

**IN THE ROYAL COURT OF GUERNSEY**

**ORDINARY DIVISION**

**NORDBEN LIFE AND PENSION INSURANCE CO. LIMITED**

**- and -**

**MONUMENT INTERNATIONAL LIFE ASSURANCE COMPANY LIMITED**

**SCHEME**

(pursuant to the Insurance Business (Bailiwick of Guernsey) Law, 2002)

**1. DEFINITIONS AND INTERPRETATION**

(1) In this Scheme the following expressions bear the meanings specified opposite them:

<b>Business</b>		The long term business carried on by Nordben at the Effective Time comprising the Transferring Policies and the Transferring Assets, subject to the Transferring Liabilities;
<b>Business Transfer Agreement</b>	<b>Transfer</b>	The business transfer agreement between Nordben and MILAC for the transfer, subject to the Order and the IOM Order, of the Business dated 12 September 2022;
<b>Commission</b>		The Guernsey Financial Services Commission;
<b>Effective Time</b>		The close of business on the Transfer Date;
<b>Independent Actuary</b>		Mr Michael Claffey of Millman Limited of 7 Grand Canal, Grand Canal Street Lower, Dublin 2, D02 KW81, Ireland, an independent actuary appointed pursuant to Section 45(2)(a) of the Insurance Business Law and paragraph 2(a) of Schedule 2 to the IOM Insurance Act;
<b>Insurance Business Law</b>	<b>Business</b>	The Insurance Business (Bailiwick of Guernsey) Law, 2002;
<b>IOM Court</b>		The High Court of Justice of the Isle of Man;
<b>IOM Insurance Act</b>		The Isle of Man Insurance Act 2008;

<b>IOM Order</b>	The order or orders by which the IOM Court sanctions the Scheme pursuant to section 21(1) of and Schedule 2 to the IOM Insurance Act;
<b>IOM Policyholder Protection Regulations</b>	The Isle of Man Life Assurance (Compensation of Policyholders) Regulations 1991;
<b>MILAC</b>	Monument International Life Assurance Company Limited, a company incorporated in the Isle of Man with company number 027082C whose registered office is at 2nd Floor, St. George's Court, Upper Church Street, Douglas, Isle of Man, IM1 1EE;
<b>Monument Re</b>	Monument Re Limited, a company incorporated in Bermuda and having its registered office at Crown House, 4 Par-la-Ville Road, Hamilton, HM08 Bermuda;
<b>Nordben</b>	Nordben Life and Pension Insurance Co. Limited, a non-cellular company incorporated with limited liability in Guernsey with company number 14861 whose registered office is at Old Bank Chambers, La Grande Rue, St Martin, Guernsey, GY4 6RT;
<b>Order</b>	The order or orders by which the Royal Court sanctions the Scheme pursuant to Section 44 of the Insurance Business Law;
<b>Retained Assets</b>	(a) Nordben's tangible fixed assets and property, plant and equipment; and  (b) cash or other liquid assets with an aggregate value of EUR 800,000;
<b>Retained Liabilities</b>	Nordben's day to day operational costs and any costs associated with the Retained Assets identified in accordance with the Business Transfer Agreement but which will include, without limitation, all rental costs and associated payments in respect of Nordben's leased property and any redundancy payments;
<b>Royal Court</b>	The Royal Court of Guernsey;
<b>Scheme</b>	This Scheme in its original form or with, or subject to any modification, addition or condition which may be approved pursuant to paragraph 10 below;
<b>Transfer Date</b>	A date subsequent to the date of the Order and the date of the IOM Order to be determined by MILAC at

its absolute discretion, such date to be within three months of the date of the Order;

**Transferring Assets** The property and assets of Nordben whatsoever and wheresoever situated immediately prior to the Transfer Date allocated to the Business including all rights, benefits and powers of Nordben under or by virtue of the Business, all rights to the exclusive ownership of all client lists and records in relation to the Business and including 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 Nordben having carried on the Business and including without limitation the Transferring Policies but excluding the Retained Assets;

**Transferring Liabilities** All current and potential debts, liabilities and obligations whatsoever of Nordben arising in respect of the Transferring Assets and the Transferring Policies at the Transfer Date including (without limitation):

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

but excluding the Retained Liabilities;

**Transferring Policies** Every policy written by Nordben under which any liability remains unsatisfied or outstanding at the Transfer Date;

**Transitional Services Agreement** The transitional services agreement to be entered into by Nordben and MILAC upon the completion of the transfer of the Business in accordance with the Business Transfer Agreement;

**Trust Instruments** The trust instruments described in paragraph 11(1)(c) below;

**Trusts Novation Agreement** An agreement between each of Nordben, MILAC and Zedra under which MILAC will agree to discharge the obligations of Nordben under the Trust Instruments and Zedra will agree to discharge its obligations to

Nordben under the Trust Instruments for the benefit of MILAC, having effect from the Transfer Date; and

**Zedra** Zedra Trust Company (Guernsey) Limited, a non-cellular company incorporated with limited liability in Guernsey with company number 24531.

- (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;
  - (d) The headings are for reference only and shall not be used for the purpose of interpretation; and
  - (e) The phrases "life and annuity", "linked long-term" and "long term business" shall have the meaning given to them in the Insurance Business Law.

## 2. **INTRODUCTION**

- (1) This Scheme sets out the terms of a scheme pursuant to Section 44 of the Insurance Business Law under which the Business is to be transferred to MILAC and is conditional upon the sanction of the Royal Court pursuant to the Order and the sanction of the IOM Court pursuant to the IOM Order.
- (2) The Business consists of life and annuity business and linked long-term business.
- (3) The Business Transfer Agreement sets out the commercial terms upon which Nordben will transfer the Business to MILAC subject to the Order and the IOM Order. 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.
- (4) The consideration for the transfer pursuant to the Scheme is set out in the Business Transfer Agreement.

## 3. **NORDBEN**

- (1) Nordben was incorporated on 16<sup>th</sup> December 1985 in Guernsey as a company limited by shares.

- (2) Nordben is licensed by the Commission to carry on long term and general insurance business, including domestic business, in or from within the Bailiwick of Guernsey under the Insurance Business Law.

#### 4. **MILAC**

- (1) MILAC was incorporated on 4<sup>th</sup> July 1985 in the Isle of Man as a company limited by shares.
- (2) MILAC is authorised by the Isle of Man Financial Services Authority under section 8 of the IOM 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.

#### 5. **TRANSFER OF ASSETS**

- (1) With effect from the Transfer Date, the Business shall be transferred to and be vested in MILAC in accordance with the provisions of the Scheme.
- (2) On the Transfer Date:
  - (a) the Transferring Policies shall be transferred to MILAC;
  - (b) MILAC shall become entitled to all the rights and powers of Nordben whatsoever subsisting on the Transfer Date arising in respect of the Transferring Policies;
  - (c) the Transferring Assets shall be transferred to MILAC and shall, in accordance with this Scheme and by virtue of the Order, vest in MILAC; and
  - (d) the Retained Assets shall be retained by Nordben.
- (3) If for any reason including being outside or not subject to the jurisdiction of the Royal Court, any Transferring Asset is not, or is not capable of being, transferred to and vested in MILAC on the Transfer Date by virtue of the Order or such transfer is not recognised by the laws of the jurisdiction governing the Transferring Asset, Nordben shall hold such Transferring Asset as trustee for MILAC and shall be subject to MILAC's directions in respect thereof from and after the Transfer Date until the relevant Transferring Asset is transferred to or otherwise vested in MILAC. MILAC shall have authority to act as the attorney of Nordben in respect of such Transferring Asset for all such purposes.
- (4) Nordben and MILAC shall take all reasonable steps and execute all such documents as may be necessary or expedient, as and when appropriate, to effect or perfect the transfer to and vesting in MILAC of any Transferring Asset or any part thereof.
- (5) In the event of any payment being made to, property being received by or right being conferred upon Nordben after the Transfer Date in respect of any

Transferring Asset, Nordben shall as soon as is reasonably practicable after its receipt pay over the amount of such payment or transfer such property or right to, or in accordance with the directions of, MILAC.

## 6. **TRANSFER OF LIABILITIES**

- (1) On the Transfer Date, the Transferring Liabilities shall be transferred to MILAC and shall, in accordance with this Scheme and by virtue of the Order, become the liabilities of MILAC and cease to be liabilities of Nordben, and the Retained Liabilities shall be retained by Nordben.
- (2) If for any reason, including being outside or not subject to the jurisdiction of the Royal Court, any Transferring Liability is not, or is not capable of being, transferred to MILAC on the Transfer Date by virtue of the Order or such transfer is not recognised by the laws of the jurisdiction governing the Transferring Liability, MILAC shall discharge such Transferring Liability on behalf of Nordben or, failing that, indemnify Nordben from and after the Transfer Date against such Transferring Liability until the relevant liability has been discharged in full or is effectively transferred to, or becomes the primary liability of, MILAC.
- (3) On and from the Transfer Date, every policyholder in respect of a Transferring Policy shall become entitled to the same rights against MILAC as were available to him against Nordben under that Transferring Policy immediately prior to the transfer in substitution for and to the exclusion of any such right against Nordben.
- (4) All premiums and other amounts payable in accordance with the terms of the Transferring Policies on and after the Transfer Date shall be payable to MILAC and MILAC 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 Nordben if the Scheme had not taken place.
- (5) Any mandate or other instruction in force on the Transfer Date (including any instruction given to a bank by its customer in the form of a standing order or direct debit) and providing for the payment by a bank or other intermediary of premiums payable under any or in respect of any of the Transferring Policies to Nordben or any other sum payable to Nordben in respect of the Business on the Transfer Date shall from and after the Transfer Date take effect as if it had provided for and authorised such payment, or as if such sum had been payable, to MILAC.
- (6) Any mandate or other instruction in force on the Transfer Date as to the manner of payment of any amount due in respect of a Transferring Policy given to Nordben shall continue in force as an effective authority to MILAC.
- (7) All references in any Transferring Policies to Nordben or its board of directors or actuary or other officer or employee shall from the Transfer Date be read as references to MILAC or its board of directors or actuary or other officer or employee (as the case may be) so that in particular (but without limitation) all rights or duties exercisable, or expressed to be exercisable, or responsibilities to

be performed by Nordben, its board of directors or appointed actuary or other officer or employee shall from the Transfer Date be exercisable or required to be performed by MILAC, its board of directors or appointed actuary or other officer or employee (as the case may be).

- (8) From the Transfer Date, Nordben shall continue to provide administration services in respect of the Transferring Policies pursuant to the Transitional Services Agreement until that agreement is terminated in accordance with its terms.

## 7. **CHARGES**

MILAC 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 MILAC 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 Nordben would have had power to do so if the Scheme had not taken place.

## 8. **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 Royal Court and the IOM Court and carrying into effect of the Scheme shall be borne by Nordben and MILAC in equal proportions for expenses payable on or before 31<sup>st</sup> December 2021, and by MILAC alone thereafter.

## 9. **CONTINUITY OF PROCEEDINGS**

On and with effect from the Transfer Date any proceedings which are pending by or against Nordben in connection with any Transferring Liabilities shall be continued by or against MILAC and MILAC shall be entitled to all defences, claims, counter-claims and rights of set-off that would have been available to Nordben in relation to the relevant Transferring Liabilities if the Scheme had not taken place.

## 10. **MODIFICATIONS AND ADDITIONS**

- (1) Nordben and MILAC may jointly consent for and on behalf of themselves and all other persons concerned to any modification or addition to the Scheme or to any further condition or provision affecting the same which the Royal Court and the IOM Court may approve whether before or after the Transfer Date.
- (2) If at any time the provisions of this Scheme prove impossible or impractical to implement, MILAC shall be at liberty to apply to the Royal Court and the IOM Court for consent to amend its terms provided that any such application shall be accompanied by a report from an independent actuary to the effect that in his opinion the proposed amendment will not adversely affect the reasonable expectations of, or reduce the protection conferred by the Scheme on, the holders of policies which are at that time underwritten by MILAC.

## 11. **POLICYHOLDER PROTECTION**

- (1) The parties acknowledge that:
- (a) persons deemed to be “policyholders” in respect of the Transferring Policies will not be covered by the IOM Policyholder Protection Regulations, as the Transferring Policies were not effected by a “participant insurer” as defined in the IOM Policyholder Protection Regulations;
  - (b) in accordance with the standard condition imposed by the Commission on licences granted under the Insurance Business Law, Nordben is required to hold assets representing at least 90% of policyholder liabilities in respect of its life and annuity business in trust;
  - (c) Zedra has been appointed as trustee:
    - (i) under an agreement between Nordben, Monument Re and Zedra dated 28<sup>th</sup> August 2020 to hold assets equal in value to at least 90% of Nordben’s non-linked policyholder liabilities which are reinsured by Monument; and
    - (ii) under a trust agreement between Nordben and Zedra dated 28<sup>th</sup> August 2020 to hold assets representing not less than 100% of Nordben’s linked long-term business liabilities;
  - (d) the rights and obligations of Nordben under the Trust Instruments shall be transferred to and vested in MILAC in accordance with the provisions of the Trusts Novation Agreement on the Transfer Date; and
  - (e) MILAC undertakes to procure that assets of MILAC representing at least (a) 90% of liabilities from time to time in respect of non-linked Transferring Policies which are reinsured by Monument Re; and (b) 100% of liabilities from time to time in respect of linked long-term Transferring Policies, will be held in trust by a trustee or trustees at all times.

## 12. **GOVERNING LAW**

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