

**THE HIGH COURT**

**COMMERCIAL**

**2017 No. 139 COS**

**(2017 No. 64 COM)**

**FRIDAY THE 16<sup>TH</sup> DAY OF JUNE 2017**

**BEFORE MR JUSTICE MCGOVERN**

**IN THE MATTER OF AXA LIFE EUROPE DESIGNATED ACTIVITY**

**COMPANY**

**AND IN THE MATTER OF HARCOURT LIFE INTERNATIONAL**

**DESIGNATED ACTIVITY COMPANY**

**AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909**

**AND IN THE MATTER OF THE INSURANCE ACT 1989**

**AND IN THE MATTER OF THE EUROPEAN UNION (INSURANCE AND**

**REINSURANCE) REGULATIONS 2015**

The Petition seeking sanction for the Scheme hereinafter mentioned presented on 13 April 2017 by the directors of AXA Life Europe DAC (“ALE”) (hereinafter called “**the Petitioners**”) coming on for hearing this day pursuant to the Order herein dated 24 April 2017

**AND UPON** reading the said Petition, the Notice of Motion dated 12 April 2017, the Notice of Motion for entry into the Commercial List dated 12 April 2017, the Affidavit of Eoin Lynam sworn on 12 April 2017, the Second Affidavit of Eoin Lynam sworn on 12 April 2017, the Affidavit of Alan Foley sworn on 12 April 2017, the Certificate of Solicitor of John Larkin dated 24 April 2017 and the documents and exhibits referred to in said Affidavits including the Scheme (which is exhibit “C” to the First Affidavit of Eoin Lynam sworn on 12 April 2017), the Affidavit of Service of Wuraola Olatunbosun sworn on 28 April 2017, the Affidavit of Lyndon Casey sworn on 8 June 2017, the Affidavit of Kevin

Nealon sworn on 9 June 2017, the Second Affidavit of Alan Foley sworn on 13 June 2017 and the Third Affidavit of Eoin Lynam sworn on 14 June 2017

**AND UPON** hearing Counsel for the Petitioners

**AND** there being no appearance in Court by or on behalf of any other party

**IT IS ORDERED** as follows:

(1) That the Scheme be sanctioned pursuant to the provisions of Section 13 of the Assurance Companies Act 1909, Regulation 41 of the European Union (Insurance and Reinsurance Regulations) 2015 and Section 36 of the Insurance Act 1989 (as amended); and

(2) That pursuant to Section 36 of the Insurance Act 1989, the following ancillary provisions for implementing the Scheme be sanctioned, with each such provision to take effect from the Effective Time (as defined in the Scheme) which for the purposes of this Order is 23:59 on 30 June 2017:

- (i) the Transferring Business, which includes the Transferring Policies, Transferring Assets, Transferring Liabilities, and rights of ALE in respect of the Transferring Contracts (all as defined in the Scheme) will be transferred by ALE to HLI;
- (ii) the Transferring Assets shall be transferred to and vested in HLI and shall cease to be assets of ALE;
- (iii) that all rights, benefits and powers conferred on or vested in ALE and the liabilities imposed on ALE by or under the Transferring Contracts shall be transferred to HLI;
- (iv) that all premiums or amounts attributable or referable to the Transferring Policies or the Transferring Contracts shall be payable to HLI;
- (v) that HLI 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 ALE;

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- (vi) all references in any Transferring Contract to ALE, the board of directors of ALE, or any other officers, employees or agents of ALE shall be read as references to HLI, the board of directors of HLI, or any other officers, employees or agents of HLI or, where appropriate, agents of HLI to which the administration carried on by HLI 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 ALE, the board of directors of ALE, or any other officers, employees or agents of ALE in relation to any of the Transferring Contracts shall, from and after the Effective Time be exercisable or required to be performed by HLI, the board of directors of HLI or any other officers, employees or agents of HLI;
- (vii) that the Transferring Liabilities shall be transferred to and shall become the liabilities of HLI and shall cease to be liabilities of ALE;
- (viii) that any mandate or other instruction in force on the Effective Time (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums payable under or in respect of any of the Transferring Contracts or the Transferring Policies shall take effect as if it had provided for and authorised such payment to HLI;
- (ix) that any mandate or other instruction in force on the Effective Time in respect of any of the Transferring Contracts or the Transferring Policies as to the manner of payment of any benefit or other amount by ALE shall (and in the case of a Transferring Policy which constitutes a Residual Contract (as defined in the Scheme), from the respective Subsequent Transfer Date (as defined in the Scheme)), continue in force as an effective authority to HLI;

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- (x) that all premiums attributable or referable to the Transferring Policies shall be payable to HLI;
- (xi) that any judicial, quasi-judicial, arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim which are pending by or against ALE in connection with the Transferring Business shall be continued by or against HLI and HLI shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to ALE in relation to any such proceedings;
- (xii) on and with effect from each Subsequent Transfer Date, all actual and potential proceedings by or against ALE in connection with the Residual Assets (as defined in the Scheme) or the Residual Liabilities (as defined in the Scheme) shall be continued by or against HLI, and HLI shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the ALE in relation to such Residual Assets and Residual Liabilities;
- (xiii) ALE is given liberty to transfer to HLI all data (including personal data) held by or on behalf of the ALE in relation to the Transferring Policies, the Transferring Assets and the Transferring Liabilities;
- (xiv) the Books and Records (being the books and records relating to the Transferring Business), which may include Policyholder Data (as defined in the Scheme) protected under the Data Protection Legislation (as defined in the Scheme), shall be transferred to HLI (such that HLI shall be deemed to be the Data Controller of the Policyholder Data), and may be used by HLI for, and disclosed by ALE to, and used by, any agent or contractor of HLI to the same extent that they were used by ALE and its agents or contractors prior to the Effective Time for all purposes in connection with the Transferring Contracts or the Transferring Policies including,

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in particular, administration thereof and all matters relevant or incidental thereto;

- (xv) to the extent that an authority has been given to ALE in connection with a Transferring Policy or a Transferring Contract by a policyholder or counterparty thereto or by any other relevant person, whether pursuant to Data Protection Legislation or otherwise, such authority shall be deemed to have been given to HLI;
- (xvi) any personal data relating to the Employees (as defined in the Scheme) protected under the Data Protection Legislation shall be transferred to HLI and may be used by HLI for, and disclosed by HLI to, and used by any agent or contractor of HLI to the same extent as used and disclosed by ALE prior to the Transfer; and
- (xvii) Such further or other Order as to this Honourable Court shall appear proper.

(3) That notice of the proposed Scheme be published within 15 days of the Effective Time once in each of the following publications: (i) Iris Oifigiúil, (ii) the Irish Examiner and (iii) the Irish Independent and be further published as required in each Member State where a risk written by ALE is situated in accordance with the law of that Member State and the directions of the relevant regulatory authority in that Member State.

Liberty to apply.

**NIAMH DERMODY  
REGISTRAR**

**Date of Perfection: 16 JUNE 2017**

**A COPY WHICH I ATTEST**

  
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**FOR REGISTRAR**

William Fry,  
Solicitors for the Petitioners.