

## UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

### NOTE

### OF

**STANDARD LIFE ASSURANCE LIMITED**, a private company limited by shares, incorporated in Scotland under the registered number SC286833, and having its registered office at Standard Life House, 30 Lothian Road, Edinburgh

### IN THE PETITION OF

**THE STANDARD LIFE ASSURANCE COMPANY**, incorporated under the Standard Life Assurance Company Act 1991 and having its head office at Standard Life House, 30 Lothian Road, Edinburgh

for

Sanction of a scheme under Part VII of the Financial Services and Markets Act 2000 and under which substantially all of the long term business of The Standard Life Assurance Company is to be transferred to SLLC Limited (to be renamed Standard Life Assurance Limited).

### INTRODUCTION

- 1.1 The Noter is Standard Life Assurance Limited (“SLAL”), a private company limited by shares and incorporated in Scotland under the registered number SC286833. It has its registered office at Standard Life House, 30 Lothian Road, Edinburgh.
- 1.2 SLAL is also a UK authorised person, within the meaning of section 105(8) of FSMA. It has been granted permission by the FSA, in terms of Part IV of FSMA, to carry on in the UK long-term insurance business falling within classes I, III, IV, VI and VII of such business set out in Part II of Schedule I to the Regulated Activities Order.
- 1.3.1 This application is made by SLAL in the process of the petition by The Standard Life Assurance Company (“SLAC”), a mutual insurance company incorporated by private Act of Parliament, for the sanction of an insurance business transfer scheme (“the 2006 Scheme”), under Part VII of, and Schedule 12 to, the Financial Services and Markets Act 2000 (“FSMA”).

- 1.3.2 The 2006 Scheme provided for the transfer to SLAL of substantially all of the long term insurance business which was carried on by SLAC in the United Kingdom and other states of the European Economic Area.
- 1.3.3 The 2006 Scheme was sanctioned by an order of this Court on 9<sup>th</sup> June 2006 (“the SLAC Sanction Order”) and became effective on 10<sup>th</sup> July 2006. The SLAC Sanction Order expressly allowed SLAC and SLAL to apply for any orders with respect to such incidental, consequential and supplementary matters as are necessary to secure that the 2006 Scheme was fully and effectively carried out.
- 1.4. In this application SLAL seeks such a consequential order giving the consent of this Court to proposed variations of the 2006 Scheme (together “the Variation”).
- 1.5.1 The Variation will be a consequence of another insurance business transfer scheme (“the SLIF Scheme”), which SLAL proposes to enter with another company in the same group of companies, Standard Life Investments Limited (“SLIF”). Like the 2006 Scheme, the SLIF Scheme is under Part VII of, and Schedule 12 to, FSMA.
- 1.5.2 The SLIF Scheme provides for the transfer to SLAL of the whole of the long term insurance business which is carried on by SLIF in the United Kingdom. That business is one solely of reinsurance. The SLIF Scheme is conditional on inter alia this Court giving its consent to the Variation.
- 1.5.3 SLIF and SLAL have together made an application to this Court (“the SLIF Scheme Application”) for the sanction of the SLIF Scheme. The Variation is itself conditional on the SLIF Scheme being sanctioned by this Court and becoming unconditional, other than in respect of this Court consenting to the Variation.
- 1.6.1 This Court had jurisdiction over the 2006 Scheme in terms of sections 107(3)(a) and (4)(b) of FSMA.
- 1.6.2 Accordingly, this Court has jurisdiction over this application.

## THE 2006 SCHEME AND THE POWER TO VARY

2.1 Paragraph 70.2(D) of the 2006 Scheme ("Paragraph 70.2(D)") provides for the 2006 Scheme being varied after the SLAC Sanction Order. Paragraph 70.2(D) provides that SLAL may:

"apply to the Court for consent to vary the terms of this Scheme; provided that in any such case:

- (i) the Regulator shall be notified of, and have the right to be heard at, any hearing of the Court at which the application is considered; and
- (ii) the application shall be accompanied by a certificate from an independent expert (such independent expert to be selected and appointed by the SLAL Board with the approval of the Regulator) to the effect that, in his opinion, the proposed variation will not materially and adversely affect the reasonable expectations of the holders of Transferred Policies."

2.2 Paragraph 1.1 of the 2006 Scheme defines "the Regulator" in the following terms:

"the Financial Services Authority or such other governmental, statutory or other authority as shall from time to time carry out functions in relation to Long Term Business conducted in the United Kingdom as are, at the Effective Time, carried out by the Financial Services Authority";

2.3 Paragraph 1.1 of the 2006 Scheme defines the "Transferred Policies" as, subject to exceptions which are immaterial in the context of this application,

- "(A) every Policy written by SLAC under which any liability remains unsatisfied or outstanding at the Effective Time, or in respect of which a liability has been accepted by SLAC prior to the Effective Time, and in each case which is comprised in the Transferred Business, including every such Policy written by SLAC which has lapsed (or which has been treated by SLAC as having lapsed) on or before the Effective Time that is reinstated by SLAL on or after the Effective Time in accordance with a subsisting right of reinstatement held immediately prior to the Effective Time; and

- (B) all proposals for insurance received by or on behalf of SLAC in respect of the Transferred Business before the Effective Time which have not become Policies in force by the Effective Time but which subsequently become Policies written by SLAL,".

2.4 Paragraph 2.2 (K) of the 2006 Scheme amplifies, for the purposes of inter alia Paragraph 70.2(D), the meaning of "variation" of the 2006 Scheme. That paragraph provides as follows:

"the expression "variation" shall include any amendment, modification, variation, supplement, deletion, replacement or termination (as the context requires), however effected;".

### **THE CONTENT OF THE VARIATION**

3.1 The Variation is very limited, and largely technical, in its scope. The terms of the Variation are set out in full in the Appendix to this Application.

3.2 First of all, the Variation applies to paragraph 22 of the 2006 Scheme ("Paragraph 22"), which provides as follows:

"22.1 If the SLIF EB Annuities Reinsurance Agreement is terminated in accordance with its terms, such termination shall be effected on the following basis:

- (A) The SLAL Board shall procure that, no later than the date on which the SLIF EB Annuities Reinsurance Agreement is terminated, an alternative arrangement is implemented to provide reinsurance of the Reinsured Liabilities (as defined in the SLIF EB Annuities Reinsurance Agreement). Such alternative arrangement shall be on terms determined by the SLAL Board which are not materially less beneficial to the With Profits Fund than the SLIF EB Annuities Reinsurance Agreement and may, at the discretion of the SLAL Board, be provided either by a SLAL Fund (other than the With Profits Fund), a New SL Group Member and/or any other person.
- (B) Notwithstanding paragraph 16.2B(iii), at the discretion of the SLAL Board, any entitlement of SLAL to an Interim Recapture Amount, a Final Recapture Amount (in each case as defined in the SLIF EB Annuities Reinsurance Agreement) or any other amount payable

because of the termination of the SLIF EB Annuities Reinsurance Agreement shall be: (i) attributed to a SLAL Fund other than the With Profits Fund which is assuming the reinsurance obligations of SLIF in the manner contemplated by paragraph 22.1(A); or (ii) transferred to another New SL Group Member or other person who is assuming such reinsurance obligations.

22.2 Any decision or determination to be made by the SLAL Board pursuant to paragraph 22.1 above must be made having regard to the advice of the SLAL WP Actuary."

3.3.1 Statement 8 of the SLIF Scheme Application explains the respects in which, on a technical legal rather than a commercial level, the SLIF Scheme is inconsistent with Paragraph 22 and so constitutes a variation to it.

3.3.2 In addition, that explanation sets out how, in the context of the SLIF Scheme, the Variation will in substance replicate the commercial substance of the provisions of Paragraph 22.

3.3.3 Reference is made to that explanation.

4.1.1 Secondly, the Variation applies to paragraph 4(A) of Schedule 3 to the 2006 Scheme ("Paragraph 4(A)"), which provides as follows:

"For the purposes of this Schedule 3 (Reference Period Transfer Amount), all Recourse Cashflow calculations shall be made on the basis that any amounts payable or receivable by the With Profits Fund pursuant to reassurances accepted or ceded shall be added to or deducted from (as appropriate) the relevant RCF component, save that any amounts payable or receivable pursuant to reinsurance agreements with SLIF (including the SLIF EB ULP Reinsurance Agreement and the SLIF EB ULL Reinsurance Agreement) shall be disregarded."

4.1.2 The Recourse Cashflows are explained at Statement 3.7 of the SLIF Scheme Application.

4.2.1 Statement 9 of the SLIF Scheme Application explains first of all how the SLIF Scheme seeks to add to, and so vary, Paragraph 4(A).

4.2.2 Statement 9 also explains the respect in which the SLIF Scheme might be inconsistent with Paragraph 4(A) and so might constitute a variation to it. The Variation puts that further matter beyond doubt.

4.2.3 In addition, Statement 9 explains how, in the context of the SLIF Scheme, neither aspect of the Variation will affect the commercial substance of, or general purpose behind, Paragraph 4(A).

4.2.4 Reference is made to Statement 9.

### **THE INDEPENDENT EXPERT**

5.1.1 In accordance with the requirements of Paragraph 70.2(D), John McKenzie, a Fellow of the Institute and Faculty of Actuaries, has been appointed by the board of directors of SLAL, with the approval of the FSA, to give a certificate as an independent expert.

5.1.2 That certificate is to the effect that, in Mr McKenzie's opinion, the Variation will not materially and adversely affect the reasonable expectations of the holders of Transferred Policies, as defined at Statement 2.3 above.

5.2 In accordance with section 109 of FSMA, Mr McKenzie has also been appointed to report as an independent expert on the SLIF Scheme. Again his appointment has been made with the approval of the FSA, which section 109 of FSMA requires.

5.3 Mr McKenzie has produced his certificate in accordance with Paragraph 70.2(D). In his report on the SLIF Scheme, Mr McKenzie explains the reasoning on which his certificate is based.

### **THE FINANCIAL SERVICES AUTHORITY**

6.1 Also in accordance with the requirements of Paragraph 70.2(D), the FSA, as the Regulator, has been notified of this application. It is sought that this application is also formally served on it, so that it may exercise its right to be heard at any hearing at which this application is to be considered.

6.2 As described in Statement 22 of the SLIF Scheme Application, it is reasonably believed that the FSA will prepare two reports for this Court on the SLIF Scheme. The

second of those reports should confirm that, in the context of the SLIF Scheme, the FSA does not object to the Variation.

## **ADVERTISEMENT OF THIS APPLICATION**

7.1 As described in the SLIF Scheme Application, notice of the SLIF Scheme will be given in accordance with the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001.

7.2.1 It is expedient that notice of this application be included in the notice of the SLIF Scheme.

7.2.2 That would save some cost and would be more informative to any interested person than two separate notices of this application and the SLIF Scheme Application would be.

## **GRANT OF CONSENT**

8.1 In these circumstances all the express requirements of Paragraph 70.2(D) have been satisfied.

8.2.1 It is also appropriate that the Court exercises its discretion under Paragraph 70.2(D) to give its consent to the Variation. In particular, the Variation will not materially and adversely affect the reasonable expectations of the holders of Transferred Policies, as defined at Statement 2.3 above.

8.2.2 As regards Paragraph 22, the Variation will replicate its commercial substance.

8.2.3 As regards Paragraph 4(A), the Variation will not affect its commercial substance.

8.3 For completeness, the Variation does not vary any of the terms of Part E5 of the 2006 Scheme, which concerned compensation payable to the then members of SLAC for the loss of certain rights. Paragraph 70.3 does not, therefore, apply to the Variation.

## **REPORTER**

9.1 The appointment of Mr Paul W Hally, solicitor, Edinburgh, has been sought as reporter to the SLIF Scheme Application. He acted as reporter in the application to sanction the 2006 Scheme.

9.2 It is expedient that Mr Hally also be appointed as reporter to this application.

## **PERIOD OF NOTICE**

10.1 In the SLIF Application the FSA wish, in accordance with its published guidance, that there be not less than 6 weeks between the notices being sent out to the policyholders and the date of the hearing to sanction the SLIF Scheme.

10.2 Accordingly, and in order to be consistent with the SLIF Scheme Application, SLAL requires technically to seek to extend the period of notice for Answers to this Application from 21 days, in accordance with Rules of Court 14.6 (2) and 15.2 (3).

## **GENERAL**

11. This application is presented under section 112(1)(d) of FSMA, at common law in accordance with the express permission in the SLAC Sanction Order and under Rules of Court 14.6 (2) and 15.2 (3).

**MAY IT THEREFORE** please your Lordships:-

- (i) to order this Note by Standard Life Assurance Limited ("the Noter") for consent to the variation which is sought to be made, in the terms set out in the Appendix to this Note ("the Variation"), to the scheme ("the 2006 Scheme") under Part VII of the Financial Services and Markets Act 2000 and under which substantially all of the long term business of The Standard Life Assurance Company was transferred to

the Noter, to be intimated on the Walls in common form;

- (ii) to order an advertisement of this Note to be published once in each of (a) The London Gazette; (b) The Edinburgh Gazette; (c) The Belfast Gazette; (d) the United Kingdom edition of The Financial Times; (e) The Scotsman and (f) The Daily Telegraph;
- (iii) to order service in common form the Financial Services Authority (designed in the Schedule to this Note) of a copy of this Note;
- (iv) to allow all parties claiming an interest to lodge Answers to this Note within 42 days after that intimation, service and advertisement;
- (v) to appoint Paul W Hally, solicitor, of 1 Exchange Crescent, Conference Square, Edinburgh (or any other person whom your Lordship considers appropriate) as Reporter for the Process and to remit the Process to the Reporter to report on the facts and circumstances set out in the Note and the regularity of the proceedings;

and upon resuming consideration of this Note, with or without Answers;

- (vi) to make an Order under Section 112(1)(d) of FSMA giving consent to the Variation of the 2006 Scheme;
  
- (vii) to order SLAL to deposit two certified copies of the Order to be made with the Financial Services Authority within 10 days of the making of that order;
  
- (viii) to appoint the Noter to advertise the Order pronounced once (a) in each of The London Gazette, The Edinburgh Gazette, The Belfast Gazette; and (b) in each of the following newspapers, namely the United Kingdom edition of The Financial Times, The Scotsman and The Daily Telegraph;

and

- (ix) to decern (whether *ad interim* or otherwise), or to do further or otherwise in the premises as your Lordship may consider appropriate.

**ACCORDING TO JUSTICE, ETC**

**SCHEDULE**

**Schedule for Service**

Service in Common Form is sought upon:

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

## APPENDIX

The Variations to the 2006 Scheme are shown underlined and by highlighting:

### 22. Reinsurance arrangements: SLIF EB Annuities Reinsurance Agreement

22.1 If the SLIF EB Annuities Reinsurance Agreement: (i) is terminated in accordance with its terms; or (ii) otherwise ceases to have effect as a result of a scheme of transfer pursuant to Part VII of the Act under which all or substantially all of the business of SLIF is transferred to SLAL; ~~such termination shall be effected on the following basis:~~

(A) The SLAL Board shall procure that, no later than the date on which the SLIF EB Annuities Reinsurance Agreement is terminated or otherwise ceases to have effect (as the case may be), an alternative arrangement is implemented to provide reinsurance of the Reinsured Liabilities (as defined in the SLIF EB Annuities Reinsurance Agreement). Such alternative arrangement shall be on terms determined by the SLAL Board which are not materially less beneficial to the With Profits Fund than the SLIF EB Annuities Reinsurance Agreement and may, at the discretion of the SLAL Board, be provided either by a SLAL Fund (other than the With Profits Fund), a New SL Group Member and/or any other person: and-

(B) Notwithstanding paragraph 16.2(B)(iii), at the discretion of the SLAL Board:

(i) where the SLIF EB Annuities Reinsurance Agreement is terminated in accordance with its terms, any entitlement of SLAL to an Interim Recapture Amount, a Final Recapture Amount (in each case as defined in the SLIF EB Annuities Reinsurance Agreement) or any other amount payable because of the termination of the SLIF EB Annuities Reinsurance Agreement; or

(ii) where the SLIF EB Annuities Reinsurance Agreement ceases to have effect as a result of a scheme of transfer pursuant to Part VII of the Act under which all or substantially all of the business of SLIF is transferred to SLAL, such assets (and/or rights to such assets) as are agreed between SLIF and SLAL to be of an aggregate value that is equal to the amount that would have been payable by SLIF to SLAL had the SLIF EB Annuities Reinsurance Agreement terminated in accordance with its terms.

- shall be: (i) attributed to a SLAL Fund other than the With Profits Fund which is assuming the reinsurance obligations of SLIF in the manner contemplated by paragraph 22.1(A); or (ii) transferred to another New SL Group Member or other person who is assuming such reinsurance obligations.

#### 4. Interpretation

(A) For the purposes of this Schedule 3 (Reference Period Transfer Amount), all Recourse Cashflow calculations shall be made on the basis that any amounts payable or receivable by the With Profits Fund pursuant to reassurances accepted or ceded shall be added to or deducted from (as appropriate) the relevant RCF component, save that:

(i) any amounts payable or receivable pursuant to reinsurance agreements with ~~SLIF~~ [any New SL Group Member](#) (including the SLIF EB ULP Reinsurance Agreement and the SLIF EB ULL Reinsurance Agreement); and

(ii) for the avoidance of doubt, any amounts payable or receivable or otherwise to be credited or debited pursuant to paragraph 24 where the Investment Element in respect of a Policy written in, allocated to or reinsured by the With Profits Fund is allocated or transferred to, or reinsured by, a SLAL Fund other than the With Profits Fund,

           shall be disregarded.