date by way of novation of IPSI’s existing contract with Omega. As such, the service standards will remain unchanged as a consequence of the Scheme for all Policyholders for circa 6 months after the Scheme Effective Date. The Independent Actuary notes *“[i]t is a key assumption that this administration arrangement can transfer and can continue to be provided to MAL from Ireland post the Scheme.”* In this regard, Omega has contacted IPSI to discuss the transfer of the existing contract.
- (f) Expenses and charges – the Report notes there is no intention on MAL’s part to amend the charges applied post-completion of the Scheme.
- (g) Costs of the Scheme – the Independent Actuary notes that all costs will be borne by the shareholders of Omega and MAL and that no costs will be borne by Policyholders. The Independent Actuary notes there will be no adverse

effect on the fair treatment of Policyholders in this regard and no specific issues to note.

- (h) Discretion – as MAL will endeavor to maintain the existing structures, there are no issues emerging that can adversely impact upon the Policyholders.
- (i) Complaints and redress – the Independent Actuary notes that the complaints handling process adopted by both entities at present are well aligned and that Policyholders will continue to be able to escalate claims to the relevant ombudsman in which the insurer is regulated. After the Scheme, the relevant ombudsman will be The Insurance Ombudsman in Luxembourg and this will have no material consequences for Policyholders.
- (j) Taxation – the Report notes there is no indication of the Scheme triggering a “chargeable event” for Policyholders and as such, it is expected that Transferring Policyholders will be unaffected by the Scheme in respect of taxation. The Report notes that MAL will become the tax agent under the Italian tax withholding system for the Transferring Policyholders and this will include the right to receive further tax recoveries under the Italian tax withholding system for a specific consideration.
- (k) Policyholder communications – the Report notes that based on the Independent Actuary’s assessment of the draft versions of the policyholder circular there are no issues to note. The Independent Actuary notes he is comfortable with the communication approach and comfortable that the Transferee Policyholders will not be disadvantaged in any way by not being issued with a copy of either this Report or the summary report.

40. The Independent Actuary notes that overall, the implementation of the Scheme will not have a material adverse effect on the fair treatment of the Policyholders.

Section 6: Regulatory Matters

41. For the purposes of Article 41 of the 2015 Regulations, Omega notified the Central Bank of the proposed Scheme on 26 June 2020.
42. Pursuant to the Regulation 41(3)(a) of the 2015 Regulations, the proposed Scheme cannot be effected without obtaining the certification of the Luxembourg Commissariat aux Assurances (the Luxembourg supervisory authority of MAL) that taking the

proposed Scheme into account MAL possesses the necessary eligible own funds to cover its solvency capital requirement thereafter.

43. Pursuant to Regulation 41 (3)(b) of the 2015 Regulations, the proposed Scheme cannot be effected without also obtaining the agreement of the competent authority of each EEA Member State where the contracts “*were concluded, either under the right of establishment or the freedom to provide services.*” The Transferring Policies were all concluded in Italy. Notwithstanding this, some EU regulators expect to be notified of the transfer in circumstances where there are policyholders resident in their jurisdiction notwithstanding that the contracts were not concluded there. This was the practice before Solvency II became law and while it is not strictly required under Solvency II, it may be prudent to adopt this approach in order to avoid any regulator raising the issue. Accordingly, on 24 July 2020, Omega requested that the Central Bank notify the regulators in each Member State of the EEA where the Transferring Policyholders are now resident as set out in Schedule 3.
44. If the regulators do not respond to the Central Bank within 3 months, the Central Bank shall be entitled to deem the regulators to have consented to the proposed Scheme.
45. Under Italian law, there is an obligation for the transferor (Omega) to notify the Italian regulator directly about a proposed transfer. Accordingly, counsel on behalf of Omega is directly notifying the Italian regulator (IVASS) about the transfer.

Section 7: Local Counsel Advice

46. In circumstances where the Transferring Policyholders are resident in Germany, France and Spain in addition to Italy, advice was sought from local counsel in each of these jurisdictions to ensure that Omega complies with its advertising / notification requirements in each of those jurisdictions. The following firms were instructed to provide this advice: (i) Italy (Studio Legale Candian), (ii) Germany (Hengeler Mueller), (iii) France (Spitz Poulle Kannan) and (iv) Spain (Hogan Lovells). In addition, advice was sought from Wildgen in Luxembourg to ensure that any notification / advertising requirements in Luxembourg (being the Member State where MAL is regulated) were adhered to.

Section 8: Notification / Advertisements

47. A detailed communications plan has been prepared to ensure that all interested parties are made aware of the proposed Scheme.

48. As at 31 March 2020, Omega had approximately 7,931 policies in issue which will transfer to MAL pursuant to the terms of the Scheme. In circumstances where the Transferring Business comprises life assurance business, there is a requirement under section 13 of the 1909 Act to transmit the documents specified by section 13(3)(b) of the 1909 Act to the individual policyholders of Omega and MAL.
49. For the purposes of section 13 of the 1909 Act, Omega has prepared a letter (the **"Policyholder Circular"**) in the form of a circular which sets out the material facts relating to the Scheme and will explain the nature of the Scheme and, subject to the approval of this Honourable Court, will include a précis (rather than the entire) of the Report, approved by the Independent Actuary. The précis of the Report has been approved by the Independent Actuary and he is satisfied that a précis of the Report should be furnished to the Policyholders rather than the full text of the Report as set out in Section 9.2.11 of the Report. A copy of the Policyholder Circular will be sent to the last known address of the holders of the Transferring Policies and will be issued in the Italian language.
50. There is 1 Transferring Policyholder who is resident in Spain. Following receipt of legal advice from Spanish counsel, there is specific wording which must be included in the letter issued to Transferring Policyholders in Spain. Accordingly, a slightly different letter will be included in the policyholder circular being issued to the Spanish resident policyholder.
51. In accordance with section 13(3)(b) of the 1909 Act, the Policyholder Circular is to be transmitted to each policyholder of Omega and MAL, at their last known address unless this Honourable Court gives a direction to the contrary. In the present case and in circumstances where the Independent Actuary has confirmed in his Report that the Scheme will have no material adverse effect on the Transferee Policyholders, it is proposed that the Policyholder Circular should not be transmitted to the existing policyholders of MAL. It is instead proposed that the Policyholder Circular should be transmitted only to the Transferring Policyholders. The Independent Actuary has confirmed in his Report that he is satisfied that it is appropriate to proceed in this way. It is therefore proposed, subject to the directions of this Honourable Court, that the Policyholder Circular should only be transmitted to the Transferring Policyholders.
52. Additional reasons why it is considered that this proposal is appropriate are set out below:

- (a) that given the number of the total number of Policyholders involved, the additional cost and expense of sending the Policyholder Circular to an additional 30,500 policyholders (approximate number of Transferee Policyholders as of 31 March 2020) would be circa €75,000 and as such, it would be disproportionate to any benefit that might be obtained by the Transferee Policyholders in having the documentation transmitted to them;
- (b) the transmission of such documentation to the Transferee Policyholders may cause unnecessary concern and confusion on their part – namely that their rights and entitlements under their policy might in some way be undermined by the proposed Scheme, when in fact this is not the case;
- (c) no further action is required by the Transferee Policyholders;
- (d) it is clear from the Report of the Independent Actuary that the risk profiles of the Transferring Policies are “*not materially different in terms of design features, operation and key risks to those already on MAL’s balance sheet*” (section 8.2.6) and therefore, the transfer does not expose the Transferee Policyholders to any significant new kinds of risks;
- (e) the Independent Actuary concludes that “*the risk of MAL policyholders’ benefits being adversely affected in terms of financial security is remote. Therefore, in my view, MAL policyholders will not be materially adversely affected by the proposed Scheme*” (section 8.4.2);
- (f) that the Court can draw comfort from the fact that, in accordance with the other direction sought from the Court, the proposed Scheme and hearing of the Petition will be advertised in a number of publications as well as on the website of both Omega and MAL and further any Policyholder who is concerned that they might be affected by the Proposed Transfer will be entitled to avail of the applicable and relevant helplines which will be operated by both Omega and MAL.

53. In compliance with Section 13(3)(a) of the 1909 Act and subject to the directions of this Honourable Court, a notice of intention to make this application together with the hearing date (the “**Pre-Transfer Notice**”) shall be published in (i) Iris Oifigiúil (ii) the Irish Independent (iii) the Irish Examiner and (iv) The Financial Times (International) Edition.

54. Furthermore, in accordance with the requirements of section 13(3)(c) of the 1909 Act, the Report together with the Petition and the Scheme (the “**Transfer Documents**”) are all available for inspection Monday to Friday (public holidays excepted) between the hours of 9:00 a.m. to 5:00 p.m. at (i) the offices of the Petitioner, 26 Upper Pembroke Street, Dublin 2 (ii) the offices of the Petitioner’s solicitors, Matheson, 70 Sir John Rogerson’s Quay, Dublin 2 (iii) the Transferee’s registered office at 5 rue Eugène Ruppert, L-2453 Luxembourg and (iv) the Transferee’s office in Italy, Viale Monza 265, 20126 Milano for a period of at least fifteen days from the date of this notice. Given the current situation with COVID-19, if you would like to make an appointment to review the documents, please contact Ross Stevenson (ross.stevenson@monumentinsurance.com) / +44 1481 232209) in the first instance. Copies of the Transfer Documents will be made available free of charge to any policyholder of the Petitioner or MAL or any person having sufficient interest in the transfer requesting such copies and are also available for viewing and / or download online at <http://www.monumentassurance.lu/> and <https://www.omegalife.ie/en/> .
55. Copies of this Petition and its schedules will be served on the Central Bank following the Directions Hearing.
56. In accordance with Regulation 41(5)(b) of the 2015 Regulations, a notice of the proposed Scheme (being in the same form as the Pre-Transfer Notice) will be published in the Member States listed in paragraph 20 (being the Member States of the Commitments in this instance) (other than Ireland) in accordance with and to the extent required by the laws of those Member States.

Section 9: Costs & Expenses

57. Except as otherwise agreed in writing, all costs and expenses relating to the preparation of the Scheme and application for the sanction of the Scheme, including the costs of the Independent Actuary and complying with the Order shall be borne jointly by Omega and MAL in equal proportions. No costs or expenses shall be borne by the Policyholders.

YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:

- (1) An Order pursuant to the provisions of Section 13 of the 1909 Act (as amended), the 2015 Regulations and Section 36 of the Insurance Act 1989 (as amended) sanctioning the Scheme (annexed hereto);

- (2) An Order pursuant to Section 36 of the Insurance Act 1989 making the following ancillary provisions for implementing the Scheme with each such provision to take effect from the Scheme Effective Date unless otherwise stated herein: -
- (i) the Transferring Business (which includes the Transferring Policies, the Transferring Assets, the Transferring Liabilities and rights of Omega in the Transferring Contracts (each as defined in the Scheme)) will be transferred to MAL;
 - (ii) that all rights, benefits and powers conferred on or vested in Omega and the liabilities imposed on Omega by or under the Transferring Contracts shall be transferred to MAL;
 - (iii) that all premiums or amounts attributable or referable to the Transferring Policies shall be payable to MAL;
 - (iv) that MAL shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of any of the Transferring Contracts which would have been available to Omega;
 - (v) all references in any of the Transferring Contracts to Omega, the board of directors of Omega, or any other officers or agents of Omega shall be read as references to MAL, the board of directors of MAL, or any other officers, employees or agents of MAL or, where appropriate, agents of MAL to which the administration carried on by MAL 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 Omega, the board of directors of Omega, or any other officers or agents of Omega in relation to any of the Transferring Policies shall, from and after the Scheme Effective Date be exercisable or required to be performed by MAL, the board of directors of MAL or any other officers, employees or agents of MAL;
 - (vi) that for the Transferring Liabilities, liabilities shall be transferred to and shall become the liabilities of MAL and shall cease to be liabilities of Omega;
 - (vii) 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 MAL;

- (viii) that any mandate or other instruction in force on 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 amounts by Omega shall (and in the case of the Residual Policies from the respective Subsequent Transfer Date (as defined in the Scheme)) continue in force as an effective authority to MAL;
- (ix) 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 Omega in connection with the Transferring Business shall be continued by or against MAL and MAL shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to Omega in relation to any such proceedings;
- (x) on and with effect from each Subsequent Transfer Date, all actual and potential proceedings by or against Omega in connection with the Residual Assets (as defined in the Scheme) or the Residual Liabilities (as defined in the Scheme) shall be continued by or against MAL, and MAL shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to Omega in relation to such Residual Assets and Residual Liabilities;
- (xi) Omega is given liberty to transfer to MAL all data (including personal data) held by or on behalf of Omega in relation to the Transferring Business;
- (xii) the Records (as defined in the Scheme), which may include Transferring Policyholder Data (as defined in the Scheme) protected under the Data Protection Laws (as defined in the Scheme), shall be transferred to MAL (such that MAL shall be deemed to be the Data Controller of the Policyholder Data), and may be used by MAL for, and disclosed by Omega to, and used by, any agent or contractor of MAL to the same extent that they were used by Omega 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;
- (xiii) to the extent that an authority has been given to Omega in connection with a Transferring Policy or a Transferring Contract, by a Transferring Policyholder or counterparty thereto or by any other relevant person, whether pursuant to Data

Protection Laws or otherwise, such authority shall be deemed to have been given to MAL;

- (xiv) that on or from the Scheme Effective Date any document evidencing or constituting a policy contained within the Transferring Policies issued by Omega or the right of any person to participate in benefits secured by the Transferring Policies or references to Omega or any short form or abbreviation thereof and/or to rights, powers, duties and/or obligations imposed on Omega shall to the extent necessary to give full effect to the Scheme be read, construed and treated as references to MAL and/or to the rights, powers, duties and/or obligations imposed on MAL subject to and in accordance with the Scheme.
- (3) An Order directing that notice of said transfer be published once in each of *Iris Oifigiúil*, *The Irish Independent*, *The Irish Examiner*, the *Financial Times* (International Edition) and be further published as required in accordance with the laws of the Member States where the risks are situated and in accordance with the directions of the regulators in the Member States in which the contracts are concluded.
- (4) Such further or other Order as to this Honourable Court shall appear proper.

NOTE

It is intended to serve a copy of this Petition (together with the Schedules) on such parties as this Honourable Court may direct.

Presented this day of , 2020 in the Central Office by Matheson, Solicitors for the Petitioner, of 70 Sir John Rogerson's Quay, Dublin 2.

FIRST SCHEDULE

NAMES AND ADDRESSES OF THE DIRECTORS OF OMEGA LIFE DESIGNATED ACTIVITY COMPANY

- (1) Jonathan Yates, The Wheelhouse, Shotatton, Ruyton-Xi-Towns Shrewsbury, United Kingdom.
- (2) Manfred Maske, 30 Jennings Bay Road, Southampton, Bermuda.
- (3) Olivier Schmidt-Berteau, 15 Bd Grande-Duchesse Joséphine-Charlotte, 1845, Luxembourg.
- (4) Rene Vanrijkel, Zeedijk 390 / 201, 8670 Koksijde, Belgium.
- (5) Alexander Brogden, 28 Grape Bay Drive, Paget, Bermuda.
- (6) Derek Fagan, 6 Northcliffe Heights, Skerries, County Dublin.

SCHEDULE 2

Scheme

SCHEDULE 3

EEA Member States of Commitment

1. Italy
2. France
3. Spain
4. Germany

THE HIGH COURT

2020 Record No.

COS

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**

PETITION

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