

**THE HIGH COURT**

**2020 Record No.2020/265 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**

**A PROPOSED TRANSFER OF INSURANCE BUSINESS FROM OMEGA LIFE  
DESIGNATED ACTIVITY COMPANY TO MONUMENT ASSURANCE LUXEMBOURG S.A.**

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**SCHEME**

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**For the transfer of insurance business for the purposes of the Assurance Companies  
Act 1909, the Insurance Act 1989, the European Union (Insurance and Reinsurance)  
Regulations 2015**

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## CONTENTS

	Page No
1 Interpretation.....	3
2 Transfer of Insurance Business.....	13
3 Scheme Effective Date.....	16
4 Tax Issues Regarding Transfer of Assets.....	17
5 Mandates and Other Instructions .....	17
6 Continuity of Proceedings .....	18
7 General Provisions.....	18
8 Evidence of Transfer .....	23

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for the transfer of insurance business for the purposes of the Assurance Companies  
Act 1909, the Insurance Act 1989 and the European Union (Insurance and  
Reinsurance) Regulations 2015

THIS SCHEME RECORDS THAT:

RECITALS:

- A. Omega Life designated activity company (previously Cattolica Life DAC) ("**Omega**" or the "**Transferor**") is a life assurance company, incorporated in Ireland on 8 June 1999 with registered number 307509. It has its registered office and principal place of business at 26 Upper Pembroke Street, Dublin 2. 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).
- B. Omega is authorised by the Central Bank of Ireland (the "**Central Bank**") to carry on life insurance business in 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**”).

- C. Monument Assurance Luxembourg (“**MAL**” or the “**Transferee**”) is a life assurance company, incorporated in Luxembourg on 8 February 2000 with registered number B73935. It has its registered office and principal place of business at 5, rue Eugène Ruppert, L-2453 Luxembourg. The Transferee also has a number of branches including a branch established in Italy with an address at Sede secondaria per l'Italia viale Monza 265 20126 Milano (the “**Italian Branch**”). 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.
- D. The Transferee is authorised by the Commissariat Aux Assurances (CAA) to 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.
- E. The authorisations held in respect of each of the Transferor and the Transferee remain in full force and effect, however as of 28 July 2017 the Transferor closed to new business.
- F. The Transferee's authorisation enables it to take receipt of the entire Transferring Business.
- G. It has been agreed by the board of directors of the Transferor and by the board of directors of the Transferee to approve the draft Scheme, subject to the requirements of the Central Bank, the Relevant Regulators and the sanction of the Court.
- H. The Transferor has notified the Central Bank of the terms of this Scheme in accordance with Regulation 41 of the 2015 Regulations.
- I. It is intended that the Transferee should acquire the Transferring Business (which for the avoidance of doubt excludes the Excluded Contracts) with effect from the Scheme

Effective Date and in accordance with the terms and conditions set out in this Scheme.

- J. It is intended that the Transferring Business will be allocated by the Transferee to its Italian branch, immediately as from the Scheme Effective Date (as defined).
- K. The Transferor and the Transferee hereby agree to appear by Counsel on the hearing of the Petition to sanction this Scheme and have undertaken to be bound by the Scheme and to take all reasonable steps (including the execution of documents) which may be necessary or expedient to give effect to the Scheme.

## **THIS SCHEME THEREFORE PROVIDES AS FOLLOWS:**

### **1 Interpretation**

- 1.1 In this Scheme the following expressions bear the meanings specified opposite them:

<b>1909 Act</b>	The Assurance Companies Act 1909;
<b>1989 Act</b>	The Insurance Act 1989;
<b>2015 Regulations</b>	The European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015);
<b>Anti-Money Laundering Requirements</b>	The applicable provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) and as may be repealed and replaced to implement the requirements of European Law and all relevant statutory instruments, codes, guidance and regulatory requirements as may be issued by a competent authority;
<b>Aon Agreement</b>	The agreement entered into by the Transferor and Aon Italia S.r.l dated 2 November 2010 and as amended on 11 December 2017 and 18 June 2019, in respect of customer servicing administration services;

<b>Asset Manager Contracts</b>	All contracts, agreements, purchase orders, terms and conditions of business, engagements and orders entered into by the Transferor with asset managers but only to the extent that they relate to the Transferring Business
<b>Books and Records</b>	All books, records and other information relating exclusively or primarily to the Transferring Business and all information relating to customers, suppliers, agents and distributors and other information in each case relating exclusively to the Transferring Business (including the employees in any jurisdiction who are wholly or mainly assigned to the Transferring Business immediately before the Scheme Effective Date) (other than the Retained Records);
<b>Central Bank</b>	The Central Bank of Ireland, or such other authority as shall from time to time carry out the functions carried out by it in Ireland as at the date of this Scheme;
<b>Controller</b>	Has the meaning ascribed to it in the GDPR;
<b>Court</b>	The High Court of Ireland;
<b>Custodian Agreements</b>	Custodian agreement entered into between the Transferor and Danske Bank dated 29 May 2012 for Corporate Bonds and ETFs (as may have been amended or restated from time to time).
<b>Data Protection Legislation</b>	All applicable laws and regulatory requirements in relation to data protection and privacy (ie, protecting the fundamental rights and freedoms of individuals to privacy with respect to the processing of personal data), or similar laws that apply in relation to the processing of Transferring Policyholder Data and/or Retained Records, including without limitation, (i) the GDPR, (ii) the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, (iii) any

	national data protection or privacy laws applicable to the Transferor or Transferee, and (iv) all applicable implementing, derivative or related laws, rules and regulations;
<b>Distribution Agreements</b>	All contracts, agreements, purchase orders, terms and conditions of business, engagements and orders with financial advisors, distributors and brokers entered into by the Transferor in relation to the Transferring Policies;
<b>Encumbrance</b>	Any claim, charge, mortgage, lien, option, equitable right, power of sale, pledge, hypothecation, retention of title, right of pre-emption, right of first refusal or other third party right or security interest of any kind or an agreement, arrangement or obligation to create any of the foregoing;
<b>Excluded Contracts</b>	The Lease and the Aon Agreement;
<b>GDPR</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/ EC;
<b>Independent Actuary</b>	Brian Morrissey of KPMG who has been appointed as independent actuary to report on the terms of the Scheme, or any successor appointed to report on same;
<b>Ireland</b>	The island of Ireland excluding Northern Ireland;
<b>Italian Regulator</b>	Istituto per la Vigilanza sulle Assicurazioni;
<b>Italian Tax Asset</b>	The tax asset of the Transferor against the Italian Tax Authority (Agenzia delle Entrate) generated by the payment by the Transferor of the Italian tax on mathematical reserves governed by art. 1 of the Law Decree no. 309 of 24

	September 2002;
<b>Lease</b>	Lease in respect of the office space at Suite 2332, 26 Upper Pembroke Street, Dublin 2 dated 12 November 2018 entered into between the Transferor and DCDS Holdings DAC;
<b>Luxembourg Regulator</b>	Commissariat aux Assurances;
<b>Order</b>	An order made by the Court pursuant to Section 13 of the 1909 Act sanctioning this Scheme and any order (including any subsequent order, which is ancillary thereto) in relation to this Scheme made by the Court pursuant to Section 36 of the 1989 Act;
<b>Outsourcing Agreement</b>	The agency services agreement dated 1 August 2019 entered into between the Transferor and Irish Progressive Services International (as may be amended or restated from time to time);
<b>Policyholders</b>	All of the Transferring Policyholders and the Transferee Policyholders;
<b>QIS Agreement</b>	The agreement being entered into between the Transferor and QIS Luxembourg (Italian Branch) on or around November 2020 for the provision of customer servicing administration services;
<b>Relevant Regulator</b>	Any regulator which the Central Bank consults with in accordance with Regulation 41(4) of the 2015 Regulations including the Italian Regulator and the Luxembourg Regulator;
<b>Reinsurance Agreements</b>	All or such part of the reinsurance agreements entered into by the Transferor as cedant which cover the Transferring Policies, including but not limited to (i) the reinsurance



	agreement entered into with Munchener Ruck Italia S.p.A with effect from 1 October 1999 and (ii) the reinsurance agreement entered into with Swiss Re (which was signed by Swiss Re on 6 December 2002);
<b>Residual Assets</b>	<p>Any property or other rights falling within the definition of Transferring Assets or Transferring Contracts:</p> <p>(i)</p> <p>(a) in respect of which the Court has declined to order the transfer to the Transferee under the 1909 Act, the 1989 Act or the 2015 Regulations (as applicable);</p> <p>(b) where the Transferor and the Transferee agree in writing that the transfer of such property should be delayed or such property should not be transferred at all;</p> <p>(c) which is outside the jurisdiction of the Court or in respect of which its transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated; or</p> <p>(d) which cannot be transferred or vested in the Transferee for any other reason,</p> <p>(ii) together with any proceeds of sale or income or other accrual or return, whether or not in the form of cash, earned or received from time to time after the Scheme Effective Date, in respect of any property referred to in paragraphs (i)(a) to (d) of this definition;</p>
<b>Residual Contract</b>	Any Transferring Contract which is a Residual Asset;
<b>Residual Liabilities</b>	Any liability whatsoever of the Transferor in respect of the Transferring Assets:

	<p>(a) that is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to the Residual Asset;</p> <p>(b) in respect of which the Court has declined to order the transfer to the Transferee under either of the 1909 Act, the 1989 Act or the 2015 Regulations (as applicable);</p> <p>(c) which cannot be transferred or vested in the Transferee for any other reason at the Scheme Effective Date; or</p> <p>(d) where the Transferor and the Transferee agree in writing that the transfer of such liability should be delayed or that such liability should not be transferred;</p>
<b>Residual Policies</b>	Any policies which correspond to any Residual Transferring Contracts which do not transfer from the Transferor to the Transferee at the Scheme Effective Date;
<b>Residual Transferring Contracts</b>	Any of the Transferring Contracts which do not transfer to the Transferee for any reason at the Scheme Effective Date;
<b>Retained Records</b>	Any accounting, financial and other records of the Transferor relating to the Transferring Business, which the Transferor is required by law to retain, including such records as may be required pursuant to the Taxes Consolidation Act 1997 and the Value Added Tax Consolidation Act 2010;
<b>Scheme</b>	This Scheme in its original form or with, or subject to, any modification or addition thereto;
<b>Scheme Effective Date</b>	The time and date when this Scheme shall become operative in accordance with clause 3;

<b>Subsequent Transfer Date</b>	<p>In relation to any Residual Asset or Residual Liability, the date after the Scheme Effective Date on which such Residual Asset or Residual Liability is or is to be transferred to the Transferee, namely:</p> <p>(a) in respect of any Residual Asset falling within paragraph (i)(a), (i)(c) or (i)(d) of the definition of Residual Asset, and of any Residual Liability which is attributable to or connected with that Residual Asset, or which falls within paragraph (b) or (c) of the definition of Residual Liability, the date on which any impediment to its transfer shall have been removed or overcome; and</p> <p>(b) in respect of any Residual Assets falling within paragraph (i)(b) or (ii) of the definition of Residual Assets, and of any Residual Liability which is attributable to or connected with that Residual Asset, and of any Residual Liability falling within paragraph (d) of the definition of Residual Liability, the date on which the Transferor and the Transferee agree the transfer should take effect;</p>
<b>Taxation or Tax</b>	<p>All forms of taxation (other than deferred tax) and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies, in each case in the nature of tax, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments to a Tax Authority on account of Tax, whenever and wherever imposed and whether chargeable directly or primarily against or attributable directly or primarily to the Transferor or any other person and all penalties and interest relating thereto;</p>
<b>Tax Authority</b>	<p>Any taxing or other authority competent to impose any</p>

	liability in respect of Taxation or responsible for the administration and / or collection of Taxation or enforcement of any law in relation to Taxation;
<b>Technical Provisions</b>	The technical provisions held by the Transferor in accordance with the 2015 Regulations in respect of the liabilities under the Transferring Policies;
<b>Transferring Assets</b>	All of the following, but excluding the Residual Assets, as at the Scheme Effective Date: ( <u>a</u> ) the rights, benefits and powers (whether actual or contingent) of the Transferor whatsoever under or by virtue of the Transferring Policies; ( <u>b</u> ) the rights, benefits and powers (whether actual or contingent) of the Transferor whatsoever under or by virtue of the Transferring Contracts; ( <u>c</u> ) all investments and other assets (if any) representing or held in connection with the Transferring Policies, including all assets representing the technical provisions relating to the Transferring Business; ( <u>d</u> ) the benefit and burden of all amounts of reinsurance relating to the Transferring Policies; and (e) all amounts due to the Transferor by any Tax Authority in respect of the Transferring Business including the Italian Tax Asset;

<b>Transferring Business</b>	The insurance business as carried on by the Transferor on the Scheme Effective Date insofar as it comprises the Transferring Policies, the Transferring Assets, the Transferring Liabilities and the Transferring Contracts.
<b>Transferring Contracts</b>	<p>(a) The Asset Manager Agreements;</p> <p>(b) The Custodian Agreement;</p> <p>(c) The Distribution Agreements;</p> <p>(d) The Outsourcing Agreement;</p> <p>(e) The Reinsurance Agreements; and</p> <p>(f) The QIS Agreement</p> <p>(g) Any other contracts to which the Transferor is a party which wholly relate to the Transferring Business but for the avoidance of doubt excluding the Excluded Contracts.</p>
<b>Transferring Liabilities</b>	All risks, obligations and liabilities of the Transferor on the Scheme Effective Date to the extent arising out of or relating to the Transferring Policies and the Transferring Business but excluding the Residual Liabilities;
<b>Transferring Policies</b>	Any policy or policies issued by the Transferor which are, or may be deemed to have been, in existence on or before the Scheme Effective Date but for the avoidance of doubt excluding the Residual Policies;
<b>Transferring Policyholder Data</b>	The personal data (as defined in the GDPR) of the Transferring Policyholders [and personal data of other individuals relating to the Transferring Policyholders controlled by the Transferor] ; and
<b>Transferee Policyholders</b>	All policyholders of the Transferee up to and including the Scheme Effective Date.
<b>Transferring</b>	All policyholders of the Transferor up to and including the

<b>Policyholders</b>	Scheme Effective Date.
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1.2 In this Scheme:

1.2.1 words and expressions shall, save where the context otherwise requires, have the meanings set out in clause 1.1;

1.2.2 liabilities include liabilities, duties and obligations of every description (whether present or future, actual or contingent).

1.2.3 rights, benefits and powers include rights, benefits and powers of every description (whether present or future, actual or contingent);

1.2.4 the word “including” is to be construed as not importing any limitation;

1.2.5 the headings used are for convenience only and shall not affect its interpretation;

1.2.6 any references to legislation shall:

(a) be to Irish legislation, unless otherwise stated, and

(b) include a reference to any legislation subordinate to such legislation;  
and

1.2.7 references to books, records or other information means books, records or other information in any form, including paper, electronically stored data, magnetic media, film and microfilm.

1.3 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.

1.4 Any words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.5 Any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing. Any reference to a person includes his successors, personal representatives and permitted assigns.

1.6 Unless the context otherwise requires, any references in this Scheme to a clause or sub-clause shall be a reference to a clause or sub-clause of this Scheme, and any reference in a clause to a sub-clause shall be a reference to a sub-clause of that clause.

## **2 Transfer of Insurance Business**

### **2.1 Transfer of Business**

2.1.1 On and with effect from the Scheme Effective Date, the Transferring Business shall by the Order and without any further act or instrument, be transferred to and be vested in the Transferee in accordance with this Scheme.

2.1.2 Subject to the provisions of this Scheme, every Transferring Policyholder shall on and from the Scheme Effective Date become entitled in substitution of any rights enforceable by or available under a Transferring Policy against the Transferor to the same right against the Transferee and the obligations of every such Transferring Policyholder shall on and after the Scheme Effective Date become enforceable (so far as still subsisting) by the Transferee in place of the Transferor. The Transferee shall carry out, perform and complete all of the terms and conditions of the Transferring Policies.

2.1.3 All premiums and other amounts attributable or referable to the Transferring Policies or the Transferring Contracts shall on and after the Scheme Effective Date be payable to the Transferee and shall be receivable and received by the Transferee and every person who is a holder of or party to any of the Transferring Policies or the Transferring Contracts shall be liable to the Transferee for any outstanding, further or additional premiums or other sums attributable or referable to the Transferring Policies or the Transferring Contracts as and when the same become due and payable.

- 2.1.4 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Transferring Policies which would have been available to the Transferor.

## **2.2 Transfer of Assets**

- 2.2.1 In addition to clause 2.1, on and with effect from the Scheme Effective Date, the Transferring Assets shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances (if any) affecting such Transferring Assets.
- 2.2.2 The Transferor and the Transferee shall, as and when appropriate, execute all documents and perform all things as may be required to effect or perfect the transfer to, and vesting in, the Transferee of any Transferring Assets on the Scheme Effective Date in accordance with the terms of this Scheme.

## **2.3 Transfer of Contracts**

- 2.3.1 In addition to clauses 2.1 and 2.2, on and with effect from the Scheme Effective Date, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers, and be subject to all the obligations and liabilities of the Transferor whatsoever subsisting on the Scheme Effective Date under or by virtue of the Transferring Contracts and all such rights, benefits and powers shall be vested in the Transferee.
- 2.3.2 Every person who immediately prior to the Scheme Effective Date is a holder of or party to any of the Transferring Contracts shall, with effect from the Scheme Effective Date, in substitution for any liability or obligation owed thereunder to the Transferor, be under the same liability or obligation to the Transferee and shall become entitled, to the exclusion of any rights which he may have had against the Transferor under any of the Transferring Contracts to the same rights against the Transferee as were available to him against the Transferor under such Transferring Contracts.
- 2.3.3 All amounts attributable or referable to any of the Transferring Contracts shall on and after the Scheme Effective Date be payable to the Transferee and shall be receivable and received by the Transferee and every person who is a



holder of or party to any of the Transferring Contracts shall be liable to the Transferee for any outstanding, further or additional sums attributable or referable to the Transferring Contracts as and when the same become due and payable.

2.3.4 The Transferee 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 the Transferor.

2.3.5 All references in the Transferring Contracts to the Transferor, the board of directors of the Transferor or any other officers or agents of the Transferor shall with effect from the Scheme Effective Date be read as references to the Transferee, the board of directors of the Transferee, or any other officers or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration of 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 the Transferring Contracts shall, with effect from 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 or agents of the Transferee.

## **2.4 Transfer of Liabilities**

On and with effect from the Scheme Effective Date, the Transferring Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of the Transferee and shall cease to be liabilities of the Transferor.

## **2.5 Transfer of Residual Assets**

2.5.1 No Residual Assets or Residual Liabilities shall be transferred to or vested in the Transferee under or by virtue of the terms of the Scheme at the Scheme Effective Date.

2.5.2 The Residual Assets and Residual Liabilities will transfer from the Transferor to the Transferee, if at all, on a relevant Subsequent Transfer Date upon

fulfilment of the conditions specified in the definition of Subsequent Transfer Date.

2.5.3 The Residual Policies will not transfer at the Scheme Effective Date. The Residual Policies will transfer from the Transferor, if at all, on a relevant Subsequent Transfer Date when the Residual Transferring Contracts transfer to the Transferee.

2.5.4 Pending a Subsequent Transfer Date, the Transferor shall hold any Residual Assets as trustee and in trust for and on behalf of the Transferee absolutely. The Transferor shall be subject to the Transferee's directions in respect of any Residual Assets and the Transferee shall discharge on the Transferor's behalf or, failing that, indemnify the Transferor against all Residual Liabilities.

## **2.6 Rights of Policyholders**

2.6.1 Subject to the provisions of this Scheme, every Transferring Policyholder insured under the Transferring Policies shall as and from the Scheme Effective Date become entitled in substitution of any rights enforceable by or available to him under his policy(ies) against the Transferor to the same right or rights against the Transferee and the obligations of such Policyholder shall as and from the Scheme Effective Date become enforceable (so far as still subsisting) by the Transferee in place of the Transferor.

2.6.2 The Transferee shall carry out, perform and complete all of the terms and conditions of the Transferring Policies.

## **3 Scheme Effective Date**

3.1 Subject to clause 3.2, this Scheme shall become operative at 23.59 on 31 December 2020 or such other time and date as may be specified in the Order and unless this Scheme shall become operative on or before 23.59 on 31 December 2020 or such later date as the Court may allow upon the application of the Transferor and the Transferee, this Scheme shall lapse.

3.2 Notwithstanding clause 3.1, this Scheme shall not become operative on the Scheme Effective Date unless:

- 3.2.1 the Court has approved the Scheme pursuant to the 1909 Act, the 1989 Act and the 2015 Regulations;
- 3.2.2 the Central Bank has given its consent or indicated that it has no objection to the Scheme; and
- 3.2.3 the Relevant Regulators have provided their consent (or have been deemed to have done so).

#### **4 Tax Issues Regarding Transfer of Assets**

Any Tax liabilities that crystallise as a result of the transfer of the Transferring Business will not be borne by the Policyholders.

#### **5 Mandates and Other Instructions**

- 5.1 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 Policies shall, on and from the Scheme Effective Date (and in the case of a Transferring Policy which constitutes a Residual Contract, from the respective Subsequent Transfer Date), take effect as if it had provided for and authorised such payment to the Transferee.
- 5.2 Any mandate or other instruction in force on the Scheme Effective Date in respect of any of the Transferring Policies as to the manner of payment of any benefit or other amount by the Transferor shall, on and from the Scheme Effective Date (and in the case of a Transferring Policy which constitutes a Residual Contract, from the respective Subsequent Transfer Date), continue in force as an effective authority to the Transferee.
- 5.3 All premiums attributable or referable to the Transferring Policies shall from the Scheme Effective Date be payable to the Transferee.

## **6 Continuity of Proceedings**

- 6.1 On and with effect from the Scheme Effective Date, 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.
- 6.2 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 or the Residual Liabilities 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 Asset and Residual Liabilities.

## **7 General Provisions**

### **7.1 Effect of the Scheme**

- 7.1.1 The transfer and vesting of a Transferring Asset, Transferring Contract or a Transferring Liability relating to any part of the Transferring 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 a party or is bound;
  - (d) entitle any party to a contract or arrangement to which the Transferor is a party to terminate such contract or arrangement when, in the absence of this transfer, that party would not otherwise be entitled to terminate it; or

- (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.

## **7.2 Further Assurances Clause**

- 7.2.1 Each party to this Scheme agrees to do such further acts and enter into such further deeds or documents as may be necessary to vest title in the Transferring Business in accordance with the terms of this Scheme.
- 7.2.2 Such of the Transferring Business in which title does not pass by delivery or otherwise at the Scheme Effective Date shall following the Scheme Effective Date be held by the Transferor on trust absolutely for the Transferee pending the formal transfer of title, delivery, or assignment to the Transferee pursuant to the terms of this Scheme and the Transferee shall perform any obligations of the Transferor thereunder as if they were the assets of the Transferee.

## **7.3 Data Protection**

- 7.3.1 On and with effect from the Scheme Effective Date, the Books and Records (being the books and records relating to the Transferring Business), which may include Transferring Policyholder Data and Retained Records protected under the Data Protection Legislation, shall be transferred to the Transferee (such that the Transferee shall be deemed to be the Controller of the Transferring Policyholder Data and Retained Records from the Scheme Effective Date), and may be used by the Transferee for, and disclosed by the Transferee 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 Policy or Transferring Contract including, in particular, administration thereof and all matters relevant or incidental thereto.
- 7.3.2 To the extent that an authority has been given to the Transferor in connection with a Transferring Policy or Transferring Contract by a Transferring Policyholder or counterparty thereto or by any other relevant person, whether pursuant to Data

Protection Legislation or otherwise, such authority shall, on or after the Scheme Effective Date, be deemed to have been given to the Transferee.

- 7.3.3 The Transferee shall comply with Data Protection Legislation in processing any personal data included in the Transferred Policyholder Data and the Retained Records.

#### **7.4 Anti-Money Laundering Requirements**

- 7.4.1 For the avoidance of doubt, on and with effect from the Scheme Effective Date, the client due diligence records of the Transferor relating to the Transferring Business shall be transferred to the Transferee and may be used by the Transferee for, and disclosed by the Transferee to, and used by, any agent or contractor of the Transferee to the same extent that they were used by the Transferor and its agents or contractors prior to the Scheme Effective Date for all purposes in connection with the Transferring Business including satisfying all applicable Anti-Money Laundering Requirements.

#### **7.5 Publication and Notification Requirements**

- 7.5.1 The Transferor and Transferee shall co-operate to publish appropriate pre-transfer and post-transfer notices in each case as may be required by the Order, applicable law or by any relevant regulatory authority.

#### **7.6 Costs and Expenses**

- 7.6.1 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 made by the Courts arising from the directions hearing or the substantive hearing in which the Court is petitioned to sanction the Scheme shall be borne by each party in the following percentages and shall not be borne by the Policyholders:

- The Transferee will bare 50% of the costs; and
- The Transferor will bare 50% of the costs.

## **7.7 Modifications or Additions**

7.7.1 The Transferor and the Transferee may consent for and on behalf of themselves, and may consent on behalf of all other persons concerned (other than the Central Bank or other Relevant Regulators), to any amendment, modification or addition to this Scheme or to any other further condition or provision affecting this Scheme which the Court may approve or impose prior to the sanction of this Scheme.

7.7.2 After the Scheme Effective Date, the Transferee may vary the terms of this Scheme with the consent of the Court, including, without limitation, if at any time, the provisions of this Scheme, in the opinion of the board of directors of the Transferee, prove to be impossible, impracticable or inequitable to implement, provided that in any such case:

- (a) the Central Bank shall be notified of and have the right to be heard at the hearing of the Court at which such application is considered; or
- (b) such application shall be accompanied by a report from an independent actuary to the effect that in their opinion the proposed amendment will not materially adversely affect the interests of the Transferring Policyholders affected by the proposed amendment; and
- (c) to the extent any such variation affects any right, obligation or interest of the Transferor, the Transferor has consented thereto.

7.7.3 If the consent of the Court is granted in accordance with clause 7.7.2, the Transferee may amend the terms of this Scheme in accordance with the terms of the Court.

## **7.8 No Third Party Rights**

7.8.1 Subject to the provisions of paragraph 7.7 (Modifications or Additions) of this Scheme, nothing in this Scheme shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Scheme.

## **7.9 Successor and Assigns**

7.9.1 This Scheme will bind and ensure to the benefit of the successors and assigns of each of the Transferor and the Transferee.

## 7.10 Notices

7.10.1 Any notice or other communication in connection with this Scheme (each, a “**Notice**”) shall be:

- (a) in writing and in English or such other language as necessary; and
- (b) delivered by hand, email, recorded delivery or courier using an internationally recognised courier company.

7.10.2 A Notice to the Transferor shall be sent to the following addresses, or such other persons or addresses as the Transferor may notify to the Transferee from time to time:

### **OMEGA**

Address:	Suite 2332, 26 Upper Pembroke Street, Dublin 2
Telephone:	+353 87 928 6666
Attention:	Derek Fagan
Email:	<a href="mailto:dfagan@omegalife.ie">dfagan@omegalife.ie</a>

7.10.3 A Notice to the Transferee shall be sent to the following address, or such other person or address as the Transferee may notify to the Transferor from time to time:

### **MAL**

Address:	5, rue Eugène Ruppert, L-2453 Luxembourg
Telephone:	+352 264 98 234
Attention:	Olivier Schmidt-Berteau
Email:	Olivier.Schmidt-Berteau@monumentassurance.com



7.10.4 A Notice shall be effective upon receipt and shall be deemed to have been received:

- (a) 60 hours after posting, in the case of recorded delivery;
- (b) at the time of delivery, if delivered by hand or courier; or
- (c) at the time of transmission in legible form, if delivered by e-mail.

## **7.11 Governing Law**

7.11.1 This Scheme shall be governed by and construed in accordance with Irish law.

## **8 Evidence of Transfer**

The production of a copy of the Order, with any modifications, amendments and/or additions made pursuant to clause 7.7 (Modifications or Additions) shall, for all purposes, be evidence of the transfer to and vesting in the Transferee of the Transferring Business.

**THE HIGH COURT  
2020 Record No.2020/265 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**

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**SCHEME**

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