

THE HIGH COURT

COMMERCIAL

2017 No. 422 COS

(2017 No. 239 COM)

THURSDAY THE 15TH DAY OF MARCH 2018

BEFORE MR JUSTICE MCGOVERN

IN THE MATTER OF UNION HERITAGE LIFE ASSURANCE COMPANY
DESIGNATED ACTIVITY COMPANY

AND IN THE MATTER OF AUGURA LIFE IRELAND DESIGNATED
ACTIVITY COMPANY

AND IN THE MATTER OF HARCOURT LIFE ASSURANCE
DESIGNATED ACTIVITY COMPANY

AND IN THE MATTER OF HARCOURT LIFE IRELAND 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 COMMUNITIES (LIFE
ASSURANCE) FRAMEWORK REGULATIONS 1994

AND IN THE MATTER OF THE EUROPEAN UNION (INSURANCE AND
REINSURANCE) REGULATIONS 2015

UPON the Petition herein presented on 6 December 2017 by the directors of Union Heritage Life Assurance Company Designated Activity Company (“UHL”), Augura Life Ireland Designated Activity Company (“ALI”), and Harcourt Life Assurance Designated Activity Company (“HLA”) (hereinafter called “the **Petitioners**”), coming on for hearing this day pursuant to the Order herein dated 18 December 2017

AND UPON reading the said Petition, the said Order, the Notice of Motion dated 6 December 2017, the Affidavit of Alan Foley sworn on 6 December 2017, the Second Affidavit of Alan Foley sworn on 6 December 2017, the Affidavit of Orla Cullen sworn on 8 March 2018, the Third Affidavit of Alan Foley sworn on 9 March 2018, the Affidavit of Celine Taaffe sworn on 12 March 2018, the

Affidavit of John Moynihan sworn on 12 March 2018, the Fourth Affidavit of Alan Foley sworn on 12 March 2018, the Affidavit of Hayley Maher (of service of the papers on the Central Bank of Ireland) sworn on 20 December 2017, the Affidavit of David Garvin sworn on 12 March 2018, the Fifth Affidavit of Alan Foley sworn on 13 March 2018, and the documents and exhibits referred to in said Affidavits, including:-

- (a) The Scheme for the transfer of the Transferring Business (as defined in the Scheme) of each of UHL, ALI and HLA to Harcourt Life Ireland Designated Activity Company (“**HLI**”) (“**the Scheme**”);
- (b) The Agreement made between UHL, ALI, HLA and HLI pursuant to which and pursuant to the terms of the Scheme it was agreed that the shares in Domi Ostenhellweg GmbH together with HLA’s interest in the property listed at Schedule 1 and Schedule 2 to the said Agreement will not pass by delivery or otherwise under the Scheme at the Effective Time and shall be treated as Residual Assets for the purposes of the Scheme (the “**Residual Asset Agreement**”);
- (c) The Report of the Independent Actuary dated 1 December 2017 considering the impact of the proposed Scheme on the Policyholders of each of UHL, ALI, HLA and HLI;
- (d) The Supplemental Report of the Independent Actuary dated 8 March 2018;
- (e) The approval of the Central Bank of Ireland dated 13 March 2018 to extend the authorisation of HLI to include Class VII (Management of Pension Funds) business in respect of the Closed Class VII book of business transferring from HLA under the Scheme;
- (f) The letter dated 13 March 2018 from the Central Bank of Ireland confirming that the Central Bank of Ireland has consulted with the appropriate authorities who have provided their consent to the proposed transfer and certifying that after taking the transfer into account, HLI will hold the necessary eligible own funds to cover its Solvency Capital Requirement.

AND UPON hearing Counsel for the Petitioners and Counsel for

Brian Greene

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 35 of the European Communities (Life Assurance) Framework Regulations 1994, Regulation 41 of the European Union (Insurance and Reinsurance Regulations) 2015, Regulation 35 of the European Communities (Life Assurance) Framework Regulations 1994, and Section 36 of the Insurance Act 1989.
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 31 March 2018:-
 - (a) The Transferring Business, which includes the Transferring Policies, Transferring Assets, Transferring Liabilities, and rights of UHL, ALI and HLA in respect of the Transferring Contracts (all as defined in the Scheme) will be transferred by UHL, ALI and HLA to HLI.
 - (b) The Transferring Assets, including the Altraplan Shares (as defined in the Scheme), the Real Property (as defined in the Scheme but excluding the property listed at Schedule 1 and Schedule 2 to the Residual Asset Agreement) and the Subsidiary Companies Shares (as defined in the Scheme)) but excluding the shares in Domi Ostenhellweg GmbH, shall be transferred to and vested in HLI and shall cease to be assets of UHL, ALI and HLA.

- (c) That all rights, benefits and powers conferred on or vested in UHL, ALI and HLA and the liabilities imposed on UHL, ALI and HLA by or under the Transferring Contracts shall be transferred to HLI.
- (d) That all premiums or amounts attributable or referable to the Transferring Policies or the Transferring Contracts shall be payable to HLI.
- (e) 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 UHL, ALI and HLA.
- (f) All references in any Transferring Contract to UHL, ALI and HLA, the board of directors of UHL, ALI and HLA, or any other officers, employees or agents of UHL, ALI and HLA 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 UHL, ALI and HLA, the board of directors of UHL, ALI and HLA, or any other officers, employees or agents of UHL, ALI and HLA 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.
- (g) That the Transferring Liabilities shall be transferred to and shall become the liabilities of HLI and shall cease to be liabilities of UHL, ALI and HLA.
- (h) 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.

- (i) 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 UHL, ALI and HLA 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.
- (j) That all premiums attributable or referable to the Transferring Policies shall be payable to HLI.
- (k) UHL, ALI and HLA are given liberty to transfer to HLI all data (including personal data) held by or on behalf of the UHL, ALI and HLA in relation to the Transferring Policies, the Transferring Assets and the Transferring Liabilities (as each such term as defined in the Scheme).
- (l) 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 UHL, ALI and HLA to, and used by, any agent or contractor of HLI to the same extent that they were used by UHL, ALI and HLA and its agents or contractors prior to the Effective Time for all purposes in connection with the Transferring Contracts or the Transferring Policies including, in particular, administration thereof and all matters relevant or incidental thereto.
- (m) To the extent that an authority has been given to UHL, ALI and HLA 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.

3. That, pursuant to Section 36(1)(c) of the Insurance Act 1989, and on the basis of the confirmation given in paragraph 15 of the Fourth Affidavit of Alan Foley that HLI fully accepts that all of the Plaintiffs in the proceedings currently pending against HLA are entitled to assert the same equities and rights as against HLI as they were entitled to assert against HLA in respect of the matters at issue in each of the said proceedings:-

(a) That the proceedings listed in the Schedule hereto and that any other 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 HLA, UHL or ALI 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 any of HLA, UHL or ALI in relation to any such proceedings, and further that each of the said Plaintiffs in such proceedings will have the same equities and rights as against HLI as they were previously entitled to assert against HLA in respect of the matters at issue in each of the said proceedings;

(b) That in the case of each such set of proceedings, HLI should be substituted as Defendant in place of HLA.

4. That notice of this Order be published within 15 days of the Effective Time once in each of the following publications, namely (i) Iris Oifigiúil, (ii) the Irish Examiner (iii) the Irish Independent and (iv) the Financial Times (International Edition), and be further published as required in each Member State where a risk written by UHL, ALI or HLA 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

A COPY WHICH I ATTEST Date of Perfection: 15 MARCH 2018


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FOR REGISTRAR

Matheson,
Solicitors for the Petitioners

SCHEDULE

1. High Court proceedings, Record No. 2018 No. 278P between Mary Daly – Plaintiff and LCG Ireland Limited and Harcourt Life Assurance DAC – Defendants;
2. High Court proceedings, Record No. 2018 No. 1191P between Sonia O’Keeffe – Plaintiff and Anglo Irish Assurance Company Limited (now Harcourt Life Assurance DAC), D MacDonald Estates (Limerick) Limited and HWBC Limited– Defendants;
3. High Court proceedings, Record No. 2015 No. 7450P between Audrey McNamara – Plaintiff and IBRC Assurance Company Limited (now Harcourt Life Assurance DAC) and John Sisk and Son Limited – Defendant;
4. Circuit Court proceedings, Record No. 2017 No. 5682P between Cora O’Brian – Plaintiff and Harcourt Life Assurance DAC – Defendant;
5. High Court proceedings, Record No. 2015 No. 176P between Aidan McGuinness - Plaintiff and Kenmare Property Finance Limited, Shane McCarthy, Irish Bank Resolution Corporation (In Special Liquidation) and Harcourt Life Assurance Designated Activity Company – Defendants;
6. High Court proceedings, Record No. 2013 No. 7759P between Sean O’Callaghan – Plaintiff and Irish Bank Resolution Corporation (In Special Liquidation), IBRC Assurance Company Limited (now Harcourt Life Assurance DAC) and IBRC Asset Management Limited – Defendants;
7. High Court proceedings, Record No. 2013 No. 13539P between Brian Green – Plaintiff and Irish Bank Resolution Corporation Limited (In Special Liquidation), Kieran Wallace, Eamon Richardson and Anglo Irish Assurance Company Limited - Defendants;

8. High Court proceedings, Record No. 2015 No. 10807P between Brian Green – Plaintiff and Harcourt Life Assurance Company Limited (In Receivership), Luke Charleton and Marcus Purcell – Defendants;
9. High Court proceedings, Record No. 2012 No. 10831P between David Lavin and the Old Orchard Limited (In Liquidation) – Plaintiffs and Irish Bank Resolution Corporation Limited and IBRC Assurance Company Limited (now Harcourt Life Assurance DAC) – Defendants;
10. High Court proceedings, Record No. 2017 No. 4252P between Dentsu Agis Network Ireland Limited – Plaintiff and Harcourt Life Assurance DAC – Defendant;
11. Circuit Court proceedings, Record No. 2017 No. 17 between Karl O’Connell and Julia Dallaghan – Plaintiffs and Harcourt Life Assurance DAC and Dalkey Sound Management Limited – Defendants;
12. High Court proceedings, Record No. 2005 No. 2743P between Tom O’Mahony - Plaintiff and Anglo Irish Assurance Company Limited (now Harcourt Life Assurance DAC), Anglo Irish Bank plc, O.F. Contracts Limited and James Walsh – Defendants.