



**IN THE SUPREME COURT OF GIBRALTAR
CHANCERY JURISDICTION**

Comp. No. of 2020

IN THE MATTER of Red Sands Life Assurance Company (Europe) Limited

-and-

IN THE MATTER of Generali Życie Towarzystwo Ubezpieczeń S.A

-and-

IN THE MATTER of Part I of Schedule 10 of the Financial Services (Insurance Companies) Act

-and-

IN THE MATTER of the Financial Services Act 2019

-and-

IN THE MATTER of the Financial Services (Insurance Business Transfers) (Saving) Regulations 2020

To: the Supreme Court of Gibraltar

The humble Petition of Red Sands Life Assurance Company (Europe) Limited (the "Petitioner"), a company established under the laws of Gibraltar with its registered office situated at Level 3, Ocean Village Business Centre, 23 Ocean Village, Gibraltar, **SHEWETH** as follows:

1. The objects of this Petition are:

- i. To seek the sanction of the Court under Section 91 and paragraph 1 of Part I of Schedule 10 of the Financial Services (Insurance Companies) Act ("the Insurance Act"), as saved by the Financial Services (Insurance Business Transfers) (Saving) Regulations

2020, to a scheme involving (inter alia) the transfer of the long-term business (as defined in Section 2 of the Insurance Act) underwritten in Poland by the Petitioner, being the long-term (life) insurance portfolio listed in Schedule 2 to the draft Portfolio Instrument of Transfer and Scheme annexed to this Petition as Schedule 1 (the "Portfolio Instrument of Transfer") to the above named Generali Życie Towarzystwo Ubezpieczeń S.A ("the Transferee");

- ii. To obtain such ancillary relief (as required) in respect of the Scheme under paragraph 5 of Part I of Schedule 10 of the Insurance Act.
2. References in this Petition to Schedule 10 of the Insurance Act are to Schedule 10 of that Act as saved by the Financial Services (Insurance Business Transfers) (Saving) Regulations 2020 on the grounds detailed and for the reasons explained by First Affidavit of Shaun Cawdery.
3. The portfolio proposed to be transferred by the Petitioner to the Transferee, pursuant to the Scheme, comprises all in-force life insurance policies underwritten by the Petitioner in Poland in accordance with the Portfolio Instrument of Transfer which excludes policies which the Petitioner and the Transferee have jointly agreed are not to transfer.
4. The Petitioner is an insurance company licensed by the Gibraltar Financial Services Commission ("GFSC"), inter alia, to effect and carry out contracts of long term insurance business in Gibraltar in Class I (Life and Annuity) on a cross border Freedom of Services basis under the European Union principle of passporting in Poland, Hungary, Czech Republic, Slovakia and Greece. The proposed transfers of the long-term insurance portfolio of the Petitioner in EEA states other than Poland are being dealt with pursuant to separate transfers under Part I of Schedule 10 of the Insurance Act.
5. The Petitioner is also licensed to effect and carry out contracts of general insurance business in Gibraltar under classes of business 1 (Accident) and 2 (Sickness). The proposed transfers of the general insurance portfolio of the Petitioner in the relevant EEA territories are being dealt with pursuant to separate transfers under Part II of Schedule 10 of the Insurance Act.
6. The Transferee is a company incorporated and governed by the laws of Poland. The company's registered office is ul. Postępu 15B, Warsaw. The Transferee is authorised and supervised by the Komisja Nadzoru Finansowego ("KNF") in Poland, inter alia, to effect and carry out contracts of life insurance. The Transferee is a member of the Generali Group.

7. The Petitioner was incorporated in Gibraltar on June 19, 2008 as a private limited company under the Companies Act with registered number 101001.
8. Following incorporation the Petitioner was licensed by the GFSC and commenced and has since continued to carry on business as an insurance company.
9. The Petitioner was called Hollard Life Assurance Company Limited until 6 January 2009.
10. The Petitioner has an authorised share capital of 50,050,000 ordinary shares of £1 each, of which 3,501,500 shares are in issue.
11. The shareholder of the Petitioner whose name appears in the Register of Members is Red Sands Group Holdings Limited.
12. The Transferee was incorporated in Poland on the 24 February 1998 and is currently with registered under number 0000025952.
13. The number of life policies in Poland as at the end of 31 December 2019 was 54,656 and their aggregate value 63,411,471 Polish Zloty.
14. All insurance services relating to policy administration and claims handling are provided by 4Life Direct sp. z o.o. ("Agent"), on behalf of the Petitioner.
15. The Petitioner is proposing to implement the Scheme, subject to the sanction of the Court, as part of its Brexit strategy as a result of the UK's decision to leave (which also includes Gibraltar) the European Union (commonly known as "Brexit"). As a consequence of Brexit, the likely scenario (also known as a "Hard Brexit") is that the Petitioner will lose its rights under European Union law to continue to carry out insurance activity across the European Single Market. These rights under European Union law are known as "passporting rights". There have been concerns that following a Hard Brexit UK and Gibraltar insurers will not be able to continue to lawfully service policyholders and claimants across Europe in line with applicable regulatory rules.
16. The Petitioner is therefore implementing the Scheme in anticipation of the UK (and consequently Gibraltar) leaving the European Union on the 31 January 2020 in order to ensure policyholders and claimants, covered by the Scheme, can continue to be serviced smoothly after Brexit. The Scheme aims to have minimal impact on those policyholders following Brexit.
17. Ian Morris ("the Independent Actuary"), is a Fellow of the Institute of Actuaries since 1986. The Independent Actuary has been appointed by the Petitioner to prepare a report on the terms of the Scheme, on the actuarial aspects of the Scheme and its effects on the Petitioner and the Transferee policyholders ("the

Independent Actuary's Report"). Mr Ian Morris' principal recent role was as Head of Insurance Services for the BWCI Group. Ian retired as a partner with effect from 1 May 2019 but continues to provide some consultancy support to BWCI.

18. The Independent Actuary's Report has been prepared in accordance with paragraph 2(1) of Part I of Schedule 10 of the Insurance Act and indicated (inter alia) the Independent Actuary's opinion of the likely effects of the Scheme on the Petitioner's and the Transferee's policyholders.
19. In accordance with the requirement of paragraph 2(2)(a) of Part I of Schedule 10 of the Insurance Act, a notice of this Petition containing the information prescribed therein will be published in the Gibraltar Government Gazette.
20. In accordance with the requirements of paragraph 2(2)(a)(i) of Part I of Schedule 10 of the Insurance Act, a notice of this Petition containing the information prescribed therein will be published in the Gibraltar Chronicle and the Panaroma newspapers.
21. In accordance with the requirements of paragraph 2(2)(a)(ii) of Part I of Schedule 10 of the Insurance Act, a notice of this Petition containing the information prescribed will be published in two national newspapers of Poland or as otherwise directed by the Court.
22. Paragraph 2(2)(b) of Part I of Schedule 10 of the Insurance Act requires, except where the Court has otherwise directed, that a statement setting out the terms of the Scheme and containing a summary of the Independent Actuary's Report sufficient to indicate the independent actuary's opinion on the likely effects of the Scheme on the long term policyholders of the Petitioner and the Transferee, be sent to each of those policyholders, and to every member of those insurers (the "Statement Requirement").
23. As explained in the First Affidavit of Shaun Cawdery the Petitioner has already sent the Agent a letter explaining the Petitioner's Brexit strategy and proposal to transfer the policies to the Transferee (the "Portfolio Transfer Communication").
24. The Portfolio Transfer Communication also explains that more information on the proposed transfer will be available on the Petitioner's website (www.redsands.gi/).
25. Pursuant to the Statement Requirement the statement and information prescribed therein must also be sent to every member of the Petitioner and the Transferee, except where the Court has otherwise directed.

26. For the reasons explained in the First Affidavit of Shaun Cawdery, it would be difficult, time-consuming, expensive and in certain cases impossible to comply with the Statement Requirement taking account of the fact that not all policyholder data regarding the Petitioner's policies are held by the Petitioner (as some are held by the Agent) and that a direct communication (which are necessarily of a technical nature) is bound to cause unnecessary confusion and worry to some policyholders, especially as they would be confused by the receipt of a communication from the Petitioner concerning the implications of Brexit on their policy.
27. It is respectfully submitted that it would be proper for this Honourable Court to make a direction dispensing with the Statement Requirement on the grounds detailed and for the reasons explained by First Affidavit of Shaun Cawdery.
28. In accordance with the requirements of paragraph 2(2)(c) of Part I of Schedule 10 of the Insurance Act, a copy of this Petition, and a copy of the Independent Actuary's report, will be served on the GFSC at least 21 days before the date of the hearing of this Petition.
29. In accordance with the requirements of paragraph 2(2)(d)(i) of Part I of Schedule 10 of the Insurance Act, copies of this Petition and of the Independent Actuary's Report will be made available for inspection at the registered office of the Petitioner at Level 3, Ocean Village Business Centre, 23 Ocean Village, Gibraltar, for a period of not less than 21 days, beginning with the date of first publication of any of the notices referred to above.
30. Paragraph 2(2)(d)(ii) of Part I of Schedule 10 of the Insurance Act requires that copies of this Petition and of the Independent Actuary's Report will be open to inspection at such places in the EEA State prescribed therein as the Court has directed.
31. It is respectfully submitted that it would be proper for this Honourable Court to make a direction dispensing with the requirement in paragraph 2(2)(d)(ii) in relation to the availability for inspection of this Petition and the Independent Actuary's Report in the EEA State prescribed therein on the grounds detailed and for the reasons explained by the First Affidavit of Shaun Cawdery.
32. In accordance with the requirements of paragraph 2(3) of Part I of Schedule 10 of the Insurance Act, the Petitioner and the Transferee shall, upon payment of such fee as may be prescribed by the rules of the Court, furnish a copy of the Petition and of the Independent Actuary's Report, to any person who asks for one at any time before an order sanctioning the Scheme is made on this Petition by the Court.
33. This Petition is presented with the approval of the Petitioner and the Transferee.

34. Your Petitioner therefore humbly prays as follows for:

- (1) An Order under paragraph 1(1) of Part I of Schedule 10 of the Insurance Act for the sanction of the Scheme for the transfer of the Transferring Life Portfolio of Red Sands Life Assurance Company (Europe) Limited to the Transferee (as defined in the Portfolio Instrument of Transfer).
- (2) Any ancillary Orders pursuant to paragraph 5 of Part 1 of Schedule 10 of the Insurance Act making such provision as the Court shall consider necessary or appropriate, including for such orders as may be necessary or appropriate to effect the transfer of the life insurance portfolio proposed to be transferred from the Petitioner to the Transferee under the terms of the Portfolio Instrument of Transfer and Scheme.
- (3) Directions (to include the dispensations) in respect of the proposed Scheme in the form sought.
- (4) That such further Order or Orders may be made in the premises as this Honourable Court shall deem appropriate.

AND your Petitioner will ever pray etc...

NOTE: It is intended to serve this Petition, together with a copy of the Independent Actuary's Report on the GFSC.

Dated the 31st day of January 2020



HASSANS
Solicitors for the Petitioner

This Petition is presented by Messrs. Hassans of Madison Building, Midtown, Queensway, Gibraltar, Solicitors for the Petitioner.

SCHEDULE 1
'The Portfolio Instrument of Transfer and Scheme'

**PORTFOLIO INSTRUMENT OF TRANSFER FOR THE PURPOSES OF
SCHEDULE 10 PART I OF THE FINANCIAL SERVICES (INSURANCE
COMPANIES) ACT SAVED BY THE FINANCIAL SERVICES
(INSURANCE BUSINESS TRANSFERS) (SAVING) REGULATIONS
2020**

RED SANDS LIFE ASSURANCE COMPANY (EUROPE) LIMITED

and

**GENERALI ŻYCIE TOWARZYSTWO UBEZPIECZEŃ SPÓŁKA
AKCYJNA**

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THIS INSTRUMENT OF TRANSFER is made this day of

PARTIES

(1) **RED SANDS LIFE ASSURANCE COMPANY (EUROPE) LIMITED**, a limited company incorporated in Gibraltar authorised and regulated by the Gibraltar Financial Services Commission and having its registered office situate at Level 3, Ocean Village Business Centre, 23 Ocean Village, Gibraltar with incorporation number 101001 and being Gibraltar tax resident with taxpayer identification number 609256 (the "**Transferor**").

(2) **GENERALI ŻYCIE TOWARZYSTWO UBEZPIECZEŃ SPÓŁKA AKCYJNA**, a company incorporated in Poland under company number 0000025952 whose registered office is situated at ul. Postępu 15B, Warsaw, Poland (the "**Transferee**").

1.1 Interpretation

The definitions and other provisions relating to interpretation set out in Schedule 1 apply throughout the Transfer Agreement, including the schedules.

1.2 General

1.2.1 The Transferor is duly licensed by the Gibraltar Financial Services Commission ("GFSC"), inter alia, to effect and to carry out contracts of life insurance business in Gibraltar under class of business I (Life and Annuity).

1.2.2 The Transferee is duly authorised and regulated and supervised by the Polish Financial Supervision Authority – Komisja Nadzoru Finansowego ("KNF"), with permissions, inter alia, to conduct life insurance activity in Branch 1 Life insurance in the following classes of business: class 1-5.

1.2.3 It is proposed to transfer the life insurance portfolio in Poland, as listed in Schedule 2 (as Transferring Policies), of the Transferor to the Transferee in accordance with this Transfer Agreement, subject to the sanction of the Court pursuant to Part I of Schedule 10 of the Insurance Act, as saved by the Financial Services (Insurance Business Transfers) (Saving) Regulations 2020.

1.2.4 The Transferor is also licensed to effect and carry out contracts of general insurance business in Gibraltar under classes of business 1 (Accident) and 2 (Sickness). The proposed transfer of the general insurance portfolio of the Transferor is being dealt with separately pursuant to separate transfers under Part II of Schedule 10 of the Insurance Act, as saved by the Financial Services (Insurance Business Transfers) (Saving) Regulations 2020, which requires the consent of the GFSC. For the avoidance of doubt, therefore, no general policies shall be transferred to or be vested in the Transferee under or by virtue of the terms of this Transfer Agreement.

1.3 Transferring Life Portfolio

1.3.1 The Transferring Life Portfolio comprises all of the Transferor's rights, obligations, claims and liabilities under in-force life insurance policies

underwritten by the Transferor in Poland as at the Effective Date, as listed in Schedule 2 of this Transfer Agreement.

- 1.3.2 The Transferring Life Portfolio shall be transferred to the Transferee in accordance with this Transfer Agreement and in due compliance with Part I of Schedule 10 of the Insurance Act, as saved by the Financial Services (Insurance Business Transfers) (Saving) Regulations 2020.
- 1.3.3 The Transferee and Transferor have further agreed that the reinsurance contracts relating to the Transferring Life Portfolio, as listed in Schedule 3 (as Novating Reinsurance Contracts) of this Transfer Agreement, will be transferred to the Transferee with the prior reinsurers' consent.
- 1.3.4 For the avoidance of doubt, the parties to this Transfer Agreement (the "Parties") intend this Transfer Agreement to release the Transferor from all claims, obligations and liabilities under or arising out of or relating to the Transferring Life Portfolio, except for the Excluded Liabilities.

1.4 Court Order

This transfer has been sanctioned by Order of the Court pursuant to Schedule 10 Part I of the Insurance Act, as saved by the Financial Services (Insurance Business Transfers) (Saving) Regulations 2020.

2. TRANSFER OF LIFE INSURANCE PORTFOLIO

2.1 Transfer of Life Insurance Portfolio

- 2.1.1 On and with effect from the Effective Date, the Transferring Life Portfolio including the Transferring Assets, the Transferring Contracts and the Transferring Liabilities shall be transferred to the Transferee and vested in the Transferee. Any Excluded Assets, including in particular the Excluded Policies, and any Excluded Liabilities shall not be transferred to the Transferee and the Transferee does not assume or accept any liability or responsibility with respect to them.
- 2.1.2 The Transferring Assets and the Transferring Liabilities shall be transferred in accordance with and subject to the terms of this Transfer Agreement as a transfer of insurance portfolio comprised of insurance contracts and related assets and liabilities and not as a transfer of an enterprise or an organised part of an enterprise.
- 2.1.3 The Transferee will pay for the Transferring Life Portfolio the Consideration detailed in Schedule 4.

2.2 Transfer of Assets

- 2.2.1 On and with effect from the Effective Date, the Transferring Assets shall, 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 Asset on the Effective Date in accordance with the terms of this Transfer, including without limitation, obtaining any required consent or waiver.
- 2.2.3 The provisions regarding the transfer of the Transferring Assets are further detailed in Schedule 5.
- 2.2.4 The Transferor shall remain solely responsible for any Excluded Assets and shall indemnify the Transferee in full against any claims addressed to the Transferee in relation to any Excluded Assets.

2.3 Transfer of Contracts

- 2.3.1 In addition to the provisions of paragraph 2.2, on and with effect from the Effective Date, the Transferee shall, 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 or after the 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 Effective Date is a holder of or party to a Transferring Contract shall, from and after the 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 Contract.
- 2.3.3 All premiums and other amounts attributable or referable to the Transferring Contracts shall on and after the 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 premiums or other 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 the Transferring Contracts which would have been available to the Transferor.
- 2.3.5 All references in any Transferring Contract to the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the board of directors of the Transferee, or any other officers, employees or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration carried on by the Transferee has been delegated. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by

the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Contracts shall, from and after the Effective Date be exercisable or required to be performed by the Transferee, the board of directors of the Transferee or any other officers, employees or agents of the Transferee.

2.4 Transfer of Liabilities

- 2.4.1 On and with effect from the Effective Date, the Transferring Liabilities shall, without any further act or instrument, be transferred to and become liabilities of the Transferee and shall cease to be liabilities of the Transferor.
- 2.4.2 On and with effect from the Effective Date, the Transferee shall be obliged to pay all valid claims and claims in course of payment which were previously received by the Transferor under or in respect of the Transferring Life Portfolio.
- 2.4.3 The Transferor shall remain solely responsible for any Excluded Liabilities and shall indemnify the Transferee in full against any claims addressed to the Transferee in relation to any Excluded Liabilities.

2.5 The Transferor's representations and warranties

- 2.5.1 With respect to the Transferring Life Portfolio, the Transferor represents and warrants that:
 - (a) all the Policies selected as the Transferring Policies are existing and active and meeting the selection criteria provided under the definition of the Transferring Life Portfolio;
 - (b) the Transferor is a sole owner of any and all Transferring Assets;
 - (c) subject to the Court's consent and any other regulatory consents to be (including any antitrust consents) obtained by the Transferee, the Transferor has obtained any and all internal and external consents, approvals or authorization necessary for the effective transfer of the Transferring Life Portfolio, including the Transferring Assets and the Transferring Liabilities;
 - (d) the Transferor has exclusive and transferrable intellectual property rights to the insurance products related to the Transferring Life Portfolio and no one is entitled to claim any amounts on the basis of their rights, including the right to be recognized as the products author;
 - (e) conducting its business activity in Poland through 4Life Direct the Transferor has always complied with applicable law and is not aware of any material breaches, infringements or misdemeanours committed by the Transferor or 4Life Direct acting in its name and on its behalf; by "material breaches" the Parties mean a significant and substantial failure in the performance of concluded contracts and / or in the performance of other obligations in compliance with laws, insurance regulations and the general standards of good faith and fair dealing by 4Life Direct acting on behalf of the Transferor and / or by the Transferor which

reasonably gives the affected party the right to sue for damages and / or to release the aggrieved party from its further obligations.

- 2.5.2 The Transferor is aware that the Transferee executes this Transfer Agreement relying on the information presented by the Transferor with respect to the Transferring Life Portfolio, including in particular the representations and warranties listed above and in clause 3.3.2 below and therefore the Transferor undertakes to indemnify the Transferee in full against any and all claims or damage resulting from the breach of this Transfer Agreement, including any breach of the Transferor's representations or warranties in adequate way (in particular by paying an adequate amount of money) as to allow the Transferee to recover any damage suffered in result of the Transferor's breach of the Transfer Agreement.

2.6 Continuity of Proceedings

- 2.6.1 Excluding the proceedings related to or connected with any Excluded Liabilities as defined in Schedule 1, on and with effect from the 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:
- (a) pending by or against the Transferor in connection with the Transferring Life Portfolio; or
 - (b) commenced by or against the Transferor in connection with the Transferring Life Portfolio following the Effective Date,

shall be continued or commenced (as appropriate) by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, settlement, rights of set-off and any other rights that would have been available to the Transferor in relation to any such proceedings.

- 2.6.2 In any event, the Transferee in its absolute discretion may determine to discontinue after the Effective Date any such proceedings which have been brought by the Transferor.
- 2.6.3 Any proceedings which are issued, served, pending, threatened, future or otherwise related to the Transferring Life Portfolio (including those which are not on or before the Effective Date issued, served, pending or threatened) by, against or with the Transferor (including as the plaintiff, claimant, applicant, defendant, respondent or other party) that are not to be continued by, against or with the Transferee pursuant to clause 2.6.1, including in particular any proceedings related to the Excluded Assets (including the Excluded Policies) and the Excluded Liabilities shall be continued by, against or with the Transferor and the Transferor shall remain entitled to all defences, claims, counterclaims, defences to counterclaims, settlements, rights of set-off and any other rights that were or would have been available to the Transferor in relation to those proceedings. The Transferor shall remain solely responsible for any

such proceedings and shall indemnify the Transferee in full against any claims addressed to the Transferee or any damage suffered by the Transferee in relation to any such proceedings. For the avoidance of doubt this clause does not apply to proceedings that may occur as a result of actions taken by the Transferee relating to the Transferring Life Portfolio after the Effective Date.

- 2.6.4 On and with effect from the Effective Date, any judgment, settlement, order or award which is obtained by the Transferor in respect of the Transferring Assets or the Transferring Contracts and not fully satisfied before the Effective Date shall, to the extent to which it was enforceable by the Transferor immediately prior thereto, become enforceable by the Transferee. However, any judgment, settlement, order or award which is obtained against the Transferee in respect of the Transferring Assets or the Transferring Contracts and not fully satisfied before the Effective Date shall remain enforceable against the Transferor.
- 2.6.5 Without prejudice to the Transferee's rights under paragraph 2.5.1, on and with effect from the Effective Date, any award, order or judgment made by any applicable court, ombudsman, arbitrator or competent authority against the Transferor in connection with the Transferring Life Portfolio will be recognised and accepted by the Transferee and shall be enforceable against the Transferee without the need for any further award, order or judgment of any court or other body.
- 2.6.6 For the avoidance of doubt, nothing in paragraphs 2.6.1 or 2.6.4 shall entitle the Transferee to raise any defence, claim, counterclaim, settlement, right of set-off or any other right that would not have been available to the Transferor.

3. GENERAL PROVISIONS

3.1 Effective Date

- 3.1.1 The scheme and transfer of the Transferring Life Portfolio shall take effect at [●] (Gibraltar time) on [●] 2020.

3.2 Effect of Transfer

- 3.2.1 The Transferor further represents and warrants that the transfer and vesting of an asset or liability relating to any part of the Transferring Life Portfolio shall not:
- (a) invalidate or discharge any contract, security or other thing; or
 - (b) require further registration in respect of any security or charge; or
 - (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 any of, or all of, the Transferor is a party or is bound; or
 - (d) entitle any party to a contract or arrangement to which any of, or all of, 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, unless otherwise required by applicable law; or

- (e) save as provided elsewhere in this transfer, 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 any of, or all of, the Transferor is a party where such greater or lesser rights, benefits or obligations would not otherwise have been conferred or imposed.

3.3 **Records and Data Protection**

3.3.1 On and with effect from the Effective Date:

- (a) title, possession and control to and of the Records relating to the Transferring Life Portfolio, including any personal data processed in connection with the Transferring Life Portfolio in respect of which the Transferor is the controller, shall be transferred to the Transferee, and those personal data may be processed by and on behalf of the Transferee to the same extent that they were processed by and on behalf of the Transferor before the Effective Date for all purposes in connection with the Transferring Life Portfolio, including, in particular, administration of the Transferring Contracts and all matters relevant or incidental thereto;
- (b) the Transferee shall become the controller in place of the Transferor in respect of the personal data transferred to the Transferee under paragraph 3.3.1(a);
- (c) any information or request for consent made or made available to, or consent obtained or request or other notice received from, any data subject by or on behalf of the Transferor in connection with the Transferring Life Portfolio will be deemed to have been made or made available to, obtained or received by the Transferee; and
- (d) the Transferee shall owe the policyholders and other persons the same duties of confidentiality and privacy under the applicable data protection laws, and they shall have the same corresponding rights under the applicable data protection laws as against the Transferee, as those which the Transferor owed to them, and they had as against the Transferor, in connection with the Transferring Life Portfolio immediately before the Effective Date.

3.3.2 The Transferor represents and warrants that no consent from the individual Policyholders or other individuals shall be required as a result of the transfer of personal data from the Transferor to the Transferee under paragraph 3.3.1(a).

3.3.3 Terms defined in EU General Data Protection Regulation 2016/679 have the same meanings when used in this paragraph 3.3.

3.3.4 The Transferor may retain a copy of the Records for its own legitimate use.

SCHEDULE 1 – INTERPRETATION

1. In this Transfer Agreement, unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them:

“Court”	The Supreme Court of Gibraltar;
"Effective Date"	the time and date on which the scheme and transfer of the Transferring Life Portfolio takes effect in accordance with paragraph 3.1;
"Encumbrance"	any charge, mortgage, pledge, security assignment, 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, without limitation, title transfer and retention agreements) having a similar effect;
"Excluded Assets"	any assets other than the Transferring Assets;
“Excluded Liabilities”	<ol style="list-style-type: none">1) any liabilities other than the Transferring Liabilities2) any historic liabilities (meaning all current or future liabilities under or relating to any Policy of the Transferor that are not in force or expired, have been terminated or cancelled on or prior to the Effective Date)3) any mis-selling liabilities (meaning any liabilities, losses, costs and/or expenses from time to time incurred or assumed by the Transferor in respect of the marketing or sale of any Transferring Policies, including liabilities, losses, costs and/or expenses arising from:<ol style="list-style-type: none">a) any complaint, claim, legal action or proceedings brought against the Transferor by or on behalf of any person or group of persons;b) the Transferor complying with (or failing to comply with) applicable law or with rules, regulations, directions, guidance or industry practice (whether formal or informal) set by or given by any regulatory authority;c) any penalty or fine levied, or which results from or arises in connection with any disciplinary action undertaken, by any regulatory authority;
"Excluded Policies"	means policies not selected and listed by the Parties as the Transferring Policies in Schedule 2;
“Insurance Act”	means the Financial Services (Insurance Companies) Act, as saved by the Financial Services (Insurance Business Transfers) (Saving) Regulations 2020;

"GFSC"	means the Gibraltar Financial Services Commission, or such other authority as shall from time to time carry out the functions carried out by it in Gibraltar as at the date of this transfer;
"Order"	the Order of the Supreme Court of Gibraltar referred to in paragraph 1.4 of this Transfer Agreement;
"Policy" and "Policyholder"	the meanings ascribed to "policy" and "policyholder" by the Insurance Act and includes at any time any constituent part of a Policy which gives rise to any separately identifiable benefit;
"Records"	all documents, files and other records, whether in physical or electronic form, relating to the Transferring Assets or the Transferring Life Portfolio, which are in the possession of, or under the control of the Transferor;
"Transfer Agreement"	this instrument of transfer in its original form or with, or subject to, any modification or addition thereto;
"Transferring Assets"	<p>all assets of the Transferor allocated to or otherwise comprised in or relating to the Transferring Life Portfolio including (without limitation):</p> <ol style="list-style-type: none"> 1. all rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts; 2. the Transferring Portfolio Reserve Amount; 3. all rights and claims (present or future, actual or contingent) against any third party in relation to the Transferring Life Portfolio or arising as a result of the Transferor having carried on the Transferring Life Portfolio; 4. receivables and monetary proceeds related to the Transferring Life Portfolio; 5. intellectual property rights to the insurance products related to the Transferring Life Portfolio including any other required information or documentation required for the Transferee to manage the Transferring Policies on all fields of exploitation, including: <ol style="list-style-type: none"> i. underwriting and pricing policies / procedures, claims handling policies / procedures, complete policy data and all information provided to the customer in the sales or service process, complete claim record of insurance products, register of all open and closed court or complaint cases; ii. complete sets of technical, demographic, operational, cost, commission, economic, assumptions for premium pricing and reserve valuation, historical data on portfolio development and products, results of statistical or actuarial surveys together with source data carried out over the last 5 (five) years for the purposes

- of valuation of reserves or premium valuation, verification of pricing assumptions based on actual portfolio performance;
- iii. all reinsurance contracts and any other oral or written changes or additional arrangements regarding these contracts / settlement method;
 - iv. any relevant correspondence with the regulatory authorities, related to the Transferring Life Portfolio;
6. the Records, including all rights, title and interest of the Transferor in the records related to the Transferring Life Portfolio, but excluding, for the avoidance of doubt (i) an amount equal to the applicable minimum solvency requirement under the laws of Gibraltar at the Effective Date, (ii) all other monies, assets and investments of the Transferor, including cash on deposit and accrued interest on such cash as are held by or on behalf of the Transferor other than the Transferring Portfolio Reserve Amount and (iii) any contracts or arrangements between the Transferor and a company within the Transferor's group, other than any Policies comprised in the Transferring Life Portfolio (all referred to as "**Excluded Assets**"). For the avoidance of doubt, (i) the Excluded Assets shall not form part of the Transferring Life Portfolio or be a Transferring Asset and (ii) the only monetary payment the Transferor will make to the Transferee as part of the Transferring Assets is the Transferring Portfolio Reserve Amount.

The Transferor will retain copy of the documents, files, information, data, records and data carriers mentioned in points 5 and 6 above.

"Transferring Life Portfolio"

the life insurance policies of the Transferor underwritten in Poland as the Transferring Contracts in-force on the Effective Date as listed in Schedule 2, including, without limitation, all rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts, along with the related Transferring Assets and all related liabilities and obligations of the Transferor, under and by virtue of the Transferring Liabilities.

For avoidance of doubt, by the Transferring Life Portfolio the Parties mean (i) in-force life insurance policies within the coverage period and (ii) the life insurance policies that were concluded with policyholders, but the insurance coverage (start or continuation) is conditional upon payment of premium in the future.

"Transferring Portfolio Reserve Amount"

the sum of (A) the Transferor's balance of reported but unpaid claims attributable to the Transferring Life Portfolio, and (B) the Transferor's provision for policyholder liabilities attributable to the Transferring Life Portfolio, including aggregate Long Term Business Provisions in accordance with Schedule 1, Chapter II, Section E paragraph 54 of the Financial Services (Insurance Companies: Accounts Directive) Regulations 2020 (where positive) held by the Transferor in respect of any Transferring Policies (or any part of such Transferring Policies).

The amount of the Transferring Portfolio Reserve Amount has been agreed by the Transferor and the Transferee to be [●] at the date hereon subject to Schedule 5 (as Transferring Portfolio Reserve Amount Calculation – Further Provision);

"Transferring Contracts"

any and all Transferring Policies;

"Transferring Liabilities"

all debts, liabilities and obligations whatsoever under or by virtue of the Transferring Contracts, but excluding:

- the Excluded Liabilities (including any historic liabilities or any miss-selling Liabilities);
- any liabilities attributable to the Excluded Policies;
- any liabilities relating to taxation; and
- any other liabilities excluded under the terms of the Transfer Agreement;

For avoidance of doubt, Transferring Liabilities include the obligation to continue to pay acquisition commissions to the Agent related to the Transferring Life Portfolio to the extent the Transferor would be obliged to pay if no transfer was executed.

"Transferring Policies"

all policies in-force as of the Effective Date as listed in Schedule 2 (including all constituent parts of a Policy) to the extent written by or on behalf of, or for which responsibility has been assumed by, the Transferor as insurer prior to the Effective Date and comprised in the Transferring Life Portfolio, but excluding the Excluded Policies;

"4Life Direct" or "Agent"

the company 4Life Direct sp.z o.o. with its registered office in Warsaw at ul. Chmielna 132/134, 00-805 Warsaw entered in the Register of Entrepreneurs kept by the District Court for the Capital City of Warsaw in Warsaw, XII Commercial Department of the National Court Register under KRS number 0000313549, being an insurance agent entered in the Register of Agents Insurance operated by the Polish Financial Supervision Authority under No. 11185495 / A.

SCHEDULE 2 – TRANSFERRING POLICIES

To be populated.

SCHEDULE 3 – NOVATING REINSURANCE CONTRACTS

To be populated.

SCHEDULE 4 – CONSIDERATION

The Transferee will pay for the Transferring Life Portfolio consideration in gross amount of EUR [●] ("Consideration") with effect on the Effective Date. For avoidance of doubt, the Consideration covers also the remuneration for the transfer of any and all intellectual property rights related to the insurance products covered by the Transferring Life Portfolio.

The Consideration is inclusive of VAT (including VAT to be declared by the Transferee under reverse charge mechanism), transfer, documentary, sales, use, stamp and registration taxes or fees, and similar taxes or fees which may be imposed upon the Consideration or the Transfer Agreement.

The Transferee shall have the right to deduct from all payments under the Transfer Agreement (including the Consideration) any applicable taxes and deductions required by any applicable law.

**SCHEDULE 5 – TRANSFERRING PORTFOLIO RESERVE AMOUNT
CALCULATON – FURTHER PROVISION**

Notwithstanding the other provisions of the Transfer Agreement, the following procedure shall apply in respect of the Transferring Portfolio Reserve Amount:

- (a) prior to the Effective Date, the Transferor shall determine in good faith its estimate of the value of the Transferring Portfolio Reserve Amount required to be transferred by the Transferor as at the Effective Date (“Estimated Transferring Portfolio Reserve Amount”);
- (b) on the Effective Date, the Transferor shall transfer to the Transferee the Transferring Assets (including the Estimated Transferring Portfolio Reserve Amount) in the form of cash via bank transfer;
- (c) no later than four months after the Effective Date, the Transferor and the Transferee shall determine and agree the amount of the actual value of the Transferring Portfolio Reserve Amount (“Actual Transferring Portfolio Reserve Amount”):
- (d) where the Actual Transferring Portfolio Reserve Amount is higher than the Estimated Transferring Portfolio Reserve Amount, the Transferor shall, no later than 20 business days after the determination of the Actual Transferring Portfolio Reserve Amount, pay to the Transferee the amount of the difference (such amount to be paid as either cash or assets) between the Actual Transferring Portfolio Reserve Amount and the Estimated Transferring Portfolio Reserve Amount;
- (e) where the Actual Transferring Portfolio Reserve Amount is lower than the Estimated Transferring Portfolio Reserve Amount, the Transferee shall, no later than 20 business days after the determination of the Actual Transferring Portfolio Reserve Amount, return to the Transferor the amount of the difference (such amount to be returned either as cash or assets) between the Actual Transferring Portfolio Reserve Amount and the Estimated Transferring Portfolio Reserve Amount;
- (f) the determination of the value of assets and liabilities for the purposes of this Schedule 5 of the Transfer Agreement shall be made in accordance with the methodology applied by the Transferor as at the Effective Date in the preparation of its regulatory returns;
- (g) any calculations, estimates or determinations required by this Schedule 5 shall be carried out by the Transferor’s actuarial function on behalf of the Transferor and the Transferee’s actuarial function on behalf of the Transferee as the case may be;
- (h) if the Transferor and the Transferee are unable to agree the Estimated Transferring Portfolio Reserve Amount or the Actual Transferring Portfolio Reserve Amount, the matter shall be referred for resolution upon the application of either Party to the chief executive officer of each

Party or, if the matter is still incapable of resolution, a person selected by mutual agreement of the Parties.

1. In this Transfer Agreement:

- 1.1 "**property**" and "**asset**" include (without limitation) property, assets, rights (including, without limitation, contingent rights as to the repayment of tax) and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;
- 1.2 "**liabilities**" includes (without limitation) duties and obligations of every description (whether present or future, actual or contingent);
- 1.3 "**transfer**" includes (as the context may require) "assign", "assignment" and "assignment", "dispose", "disposal", "novate", "novation", "convey" and "conveyance";
- 1.4 any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine;
- 1.5 any reference in this Transfer Agreement 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;
- 1.6 expressions used in this Transfer Agreement which have meanings under Insurance Act shall bear those meanings unless otherwise expressly defined herein;
- 1.7 any reference to this Transfer Agreement shall include the Schedule to it and (unless inconsistent with the subject or context) references in this Transfer Agreement to paragraphs, parts or Schedule are to paragraphs of, parts of or the Schedule to this Transfer Agreement; and
- 1.8 any reference to writing shall include any mode of reproducing words in a legible and non-transitory form.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **RED SANDS
LIFE ASSURANCE COMPANY
(EUROPE) LIMITED** acting by a
director in the presence of:

.....

.....
NAME OF WITNESS:
ADDRESS OF WITNESS:
OCCUPATION OF WITNESS:

Executed as a deed by **GENERALI ŻYCIE
TOWARZYSTWO UBEZPIECZEŃ
SPÓŁKA AKCYJNA**
acting by an authorised signatory in the presence of:

.....

.....
NAME OF WITNESS:
ADDRESS OF WITNESS:
OCCUPATION OF WITNESS:

Note: The Instrument of Transfer is a working draft and therefore subject to further comment, review and amendment