In the High Court of New Zealand
Wellington Registry
I Te Kōti Matua O Aotearoa
Te Whanganui-ā-Tara Rohe

CIV-2025-485-

in the matter of: a scheme of arrangement under Part 15 of the Companies Act 1993

and: **Foundation Life (NZ) Limited**, a duly incorporated company having its registered office at Ground Floor, 50 Customhouse Quay, Wellington

Applicant

Originating application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993

Dated: 27 February 2025

REFERENCE: M D Arthur (michael.arthur@chapmantripp.com)
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ORIGINATING APPLICATION FOR ORDERS APPROVING A SCHEME OF ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993

To the Registrar of the High Court at Wellington

And to every person directed to be served

This document notifies you that—

1 The applicant will on apply to the court for orders that:

1.1 the proposed scheme of arrangement on the terms set out in the Scheme Terms (a draft of which is **annexed** to this application and the final version of which will be submitted to the Court prior to the hearing of this application) (the **Scheme**) is approved and is binding upon:

(a) the applicant, Foundation Life (NZ) Limited (**Foundation Life**); and

(b) Foundation Life's **Eligible Policyholders** (as defined in the Scheme Terms).

2 The grounds on which the orders are sought are as follows:

2.1 Section 236(1) of the Companies Act 1993 provides the Court with powers to make orders that the Scheme is binding on Foundation Life and the Eligible Policyholders, and on such other persons as the Court may specify and upon such terms and conditions as the Court thinks fit.

2.2 Section 237(1) of the Companies Act 1993 provides the Court with the power to make additional orders to give effect to the Scheme.

2.3 By the date on which this application is determined:

(a) Foundation Life will have complied with the initial orders made by this Court and the requirements of Part 15 of the Companies Act 1993; and

(b) the Scheme will have been fairly put before the class concerned.

2.4 The Scheme is such that:

(a) an intelligent and honest business person, a member of the class concerned and acting in respect of that interest, might reasonably approve it; and

(b) it is fair and equitable.

3 The application is made in reliance on:

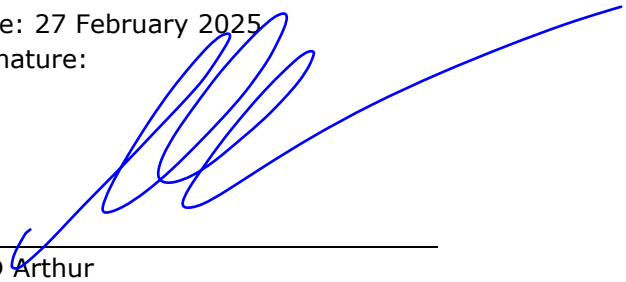
3.1 Part 15 of the Companies Act 1993;

3.2 Part 19 of the High Court Rules 2016;

3.3 the affidavit of Timothy Charles Sole, affirmed on 27 February 2025; and

3.4 a further affidavit or affidavits to be filed prior to the hearing of this application.

Date: 27 February 2025
Signature:



M D Arthur
Solicitor for the applicant

This document is filed by Michael David Arthur, solicitor for the applicant, of the firm Chapman Tripp.

Documents for the applicant should be served by email to each of the email addresses on the front page of this document.

Provided that documents are served by email, documents may also be:

(a) Posted to the solicitors listed on the front page of this document at PO Box 2206, Shortland Street, Auckland 1140.

(b) Hand delivered to level 34, PwC Tower, 15 Customs Street West, Auckland 1010.

SCHEME TERMS

SCHEME TERMS FOR THE SCHEME OF ARRANGEMENT BETWEEN FOUNDATION LIFE (NZ) LIMITED AND ITS ELIGIBLE POLICYHOLDERS

BACKGROUND

A Foundation Life (NZ) Limited has proposed a scheme of arrangement between itself and its Eligible Policyholders, the terms of which are set out below.

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In the Explanatory Statement for the Scheme and in these terms, unless the context requires otherwise:

Additional Bonus means, in relation to a Current Policy, a bonus which may be declared by Foundation Life at any time and accumulated to a Policyholder's Initial Life Cover. The declaration of Additional Bonuses is not guaranteed.

Agreement to Issue Replacement Life Insurance means the agreement of that name entered into between Foundation Life and Chubb Life dated 4 July 2018, which was amended and replaced on 24 December 2020 and further amended on 23 December 2021, 12 January 2023, 15 March 2023, 30 March 2023, 2 May 2023, 18 August 2023, 23 August 2024 and 19 February 2025.

Annual Bonus means, in relation to a Current Policy, each Policyholder's allocated share of the profits generated by the Participating Assets which may be declared by Foundation Life at the end of each of Foundation Life's financial years and accumulated to the Policyholder's Initial Life Cover.

Appointed Actuary means Mr Paul Swinhoe (FIA, FIAA, FNZSA), who is the appointed actuary of Foundation Life for the purposes of section 78 of the Insurance (Prudential Supervision) Act 2010.

Appointed Actuary's Report means the "Appointed Actuary's Report on Foundation Life (NZ) Limited's Proposed Scheme of Arrangement" dated 25 February 2025.

Approved means, in relation to the Scheme, the grant of orders by the Court approving the Scheme under section 236(1) of the Companies Act.

Bonuses means the Annual Bonuses and Additional Bonus.

Business Day means a day (other than Saturday, Sunday or a public holiday) on which registered banks are open for business in Auckland and Wellington.

Cash Payment means, in relation to a Current Policy held by an Eligible Policyholder, the cash payment determined by the Model in respect of that Current Policy as the Eligible Policyholder's Scheme Outcome.

Choice means a choice between the options described in clauses 3.1 and 3.2 below (as applicable) (and **Choose** has a corresponding meaning).

Choice Date means the date as determined by Foundation Life and notified to Eligible Policyholders, being the last date on which by 5.00pm NZ Resident Eligible Policyholders may Choose which Scheme option they receive, and any Eligible Policyholder (including Overseas Eligible Policyholders) may complete the transfer of their Current Policy to a new policyholder and/or repay Foundation Life some or all of any Policy Debt. The Choice Date is also the date as at which by 5.00pm Foundation Life finally determines who the Overseas Eligible Policyholders are and the date from which at 5.00pm Foundation Life will cease approving requests for new loans under the Current Policies. The Choice Date is expected to be 7 weeks after the Scheme Approval Date.

Choice Form means the form for NZ Resident Eligible Policyholders to indicate their Choice.

Chubb Life means Chubb Life Insurance New Zealand Limited (company number: 20561), previously known as Cigna Life Insurance New Zealand Limited, a New Zealand limited liability company and licensed life insurer.

Companies Act means the Companies Act 1993.

Court means the High Court of New Zealand (in Wellington).

Current Policy means a Whole of Life Policy or an Endowment Policy that has not had a Final Claim Event, been surrendered or lapsed on or before 5.00pm on the Record Date, and has a fixed Maturity Date which is scheduled on or after the Effective Date.

Death Benefit means, in relation to a Current Policy, at any time, the sum of the Initial Life Cover, plus any accumulated Bonuses, which at that time is payable to a Policyholder by Foundation Life on the Life Insured's death, less any Terminal Illness benefit previously paid to the Policyholder. It does not include any cover that is provided by a Rider Benefit.

Effective Date means the date, on or after 1 September 2025, determined by Foundation Life and notified to Eligible Policyholders by Foundation Life, as being the date on which, at the commencement of the day, life cover under the Replacement Policies starts and the date as at which each Eligible Policyholder's final Policy Value and the final value of the Scheme Outcome each Eligible Policyholder receives under the Scheme is calculated (amongst other things). For the sole purpose of determining who can vote on the Scheme, the Effective Date shall be taken to be 1 September 2025.

Eligible Policyholders means Policyholders who hold a Current Policy at 5.00pm on the Record Date. Notwithstanding this:

(a) where an Eligible Policyholder has transferred their Policy after 5.00pm on the Record Date but before 5.00pm on the Choice Date, the transferee shall be an Eligible Policyholder, and the transferor shall no longer be an Eligible Policyholder from the transfer date; and

(b) where an Eligible Policyholder has died after 5.00pm on the Record Date and before the Effective Date, the executors of the deceased policyholder's estate become the Eligible Policyholder from the date of death.

Endowment Policy means an endowment participating policy issued by Foundation Life which participates in the profits of the Participating Fund.

Endowment Policyholder means, in respect of an Endowment Policy, the Policyholder.

Explanatory Statement is the document provided to Policyholders by Foundation Life explaining the Scheme and its background.

Final Claim Event means, in respect of a Policy, the Life Insured has died, or a Terminal Illness claim equal to the Death Benefit has been accepted by Foundation Life.

FLNZH means Foundation Life (NZ) Holdings Limited (company number: 5246601), a New Zealand limited liability company, of which Foundation Life is a wholly-owned subsidiary.

Foundation Life means Foundation Life (NZ) Limited (company number: 868766), a New Zealand limited liability company and licensed life insurer.

Foundation Life Directors means the directors of Foundation Life, more information in respect of which is available in **Appendix 7**.

Foundation Life Nominees means Foundation Life Nominees Pty. Ltd. (ACN: 169711755), an Australian limited company, of which FLNZH is a wholly-owned subsidiary.

Full Replacement Cover Option means the option set out in clause 3.1(a).

IBNR Claim means an 'incurred but not reported' claim which, in respect of a date, is a Current Policy liability which has arisen but which has not been reported to Foundation Life as at that date.

Independent Actuary means Mr David Chamberlain (FNZSA) of Melville Jessup Weaver.

Independent Actuary's Report means the letter signed by Mr David Chamberlain, as a Principal of Melville Jessup Weaver, titled "Independent Actuary's review of the Foundation Life Scheme of Arrangement" dated 25 February 2025.

Initial Life Cover means, in relation to a Current Policy, the base amount of life cover elected by a Policyholder at the commencement of the Current Policy and agreed to be paid by Foundation Life on the Life Insured's death, or, where applicable, such reduced or increased amount of life cover as agreed with the Policyholder (including CPI increases). It does not include any life cover that is provided by a Rider Benefit or as a result of Bonuses.

Insurance Legislation means the Insurance (Prudential Supervision) Act 2010, the Insurance (Prudential Supervision) Regulations 2010, and the Life Insurance Act 1908.

Insurance-Receiving Policyholders means those NZ Resident Eligible Policyholders who are to be issued Replacement Policies as part of the Scheme.

IPSA means the Insurance (Prudential Supervision) Act 2010.

Life Insured means, in respect of a policy, the person whose life is insured by that policy. The life insured may be the same person as the policyholder or a different person.

Maturity Date means, in relation to a policy, the fixed date at which the Death Benefit will become payable under that policy, even if the Life Insured has not died.

Model means the model described at section 5 and Appendix A of the Appointed Actuary's Report for calculating each Eligible Policyholder's Policy Value and the value of their Scheme Outcome.

NZ Resident Eligible Policyholder means, on a date, an Eligible Policyholder who has a New Zealand postal address recorded in the Register on that date.

Overseas Eligible Policyholder means, on a date, an Eligible Policyholder who has a postal address recorded in the Register which is outside New Zealand on that date.

Participating Assets means, in relation to a date, the assets of Foundation Life's Participating Fund on that date.

Participating Fund means the sub-fund of the statutory fund in which the assets of the Current Policies are held, and in which Policyholders' premiums are invested.

Policy means a life insurance policy issued by Foundation Life.

Policy Debt means, in relation to a Current Policy, any Current Policy loans, premium debt or other debt owing to Foundation Life on that Current Policy.

Policy Value means, in relation to a Current Policy held by an Eligible Policyholder, the Eligible Policyholder's share of the Participating Fund in respect of that Current Policy as determined by Foundation Life using the Model.

Policyholder means, at a time, person(s) who is (are) recorded on the Register as the owner of a Policy (whether or not they are also the Life Insured under the Policy) at that time, and, in relation to a Policy, means the person(s) who is (are) recorded on the Register as the owner(s) of that Policy at that time.

Pre-Paid Premiums means, in respect of a Current Policy or a Rider Benefit, premiums which have been paid in advance and relate to any cover under the Current Policy for a period beyond the current premium payment period.

RBNA Claim means a 'reported but not admitted' claim, which is a claim under a Current Policy which is reported to Foundation Life before the Effective Date, but has not been admitted by Foundation Life for payment before the Effective Date.

RBNA Cover Amount means the aggregate amount of RBNA Claims transferred by Foundation Life to Chubb Life in accordance with the Agreement to Issue Replacement Life Insurance, together with any statutory accrued interest up to Effective Date.

Record Date means the day which is three Business Days before the date of the Scheme Meeting, being the date from which at 5.00pm Eligible Policyholders will be bound by the Scheme in respect of their Current Policies if the Scheme is Approved.

Register means Foundation Life's Policyholder register.

Replacement Benefit means, in relation to a Rider Benefit, a replacement benefit, which the NZ Resident Eligible Policyholder is to receive under the Scheme to replace that Rider Benefit, to be issued by Chubb Life in accordance with the Scheme in favour of the NZ Resident Eligible Policyholder who holds the Rider Benefit, for which no further premiums need to be paid (unless the Insurance-Receiving Policyholder and Chubb Life agree to amend the terms of the Replacement Policy or the Replacement Benefit at the Insurance-Receiving Policyholder's cost), whereby:

(a) guaranteed insurability Rider Benefits and the total and permanent disability Rider Benefit would become a Replacement Benefit to their Replacement Policy and existing term insurance Rider Benefits would become new standalone term insurance policies;

(b) the terms of the Replacement Benefits offered by Chubb Life will be at least as good as the terms of the Rider Benefits they replace, other than:

  (i) additional cover under Replacement Benefits for guaranteed insurability rider benefits will not allow policyholders to take out a new Whole of Life Policy or Endowment Policy; and

  (ii) increased cover under Replacement Benefits for term rider benefits will not be able to be converted into a new Whole of Life Policy or Endowment Policy; and

(c) additional life cover provided by Chubb Life as a result of a policyholder exercising their Replacement Benefit will instead be in the form of term insurance.

Replacement Cover means, in relation to a Current Policy held by an NZ Resident Eligible Policyholder who Chooses the Full Replacement Cover Option or one of the combinations of life cover and cash, a life insurance policy, to be issued by Chubb Life under the Agreement to Issue Replacement Life Insurance to the NZ Resident Eligible Policyholder, for which no further premiums need to be paid (unless the Insurance-Receiving Policyholder and Chubb Life agree to amend the terms of the Replacement Policy or the Replacement Benefit at the Insurance-Receiving Policyholder's cost), with any Chosen Replacement Benefits attached.

Replacement Policy means, in relation to a Current Policy held by an NZ Resident Eligible Policyholder, the life insurance policy issued by Chubb Life as part of the Scheme, being life insurance policies for Replacement Cover and policies for the Replacement Benefits for Rider Benefits, in respect of that Current Policy. For clarity:

(a) the Replacement Policy's surrender value is not guaranteed, but will not be more than the amount of the premium paid by Foundation Life to Chubb Life in respect of the relevant Replacement Policy. The Surrender Value will be calculated by Chubb Life based on circumstances at the time of surrender and may initially be well below the premium paid to Chubb Life by Foundation Life for that policy;

(b) claims under the Replacement Policy are payable solely:

  (i) in the event of the Life Insured's death; or

  (ii) in the event that the Life Insured is diagnosed with a Terminal Illness,

  and a Replacement Policy will end only when the such event occurs and the Insurance-Receiving Policyholder receives the full Sum Insured under the Replacement Policy or the Insurance-Receiving Policyholder surrenders the Replacement Policy in accordance with its terms.

Reserve Bank means the Reserve Bank of New Zealand.

Rider Benefits means, in relation to a Current Policy, any non-participating guaranteed insurability benefits, supplementary temporary benefits, NT term benefits, decreasing temporary benefits and supplementary disablement maturity benefit (each as further described in **Appendix 7** of the Explanatory Statement) which are underwritten by Foundation Life in respect of that Current Policy.

Scheme means the scheme of arrangement pursuant to Part 15 of the Companies Act, the terms of which are set out in this document.

Scheme Approval Date means the date of the decision from the second Court hearing at which the Scheme is Approved and, if Approved, the date on which this document is binding on Foundation Life and all Eligible Policyholders.

Scheme Conditions means:

(a) Eligible Policyholders pass the Scheme Resolution approving the Scheme by the majorities set out below:

  (i) by more than 50% in number (1 vote per Current Policy) of the Current Policies held by Eligible Policyholders who vote. For this purpose, where more than one vote is cast in relation to a Current Policy, only the vote of the joint Eligible Policyholder first named in the Register (or the proxy appointed by that person) will be counted; and

  (ii) votes in favour, representing not less than 75% in value of the Current Policies held by Eligible Policyholders who vote. For this purpose, the value of a Current Policy will be the Surrender Value of that Current Policy as at 5.00pm on the Record Date;

(b) the Scheme is Approved; and

(c) all regulatory approvals, consents and other acts that are necessary to implement the Scheme are obtained from the relevant regulatory authorities on or before 9:00am on the date on which the Court hears the application to approve the Scheme.

Scheme Expenses includes all developmental and implementation costs of the Scheme, but does not include the administrative costs for paying Eligible Policyholders their cash entitlements under the Scheme.

Scheme Meeting means the meeting of Eligible Policyholders to be held at Eden Park, World Cup Lounge West, Level 4, Samsung South Stand, 42 Reimers Avenue, Kingsland, Auckland on 9 June 2025 at 2.00pm.

Scheme Outcome means, in relation to an Eligible Policyholder, the Replacement Cover and additional cash, Cash Payment or a combination of them, which an Eligible Policyholder will be eligible to receive under the Scheme if the Scheme is implemented.

Scheme Resolution means the resolution to be put at the Scheme Meeting, which is set out in the Notice of Meeting appended to the Scheme's Explanatory Statement (see **Appendix 1**).

Scheme Terms means the document contained in this Appendix 5 which sets out the scheme of arrangement which will become binding on Foundation Life and all Eligible Policyholders on and from the Scheme Approval Date if the Scheme is approved.

Shareholder means, in relation to Foundation Life, Foundation Life (NZ) Holdings Limited.

Shareholder Entitlement means the entitlement due to the Shareholder set out in clause 7.1 or any such lesser amount as the Shareholder may agree.

Single Premium means the aggregate amount of the premium payable by Foundation Life to Chubb Life under the Agreement to Issue Replacement Life Insurance for the issue of the Replacement Policies to the Insurance-Receiving Policyholders.

Statutory Fund means the fund that Foundation Life is required to maintain as a licensed life insurer in accordance with Insurance Legislation. The Statutory Fund is split into two sub-funds, the Participating Fund and the non-participating fund.

Sum Insured means, as the context requires, the Death Benefit in relation to a Current Policy, or the guaranteed sum insured in relation to a Replacement Policy determined by Foundation Life for that Replacement Policy using the Model. For clarity where a payment has been made under the Current Policy, which is less than the Death Benefit, the Sum Insured in respect of a Replacement Policy shall be the net amount after deducting such payments.

Surrender Value means the amount an insurer may agree to pay the policyholder if the policyholder wishes to cancel the policy.

Take-up Rate means the proportion of the Sum Insured of the Current Policies of Eligible Policyholders who receive Replacement Policies.

Terminal Illness means, in relation to a date, the diagnosis of a Life Insured with a terminal illness where the Life Insured's death is expected within 12 months of that date, supported by evidence accepted by the insurer.

Whole of Life Policy means a whole of life participating policy issued by Foundation Life which participates in the profits of the Participating Fund.

Whole of Life Policyholder means, in respect of a Whole of Life Policy, the Policyholder.

1.2 **Construction**

In the construction of these terms, unless the context requires otherwise:

Background and clauses: references to Background and clauses are to the background and clauses of these terms.

Business Days: anything required by these terms to be done on a day which is not a Business Day may be done on the next Business Day.

Currency: a reference to any monetary amount is to New Zealand currency.

Dates and Time: a reference to a time or a date is to a New Zealand time or date.

Defined Terms: words or phrases appearing in these terms with capitalised initial letters are defined terms and have the meanings given to them in these terms.

Documents: a reference to any document, including these terms, includes a reference to that document as amended or replaced from time to time.

Headings: headings appear as a matter of convenience and do not affect the construction of these terms.

Including: a reference to *including* or similar words includes a reference to "without limitation".

Joint and Several Obligations: any provision of these terms to be performed or observed by two or more persons binds those persons jointly and severally.

Negative Obligations: a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done.

No Contra Proferentem Construction: the rule of construction, known as the "contra proferentem rule", does not apply to these terms.

Eligible Policyholders: a reference to an Eligible Policyholder includes that person's personal representatives, successors and permitted assigns.

Person: a reference to a person includes a reference to a body corporate, to a governmental agency and to an unincorporated body of persons.

Related Terms: where a word or expression is defined in these terms, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

Rounding of calculated percentages and fractions: where these terms refer to:

(a) the Sum Insured by reference to a percentage of the NZ Resident Eligible Policyholder's Current Policy's Surrender Value; or

(b) cash amounts by reference to a fraction of a Policy Value,

those percentages and fractions are rounded to provide a meaningful indication of the percentages and fractions that will apply, and the actual percentages and fractions in each case will be determined by Foundation Life using the Model.

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders.

Statutes and Regulations: a reference to a statute or any regulations is a reference to that statute or those regulations as amended, or to any statute or regulations substituted for that statute or those regulations.

2 CANCELLATION OF CURRENT POLICIES

2.1 All Current Policies to be cancelled immediately before the Effective Date

The Current Policies and any existing entitlements under these policies will be cancelled with effect from the end of the day before the Effective Date. That cancellation will occur without the need for any notice by Foundation Life to any Eligible Policyholder. For clarity, this clause does not affect any entitlement derived under the Scheme.

3 ELIGIBLE POLICYHOLDER ENTITLEMENTS UNDER THE SCHEME

3.1 NZ Resident Eligible Policyholders to be given a Choice

Foundation Life will offer NZ Resident Eligible Policyholders, as compensation for the cancellation of their Current Policies under the Scheme, the Choice of one of the following options:

(a) Replacement Cover which will have a Sum Insured that, at the Effective Date, is 5% higher than the NZ Resident Eligible Policyholder's Current Policy's Death Benefit, for which no further premiums will need to be paid. Under the Model, some Policyholders will also receive a payment of the balance of their Policy Value from Foundation Life. Where such payment would be less than $1,000 and the Eligible Policyholder is to receive Full Replacement Cover, the payment shall be applied to increase the Sum Insured on the Replacement Cover; or

(b) a Cash Payment that will, at the Effective Date, be a minimum of 5% higher than the NZ Resident Eligible Policyholder's Current Policy's Surrender Value, capped at the NZ Resident Eligible Policyholder's Current Policy's Death Benefit; or

(c) a combination of life cover provided by Chubb Life and cash, with the emphasis on life cover or the emphasis on cash (the choice between those two options is to be chosen by the NZ Resident Eligible Policyholder), with the combinations representing an allocation of the Policy Value:

  (i) two thirds towards Replacement Cover and one third towards cash; or

  (ii) one third towards Replacement Cover and two thirds towards cash.

In each case, the Sum Insured and/or the Cash Payment (as applicable for the relevant Current Policy) and any other payments will be determined by Foundation Life using the Model.

3.2 NZ Resident Eligible Policyholders with Rider Benefits

Foundation Life will offer NZ Resident Eligible Policyholders whose Current Policy includes Rider Benefits, as further compensation for the cancellation of their Current Policies (which include their Rider Benefits) under the Scheme, a further Choice if they are to receive a Replacement Policy, of receiving either:

(a) Replacement Benefits; or

(b) an increase to their Cash Payment of an amount equal to the average cash value of their Rider Benefits (even if that cash value is less than the minimum $1,000 Cash Payment), which shall be determined by Foundation Life.

Those NZ Resident Eligible Policyholders whose Current Policy includes Rider Benefits who are to receive solely a Cash Payment of their Policy Value shall be deemed to have elected an increased Cash Payment under clause 3.2(b) and may not elect Replacement Benefits under clause 3.2(a).

3.3 **NZ Resident Eligible Policyholders to be notified of their options**

(a) As soon as reasonably practical after the Scheme Approval Date, Foundation Life will send to each NZ Resident Eligible Policyholder a Choice Form and allow those NZ Resident Eligible Policyholders approximately 6 weeks from the date the Choice Form is sent to them to make a Choice. To be effective, a completed Choice Form must be received by Foundation Life by 5.00pm on the Choice Date.

(b) If, on or following the Scheme Approval Date, but prior to 5.00pm on the Choice Date, Foundation Life becomes aware that a Current Policy which was owned by an Overseas Eligible Policyholder is now owned by an NZ Resident Eligible Policyholder (whether because of an ownership transfer registered by Foundation Life or otherwise), Foundation Life will send the NZ Resident Eligible Policyholder a Choice Form and will give the NZ Resident Eligible Policyholder until 5.00pm on the Choice Date to make a Choice.

(c) If, on or following the Scheme Approval Date, but prior to 5.00pm on the Choice Date, Foundation Life becomes aware that ownership of a Current Policy has been transferred between two NZ Resident Eligible Policyholders, Foundation Life will send the transferee NZ Resident Eligible Policyholder a Choice Form and will give the transferee NZ Resident Eligible Policyholder until 5.00pm on the Choice Date to make a Choice, and any Choice made by the transferor will be void.

(d) A Choice or deemed Choice cannot be changed after 5.00pm on the Choice Date.

3.4 **Where NZ Resident Eligible Policyholders do not make a Choice by 5.00pm on the Choice Date, their Scheme Outcomes will be set by default**

If a Choice Form is not received by Foundation Life from an NZ Resident Eligible Policyholder by 5.00pm on the Choice Date, or Foundation Life is not reasonably able to determine any actual Choice in a Choice Form, the NZ Resident Eligible Policyholder will be deemed to have chosen:

(a) for Whole of Life Policyholders, the option described in clause 3.1(a), including any entitlement to Replacement Benefits as described in clause 3.2(a); or

(b) for Endowment Policyholders, the option described in clause 3.1(b), including any entitlement to an increased Cash Payment of an amount equal to the cash value of any Rider Benefits as described in clause 3.2(b).

However, where the NZ Resident Eligible Policyholder has selected in a Choice Form an option in respect of their Rider Benefits but has not selected an option in clause 3.1, or Foundation Life is not reasonably able to determine the Choice of an option in clause 3.1 from their Choice Form, the Policyholder shall be deemed to have chosen the option in respect of the NZ Resident Eligible Policyholder's Current Policy that corresponds to the option Chosen in respect of their Rider Benefits.

If Foundation Life is not reasonably able to determine the Choice in respect of Replacement Benefits from a Choice Form, then an NZ Resident Eligible Policyholder shall be deemed to have Chosen to receive Replacement Benefits, except if the NZ Resident Eligible Whole of Life Policyholder has Chosen the Cash Payment option described in 3.1(b).

For clarity, clauses 3.10 and 3.11 override this clause 3.4.

3.5 **Overseas Eligible Policyholder Scheme Outcomes**

Overseas Eligible Policyholders will not be given a Choice. Policyholders who are Overseas Eligible Policyholders at 5.00pm on the Choice Date will receive the option described in clause 3.1(b), and those Overseas Eligible Policyholders whose Current Policy includes a Rider Benefit will receive an increased Cash Payment under clause 3.2(b).

3.6 **Determination of the amount of Eligible Policyholders' Scheme Outcomes**

As soon as reasonably practicable after the Effective Date, Foundation Life shall determine the amounts of Eligible Policyholders' Scheme Outcomes, the Policy Value and the amount of Single Premium payable to Chubb Life using the Model.

Foundation Life shall advise Chubb Life of the amount of the Sum Insured under the Replacement Policies in accordance with the Agreement to Issue Replacement Life Insurance.

3.7 **Payment of Cash Payments and any payment determined by the Model for the options in clauses 3.1(a) and 3.1(c)**

(a) Within a reasonable time after the determination of the Scheme's cash payments to Eligible Policyholders, Foundation Life will pay such amounts to those Eligible Policyholders whose Scheme Outcome includes a Cash Payment or to those Eligible Policyholders entitled to a cash payment under the options in clauses 3.1(a) and 3.1(c), provided the Eligible Policyholder has first provided Foundation Life all confirmation of identity documents reasonably required by Foundation Life, bank account details and any other details Foundation Life may require.

(b) Where Foundation Life has made reasonable efforts to contact an Eligible Policyholder who is entitled to a cash payment under the Scheme and the Policyholder has not responded or met the required conditions within the advised period to receive that payment, Foundation Life may pay that payment to the Inland Revenue in accordance with the Unclaimed Money Act 1971.

3.8 **Foundation Life will procure the issue of Replacement Policies**

Foundation Life will procure that Chubb Life:

(a) issues the Replacement Policies to the Insurance Receiving Policyholders, including any Replacement Benefits where the Scheme requires. Each Replacement Policy shall take effect from the commencement of the Effective Date, regardless of when the Replacement Policy document is actually received by the Insurance Receiving Policyholder; and

(b) sends the Replacement Policies to Insurance Receiving Policyholders if an address is known as soon as reasonably practical on or after the Effective Date.

Foundation Life will pay to Chubb Life the premiums required by the Agreement to Issue Replacement Life Insurance.

3.9 **Actions in respect of Current Policies**

Foundation Life shall, in respect of Eligible Policyholders:

(a) from the Scheme Approval Date, cease processing:

(i) claims where the claim event occurs after 5.00pm on the Record Date until the amount of the claim can be determined under the Scheme, except where payment is made under clause 3.10(a) or (c); and

(ii) surrender requests (including for partial surrenders) where the surrender date is after 5.00pm on the Record Date until the surrender amount can be determined under the Scheme, except where payment is made under clause 3.10(b);

(b) from 5.00pm on the Choice Date, in respect of the Current Policies, cease:

(i) processing ownership transfers;

(ii) accepting the repayment by Eligible Policyholders of Policy Debt; and

(iii) processing requests for new loans; and

(c) from the date three Business Days before Effective Date, in respect of the Current Policies, cease:

(i) collecting premiums;

(ii) accruing interest on outstanding Policy Debt;

(d) as at the Effective Date, write-off any amount of Policy Debt which is less than $50 in respect of a Current Policy.

3.10 **Alternatives for Policyholders after 5.00pm on the Record Date**

Notwithstanding any other clause in this document, Foundation Life may agree with an Eligible Policyholder, during the period after 5.00pm on the Record Date and before the Effective Date, that:

(a) where a Final Claim Event has occurred after 5.00pm on the Record Date but before the Effective Date, the Eligible Policyholder receives the Current Policy's Death Benefit; or

(b) where the Eligible Policyholder's Current Policy is surrendered after 5.00pm on the Record Date but before the Effective Date, the Eligible Policyholder receives their Current Policy's Surrender Value,

in full satisfaction of the Eligible Policyholder's entitlements under the Scheme and their Current Policy, or

(c) where a Terminal Illness claim (which is not a Final Claim Event) or a Rider Benefit claim (other than a Final Claim Event) has occurred after 5.00pm on the Record Date but before the Effective Date, the Eligible Policyholder receives the Current Policy's Terminal Illness payment or Rider Benefit, in full satisfaction of the Eligible Policyholder's entitlement under the Scheme and their Current Policy for that Terminal Illness cover or Rider Benefit.

3.11 **Treatment of claims (other than maturities) occurring after 5.00pm on the Record Date but before the Effective Date**

Notwithstanding clauses 3.4 to 3.8, where a claim event in respect of a Current Policy, other than a maturity, has occurred after 5.00pm on the Record Date, but before the Effective Date:

(a) the NZ Resident Eligible Policyholder shall be paid under the Scheme, as the NZ Resident Eligible Policyholder's sole entitlement under the Scheme:

(i) in respect of an NZ Resident Eligible Policyholder's Death Benefit, the Sum Insured of their Replacement Policy and any additional payment determined by the Model for the option in clause 3.1(a);

(ii) in respect of an NZ Resident Eligible Policyholder's Rider Benefits, any amount the NZ Resident Eligible Policyholder would have been entitled to under the Eligible Policyholder's Replacement Policy in respect of Replacement Benefits; or

(iii) in respect of an NZ Resident Eligible Policyholder's Terminal Illness, the Terminal Illness entitlement under the NZ Resident Eligible Policyholder's Replacement Policy,

less any payment received in respect of the NZ Resident Eligible Policyholder's Current Policy that is not reflected in the Sum Insured, as if the claim had arisen after the Effective Date; and

(b) an Overseas Eligible Policyholder shall be paid under the Scheme, as the Overseas Eligible Policyholder's sole entitlement under the Scheme:

(i) in respect of an Overseas Eligible Policyholder's Death Benefit, the Cash Payment determined by the Model for the option in clause 3.1(b); or

(ii) in respect of an Overseas Eligible Policyholder's Rider Benefits, any extra amount the Eligible Policyholder would have been entitled to as an increase to the Overseas Eligible Policyholder's Cash Payment under clause 3.2(b) in respect of the Overseas Eligible Policyholder's Rider Benefits,

less any payment received in respect of the Overseas Eligible Policyholder's Current Policy that is not reflected in the Sum Insured, as if the claim event had arisen after the Effective Date,

within a reasonable time on or after the Effective Date, provided the Eligible Policyholder has first provided Foundation Life or Chubb Life all confirmation of identity documents reasonably required by Foundation Life or Chubb Life, bank account details and any other details Foundation Life or Chubb Life may require, as if the claim event had occurred after the Effective Date (plus any statutory interest up to the date of payment), unless, in any case, the Eligible Policyholder receives in respect of such claim their Current Death Benefit, their Current Policy's Surrender Value or their Terminal Illness payment under clause 3.10.

Where an NZ Resident Eligible Policyholder makes a Terminal Illness claim under a Current Policy after 5.00pm on the Record Date and before the Effective Date, if the amount paid under this clause is less than an amount payable under this clause in respect of a Final Claim Event, any unpaid balance of the amount payable under this clause in respect of a Final Claim Event would be treated as the Sum Insured under the NZ Resident Eligible Policyholder's Current Policy for the purposes of rest of the Scheme.

3.12 **Repayment of Policy Debt**

An Eligible Policyholder, in their discretion, may repay their Policy Debt (in whole or in part) to Foundation Life prior to 5.00pm on the Choice Date. If the Eligible Policyholder's Policy Debt is not repaid prior to 5.00pm on the Choice Date, such Policy Debt shall be repaid out of the Policy Value attributed to the Eligible Policyholder and reflected in the Scheme Outcomes generated by the Model.

3.13 **Cost of Rider Benefits**

Foundation Life will pay all costs associated with:

(a) providing Replacement Benefits or increasing Cash Payments to NZ Resident Eligible Policyholders in respect of their Rider Benefits; and

(b) providing the cash value of their Rider Benefit to Overseas Eligible Policyholders,

from Foundation Life's non-participating fund.

4 CANCELLATION OF A REPLACEMENT POLICY BY AN INSURANCE-RECEIVING POLICYHOLDER

If an Insurance-Receiving Policyholder wishes to cancel their Replacement Policy and within 14 days of receiving their Replacement Policy documents notifies Chubb Life of this wish, then within a reasonable time after Foundation Life receives from Chubb Life written confirmation that Chubb Life is cancelling the Replacement Policy and will be repaying the amount of the premium paid to Chubb Life on the Insurance-Receiving Policyholder's behalf by Foundation Life for the Replacement Policy (to which Foundation Life is entitled under the Agreement to Issue Replacement Life Insurance) then once the Policyholder has provided Foundation Life with their bank account details and such confirmation of identity documents as required by Foundation Life, Foundation Life will pay the Insurance-Receiving Policyholder an amount equivalent to what that Policyholder would have received if they had chosen the Cash Payment option, less any payment they may have already received under the Scheme.

5 CONDITIONS

5.1 Scheme is Conditional

The Scheme is conditional on the satisfaction of each of the Scheme Conditions. If the Scheme Conditions are not met, the Scheme will not proceed and these terms will be of no effect.

5.2 Sufficient assets condition

If, prior to the Effective Date, in Foundation Life's reasonable opinion, the Participating Assets will not be sufficient to pay Chubb Life's premium, Policyholders' payments, the Shareholder Entitlement and other liabilities of the Participating Fund on the Effective Date then:

(a) from the date it is determined by Foundation Life that this condition is not met, clauses 3.9 (a) to (c) shall cease to have effect and Foundation Life shall resume with the activities under clause 3.9(a) to (c) as if those clauses had not existed;

(b) clauses 2, 3.6, 3.7, 3.9(d), 3.11, 3.13, 4 and 7 shall not come into effect and shall be terminated; and

(c) (for clarity) Foundation Life shall have no liability under the Scheme to make any payment to any Eligible Policyholder, or to procure for any Eligible Policyholder any Replacement Cover or Replacement Benefit, and every Endowment Policy and Whole of Life Policy shall continue, as they are.

6 SCHEME APPLICATION

6.1 Effect of the Scheme

The Scheme will bind all Eligible Policyholders in respect of their Current Policies irrespective of how any particular Eligible Policyholder voted and, for complete clarity, including any Eligible Policyholder in respect of whose Participating Policy a Final Claim Event occurs after 5.00pm on the Record Date and before the Effective Date, the policy liabilities in respect of which will be addressed by clauses 3.10 or 3.11.

7 SHAREHOLDER ENTITLEMENT AND EXPENSE CONTRIBUTIONS

7.1 Shareholder Entitlement and expense contributions

To the extent permitted by law, the Shareholder will be paid a fixed amount of $16.05m or such lesser amount as the Shareholder may accept in its discretion, or which is required to comply with the Insurance Legislation, in return for the Shareholder agreeing, at its own expense, to capitalise Foundation Life to enable Foundation Life to make payment of:

(a) any administrative costs incurred by Foundation Life for paying Eligible Policyholders' cash entitlements under the Scheme that are unable to be met by Foundation Life from its budget; and

(b) all costs incurred in relation to the winding-up and de-registration of Foundation Life from the New Zealand Companies Office register.

No further distributions shall be made to the Shareholder from the Participating Fund (aside from a final washup payment (if any) when the Participating Fund is closed).

8 GOVERNING LAW

8.1 Governing law

The Scheme is governed by the laws of New Zealand, and shall bind Foundation Life and all Eligible Policyholders pursuant to Part 15 of the Companies Act.

8.2 Submission to jurisdiction

Eligible Policyholders irrevocably submit to the exclusive jurisdiction of the courts of New Zealand in respect of any proceedings arising out of, or in connection with, the Scheme. Eligible Policyholders irrevocably waive any objection to the venue of any legal proceedings in New Zealand courts on the basis that the process has been brought in an inconvenient forum.