

**DRAFT**

**No. 5896 of 2008**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF DOMESTIC & GENERAL LIFE ASSURANCE COMPANY  
LIMITED**

**and**

**IN THE MATTER OF FORESTER LIFE LIMITED**

**and**

**IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000**

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**SCHEME**

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**(pursuant to Part VII of the Financial Services and Markets Act 2000)  
for the transfer to Forester Life Limited of the entire long term business of Domestic &  
General Life Assurance Company Limited**

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## TABLE OF CONTENTS

1.	INTERPRETATION	1
2.	INTRODUCTION	3
3.	OPERATIVE PROVISIONS	4
4.	CONTINUITY	6
5.	RIGHTS AND OBLIGATIONS UNDER TRANSFERRING POLICIES	6
6.	RIGHTS AND OBLIGATIONS UNDER TRANSFERRING LIABILITIES	7
7.	REASSURANCE AGREEMENTS	8
8.	MANDATES	8
9.	FUND STRUCTURE	9
10.	PROCEEDINGS	10
11.	EFFECTIVE DATE	10
12.	COSTS	10
13.	AMENDMENT	11
14.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	11
15.	GOVERNING LAW	11

1. **INTERPRETATION**

- 1.1. In this Scheme (including the Schedules hereto) the following expressions shall, unless the context otherwise requires, bear the meanings respectively set opposite them:

**Act** means the Financial Services and Markets Act 2000;

**Actuarial Function Holder** means, in relation to an insurer, the actuary from time to time appointed pursuant to SUP 4.3 of the FSA Handbook;

**Bid Price** has the meaning set out in the Glossary to the FSA Handbook;

**Cancer Cash Plans** means those Transferring Policies set out in Schedule 2;

**Court** means the High Court of Justice of England;

**DGLA** means Domestic & General Life Assurance Company Limited (FSA reference number 191236), a private limited company incorporated in England under company number 02821512 with registered office at Swan Court, 11 Worple Road, Wimbledon, London SW19 4JS;

**Effective Date** means the date upon which the Scheme becomes effective in accordance with Clause 11 of this Scheme;

**Excluded Funds** means the sum identified out in the Annual FSA Insurance Return for the year ended 31 March 2008 as the additional transfer of business expense reserve in DGLA's Long Term Insurance Fund;

**FLL** means Forester Life Limited (FSA reference number 177898), a private limited company incorporated in England under company number 02997655 with registered office at Foresters House, Cromwell Avenue, Bromley, BR2 9BF;

**FLL Other Business Fund** means that part of the Long Term Insurance Fund ring-fenced and maintained by FLL in respect of its non with-profits business;

**FSA** means the Financial Services Authority of the United Kingdom;

**Guernsey Policies** means those policies set out in Schedule 4;

**Lapsed Policies** means all the Long Term Insurance Contracts of DGLA which are no longer in force but under which DGLA may have a liability to make a payment to a former policyholder or relative of a former policyholder or some other person;

**Linked Assets** means, in relation to Unit-Linked Policies, the assets which are identified in the records of DGLA as being assets by reference to the value of which Property-Linked Benefits are to be determined;

**Linked Fund** has the meaning set out in the Glossary to the FSA Handbook;

**Linked Long Term** has the meaning set out in the Glossary to the FSA Handbook;

**Long Term Insurance Contract** means any contract of insurance falling within Part II of Schedule 1 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

**Long Term Insurance Fund** means the long term insurance fund as defined in the Glossary to the FSA's Handbook;

**Mathematical Reserve(s)** has the meaning given to the term in the Glossary to the FSA's Handbook as it applies to the Transferring Policies;

**Order** means an order of the Court sanctioning this Scheme pursuant to Section 111(1) of the Act and any order of the Court under Section 112 of the Act;

**Property-Linked Benefits** has the meaning set out in the Glossary to the FSA's Handbook;

**Reassurance Agreements** means the agreements subsisting at the Effective Date and entered into by DGLA and the Reassurer for the reinsurance of the Transferring Policies as set out in Schedule 3;

**Reassurer** means Swiss Re Life and Health (UK) Limited;

**Scheme** means this Scheme in its original form or with any modification thereof or addition thereto or condition approved pursuant to Clause 13 of this Scheme or imposed by the Court;

**Transfer Agreement** means the Business Transfer Agreement entered into between DGLA and FLL dated 13 May 2008;

**Transferring Assets** means all properties, rights, claims, benefits and powers of DGLA consisting of the entire Long Term Insurance Fund of DGLA at the Effective Date except for the Excluded Funds;

**Transferring Liabilities** means all liabilities and obligations whatsoever (whether present or future, certain or contingent) of DGLA arising under (but only those arising under) the Transferring Policies as at the Effective Date;

**Transferring Policies** means all the Long Term Insurance Contracts of DGLA in force and the benefit and risk attaching to each such policy as at the Effective Date together with the Lapsed Policies but excluding the Guernsey Policies;

**Unit-Linked Policies** means those Transferring Policies which are Linked Long Term; and

**United Kingdom** means the United Kingdom of Great Britain and Northern Ireland.

- 1.2. Words denoting the singular shall include the plural and vice versa; words denoting one gender shall include the other gender; words denoting individuals shall include any body corporate, unincorporated associations of persons, governments, State or agency of a State (whether or not being a separate legal personality) and vice versa.
- 1.3. Except as the context otherwise requires, words and expressions used in the Act or in any regulations or rules made under it shall have the same meanings in this Scheme.
- 1.4. Any reference in this Scheme to an enactment, statutory provision, regulations or rules shall be deemed to include a reference to that enactment or statutory provision or those regulations or rules as from time to time amended, consolidated, modified, replaced or re-enacted by any statute or statutory provision.
- 1.5. References to a party to this Scheme include references to the successors or assignors (immediate or otherwise) of that party.
- 1.6. References to an agreement or document are to the same as amended from time to time.
- 1.7. Headings in this Scheme are inserted for convenience only and shall not affect its construction.

## 2. **INTRODUCTION**

- 2.1. DGLA is an insurance company to which the Act applies and is authorised by the FSA to effect and/or carry out contracts of long-term insurance in the United Kingdom in the following classes: Life i, iii and iv.
- 2.2. FLL is an insurance company to which the Act applies and is authorised by the FSA to effect and/or carry out contracts of long term insurance in the United Kingdom in the following classes: Life i, iii, iv and vii.
- 2.3. FLL has the requisite authorisation and permissions to enable it to accept the Transferring Policies.

- 2.4. It is proposed that on and with effect from the Effective Date, the Transferring Assets, the Transferring Policies and the Transferring Liabilities shall be transferred to and vested in FLL by the Order in accordance with Part VII of the Act and be dealt with in accordance with this Scheme.
- 2.5. DGLA and FLL have each agreed to apply jointly by counsel at the hearing of the application to sanction this Scheme, to be bound by any Order and to execute all such documents and to do all such acts and things as may be necessary or expedient to be executed or done by it for the purposes of giving effect to the Scheme.

### 3. **OPERATIVE PROVISIONS**

#### 3.1. **Transfer**

##### (a) **Transfer of Transferring Policies**

- (i) On and with effect from the Effective Date, each Transferring Policy and all of DGLA's interest in it shall, by the Order and without any further act or instrument, be transferred to and vested in FLL and be dealt with in accordance with this Scheme.
- (ii) FLL shall accept without investigation, requisition or objection such title to the Transferring Policies as DGLA has at the Effective Date.
- (iii) DGLA shall declare itself trustee for FLL on and from the Effective Date in respect of any of the Transferring Policies which are not or are not capable of being transferred on that date and pending such transfer agrees to act in accordance with the directions of FLL in respect thereof.
- (iv) In the event of any payment being made to or benefit received by DGLA after the Effective Date in respect of any Transferring Policy, DGLA shall hold such payment or benefit on trust for FLL, and pending transfer to FLL, shall act in accordance with the directions of FLL in respect thereof.
- (v) DGLA and FLL shall each take all such steps to do all such things (including the execution and delivery of any document) as may be required to effect or perfect the transfer to and vesting in FLL of each Transferring Policy in accordance with the terms of this Scheme.

**(b) Transfer of Transferring Liabilities**

- (i) On and with effect from the Effective Date, the Transferring Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of FLL. FLL shall succeed to and discharge each Transferring Liability to the exclusion of DGLA.
- (ii) FLL shall discharge on behalf of DGLA or, failing that, indemnify DGLA from and after the Effective Date against:
  - (A) all Transferring Liabilities which are not or are not capable of being transferred on the Effective Date by this Scheme until the relevant liability is transferred to or becomes the liability of FLL; and
  - (B) any other liability incurred in connection with the Transferring Policies whether arising before or after the Effective Date.
- (iii) DGLA and FLL shall each take all such steps and do all such acts and things (including the execution and delivery of any documents) as may be required to effect or perfect the transfer of and vesting in FLL of each Transferring Liability in accordance with the terms of this Scheme.

**(c) Transfer of Transferring Assets**

- (i) On and with effect from the Effective Date, all Transferring Assets shall, by the Order and without any further act or instrument (but subject to the terms of the Order and save as otherwise provided in this Scheme), be transferred to and become assets of FLL.
- (ii) DGLA shall declare itself trustee for FLL on and from the Effective Date in respect of any of the Transferring Assets which are not or are not capable of being transferred on that date and pending such transfer agrees to act in accordance with the directions of FLL in respect thereof.
- (iii) In the event of any payment being made to or benefit received by DGLA after the Effective Date in respect of any Transferring Asset, DGLA shall hold such payment or benefit on trust for FLL and pending transfer to FLL shall act in accordance with the directions of FLL in respect thereof.

- (iv) DGLA and FLL shall each take all such steps and do all such things (including the execution and delivery up of any documents) as may be required to effect or perfect the transfer to and vesting in FLL of the Transferring Assets in accordance with the terms of this Scheme.

#### 4. CONTINUITY

- 4.1. Subject to the provisions of this Scheme, the Transferring Policies shall by the Order and without any further act or deed be transferred to and vest in FLL in accordance with this Scheme and the Transferring Assets shall be likewise transferred to and vest in FLL for all the estate and interest of DGLA therein (but subject to all mortgages, charges or encumbrances affecting the same) and the Transferring Liabilities shall be likewise transferred to and become the liabilities of FLL and shall cease to be liabilities of DGLA. FLL shall for all purposes be deemed to have received the benefit and burden of the aforesaid transfers and to have been entitled thereto on and from the Effective Date and shall be entitled and bound to account for the Transferred Assets, Transferred Liabilities and profits of the Transferred Policies accordingly. FLL shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of each Transferring Policy, Transferring Asset and Transferring Liability which would have been available to DGLA.
- 4.2. Any reference in any Transferring Policies, Transferring Assets or in any agreement, contract, instrument or deed entered into by DGLA and forming part of the Transferring Liabilities, to DGLA, the DGLA Board of Directors, the DGLA Actuarial Function Holder or any officer or employee of DGLA, shall, from and after the Effective Date, be deemed to be a reference to FLL, the FLL Board of Directors, FLL Actuarial Function Holder or the appropriate officer or employee of FLL (as the case may be). In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by DGLA, the DGLA Board of Directors, the DGLA Actuarial Function Holder or any officer or employee of DGLA in relation to the Transferring Policies or Transferring Assets shall, on and from the Effective Date, be exercisable or required to be performed respectively by FLL, the FLL Board of Directors, the FLL Actuarial Function Holder or the appropriate officer or employee of FLL (as the case may be).

#### 5. RIGHTS AND OBLIGATIONS UNDER TRANSFERRING POLICIES

- 5.1. On and with effect from the Effective Date, FLL shall succeed and become entitled to all the rights, discretions, authorities, benefits and powers of DGLA whatsoever under or by virtue of each Transferring Policy.

- 5.2. Every person being a holder of any of the Transferring Policies shall on and from the Effective Date become entitled, to the exclusion of any rights which he may have had against DGLA, to the same rights against FLL as were available to him under such policies against DGLA save that any right or option to effect a further policy of insurance or annuity shall be deemed to be a right or option to effect an equivalent policy or annuity with FLL in accordance with the provisions of clause 5.4 below.
- 5.3. With effect on and from the Effective Date, every person who immediately prior to the Effective Date is a party to a Transferred Policy shall, in substitution for any liability to or obligation owed by him thereunder to DGLA, be under the same liability or obligation to FLL.
- 5.4. If any person exercises any right or option under the terms of a Transferring Policy and either:
- (a) the right or option provides for a new, additional or replacement policy to be issued; or
  - (b) it is appropriate, in the opinion of the FLL Board of Directors, in order to comply with that right or option, to issue a new, additional or replacement policy

the obligation thereby arising shall be satisfied by the issue by FLL of a policy which complies with the terms of that right or option, subject to the right of FLL, in the event that FLL does not, at the time of exercise of the right or option, underwrite the same policy to which the right or option relates, to offer the nearest equivalent policy underwritten by FLL at that time.

- 5.5. On and with effect from the Effective Date, all premiums or other sums attributable to or payable under the Transferring Policies shall be payable to FLL.
- 5.6. FLL shall be entitled to, in respect of the Cancer Cash Plans, review premiums at least on an annual basis.

## 6. **RIGHTS AND OBLIGATIONS UNDER TRANSFERRING LIABILITIES**

On and with effect from the Effective Date, every person who has a right against DGLA in respect of a Transferring Liability shall continue to be entitled, to the exclusion of any rights he may have had against DGLA in respect of the relevant Transferring Liability, to the same rights against FLL as were available to him against DGLA.

7. **REASSURANCE AGREEMENTS**

7.1. On and with effect from the Effective Date, all the rights, benefits and powers conferred on or vested in DGLA and all the liabilities imposed on DGLA by or under the Reassurance Agreements whether express or implied shall, by the Order and without any further act or instrument, be transferred to and vested in FLL which shall be substituted as a party in place of DGLA as if FLL had always been an original party to each such agreement from inception, with the effect that:

- (a) all rights of DGLA under the Reassurance Agreements shall be deemed to be rights enjoyed by FLL;
- (b) all obligations owed to the Reassurer by DGLA under the Reassurance Agreements shall be deemed to be obligations owed by FLL;
- (c) all rights granted to the Reassurer by DGLA under the Reassurance Agreements shall be deemed to be rights granted by FLL;
- (d) all obligations owed to DGLA by the Reassurer under the Reassurance Agreements shall be deemed to be due to FLL;
- (e) DGLA shall be released and discharged from performance of the obligations under the Reassurance Agreements.

7.2. The transfer of the Reassurance Agreements to FLL shall not give rise to any rights or obligations in addition to the rights and obligations of the Reassurer and FLL under the Reassurance Agreements.

8. **MANDATES**

8.1. Any mandate or other instruction in force on the Effective Date providing for payment of premiums payable under the Transferring Policies shall thereafter, by the Order and without any further act or instrument or notification of any person, take effect as if it provided for and authorised payment to FLL.

8.2. Any mandate or other instruction, including but without limitation any direct debit instruction, in force at the Effective Date as to the manner of payment of any sum payable under any Transferring Policy shall, by the Order and without any further act or instrument or notification of any person, continue in force as an effective authority to FLL.

## 9. **FUND STRUCTURE**

### 9.1. Allocation of Transferring Assets and Transferring Liabilities

- (a) On and with effect from the Effective Date, FLL shall allocate the Transferring Policies and Transferring Assets to the FLL Other Business Fund.
- (b) On and with effect from the Effective Date, FLL shall allocate the Transferring Liabilities to the FLL Other Business Fund.
- (c) No separate sub fund shall be set up in respect of this Scheme.

### 9.2. Unit Linked Policies

#### (a) Linked Funds

- (i) On and with effect from the Effective Date, FLL shall in respect of each Linked Fund in existence immediately prior to the Effective Date create and maintain the same Linked Funds within the FLL Other Business Fund as those maintained by DGLA immediately prior to the Effective Date and shall allocate the same Transferring Assets to those funds as are allocated by DGLA immediately prior to the Effective Date.
- (ii) In respect of each Unit Linked Policy, FLL shall, on and with effect from the Effective Date, allocate to the account of each Unit Linked Policy such number of units in the relevant Linked Fund so that the number of units and the Bid Price of the units immediately following the Effective Date equals the number of units in the relevant Linked Fund and the Bid Price of those units immediately prior to the Effective Date.
- (iii) On and with effect from the Effective Date, FLL may exercise the right to price Unit Linked Policies on a daily basis rather than on a weekly basis, subject always to legal requirements and FSA regulations.

#### (b) Fees and charges

- (i) Subject to (ii) below, on and with effect from the Effective Date, FLL shall maintain the management fees and charging structures in place in respect of the Unit Linked Policies immediately prior to the Effective Date.

- (ii) On and with effect from the Effective Date, FLL reserves the right to amend the management fees and charging structures in respect of Unit Linked Policies on an annual basis (either on the policy anniversary or on a date fixed by FLL), subject always to the maximum increase permitted in the policy documents and to legal requirements and FSA regulations.

### 9.3. Operation of FLL Other Business Fund

Subject to applicable legal and regulatory requirements in force at the time nothing in this Scheme shall prevent FLL from:

- (i) establishing further sub funds or Linked Funds within the FLL Other Business Fund at any time after the Effective Date and allocating assets to that sub fund or Linked Fund;
- (ii) closing any sub fund or Linked Fund; or
- (iii) merging, reconstructing or sub dividing any sub fund or Linked Fund

on such terms as FLL may determine, having obtained appropriate actuarial advice.

## 10. **PROCEEDINGS**

If on the Effective Date any proceedings shall be pending by or against DGLA in connection with the Transferring Policies, Transferring Assets or Transferring Liabilities or any of them, the same shall be continued by or against FLL and FLL shall be entitled to any and all defences, claims, counterclaims and rights of set-off that would have been available to DGLA in relation to such proceedings.

## 11. **EFFECTIVE DATE**

Subject to the Order being made, the Scheme shall become effective in relation to each Transferring Policy, each Transferring Liability and each Transferring Asset at 11.59pm on 24 October 2008 or such other time as may be specified in the Order.

## 12. **COSTS**

The costs and expenses of and incidental to the preparation and carrying into effect of this Scheme shall be shared and borne by separate agreement between the parties hereto.

13. **AMENDMENT**

DGLA and FLL may jointly consent for and on behalf of themselves and all other persons concerned to any modification or addition to this Scheme which the Court may think fit to approve or impose.

14. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Scheme is not intended to nor shall it create any rights, entitlements, claims or benefits enforceable by any person that is not a party to it and no other person shall have any benefit or have any right, entitlement or claim in relation to this Scheme by virtue of the Contracts (Rights of Third Parties) Act 1999.

15. **GOVERNING LAW**

This Scheme shall be governed by and construed in accordance with English law.

Dated            of                            2008

