

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CIVIL DIVISION

CHANCERY PROCEDURE

UTMOST LIMITED

- and -

QUILTER INTERNATIONAL ISLE OF MAN LIMITED

SCHEME

(pursuant to section 21(1) of and Schedule 2 to the Insurance Act 2008)

APPLEBY

Appleby (Isle of Man) LLC
33 Athol Street
Douglas
Isle of Man
IM1 1LB
Ref: 451606.0001

1. DEFINITIONS AND INTERPRETATION

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

Authority: the Isle of Man Financial Services Authority or such successor governmental department, regulatory authority or other official body from time to time exercising supervisory powers in relation to insurance companies in the Isle of Man;

Business: the long-term business carried on by Utmost at the Effective Time comprising the Transferring Policies and the Transferring Assets, subject to the Transferring Liabilities and the Residual Policies and the Residual Assets, subject to the Residual Liabilities;

Constructive Funds: all funds which Utmost holds in the Santander 31 Day notice account with account number 16517120072210 as constructive trustee, which derived from three long term business policies that Utmost purported to issue in 1998, which were unenforceable for illegality and were cashed;

Contract: any written contract, commitment, agreement (including a facility agreement), deed, indenture, note, bond, mortgage, loan, instrument, lease or licence to which Utmost is a party, in each case as amended, supplemented, varied or substituted from time to time;

Court: the High Court of Justice of the Isle of Man;

Data Controller: has the meaning given to it in the Data Protection Legislation;

Data Protection Legislation: all applicable laws and regulatory requirements in relation to data protection and privacy including the Isle of Man Data Protection Act 2018 and 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, as applied to the Isle of Man by the Data Protection (Application of GDPR) Order 2018;

Effective Time: the close of business on the Transfer Date;

Encumbrance: any mortgage, charge, pledge, security, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind, and any other type of preferential arrangement (including title transfer and retention agreements) having a similar effect;

Excluded Assets:

- (a) cash amounting to £[X]¹m as held in the current account in the name of Utmost with The Royal Bank of Scotland International Limited;
- (b) the UPE Agreement and all and any rights, benefits and powers of Utmost under the UPE Agreement; and
- (c) the Constructive Funds;

Excluded Liabilities: all current and potential debts, liabilities and obligations of Utmost arising in respect of or otherwise associated with the Constructive Funds and the UPE Agreement;

Guernsey Court: the Royal Court of Guernsey;

Guernsey Effective Date: in relation to any Guernsey Policy, the date upon which the transfer of such Guernsey Policy becomes effective under the Guernsey Scheme;

Guernsey Insurance Law: the Insurance Business (Bailiwick of Guernsey) Law 2002;

Guernsey Order: an order of the Guernsey Court sanctioning the Guernsey Scheme pursuant to section 44 of the Guernsey Insurance Law;

Guernsey Policy: a Relevant Policy which was issued to a person resident in Guernsey;

Guernsey Scheme: the scheme for the transfer of the Guernsey Policies from Utmost to Quilter pursuant to section 44 of the Guernsey Insurance Law;

Hong Kong Coinsurance: the unit linked life modified coinsurance agreement dated 1 June 2018 between AXA China Region Insurance Company (Bermuda) Limited and Utmost;

Indemnity: the deed of indemnity dated 24 October 2017 between Utmost Holdings and Utmost pursuant to which Utmost Holdings indemnifies Utmost in respect of losses incurred or arising out of or in connection with the Litigation;

Indemnity Rights: all and any rights, benefits and powers of Utmost under the Indemnity and any other rights, benefits and powers that Utmost may have which are in any way related to the Litigation;

Independent Actuary: Mr Philip Simpson, a Principal of Milliman LLP of 11 Old Jewry, London, EC2R 8DU, a Fellow of the Institute and Faculty of Actuaries, an independent actuary appointed pursuant to paragraph 2(a) of Schedule 2 to the Insurance Act;

Insurance Act: the Isle of Man Insurance Act 2008;

¹ X is to be determined by Utmost and Quilter finance prior to the hearing of the application to sanction the Scheme. It is expected to be in the range £50m to £55m.

Insurance Regulations: the Isle of Man Insurance Regulations 2021;

Jersey Court: the Royal Court of Jersey;

Jersey Effective Date: in relation to any Jersey Policy, the date upon which the transfer of such Jersey Policy becomes effective under the Jersey Scheme;

Jersey Insurance Law: the Insurance Business (Jersey) Law 1996;

Jersey Order: an order of the Jersey Court sanctioning the Jersey Scheme pursuant to Article 27 of and the Second Schedule to the Jersey Insurance Law;

Jersey Policy: a Relevant Policy carried on by Utmost in or from within Jersey (as such expression is interpreted for the purpose of the Jersey Insurance Law);

Jersey Scheme: the scheme for the transfer of the Jersey Policies from Utmost to Quilter pursuant to Article 27 of and the Second Schedule to the Jersey Insurance Law;

Liabilities: the current liabilities of Utmost on the Transfer Date;

Litigation: the proceeding in the New York courts in which Fairfield Sentry Limited is named as the claimant and in which Utmost (under its former name, AXA Isle of Man Limited) is named as defendant and/or any associated proceeding brought now or in the future in respect of the redemption payments made to Utmost (under its former name, AXA Isle of Man Limited) by Fairfield Sentry Limited the subject of that proceeding;

Non Unit Linked Assets: those assets of Utmost on the Transfer Date that are not investment assets or cash assets that are invested explicitly to cover the face value of policyholder unit linked funds;

Order: the order or orders by which the Court sanctions the Scheme pursuant to section 21(1) of and Schedule 2 to the Insurance Act;

Personal Data: has the meaning given to it in the Data Protection Legislation;

Policyholder Protection Regulations: the Isle of Man Life Assurance (Compensation of Policyholders) Regulations 1991;

Policyholder: the holder of a Transferring Policy;

Quilter: Quilter International Isle of Man Limited, a company incorporated in the Isle of Man with company number 024916C whose registered office is at King Edward Bay House, King Edward Road, Onchan, Isle of Man, IM99 1NU;

Quilter Actuary: the person appointed as actuary by Quilter from time to time in compliance with section 18 of the Insurance Act;

Quilter Board: the board of directors from time to time of Quilter;

Records: policy documents and any correspondence received from or sent to the policyholder, whether in physical or electronic form, relating to the Transferring Policies which are in the possession of, or under the control of, Utmost as at the Relevant Date;

Relevant Date: the Effective Time except in the case of any Residual Policy, Residual Asset or Residual Liability, in which case it means the applicable Subsequent Transfer Date;

Relevant Policies: every policy written by Utmost under which any liability remains unsatisfied or outstanding at the Effective Time including, for the avoidance of doubt, the Hong Kong Coinsurance and the Singapore Coinsurance;

Residual Assets:

- (a) all and any rights, benefits and powers of Utmost under any of the Residual Policies and all and any other property of Utmost which would be a Transferring Asset but:
 - (i) which the Court does not have jurisdiction to transfer;
 - (ii) the transfer of which under the Scheme is not recognised by the laws of any jurisdiction in which such property is situated or by which such property is governed;
 - (iii) which Utmost and Quilter agree in writing prior to the Effective Time not to transfer under the Scheme at the Effective Time; or
 - (iv) which cannot be transferred to or vested in Quilter under the Scheme at the Effective Time for any other reason; and
- (b) all and any proceeds of sale or income or other accrual or return, whether or not in any case in the form of cash, earned or received from time to time in respect of any property referred to in paragraph (a) of this definition after the Effective Time but prior to the Subsequent Transfer Date for the relevant property;

Residual Liabilities: all and any liabilities of Utmost under any of the Residual Policies and all and any other liability or obligation of Utmost which would be a Transferring Liability but:

- (a) which the Court does not have jurisdiction to transfer;
- (b) the transfer of which under the Scheme is not recognised by the laws of any relevant jurisdiction;
- (c) which Utmost and Quilter agree in writing prior to the Effective Time not to transfer under the Scheme at the Effective Time;
- (d) which is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset; or
- (e) which cannot be transferred to or vested in Quilter under the Scheme at the Effective Time for any other reason;

Residual Policies: the Guernsey Policies and the Jersey Policies (in each case, to the extent that and for so long as the Guernsey Scheme and the Jersey Scheme (as applicable) has not yet received the requisite court approval and become effective in accordance with its terms) and any other Relevant Policy:

- (a) which the Court does not have jurisdiction to transfer;
- (b) the transfer of which under the Scheme is not recognised by the laws of any relevant jurisdiction;
- (c) which Utmost and Quilter agree in writing prior to the Effective Time not to transfer under the Scheme at the Effective Time; or
- (d) which cannot be transferred to or vested in Quilter under the Scheme at the Effective Time for any other reason;

Scheme: this Scheme in its original form or with, or subject to any modification, addition or condition which may be approved pursuant to paragraph 15 below;

Singapore Coinsurance: the unit linked life modified coinsurance agreement dated 31 December 2015 between AXA Life Insurance Singapore Private Limited and Utmost;

Subsequent Transfer Date: in relation to a Residual Policy, Residual Asset or Residual Liability, the date after the Effective Time on which such Residual Policy, Residual Asset or Residual Liability is transferred to Quilter namely:

- (a) in respect of a Guernsey Policy, the Guernsey Effective Date;
- (b) in respect of a Jersey Policy, the Jersey Effective Date;
- (c) in respect of a Residual Policy falling within paragraph (a), (b) or (d) of the definition of Residual Policies, a Residual Asset falling within paragraph (a)(i), (a)(ii) or (a)(iv) of the definition of Residual Assets, and a Residual Liability which is attributable to or connected with any such Residual Policy or Residual Asset or which falls within paragraph (a), (b) or (e) of the definition of Residual Liability, the date on which the impediment to its transfer shall have been removed or overcome;
- (d) in respect of a Residual Policy falling within paragraph (c) of the definition of Residual Policies, a Residual Asset falling within paragraph (a)(iii) of the definition of Residual Assets, and a Residual Liability which is attributable to or connected with any such Residual Policy or Residual Asset or which falls within paragraph (c) of the definition of Residual Liability, the date on which Utmost and Quilter agree the transfer of that Residual Policy, Residual Asset or Residual Liability, as the case may be, should take effect; and
- (e) in respect of a Residual Asset falling within paragraph (b) of the definition of Residual Assets and a Residual Liability which is attributable to or connected with that Residual

Asset or which falls within paragraph (d) of the definition of Residual Liability, the date on which the relevant asset, liability or policy is transferred to Quilter;

Transfer Date: 30 November 2022 or such other date subsequent to the date of the Order to be determined by Quilter, such date to be within three months of the date of the Order;

Transferring Assets: all property and assets of Utmost immediately prior to the Effective Time allocated to the Business, including:

- (a) the Indemnity Rights;
- (b) all rights, benefits and powers of Utmost under or by virtue of the Business;
- (c) all rights, benefits and powers of Utmost under or by virtue of the Contracts;
- (d) all rights to the exclusive ownership of all client lists and records in relation to the Business; and
- (e) all rights and claims (present or future, actual or contingent) against any third party in relation to the Business or arising as a result of Utmost having carried on the Business and including the Transferring Policies,

but excluding the Excluded Assets and only including the Residual Assets on and from each relevant Subsequent Transfer Date;

Transferring Business:

- (a) the Transferring Policies;
- (b) the Transferring Assets; and
- (c) the Transferring Liabilities;

Transferring Liabilities: all current and potential debts, liabilities and obligations of Utmost arising in respect of or otherwise associated with the Transferring Assets, the Transferring Policies and the Litigation immediately prior to the Effective Time, including:

- (a) all liabilities under the Transferring Policies;
- (b) all liabilities of Utmost under the Contracts;
- (c) all liability to taxation attributable to the Business; and
- (d) all other liabilities, whether actual or contingent, in respect of the Business,

but excluding the Excluded Liabilities and only including the Residual Liabilities on and from each relevant Subsequent Transfer Date;

Transferring Policies: the Relevant Policies but only including the Residual Policies on and from each relevant Subsequent Transfer Date;

UPE: Utmost Paneurope Designated Activity Company, a designated activity company incorporated in Ireland with company number 311420 whose registered office is at Navan Business Park, Athlumney, Navan, co. Meath, Ireland C15 CCW8;

UPE Agreement: the management services agreement for the provision of services dated 4 December 2020 between UPE (as manager) and Utmost (as service provider);

Utmost: Utmost Limited, a company incorporated in the Isle of Man with company number 056473C whose registered office is at Royalty House, Walpole Avenue, Douglas, Isle of Man, IM1 2SL;

Utmost Holdings: Utmost Holdings Isle of Man Limited, a company incorporated in the Isle of Man with company number 013432V whose registered office is at Royalty House, Walpole Avenue, Douglas, Isle of Man, IM1 2SL;

Utmost Actuary: the person appointed as actuary by Utmost from time to time in compliance with section 18 of the Insurance Act; and

Utmost Board: the board of directors from time to time of Utmost.

- 1.2 In this Scheme, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) reference to any gender includes reference to any other gender;
 - (c) references to an enactment or statutory provision shall be deemed to include that enactment or statutory provision as amended, varied or re-enacted from time to time and shall include any subordinate legislation, regulations or orders made from time to time under that enactment or statutory provision;
 - (d) the headings are for reference only and shall not be used for the purpose of interpretation;
 - (e) the phrases "long-term business" and "linked long-term" shall have the meaning given to them in the Insurance Regulations; and
 - (f) the words "include" and "including" are not words of limitation and shall be deemed to be followed by the words "without limitation".

2. **INTRODUCTION**

- 2.1 The Business consists of linked long-term business. All Relevant Policies, including the Guernsey Policies and the Jersey Policies are governed by Isle of Man law.
- 2.2 It is proposed that the Business shall be transferred to Quilter in accordance with the Scheme and that the Order be made accordingly, for the sanction of the Scheme, pursuant to section 21(1) of and Schedule 2 to the Insurance Act.

- 2.3 It is further proposed that:
- (a) the transfer of the Guernsey Policies to Quilter shall only take place after the Guernsey Scheme has been approved by the Guernsey Court and has become effective; and
 - (b) the transfer of the Jersey Policies to Quilter shall only take place after the Jersey Scheme has been approved by the Jersey Court and has become effective.

2.4 Both parties have agreed to appear by counsel on the hearing of the application to sanction the Scheme and have undertaken to be bound by the Scheme and to take all steps (including the execution of documents) which may be reasonably necessary or expedient to give effect to the Scheme.

3. **UTMOST**

3.1 Utmost was incorporated on 25 November 1991 in the Isle of Man as a private company limited by shares with the name Sun Life Operations Limited. It subsequently changed its name to Sun Life International (IOM) Limited on 17 July 1992, to AXA Isle of Man Limited on 24 September 2001 before changing its name to Utmost Limited on 21 October 2016.

3.2 Utmost is authorised by the Authority under section 8 of the Insurance Act to carry on class 1 (linked long-term) and class 2 (long-term) insurance business in or from the Isle of Man.

3.3 Utmost also holds a category A permit to conduct long term insurance business in Jersey.

4. **QUILTER**

4.1 Quilter was incorporated on 18 September 1984 in the Isle of Man as a private company limited by shares with the name Nel Britannia International Assurance Limited. It subsequently changed its name to Royal Skandia Life Assurance Limited on 4 January 1989, to Old Mutual International Isle of Man Limited on 12 December 2014 before changing its name to Quilter International Isle of Man Limited on 14 February 2020.

4.2 Quilter is authorised by the Authority under section 8 of the Insurance Act to carry on class 1 (linked long-term), class 2 (long-term) and class 10 (reinsurance of contracts within classes 1 and 2) insurance business in or from the Isle of Man.

4.3 Quilter also holds a category A permit to conduct long term insurance business in Jersey.

5. **TRANSFER OF THE BUSINESS**

5.1 At the Effective Time, each:

- (a) Transferring Policy; and
- (b) Transferring Asset,

and, in each case, all the rights, interests, obligations, benefits and powers of Utmost in it shall, by the Order and without any further act or instrument, be transferred to and be vested in Quilter in accordance with the provisions of the Scheme.

- 5.2 On and with effect from each Subsequent Transfer Date, each Residual Asset and each Residual Policy to which such Subsequent Transfer Date applies and, in each case, all the rights, interests, obligations, benefits and powers of Utmost in it shall, by the Order, be transferred to and be vested in Quilter in accordance with the provisions of the Scheme.
- 5.3 At the Effective Time, each Transferring Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of Quilter in accordance with the Scheme and shall cease to be a liability of Utmost.
- 5.4 On and with effect from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order, be transferred to and become a liability of Quilter in accordance with the Scheme and shall cease to be a liability of Utmost.
- 5.5 At and with effect from the Relevant Date and without prejudice to any other provision of the Scheme, all references to Utmost in any contract between Utmost and any other party, or in any document or instrument, to the extent evidencing title to or the benefit or burden of a Transferring Policy, a Transferring Asset or a Transferring Liability shall, in so far as the relevant policy, asset or liability is transferred to Quilter, be read and construed as if the same were references to Quilter so that such contract, document or instrument shall operate as if such references had always been to Quilter rather than Utmost.
- 5.6 Neither the transfer of the Transferring Business nor this Scheme shall, in relation to the Transferring Business or any Transferring Policy, Transferring Asset, Transferring Liability, Residual Policy, Residual Asset, Residual Liability or any other asset, property, liability or business of Utmost which is subject to the jurisdiction of the Court, whether before or after the Effective Time:
- (a) invalidate, discharge or result in the termination of any policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title; or
 - (b) constitute a breach of or default, event of default, potential event of default, termination event, mandatory prepayment event, enforcement event, perfection event or other similar event or condition (however described) under, or allow any person to terminate, any policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title; or
 - (c) require any registration, re-registration or filing or any amendment to any existing registration or filing in respect of any policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title; or
 - (d) require any person to perform any new or additional obligation or to take any new or additional step or action (other than, in each case, as required under the Scheme), including the giving of any notice, the obtaining of any consent, approval or

determination, the accession to any agreement, the payment of any fee, cost, expense, interest or other amount, the granting of any new or additional Encumbrance or the transfer of any asset or property; or

- (e) entitle or require any person to exercise any right or remedy, to reduce, suspend, delay, alter or discharge its rights or obligations, to accelerate, terminate, suspend, delay, alter or discharge the performance of any rights or obligations or otherwise to vary, amend, disclaim, repudiate or terminate any policy, agreement, instrument, trust deed, indenture or Encumbrance; or
- (f) affect the enforceability, priority or ranking of any Encumbrance.

5.7 Residual Policies, Residual Assets and Residual Liabilities may be transferred to Quilter pursuant to the Scheme, to the extent that the Scheme is lawfully capable of doing so, or by any other process or procedure. The parties will use their respective reasonable endeavours to obtain the consent of any third party needed to achieve such transfer, under the Scheme or under another process or procedure.

5.8 Utmost and Quilter agree to do such further acts and enter into such further deeds or documents as may be necessary to transfer the Transferring Business to Quilter.

5.9 Quilter shall take over the administration of the Transferring Policies from Utmost at and with effect from the Relevant Date.

6. **CONTINUITY OF PROCEEDINGS**

On and with effect from the Relevant Date, any proceedings which are pending or current immediately before the Relevant Date to the extent issued or served in connection with the Transferring Business, in respect of which Utmost is plaintiff, claimant, applicant, defendant, respondent or otherwise a party to the proceedings shall be continued by or against Quilter, and Quilter shall be entitled to all claims, counterclaims, defences, defences to counterclaims, settlements, rights of set-off and any other rights that were or would have been available to Utmost in relation to those proceedings. Any proceedings which relate to any Residual Policy, Residual Asset or Residual Liability shall be continued by or against Utmost until the relevant Subsequent Transfer Date.

7. **PREMIUMS AND MANDATES**

7.1 All premiums and other amounts payable in accordance with the terms of the Transferring Policies on and after the Relevant Date, shall be payable to Quilter, and Quilter shall be entitled to any and all defences, claims, counter-claims and rights of set-off against or under the Transferring Policies which would have been available to Utmost if the Scheme had not taken place.

7.2 Any direct debit mandate, standing order or other instruction or authority in force at the Relevant Date (including any instructions given to a bank by its customer in the form of direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums or other amounts payable to Utmost under any Transferring Policy or

Transferring Asset shall thereafter take effect as if it had provided for and authorised such payment to Quilter.

- 7.3 Any mandate or other instruction or authority in force at the Relevant Date as to the manner of payment by Utmost of any sum payable under any Transferring Policy shall continue in force as an effective mandate, instruction or authority to Quilter.

8. **RIGHTS AND OBLIGATIONS UNDER THE TRANSFERRING POLICIES**

- 8.1 On the Relevant Date, Quilter shall become entitled to all the rights, interests, benefits and powers of Utmost subsisting on the Relevant Date under or by virtue of the Transferring Policies, save for rights, interests, benefits and powers constituting Excluded Assets.

- 8.2 A Policyholder shall, on and with effect from the Relevant Date, become entitled, in succession to, and to the exclusion of, any rights which that person may have had against Utmost under such Transferring Policy, to the same rights against Quilter as were available to that person against Utmost under such Transferring Policy and (as regards a Transferring Policy under which premiums or other sums attributable or referable thereto continue to be payable by that person) shall on and with effect from the Relevant Date account to Quilter for any further or additional premiums or other sums attributable or referred thereto, if any, as and when the same become due and payable.

- 8.3 All references in any Transferring Policy (or any ancillary document relating to such policy) to Utmost, the Utmost Board, the Utmost Actuary or such other officers, employees or agents of Utmost shall, with effect on and from the Relevant Date, be read as references to Quilter, the Quilter Board, the Quilter Actuary or any other officers, employees or agents of Quilter respectively. In particular, but without limitation, and subject to the other provisions of the Scheme, all rights exercisable by, and all duties or responsibilities to be performed by, Utmost, the Utmost Board, the Utmost Actuary or any other officers, employees or agents of Utmost in relation to any of the Transferring Policies or related agreements or documents shall, with effect on and from the Relevant Date, be exercisable or required to be performed by Quilter, the Quilter Board, the Quilter Actuary or such other officers, employees or agents of Quilter respectively.

- 8.4 Without prejudice to the generality of paragraph 8.1, where the benefits of any Transferring Policy are held under the terms of a trust, such terms together with the terms of any rules applicable to any pension scheme under which benefits are calculated by reference to a Transferring Policy, shall operate and be construed, with effect on and from the Relevant Date, on a basis which is consistent with the transfer of such Transferring Policy in accordance with the provisions of the Scheme. For the avoidance of doubt:

- (a) where the consent of Utmost is required under any such terms, the consent of Quilter shall, with effect on and from the Relevant Date, instead be treated as required; and
- (b) where a power to appoint trustees under such terms is conferred on Utmost, that power shall, with effect on and from the Relevant Date, instead be treated as conferred on Quilter.

8.5 The transfer of any rights, interests, benefits, powers, liabilities and obligations under or in connection with any Transferring Policy, Transferring Asset, Transferring Liability, Residual Policy, Residual Asset or Residual Liability pursuant to the Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified.

9. **DECLARATION OF TRUST BY UTMOST**

9.1 Utmost shall, from the Effective Time, hold all Residual Assets, together with any proceeds of sale or income or other right accrued or return arising in respect thereof, as trustee for Quilter. In the event that Utmost cannot hold any Residual Asset as trustee for Quilter, Utmost will use commercially reasonable endeavours to sell the relevant Residual Asset for a fair market value and will then hold the proceeds of sale as trustee for Quilter.

9.2 Paragraph 9.1 shall not apply to the extent that:

- (a) giving effect to such a trust would require a consent or waiver which has not been obtained;
- (b) such a trust would not be recognised by any applicable law; or
- (c) Utmost and Quilter agree in writing not to give effect to such a trust for any reason.

9.3 Utmost shall be subject to the directions of Quilter in respect of the Residual Assets, from the Effective Time until they are transferred to or otherwise vested in Quilter, and Quilter shall have authority to act as Utmost's attorney in respect of such assets for all such purposes (and Utmost will, at its own cost, execute a power of attorney to that effect in Quilter's favour should Quilter so require).

9.4 In the event of any payment being made to, property being received by, or right being conferred upon Utmost after the Effective Time in respect of any Transferring Policy, any Transferring Asset, any Residual Policy or any Residual Asset, Utmost shall hold such payment, property or right as trustee for Quilter and, as soon as is reasonably practicable after its receipt, shall pay over the full amount of such payment or (to the extent it is able to do so) transfer such property or right to, or in accordance with the directions of, Quilter.

10. **INDEMNITY**

10.1 On and from the Effective Time, Quilter shall discharge on Utmost's behalf or, failing that, shall indemnify Utmost against:

- (a) charges, costs and claims arising in respect of all Transferring Liabilities and Residual Liabilities that are not, or are not capable of being, transferred by the Scheme or by an order made by the Court pursuant to paragraph 9 of Schedule 2 to the Insurance Act (other than liabilities which are the subject of paragraph 10.1(b) or paragraph

10.2 below) until the relevant liability is transferred to or becomes a liability of Quilter; and

- (b) any amount paid by Utmost in respect of any Transferring Liabilities and Residual Liabilities that are, whether wholly or in part, the subject of a policy of indemnity insurance or a claim or right of recovery against a third party, but only to the extent that Utmost, having made a claim under such a policy or against such third party, shall have failed to recover any such amount pursuant to rights it may have under such policy, claim or right of recovery.

10.2 Quilter shall indemnify Utmost against any reasonable costs and/or expenses, which it may incur in pursuing any claim under any such policy of indemnity insurance or against any such third party as is referred to in paragraph 10.1(b). Subject thereto, Utmost shall take such steps as Quilter may reasonably require in order to pursue the rights it may have under any such policy of indemnity insurance or against any such third party. Quilter shall be entitled, upon notice to Utmost, to have conduct of all litigation or other proceedings in respect of any such claim. In that connection, Utmost shall give all such assistance as Quilter may reasonably require in conducting any such proceedings.

10.3 On and with effect from the Effective Time, Quilter shall discharge on behalf of Utmost or, failing that, shall indemnify Utmost against any charges, costs and claims arising in respect of all Transferring Liabilities which have been transferred to or otherwise become a liability of Quilter and in respect of which a third party brings a claim against Utmost.

11. **MANAGEMENT OF FUNDS**

11.1 Establishing, Closing and Amalgamating Unit Linked Funds

Nothing in this Scheme shall prevent Quilter, at any time and from time to time, (i) establishing new linked funds; (ii) closing existing linked funds; (iii) amalgamating any linked fund or any part or parts thereof with any other linked fund or part or parts thereof; (iv) changing the name or designation of any linked fund or dividing any linked funds into one or more linked funds; (v) changing the approach to unit pricing or (vi) effecting any combination of the above, on such terms as Quilter may consider appropriate and as permitted by applicable law or regulation.

11.2 Unit Linked Funds placed with External Managers and Custodians

- (a) On and with effect from the Relevant Date, Quilter shall establish records corresponding to all of the records maintained by Utmost, on an individual policy by policy basis, in respect of the externally managed funds that are designated in favour of each Transferring Policy.
- (b) On and with effect from the Relevant Date, Quilter shall record which externally managed funds are designated in favour of each Transferring Policy and shall ensure that such designations are identical to those that were held in the records of Utmost immediately prior to the Relevant Date. For the avoidance of doubt, there will be no

change to the underlying assets, the investment strategy or policy charges as a result of the transfer of the Transferring Business.

12. CHARGES

Quilter shall not, by reason only of the operation of the Scheme, increase the amount of any charges in respect of the Transferring Policies. For the avoidance of doubt, this paragraph shall not prevent Quilter from increasing such charges in accordance with the terms of the Transferring Policies in response to normal commercial circumstances in the same way in which Utmost currently has the power to do.

13. DATA PROTECTION

On and with effect from the Relevant Date:

- 13.1 Quilter shall succeed to all rights, liabilities and obligations of Utmost in respect of any Personal Data in the Records;
- 13.2 Quilter shall owe to any person the same duties under the Data Protection Legislation, as well as of confidentiality and privacy, as those which Utmost owed in relation to the Transferring Business immediately prior to the Effective Time;
- 13.3 Quilter shall become the Data Controller of any Personal Data in the Records in place of Utmost; and
- 13.4 any consent or notice given or request made to Utmost in connection with the Transferring Business by any person, whether pursuant to Data Protection Legislation or otherwise, including any consent with respect to marketing to that person, shall be deemed to apply to Quilter, and in any such consent, notice or request as is mentioned in this paragraph 13, any reference to Utmost shall be deemed to include a reference to Quilter.

14. COSTS AND EXPENSES

The fees and expenses of the Independent Actuary and the costs and expenses incurred in preparing this Scheme, obtaining the sanction of the Court, and carrying into effect the Scheme shall be borne by Quilter.

15. MODIFICATIONS OR ALTERATIONS

- 15.1 Utmost and Quilter may, as required, consent for and on behalf of themselves and all other persons concerned to:
 - (a) any modification of or addition to the Scheme; or
 - (b) any further condition or provision affecting the same,which, prior to its sanction of the Scheme, the Court may approve or impose.

15.2 Subject to paragraph 15.3, at any time after the sanction of the Scheme, Utmost and Quilter may apply to the Court for consent to amend the terms of the Scheme. If such consent is granted by the Court, Quilter may amend the terms of the Scheme in accordance with such consent.

15.3 Quilter may amend the terms of the Scheme and the consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of the Scheme (including amendments to correct manifest errors and/or to reflect changes required by law or regulation, including changes in generally accepted actuarial practice and/or minor or technical amendments) that are agreed by Utmost and Quilter, provided that the Authority has been notified of the same and has indicated that it does not object thereto.

16. **POLICYHOLDER PROTECTION**

The parties acknowledge that, after the Relevant Date, the Policyholders will continue to be covered by the Isle of Man Life Assurance (Compensation of Policyholders) Regulations 1991 under which, should Quilter become insolvent and be unable or likely to be unable to satisfy claims under the Transferring Policies, Policyholders may be entitled to a payment of up to 90% of Quilter's liability under the relevant policy.

17. **SUCCESSORS AND ASSIGNS**

This Scheme will bind and enure to the benefit of the successors and assigns of Utmost and Quilter.

18. **THIRD PARTY RIGHTS**

A person who is not a party to this Scheme may not enforce any term of this Scheme under the Contracts (Rights of Third Parties) Act 2001 or pursuant to any third party rights which may be available at common law or under the rules of equity or otherwise.

19. **GOVERNING LAW**

This Scheme shall be governed by and construed in accordance with the laws of the Isle of Man.