



80623

**IN THE HIGH COURT OF JUSTICE**

**No 1863 of 2015**

**CHANCERY DIVISION**

**COMPANIES COURT**

**The Honourable Mr Justice Warren**

**Thursday the 9<sup>th</sup> day of July 2015**

**IN THE MATTER OF INDEPENDENT INSURANCE COMPANY LIMITED (IN PROVISIONAL LIQUIDATION)**

**AND IN THE MATTER OF PART 26 OF THE COMPANIES ACT 2006**



**ORDER**

**UPON THE APPLICATION** by Part 8 Claim Form dated 11 March 2015 (the "**Claim Form**") of Independent Insurance Company Limited (in provisional liquidation) with registered number 00080623 whose registered office is at c/o Capita Insurance Services Ltd, 5<sup>th</sup> Floor Churchgate House, 56 Oxford Street, Manchester M1 6EU (the "**Company**") acting by its provisional liquidators Mark Charles Batten and Dan Yoram Schwarzmann (the "**Provisional Liquidators**") appointed by order of Mr Justice Ferris dated 17 June 2001

**AND UPON HEARING** Daniel Bayfield, Counsel for the Company

**AND UPON READING** the Claim Form and the evidence

**AND UPON** the Financial Services Compensation Scheme by Counsel, namely, Daniel Bayfield, undertaking to be bound by the scheme of arrangement hereinafter mentioned and proposed to be made between the Company and the Scheme Creditors (as defined in the scheme of arrangement hereinafter mentioned)

**THIS COURT HEREBY SANCTIONS** the scheme of arrangement as set forth in the Schedule hereto

**AND IT IS ORDERED** that the Provisional Liquidators do forthwith deliver an office copy of this order to the Registrar of Companies for England and Wales



## **SCHEDULE**

### **THE SCHEME OF ARRANGEMENT**



**IN THE HIGH COURT OF JUSTICE**

**No. 1863 of 2015**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF THE COMPANIES ACT 2006**

**- and -**

**IN THE MATTER OF INDEPENDENT INSURANCE COMPANY LIMITED  
(IN PROVISIONAL LIQUIDATION)**

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**SCHEME OF ARRANGEMENT  
(under Part 26 of the Companies Act 2006)**

**- between -**

**INDEPENDENT INSURANCE COMPANY  
LIMITED  
(IN PROVISIONAL LIQUIDATION)**

**- and -**

**THE SCHEME CREDITORS  
(as defined in the scheme of arrangement)**

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**Herbert Smith Freehills LLP**

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## **PART 1 – THE COMPANY**

### **1. THE COMPANY AND THE SCHEME**

- 1 1 The Company is a company incorporated under the laws of England and Wales with company registration number 00080623
- 1 2 The Company wrote general insurance and reinsurance business including liability, property, motor and other insurance for the commercial and personal lines sectors
- 1 3 On 17 June 2001, the directors of the Company presented a petition to the Court for the winding-up of the Company on the basis that it was insolvent and could not pay its debts in full
- 1 4 The Provisional Liquidators were appointed by the Court on 17 June 2001 and continue to hold that office
- 1 5 One of the terms of the order appointing the Provisional Liquidators is a power to formulate and propose a scheme of arrangement to the Company's creditors
- 1 6 The arrangements contained in this Scheme are being proposed to Scheme Creditors as an alternative to a liquidation of the Company, although after the Scheme has been implemented and payments made thereunder, it is intended that the Company will go into compulsory liquidation

### **2. OTHER PARTICIPANTS IN THE SCHEME**

- 2 1 The Provisional Liquidators, acting in their capacity as both Provisional Liquidators and Scheme Administrators, have undertaken to be bound by the Scheme as it applies to them and their roles as both Provisional Liquidators and Scheme Administrators under the Scheme and to execute or do, or procure to be executed or done, all such documents, acts or things as may be necessary or as the Court may consider desirable to be executed or done by them or on their behalf for the purpose of giving effect to such undertaking or the Scheme
- 2 2 The FSCS has agreed with the Company and the Provisional Liquidators to undertake to the Court to be bound by the Scheme (subject to it becoming effective) and to execute or do, or procure to be executed or done, all documents, acts or things as may be necessary or as the Court may consider desirable to be executed or done by it or on its behalf for the purpose of giving effect to the Scheme
- 2 3 The Scheme Actuarial Adviser has given and has not withdrawn its consent to act as Scheme Actuarial Adviser from the Effective Date and to be bound by the terms of the Scheme to the extent that they apply to it as Scheme Actuarial Adviser
- 2 4 The Scheme Adjudicator has given and not withdrawn his consent to act as Scheme Adjudicator from the Effective Date and to be bound by the terms of the Scheme to the extent that they apply to him as Scheme Adjudicator

### **3. THE COURT MAY MODIFY THE SCHEME**

- 3 1 The Company may consent on behalf of all Scheme Creditors to any modification of or addition to the Scheme, or any terms or conditions which the Court may think fit to



approve or impose at any hearing of the Court to sanction the Scheme which would not directly or indirectly have a materially adverse effect on the interest of any Scheme Creditor under the Scheme

- 3.2 Any modification of or addition to the Scheme or any of its terms which, in the opinion of the FSCS, would materially adversely affect its interests in the Scheme, shall not be made unless and until approved by the FSCS

## **PART 2 – GENERAL PROVISIONS**

### **4. APPLICATION AND PURPOSES OF THE SCHEME**

- 4 1 The Scheme shall apply to all of the Company's Liabilities apart from the Excluded Employment Claims
- 4 2 The purposes of the Scheme are
- 4 2 1 to allow Scheme Creditors to submit estimates of the value of Notified Outstanding Claims and IBNR Claims by reference to the terms of the Estimation Guidelines contained in the Scheme Non-Protected Claims will then be considered and agreed by the Company where possible by reference to the Estimation Guidelines or determined by the Scheme Adjudicator,
  - 4 2 2 to require all Scheme Claims (other than Protected Contingent Claims and Protected Claims) to be submitted in writing by Scheme Creditors to the Company by the Bar Date,
  - 4 2 3 to allow the Company to pay a dividend to Scheme Creditors on their Admitted Scheme Claims in full and final settlement of those claims,
  - 4 2 4 to achieve fairness between Scheme Creditors by recouping Defence Costs paid during the Provisional Liquidation (payment of which has benefitted some but not all Scheme Creditors) subject to Scheme Creditors having a right of opt out from such recoupment,
  - 4 2 5 to facilitate arrangements under which the FSCS pays compensation in respect of Protected Claims during the term of the Scheme and thereafter once the Scheme has terminated and the Company is in liquidation and the handling by the FSCS of any Protected Claims made by Protected Policyholders which may arise and become eligible for payment of compensation by the FSCS in the liquidation,
  - 4 2 6 to allow the Company to make a payment to the FSCS as a contribution to the costs and expenses which the FSCS will incur in taking over and carrying on the run-off, claims handling and agreement of all Liabilities which may in the future become Protected Claims, without further recourse to the Company or its Property, and
  - 4 2 7 to allow the Company to pay or provide for Priority Liabilities in full

### **5. THE DATE WHEN THE SCHEME BECOMES EFFECTIVE**

The Scheme shall become effective on the Effective Date, being the date upon which an office copy of the Court Order sanctioning the Scheme is delivered to the Registrar of Companies in England and Wales

### **6. CONTINUED STAY ON LEGAL PROCEEDINGS AGAINST THE COMPANY**

- 6 1 From the Effective Date (and subject to Clause 6 2 below), no Scheme Creditor shall be entitled to take or continue any step or Proceeding against the Company or any of its Property in any jurisdiction whatsoever for the purpose of establishing any Scheme Claim and/or obtaining payment directly or indirectly in respect of any Scheme Claim

- 6 2 Nothing in Clause 6 1 above shall prejudice the enforcement by a Scheme Creditor of
- 6.2 1 its rights under the Scheme, or
- 6.2 2 its rights or any claim against any person other than the Company
- 6 3 No Scheme Creditor shall, without the prior written consent of the FSCS, be entitled to take any step, including any Proceeding, relating to the interpretation or application of the Policyholders Protection Act or the FSCS Rules as such Act and rules apply to the Scheme
- 6 4 The stay on Proceedings contained in Clause 6 1 may only be lifted with the prior written consent of the Company which shall only be given if the Scheme Administrators consider that to lift the stay is in the best interests of the general body of Scheme Creditors as a whole

## **7. SECURITY**

- 7 1 Nothing in the Scheme shall affect the right of any Scheme Creditor to rely on or enforce any Security which could have been relied on or enforced if the Company were being wound up pursuant to the Winding-up Petition and an order of the Court for the winding-up of the Company had been made on the Effective Date, provided that any action to enforce any Security is done strictly in accordance with the terms of the contract pursuant to which the Security was established
- 7 2 Where a Scheme Creditor has the benefit of any Security, the value of that Security shall be deducted from the Scheme Creditor's Scheme Claims in determining any Admitted Scheme Claims under the Scheme
- 7 3 Where the Scheme Claims of a Scheme Creditor with the benefit of Security have all become Admitted Scheme Claims in respect of which a deduction has been made to take into account the value of any Security (or have been otherwise dealt with in accordance with the Scheme), the Scheme Creditor shall
- 7 3 1 enforce, draw down or withdraw from the Security the amount of any deduction;
- 7 3 2 release, discharge or cancel the Security, and
- 7 3 3 provide such cooperation and assistance as the Company or the Scheme Administrators may require in order to obtain the release of the balance of any remaining Security to the Company Each Scheme Creditor is deemed to acknowledge that, in the event that all its Scheme Claims are satisfied as a result of the realisation of any Security, he shall continue to provide assistance to the Company and the Scheme Administrators in accordance with this Clause 7 3
- 7 4 Any Scheme Creditor who obtains or receives payment by enforcing, drawing down or withdrawing any Security in an amount which exceeds either the value of his Scheme Claim in respect of the contract or contracts, including any Insurance Contract, for which the Security was issued or established, and/or any other Scheme Claim to which the Scheme Creditor is legally entitled to apply it, or the amount which he is legally entitled to receive from that Security at the time when he receives or obtains payment, shall hold the amount of such excess on trust for the Company and shall immediately pay the same to the Company without set-off, deduction, retention, abatement or counterclaim
- 7 5 Notwithstanding Clause 7 4, the Company may, at its absolute discretion, treat any excess

referred to in Clause 7 4 as an advance dividend received in full by the Scheme Creditor during the course of the Provisional Liquidation and deduct the amount of the excess from any amount payable by way of dividend to that Scheme Creditor on that Scheme Creditor's Admitted Scheme Claims under the Scheme

- 7 6 Where a Scheme Creditor has enforced, drawn down or withdrawn from its Security and the Company is unable to reconcile or match all or part of the proceeds of enforcement (the "**Unreconciled Proceeds**") with Scheme Claims against which such proceeds may be legitimately applied in accordance with the terms of the contract under which the Security was established, then without prejudice to any other rights which the Company may have, including without limitation the right to demand repayment of the Unreconciled Proceeds, the Company may, at its absolute discretion, determine against which Scheme Claims
- 7 6 1 the Unreconciled Proceeds,
- 7 6 2 any other advantage or benefit obtained by the Scheme Creditor,
- 7 6 3 interest from the date of payment of the Unreconciled Proceeds, and
- 7 6 4 any costs incurred by the Company in investigating the Unreconciled Proceeds, shall be applied
- 7 7 Nothing in the Scheme shall affect the rights of the Company against any person in respect of any wrongful or excessive drawdown or enforcement of any Security In particular, should a Scheme Creditor wrongfully enforce any Security issued or created in respect of the Company, this shall be deemed to constitute a step prohibited by Clause 6

## **8. SET-OFF**

- 8 1 Where before the Effective Date there have been mutual credits, mutual debts or other mutual dealings between the Company and a Scheme Creditor, an account shall be taken under the Scheme of the amount of that Scheme Creditor's Scheme Claims as valued under the Scheme and all sums (if any) due from that Scheme Creditor to the Company in respect of mutual credits, debts or other dealings, and the sums due from one party shall be set-off against the sums due from the other
- 8 2 Reference in this Clause 8 to mutual credits, mutual debts or other mutual dealings shall not include
- 8 2 1 any debt of the Company arising out of an obligation incurred at a time when the Scheme Creditor had notice that the Winding-up Petition was pending, or
- 8 2 2 any debt which has been acquired by a Scheme Creditor by assignment or otherwise, pursuant to an agreement between the Scheme Creditor and any other party where that agreement was entered into
- (A) after the Petition Date; and
- (B) at a time when the Scheme Creditor had notice that the Winding-up Petition was pending

For the avoidance of doubt, any Scheme Claim which has been assigned to a Scheme Creditor after the Petition Date may not be applied in extinguishing or reducing any

## **PART 1 – THE COMPANY**

### **1. THE COMPANY AND THE SCHEME**

- 1 1 The Company is a company incorporated under the laws of England and Wales with company registration number 00080623
- 1 2 The Company wrote general insurance and reinsurance business including liability, property, motor and other insurance for the commercial and personal lines sectors.
- 1 3 On 17 June 2001, the directors of the Company presented a petition to the Court for the winding-up of the Company on the basis that it was insolvent and could not pay its debts in full
- 1.4 The Provisional Liquidators were appointed by the Court on 17 June 2001 and continue to hold that office
- 1 5 One of the terms of the order appointing the Provisional Liquidators is a power to formulate and propose a scheme of arrangement to the Company's creditors
- 1 6 The arrangements contained in this Scheme are being proposed to Scheme Creditors as an alternative to a liquidation of the Company, although after the Scheme has been implemented and payments made thereunder, it is intended that the Company will go into compulsory liquidation

### **2. OTHER PARTICIPANTS IN THE SCHEME**

- 2 1 The Provisional Liquidators, acting in their capacity as both Provisional Liquidators and Scheme Administrators, have undertaken to be bound by the Scheme as it applies to them and their roles as both Provisional Liquidators and Scheme Administrators under the Scheme and to execute or do, or procure to be executed or done, all such documents, acts or things as may be necessary or as the Court may consider desirable to be executed or done by them or on their behalf for the purpose of giving effect to such undertaking or the Scheme
- 2 2 The FSCS has agreed with the Company and the Provisional Liquidators to undertake to the Court to be bound by the Scheme (subject to it becoming effective) and to execute or do, or procure to be executed or done, all documents, acts or things as may be necessary or as the Court may consider desirable to be executed or done by it or on its behalf for the purpose of giving effect to the Scheme
- 2 3 The Scheme Actuarial Adviser has given and has not withdrawn its consent to act as Scheme Actuarial Adviser from the Effective Date and to be bound by the terms of the Scheme to the extent that they apply to it as Scheme Actuarial Adviser.
- 2 4 The Scheme Adjudicator has given and not withdrawn his consent to act as Scheme Adjudicator from the Effective Date and to be bound by the terms of the Scheme to the extent that they apply to him as Scheme Adjudicator.

### **3. THE COURT MAY MODIFY THE SCHEME**

- 3 1 The Company may consent on behalf of all Scheme Creditors to any modification of or addition to the Scheme, or any terms or conditions which the Court may think fit to

approve or impose at any hearing of the Court to sanction the Scheme which would not directly or indirectly have a materially adverse effect on the interest of any Scheme Creditor under the Scheme.

- 3 2 Any modification of or addition to the Scheme or any of its terms which, in the opinion of the FSCS, would materially adversely affect its interests in the Scheme, shall not be made unless and until approved by the FSCS

## **PART 2 – GENERAL PROVISIONS**

### **4. APPLICATION AND PURPOSES OF THE SCHEME**

- 4 1 The Scheme shall apply to all of the Company's Liabilities apart from the Excluded Employment Claims
- 4 2 The purposes of the Scheme are
- 4 2 1 to allow Scheme Creditors to submit estimates of the value of Notified Outstanding Claims and IBNR Claims by reference to the terms of the Estimation Guidelines contained in the Scheme Non-Protected Claims will then be considered and agreed by the Company where possible by reference to the Estimation Guidelines or determined by the Scheme Adjudicator,
  - 4 2 2 to require all Scheme Claims (other than Protected Contingent Claims and Protected Claims) to be submitted in writing by Scheme Creditors to the Company by the Bar Date,
  - 4 2 3 to allow the Company to pay a dividend to Scheme Creditors on their Admitted Scheme Claims in full and final settlement of those claims,
  - 4 2 4 to achieve fairness between Scheme Creditors by recouping Defence Costs paid during the Provisional Liquidation (payment of which has benefitted some but not all Scheme Creditors) subject to Scheme Creditors having a right of opt out from such recoupment;
  - 4 2 5 to facilitate arrangements under which the FSCS pays compensation in respect of Protected Claims during the term of the Scheme and thereafter once the Scheme has terminated and the Company is in liquidation and the handling by the FSCS of any Protected Claims made by Protected Policyholders which may arise and become eligible for payment of compensation by the FSCS in the liquidation,
  - 4 2 6 to allow the Company to make a payment to the FSCS as a contribution to the costs and expenses which the FSCS will incur in taking over and carrying on the run-off, claims handling and agreement of all Liabilities which may in the future become Protected Claims, without further recourse to the Company or its Property, and
  - 4 2 7 to allow the Company to pay or provide for Priority Liabilities in full

### **5. THE DATE WHEN THE SCHEME BECOMES EFFECTIVE**

The Scheme shall become effective on the Effective Date, being the date upon which an office copy of the Court Order sanctioning the Scheme is delivered to the Registrar of Companies in England and Wales

### **6. CONTINUED STAY ON LEGAL PROCEEDINGS AGAINST THE COMPANY**

- 6 1 From the Effective Date (and subject to Clause 6 2 below), no Scheme Creditor shall be entitled to take or continue any step or Proceeding against the Company or any of its Property in any jurisdiction whatsoever for the purpose of establishing any Scheme Claim and/or obtaining payment directly or indirectly in respect of any Scheme Claim

- 6 2 Nothing in Clause 6 1 above shall prejudice the enforcement by a Scheme Creditor of.
- 6 2 1 its rights under the Scheme, or
- 6 2 2 its rights or any claim against any person other than the Company.
- 6 3 No Scheme Creditor shall, without the prior written consent of the FSCS, be entitled to take any step, including any Proceeding, relating to the interpretation or application of the Policyholders Protection Act or the FSCS Rules as such Act and rules apply to the Scheme
- 6.4 The stay on Proceedings contained in Clause 6 1 may only be lifted with the prior written consent of the Company which shall only be given if the Scheme Administrators consider that to lift the stay is in the best interests of the general body of Scheme Creditors as a whole
- 7. SECURITY**
- 7 1 Nothing in the Scheme shall affect the right of any Scheme Creditor to rely on or enforce any Security which could have been relied on or enforced if the Company were being wound up pursuant to the Winding-up Petition and an order of the Court for the winding-up of the Company had been made on the Effective Date, provided that any action to enforce any Security is done strictly in accordance with the terms of the contract pursuant to which the Security was established
- 7 2 Where a Scheme Creditor has the benefit of any Security, the value of that Security shall be deducted from the Scheme Creditor's Scheme Claims in determining any Admitted Scheme Claims under the Scheme
- 7 3 Where the Scheme Claims of a Scheme Creditor with the benefit of Security have all become Admitted Scheme Claims in respect of which a deduction has been made to take into account the value of any Security (or have been otherwise dealt with in accordance with the Scheme), the Scheme Creditor shall
- 7 3 1 enforce, draw down or withdraw from the Security the amount of any deduction,
- 7 3 2 release, discharge or cancel the Security, and
- 7 3 3 provide such cooperation and assistance as the Company or the Scheme Administrators may require in order to obtain the release of the balance of any remaining Security to the Company Each Scheme Creditor is deemed to acknowledge that, in the event that all its Scheme Claims are satisfied as a result of the realisation of any Security, he shall continue to provide assistance to the Company and the Scheme Administrators in accordance with this Clause 7 3
- 7 4 Any Scheme Creditor who obtains or receives payment by enforcing, drawing down or withdrawing any Security in an amount which exceeds either the value of his Scheme Claim in respect of the contract or contracts, including any Insurance Contract, for which the Security was issued or established, and/or any other Scheme Claim to which the Scheme Creditor is legally entitled to apply it, or the amount which he is legally entitled to receive from that Security at the time when he receives or obtains payment, shall hold the amount of such excess on trust for the Company and shall immediately pay the same to the Company without set-off, deduction, retention, abatement or counterclaim
- 7 5 Notwithstanding Clause 7 4, the Company may, at its absolute discretion, treat any excess



referred to in Clause 7 4 as an advance dividend received in full by the Scheme Creditor during the course of the Provisional Liquidation and deduct the amount of the excess from any amount payable by way of dividend to that Scheme Creditor on that Scheme Creditor's Admitted Scheme Claims under the Scheme

- 7 6 Where a Scheme Creditor has enforced, drawn down or withdrawn from its Security and the Company is unable to reconcile or match all or part of the proceeds of enforcement (the "**Unreconciled Proceeds**") with Scheme Claims against which such proceeds may be legitimately applied in accordance with the terms of the contract under which the Security was established, then without prejudice to any other rights which the Company may have, including without limitation the right to demand repayment of the Unreconciled Proceeds, the Company may, at its absolute discretion, determine against which Scheme Claims

7 6 1 the Unreconciled Proceeds,

7 6 2 any other advantage or benefit obtained by the Scheme Creditor,

7.6 3 interest from the date of payment of the Unreconciled Proceeds, and

7 6 4 any costs incurred by the Company in investigating the Unreconciled Proceeds, shall be applied

- 7 7 Nothing in the Scheme shall affect the rights of the Company against any person in respect of any wrongful or excessive drawdown or enforcement of any Security. In particular, should a Scheme Creditor wrongfully enforce any Security issued or created in respect of the Company, this shall be deemed to constitute a step prohibited by Clause 6

## **8. SET-OFF**

- 8 1 Where before the Effective Date there have been mutual credits, mutual debts or other mutual dealings between the Company and a Scheme Creditor, an account shall be taken under the Scheme of the amount of that Scheme Creditor's Scheme Claims as valued under the Scheme and all sums (if any) due from that Scheme Creditor to the Company in respect of mutual credits, debts or other dealings, and the sums due from one party shall be set-off against the sums due from the other

- 8 2 Reference in this Clause 8 to mutual credits, mutual debts or other mutual dealings shall not include

8 2 1 any debt of the Company arising out of an obligation incurred at a time when the Scheme Creditor had notice that the Winding-up Petition was pending, or

8 2 2 any debt which has been acquired by a Scheme Creditor by assignment or otherwise, pursuant to an agreement between the Scheme Creditor and any other party where that agreement was entered into:

(A) after the Petition Date, and

(B) at a time when the Scheme Creditor had notice that the Winding-up Petition was pending

For the avoidance of doubt, any Scheme Claim which has been assigned to a Scheme Creditor after the Petition Date may not be applied in extinguishing or reducing any

#### Liability of that Scheme Creditor to the Company

- 8 3 Only after all mutual credits, mutual debts or other mutual dealings (if any) between the Company and a Scheme Creditor have been determined and set off against the other pursuant to this Clause 8 shall the balance due from the Company (if any) be eligible for payment of dividends pursuant to and subject to the Scheme
- 8 4 The Company shall treat the members of each Lloyd's Syndicate as a single Scheme Creditor so that no account shall be taken of any variation in the underwriting membership of that syndicate from one year of account to the next
- 8 5 Nothing in the Scheme shall prejudice the Company's right to collect any Offset Amounts.

#### **9. INTEREST**

- 9 1 Where a Scheme Claim includes a claim for Admissible Interest, such Admissible Interest shall only be included as part of a Scheme Claim
- 9 1 1 where the Scheme Claim has become an Admitted Scheme Claim, and
- 9 1 2 for the period from the date provided for in the relevant contract, judgment, decree or statute up to and including the Effective Date.
- 9 2 No payment shall be made under the Scheme in respect of any part of a Scheme Claim which represents interest which is not Admissible Interest
- 9 3 Any payment made under the Scheme in respect of any part of a Scheme Claim which represents Admissible Interest or in respect which the Company is required to make a withholding for Tax shall be made net of any deduction or withholding for, or on account of, Tax
- 9 4 Where a distribution is paid by the Company in respect of a Scheme Claim that includes a claim for interest, the distribution shall be a payment first of principal and, to the extent that the principal has been paid in full, as a payment of Admissible Interest

#### **10. FOREIGN CURRENCY CONVERSION OF SECURITY AND OFFSET AMOUNTS**

- 10 1 In determining the value of any Offset Amount or Security in relation to a Scheme Claim where the Offset Amount or Security is in a currency other than the currency in which the relevant Scheme Claim is payable, the amount of Offset Amount or amount of Security shall be converted into the currency in which the Scheme Claim is payable at the Scheme Exchange Rate

#### **11. BROKER FUNDING**

A broker or other person who has funded or made payments to a Scheme Creditor in respect of a Scheme Claim shall not by having provided such funding or making such payments become a Scheme Creditor unless it has so funded or paid pursuant to the terms of a valid assignment given to it by the Scheme Creditor of the underlying Scheme Claims or otherwise has a legally enforceable right to payment by way of subrogation

## **PART 3 – APPLICATION OF THE ASSETS**

### **12. THE COMPANY'S PROPERTY**

- 12 1 All of Company's Property (apart from an amount of cash to be held by the Company as a reserve to allow dividends to be paid in respect of Excluded Employment Claims (as those claims may be admitted in a winding up of the Company) *pari passu* with distributions payable under the Scheme to Scheme Creditors) shall be held on bare trust for Scheme Creditors and shall be dealt with, applied and distributed in accordance with the terms of the Scheme. The Company shall be responsible for making payments from the Company's Property in accordance with the terms of the Scheme.
- 12 2 This Scheme and its terms, application and effect shall continue notwithstanding any Liquidation Event in respect of the Company unless and until the Scheme is terminated in accordance with its terms whereupon the bare trust created by the Scheme and the rights of Scheme Creditors therein shall terminate.

### **13. HOW THE COMPANY'S PROPERTY WILL BE APPLIED**

- 13 1 All of the Company's Property (apart from an amount of cash to be held by the Company as a reserve to allow dividends to be paid in respect of Excluded Employment Claims (as those claims may be admitted in a winding up of the Company) *pari passu* with distributions payable under the Scheme to Scheme Creditors) shall be applied by the Company in accordance with the terms of the Scheme.
- 13 2 The Company's Property will be applied in the following manner
- 13.2 1 **first**, in payment or reservation in full of Scheme Costs,
- 13 2 2 **secondly**, in payment or reservation in full of Priority Liabilities to the extent not paid or reserved for as Scheme Costs,
- 13.2 3 **thirdly**, in payment of *pari passu* distributions to Scheme Creditors in respect of their Admitted Scheme Claims (subject to the provision of Clause 30)

## **PART 4 – HOW TO MAKE CLAIMS IN THE SCHEME**

### **14. NOTICE OF EFFECTIVE DATE**

- 14 1 The Company shall as soon as practicable after the Effective Date send to each person it believes to be a Scheme Creditor to whom notice of the Scheme Meetings was given a notice informing that person of (a) the Effective Date and (b) the Bar Date by which Scheme Claims must be received by the Company on a Claim Form ("**Notice of Effective Date**")
- 14 2 All such notices will be sent to each Scheme Creditor's last known address as shown in the Company's records unless a Scheme Creditor notifies the Company in writing of a different postal address. The Company shall as soon as practicable after becoming aware, prior to the Bar Date, of any other person it believes to be a Scheme Creditor, send by Post to the last known address of such any other person a Notice of Effective Date stating that the Scheme has become effective
- 14 3 The Company shall cause to be published in the same newspapers and publications in which the Scheme Meetings were advertised, an advertisement
- 14 3 1 requiring any person believing itself to be a Scheme Creditor who has not received a Notice of Effective Date to contact the Company,
- 14 3.2 informing Scheme Creditors of where and how they can obtain a Claim Form,
- 14 3 3 requiring Scheme Creditors to complete and return a Claim Form to the Company on or before the Bar Date, and
- 14 3 4 notifying Scheme Creditors of where and to whom any queries on the Scheme or its operation may be addressed

### **15. CLAIMS MUST BE RECEIVED BY THE COMPANY BY THE BAR DATE**

- 15.1 Except where Clause 15 2 applies, all Scheme Claims must be submitted by Scheme Creditors to the Company on a Claim Form (as described below) by Post or by Email and must be received by the Company on or before the Bar Date which shall be 5pm London time on the first Business Day falling 180 days from the Effective Date
- 15 2 Where a Scheme Creditor submitted a Voting Form to the Company for the purpose of voting at the Scheme Meetings to approve the Scheme and, in respect of one or more Scheme Claims, elected (by ticking the appropriate box prior to submitting the Voting Form) that the Voting Form should be used as the Scheme Creditor's Claim Form for the purpose of those Scheme Claims, the Scheme Creditor shall be deemed to have submitted a Claim Form in respect of those Scheme Claims for the purpose of the Scheme
- 15 3 Amendments, changes or revisions to a Scheme Claim or the sending of Supporting Information or additional Supporting Information can be made or done by a Scheme Creditor at any time before the Bar Date but not thereafter. Any Supporting Information received after the Bar Date shall (unless such Supporting Information has been requested by the Company or the Scheme Adjudicator) be ignored. Notwithstanding the provisions of this Clause 15 3, the Company may, at its absolute discretion, elect to take such Supporting Information into account for any purpose

**16. CONSEQUENCES OF FAILURE TO SUBMIT A SCHEME CLAIM BY THE BAR DATE**

- 16 1 Any Scheme Creditor who does not submit its Scheme Claims to the Company on or before the Bar Date as required to do so under Clause 14 above shall continue to be bound by and subject to the terms of the Scheme but shall not be entitled to any dividend payments under the Scheme in respect of such Scheme Claims. Save in relation to a Scheme Claim which is a Protected Claim or a Protected Contingent Claim, the Company shall be fully and irrevocably released from any and all Liability in respect of any Scheme Claims of a Scheme Creditor in respect of which a Claim Form is not received by the Company by the Bar Date as is required by the Scheme.
- 16 2 Failure to submit a Scheme Claim that is a Protected Claim or a Protected Contingent Claim to the Company on or before the Bar Date will not affect any entitlement of the Scheme Creditor to be paid the Protected Percentage in relation to that Scheme Claim as and when it matures into a Protected Claim.

**17. TERMINATION OF CURRENT UNEXPIRED POLICIES**

The Liability of the Company in relation to any policy period or any part of the policy period of a Current Insurance Contract (except in relation to a Liability in respect of a Protected Claim or a Protected Contingent Claim, to which this Clause shall not apply) which has not expired or not already been cancelled on or before the Effective Date shall be estimated under the Scheme as if an order of the Court for the winding-up of the Company had been made on the Effective Date and all such Current Insurance Contracts had terminated on that date.

**18. SCHEME CLAIMS**

- 18 1 Scheme Claims may consist of Unpaid Agreed Claims, Notified Outstanding Claims, IBNR Claims and Non-Insurance Claims.
- 18 2 The Liability (if any) owed by the Company to a Scheme Creditor shall be the aggregate value of that Scheme Creditor's Admitted Scheme Claims (if any) as established in accordance with the Scheme.
- 18 3 The Admitted Scheme Claim of each Scheme Creditor shall be determined by reference to
- 18 3 1 the Scheme Claim(s) of that Scheme Creditor as established under the Scheme (after deducting any amount payable to that Scheme Creditor under any Security held by it or for its benefit in accordance with Clause 7.2),
  - 18 3 2 the existence of any Offset Amounts of that Scheme Creditor, which shall be taken into account and set off under Clause 8 against Scheme Claims of that Scheme Creditor, and
  - 18 3 3 any discounts to be applied in accordance with Clause 22.3,
- each valued in accordance with the terms of the Scheme and where applicable, the Estimation Guidelines.
- 18 4 The Estimation Guidelines form part of the terms of the Scheme. All Scheme Creditors shall be bound by, and may not in any circumstances dispute the principles, policies or assumptions comprised or contained within, the Estimation Guidelines.

## **19. DEFENCE COSTS AND THEIR RECOUPMENT UNDER THE SCHEME**

19 1 If a Scheme Creditor is satisfied that

19 1 1 it did not enter into any agreement with the Company, its agents or the Provisional Liquidators that any Defence Costs paid or incurred in defending claims made under its policies would be treated as an advance dividend payment to it under a scheme of arrangement and would be deducted from any dividends otherwise payable to it in such a scheme; and

19 1 2 it has no knowledge of any other basis upon which the Company is entitled to treat such Defence Costs as an advance payment to it under a scheme of arrangement,

it can require that any dividends payable to it under the Scheme are paid to it in full (without any recoupment of Defence Costs) by ticking and signing the appropriate box on the Claim Form and returning the signed form to the Company on or before the Bar Date, following which any dividends payable to that Scheme Creditor will be paid in full, subject to any contrary provision of the Scheme

19 2 For the avoidance of doubt, an objection to the recoupment of Defence Costs is not a dispute capable of being referred to the Scheme Adjudicator for adjudication

## **20. USING A CLAIM FORM TO MAKE A CLAIM**

20 1 All Scheme Claims must be notified to the Company by the Bar Date on a Claim Form (or a Voting Form submitted in the place of a Claim Form in accordance with Clause 15 2)

20 2 Claim Forms are included in the Scheme documents as sent to Scheme Creditors and are also available by way of download from the Website or by Post upon written request to the Company

### **Unpaid Agreed Claims**

20 3 Scheme Creditors with an Unpaid Agreed Claim (other than Unpaid Agreed Claims which are Protected Claims and Unpaid Agreed Claims in respect of which the Scheme Creditor has elected to use its Voting Form as a Claim Form in accordance with Clause 15 2) shall within 21 days of the Effective Date be notified in writing by the Company by Post to the last known address of the Scheme Creditor as appearing in the Company's books and records of the value of its Unpaid Agreed Claim on a pre-populated Claim Form, which shall include (where relevant)

20 3 1 the Unpaid Agreed Claim(s) of the Scheme Creditor (after deducting any amount payable to that Scheme Creditor under any Security held by it or for its benefit in accordance with Clause 7 2), and

20 3 2 any Offset Amounts owed by the Scheme Creditor to the Company which may be set off in accordance with Clause 8,

and accordingly the value of the Scheme Claims which the Company is willing to agree and admit for dividend purposes as an Admitted Scheme Claim, together with

- 20 3 3 the amount in respect of any Defence Costs referable to the Scheme Creditor that shall be deducted from any amount payable by way of dividend to the Scheme Creditor in accordance with Clause 30
- 20 4 If the Scheme Creditor accepts the value of the Admitted Scheme Claim set out in the pre-populated Claim Form and has no other Scheme Claims to submit to the Company, it should sign and return the Claim Form to the Company before the Bar Date, whereupon this shall become the Scheme Creditor's Admitted Scheme Claim and the provisions of Clause 22 shall not apply
- 20 5 If the Scheme Creditor
- 20 5 1 disputes any of the amounts shown on the pre-populated Claim Form, and/or
- 20 5 2 has other Scheme Claims to notify to the Company that have not been set out on the pre-populated Claim Form,
- the Scheme Creditor must mark the Claim Form as disputed, amend or complete the Claim Form in accordance with Clauses 20 7 below (as relevant) and provide full Supporting Information to the Company in connection with any disputed or additional Scheme Claim
- 20 6 Whether or not the Scheme Creditor accepts or disputes the value of the Admitted Scheme Claim set out in the pre-populated Claim Form, if the Scheme Creditor wishes to opt out of the recoupment of Defence Costs, it must make the appropriate declaration on the Claim Form in accordance with Clause 19 and sign and return the notice to the Company before the Bar Date whereupon no Defence Costs will be recouped from any dividends payable to that Scheme Creditor and Clause 30 of this Scheme will not apply to it

**Notified Outstanding Claims, IBNR Claims and Non-Insurance Claims**

- 20 7 When completing its Claim Form, a Scheme Creditor must
- 20 7 1 in respect of Notified Outstanding Claims and IBNR Claims
- (A) indicate whether, in the opinion of the Scheme Creditor, the Scheme Claim is a Protected Contingent Claim by ticking the appropriate box on the Claim Form,
- (B) estimate, on a Best Estimate basis, the value of Notified Outstanding Claims and IBNR Claims as at the Valuation Date and then adjust those estimates to allow for
- (1) any such claims which have become Unpaid Agreed Claims after the Valuation Date,
- (2) any such claims which have been notified to or discovered by the Scheme Creditor after the Valuation Date; and
- (3) any new information received by the Scheme Creditor after the Valuation Date,
- so that the values of Notified Outstanding Claims and IBNR Claims are shown as at the Bar Date
- The values of the Scheme Creditor's Notified Outstanding Claims and

IBNR Claims after any such adjustment as provided for above should be the final values specified on that Scheme Creditor's Claim Form in respect of Notified Outstanding Claims and IBNR Claims, and

- (C) if the Scheme Creditor wishes to opt out of the recoupment of Defence Costs, make the appropriate declaration on the Claim Form in accordance with Clause 19,

20 7 2 in respect of all Non-Insurance Claims state

- (A) the amount claimed in respect of each such claim,
- (B) how the Company's Liability arises, whether pursuant to contract or otherwise,
- (C) whether all or part of the Company's Liability is not agreed by the Company, and
- (D) the basis for calculation of the claim

**21. THE PROCESS FOR ASSESSING WHETHER A SCHEME CLAIM IS A PROTECTED CLAIM OR A PROTECTED CONTINGENT CLAIM**

21 1 Where a Scheme Creditor has indicated on a Claim Form submitted to the Company before the Bar Date that a Scheme Claim is a Protected Claim or a Protected Contingent Claim, the Company will (in consultation with the FSCS if necessary) assess whether the Scheme Claim is a Protected Claim or a Protected Contingent Claim and will notify the Scheme Creditor of its assessment

21 2 Where the Company's assessment is that the Scheme Claim is a Protected Claim or a Protected Contingent Claim

21 2 1 the Company's Liabilities in respect of that Scheme Claim (if any) owing or which may in the future become owing to the Scheme Creditor shall not be agreed or estimated under the Scheme; and

21 2 2 no dividend shall be paid or payable by the Company under the Scheme in respect of that Scheme Claim

21 3 Notwithstanding Clause 21 2, if the Company cannot conclusively determine that the Scheme Claim is a Protected Claim or a Protected Contingent Claim it may, at its absolute discretion, treat the Scheme Claim as a Non-Protected Claim for the purpose of the Scheme so that the provisions of Clause 21.2 shall not apply to the Scheme Claim

21 4 For the avoidance of doubt, the Company's assessment of a Scheme Claim for the purpose of Clause 21.2

21 4.1 shall not be binding on the FSCS in relation to any obligation it may have (or may have in the future) to the Scheme Creditor as a Protected Policyholder, and

21 4 2 shall not affect any rights the Scheme Creditor may have (or may have in the future) as a Protected Policyholder



**22. THE PROCESS FOR AGREEMENT OF SCHEME CLAIMS (OTHER THAN PROTECTED CLAIMS AND PROTECTED CONTINGENT CLAIMS)**

22 1 The Company shall examine each Claim Form and Supporting Information returned to the Company on or before the Bar Date and shall use reasonable endeavours to reach agreement with each Scheme Creditor with regard to the existence and value of the Liabilities (if any) owed by the Company to each Scheme Creditor (other than Protected Claims and Protected Contingent Claims).

22 2 In respect of IBNR Claims and Notified Outstanding Claims (other than Protected Claims and Protected Contingent Claims), such examination shall include (without limitation) consideration of whether

22 2 1 details of Insurance Contracts or brokers or agents (if relevant) thereon are correct and/or adequately supported by any Supporting Information, and

22 2 2 details of estimates of the Company's Liabilities arising under the Insurance Contracts as listed on the Claim Form are accurate and/or reasonable and/or, where relevant, have been calculated in accordance with the Estimation Guidelines.

The Company shall then take into account whether

22 2 3 there are any Offset Amounts to which Clause 8 applies or may apply, and

22 2 4 there is any Security to which Clause 7 applies or may apply

22 3 The Company shall discount any Notified Outstanding Claims, IBNR Claims and/or Offset Amounts contingently owing by a Scheme Creditor to the Company to allow for the time value of money as at the Bar Date. The Company shall apply the Discount Rate as at the Bar Date to such expected payment patterns as the Company reasonably considers are appropriate to the nature of the relevant Liabilities. In exceptional circumstances, the Company may accept alternative payment patterns for discounting suggested by a Scheme Creditor, provided that the Scheme Creditor can supply a calculation that the Company considers is fully supported and which includes justifiable underlying assumptions.

22.4 In any case where, in the opinion of the Company, a Scheme Creditor is under a Liability to the Company, the Company shall seek to agree the existence and value of the Offset Amount with that Scheme Creditor.

22 5 If the Company reaches agreement with a Scheme Creditor in respect of its Scheme Claims, taking into account any sums recoverable by the Scheme Creditor under any Security, any Offset Amounts, the discount to be applied in accordance with Clause 22 3 and any other relevant matters, it shall, within 14 days after reaching agreement send such Scheme Creditor a Net Statement by Post or Email.

22 6 If within what the Company considers to be a reasonable time (and no later than 120 days after the Bar Date, unless such period is extended at the discretion of the Scheme Administrators) the Company has not reached agreement with a Scheme Creditor in respect of

22 6 1 the whole or any part of the amounts claimed in its Claim Form (after deducting any amount payable to that Scheme Creditor under any Security held by it or for its benefit in accordance with Clause 7 2),

- 22 6 2 the existence or the value of any Offset Amounts, and
  - 22 6 3 the discount to be applied in accordance with Clause 22 3,
- the Company shall send the Scheme Creditor a Net Statement by Post or Email.
- 22 7 A Net Statement shall set out the value of
- 22 7 1 Liabilities owed by the Company to the Scheme Creditor (taking into account any sums payable to or recoverable by a Scheme Creditor under any Security) whether in respect of IBNR Claims, Notified Outstanding Claims, Unpaid Agreed Claims or Non-Insurance Claims,
  - 22 7 2 Offset Amounts owed by the Scheme Creditor to the Company which are eligible for Set Off under Clause 8,
  - 22 7 3 any discount to be applied in accordance with Clause 22 3, and
  - 22 7 4 (unless the Scheme Creditor has opted out of the recoupment of Defence Costs in accordance with Clause 18) the amount in respect of any Defence Costs referable to the Scheme Creditor that shall be deducted from any amount payable by way of dividend to the Scheme Creditor in accordance with Clause 30,
- and accordingly the value of the Scheme Claims which the Company is willing to agree and admit for dividend purposes as an Admitted Scheme Claim
- 22 8 If, within 28 days of the date of receipt or deemed receipt of a Net Statement, the relevant Scheme Creditor
- 22 8 1 confirms to the Company in writing that it agrees with all of the values specified in the Net Statement,
  - 22 8 2 confirms to the Company in writing that it agrees with all of the values specified in the Net Statement, but elects to opt out of the recoupment of Defence Costs and makes the declaration in accordance with Clause 19, or
  - 22 8 3 does not reply to the Net Statement,
- then the Scheme Creditor's Admitted Scheme Claim in the Scheme shall be the amount specified by the Company in that Scheme Creditor's Net Statement
- 22 9 If, within 28 days of the date of the Net Statement, the Scheme Creditor gives notice to the Company that it disputes any value contained in the Net Statement, the Company shall, within 28 days of the date of receipt of that notice by them, refer the disputed value to the Scheme Adjudicator for adjudication under the Scheme
- 22 10 Without prejudice to the provisions of Clause 22 9, the Company may refer any matter to the Scheme Adjudicator if at any time the Company believes that it will be impossible or impracticable to reach agreement with a Scheme Creditor Where such referral is made, the Company shall notify the Scheme Creditor of the referral and provide a written summary of the reasons for such referral
- 22 11 The amount in respect of which any Scheme Creditor votes at a Scheme Meeting and/or any determination by the chairman of the Scheme Meeting of that amount or decision on discrepancies between the information provided by Scheme Creditors prior to the holding of a Scheme Meeting and the Company's records for (in either case) the purposes of voting

at a Scheme Meeting shall not be binding on the Company, the Scheme Creditors, the Scheme Administrators and/or the Scheme Adjudicator for any purposes other than voting

- 22 12 The Company will not be bound by, or prepared to follow, any settlement made between a Scheme Creditor and another insurer or reinsurer if it believes any such settlement to be unreasonable
- 22 13 For the avoidance of doubt, the views of any of the Company, the Scheme Actuarial Adviser, the Scheme Administrators or the Scheme Adjudicator (and/or any of their employees, alternates, agents or advisers) as to the appropriate methodology, principles or assumptions to be applied in determining the value of any Scheme Claim owed by the Company to a Scheme Creditor, whether express or implied and whether contained in the Scheme, the Estimation Guidelines or any other document or communication, are provided only for the purpose of determining any Liability owed by the Company to the Scheme Creditor (if any) and may not be relied upon for any other purpose. Further, no such methodology, principle or assumption shall be construed as advice being given by the Company, the Scheme Actuarial Adviser, the Scheme Administrators, the Scheme Adjudicator (and/or any of their employees, alternates, agents or advisers) to the Scheme Creditor or any other person for any purpose
- 22 14 Subject to the provisions of the Scheme in respect of the agreement of Protected Claims, each Scheme Creditor accepts the Scheme, its terms, operation and effect as the sole means of determining (i) the existence, value and/or amount of any Liability of the Company in respect of all Scheme Claims, and/or (ii) the existence, value and/or amount of any Offset Amount or Security
- 22 15 Further, each Scheme Creditor agrees to and shall be bound by the Scheme and its operation including without limitation the requirement to submit and estimate Scheme Claims in accordance with the Estimation Guidelines and the process by which such Scheme Claims will be estimated under the Scheme or determined by the Scheme Adjudicator as the case may be

**23. ADJUDICATION OF DISPUTED CLAIMS AND THE COSTS OF THE ADJUDICATOR**

- 23 1 The Scheme Adjudicator shall have access to all of the Company's (and its agents') available books, records, documents and information in order to resolve any matter or dispute which has been referred to him
- 23 2 The Scheme Adjudicator shall consider the information, papers and documents before him and shall be entitled to be given all further documents, data or information from the Scheme Creditor, the Scheme Administrators, the Company, its agents and/or the Scheme Actuarial Adviser as it may request generally or specify in which case the relevant person or persons as requested shall within such time period as specified by the Scheme Adjudicator provide the Scheme Adjudicator with the required documents, data or information
- 23.3 If the Scheme Adjudicator requires any person to appear before him, he shall be entitled to prescribe and lay down such procedures or provisions as he in his absolute discretion thinks appropriate for the purposes of assisting him in carrying out his functions or exercising his powers and he shall be entitled to call for such evidence, documents, data and information as he may require and to require any or all of the Company, the Scheme Administrators, the Scheme Actuarial Adviser and the Scheme Creditor to appear before and/or address him on

any matters he is to determine in which case the Company, the Scheme Administrators, the Scheme Actuarial Adviser and the Scheme Creditor (as so requested) shall appear on such date and at such place as the Scheme Adjudicator shall reasonably prescribe

- 23 4 The Scheme Adjudicator shall be entitled to instruct and consult with such advisers (including legal advisers) and experts as he may think appropriate and shall be entitled to reach a determination as he sees fit on the basis of the documents, information or advice made available or given to him in the course of his consideration of the dispute
- 23 5 In adjudicating on any disputed matter, the Scheme Adjudicator shall act as an expert and not as an arbitrator Any decision or determination made or given at any stage in the adjudication process by the Scheme Adjudicator in relation to any matter under adjudication shall be final and binding on the Company, the relevant Scheme Creditor and the Scheme Administrators for the purposes of the Scheme and (1) there shall be no claim against the Scheme Adjudicator in respect thereof (11) no right of appeal from any such decision or determination except as may be permitted by law
- 23 6 The Scheme Adjudicator shall be entitled, in respect of his remuneration and costs and expenses incurred by him, to order the Company and/or a Scheme Creditor to deposit such sums as he shall deem appropriate to secure payment in respect of his remuneration, costs and expenses and, in addition, to
- 23 6 1 direct that any or all of his remuneration, costs, and expenses shall be paid by the Company, in which case the Scheme Administrators shall cause the same to be paid forthwith from the Company's Property as a Scheme Cost, or
- 23 6 2 direct that any or all of his remuneration, costs and expenses shall be paid by the relevant Scheme Creditor in which case, the same shall be paid by the Scheme Creditor forthwith and, in any event, no later than 15 Business Days from the date of such direction, failing which the Scheme Administrators shall cause the same to be paid from the Company's Property as a Scheme Cost but so that the Company shall be reimbursed in full in respect of that payment by the Scheme Creditor
- 23 7 In the event that the amount of the Scheme Adjudicator's remuneration, costs and expenses is paid by the Company as a Scheme Cost under Clause 23 6 2 the Company shall, following such payment, either
- 23 7 1 deduct the amount of the payment made by it as a Scheme Cost from any amount which may be or may become due to the Scheme Creditor by way of dividend under the Scheme in respect of its Admitted Scheme Claims, such Scheme Creditor being deemed for these purposes as having received on account of any such dividend an advance payment of a dividend under the Scheme equal to the amount which it has been directed to pay, or
- 23 7 2 where the Scheme Creditor is not entitled to receive a dividend pursuant to the Scheme, or the amount of the payment made as a Scheme Cost under Clause 23 6 2 above exceeds the dividend payment, the payment made by the Company or such excess shall be a debt owed by the Scheme Creditor to the Company and shall be payable in full forthwith by the Scheme Creditor

**24. ADMITTED SCHEME CLAIMS WILL BE FINAL AND BINDING**

Once a Scheme Claim has become an Admitted Scheme Claim it shall be final and binding on the Scheme Creditor, the Company and all other Scheme Creditors and there shall be no challenge or right of appeal in respect thereof except in so far as is permitted by law. The value of an Admitted Scheme Claim shall not be increased or decreased by any hindsight, subsequent event or additional information.

**25. RELEASE OF SCHEME CLAIMS APART FROM PROTECTED CLAIMS**

25.1 Each Scheme Creditor agrees that the payment of all dividends (including any deemed payment of dividends or dividends expressed to have been paid as advance dividends) under the Scheme shall be made and received in full and final settlement of the Company's Liability to that Scheme Creditor in respect of all Liabilities of the Company to it, apart from any Liability of the Company in respect of any Protected Claim or Protected Contingent Claim.

25.2 Nothing in this Scheme shall result in or shall be construed as resulting in any release, extinguishment or compromise of any Protected Claim or Protected Contingent Claim which is or which may in future be a Liability of the Company.

**26. EFFECT OF PROHIBITED ACTS AND RECEIPT OF BENEFITS AFTER THE EFFECTIVE DATE**

26.1 From the Effective Date, the Company will not make any payment to Scheme Creditors in respect of their Scheme Claims other than by making dividend payments in respect of Admitted Scheme Claims as provided for in the Scheme, or as specified in the Scheme, to the FSCS.

26.2 If after the Effective Date any Scheme Creditor

26.2.1 takes any action prohibited by Clauses 6.1 or 6.3, and/or

26.2.2 receives any money, property or other benefit (other than a payment from the FSCS under the Scheme) or exercises any right in respect of the Company's Property in any jurisdiction otherwise than *pari passu* with all Scheme Creditors,

the Company shall, in its absolute discretion, determine the value of any such money, property, benefit or advantage received by the Scheme Creditor which value may include (without limitation) such amount as the Company may consider to be appropriate by way of interest or costs, charges or expenses incurred by the Company in relation thereto.

26.3 Any amount received or treated as having been received by a Scheme Creditor under Clause 26.2 above shall be paid to the Company by the Scheme Creditor forthwith without set-off, deduction, retention, abatement or counterclaim, and pending such payment shall be held on trust for the Company.

26.4 Notwithstanding Clause 26.3, the Company may, at its absolute discretion, treat any amount received or treated as having been received by a Scheme Creditor under Clause 25.2 above as an advance dividend received in full by the Scheme Creditor during the course of the Provisional Liquidation and deduct that amount from any amount payable by way of dividend to that Scheme Creditor on that Scheme Creditor's Admitted Scheme Claims under the Scheme.

## **PART 5 – PAYMENTS UNDER THE SCHEME**

### **27. PAYMENT OF PRIORITY LIABILITIES**

As soon as practicable after the Effective Date, the Company shall pay in full all the Company's Priority Liabilities in priority to Admitted Scheme Claims, but nothing in the Scheme shall oblige the Company to pay any Priority Liability at any time before the date on which such Priority Liability would, apart from the Scheme, otherwise have become due for payment

### **28. CASH AVAILABLE FOR DISTRIBUTION**

- 28 1 The Company shall from time to time review the Property and Liabilities of the Company to determine the amount of cash (the "Available Cash") which in the opinion of the Company, having consulted with the Creditors' Committee, should be made available at that time for payment to Scheme Creditors in respect of their Admitted Scheme Claims
- 28 2 In determining the amount of Available Cash the Company shall make proper provision for the payment of the Excluded Employment Claims, Priority Liabilities and any other Liabilities of the Company, including any Scheme Claims which have yet to become Admitted Scheme Claims (excluding any Protected Claims), and costs which may be incurred in winding up the Company and the costs of the Official Receiver or liquidator which the Provisional Liquidators, the Company or the Scheme Administrators consider are prudent and appropriate to make

### **29. DATE OF PAYMENT OF DIVIDENDS**

As soon as reasonably practicable following the determination of the amount of Available Cash, the Company shall, subject to Clause 28, pay to each Scheme Creditor such percentage of its Admitted Scheme Claim in the relevant currency that represents the same percentage as the amount of Available Cash is of the aggregate amount of all Admitted Scheme Claims determined at the date of payment.

### **30. DEDUCTION OF DEFENCE COSTS ALREADY PAID BY THE COMPANY FROM DIVIDENDS PAYABLE UNDER THE SCHEME**

- 30 1 Unless a Scheme Creditor has opted out of the recoupment of Defence Costs by making the declaration in Clause 19 on the Scheme Creditor's Claim Form or Voting Form (as relevant) in accordance with the requirements of the Scheme, where
- 30 1 1 the Company has before the Effective Date paid or agreed to pay Defence Costs in connection with
- (A) a Scheme Claim of a Scheme Creditor; or
  - (B) a claim made against that Scheme Creditor in its capacity as policyholder of the Company which was notified to the Company after 11 June 2001 but before the Effective Date that claim did not become a Scheme Claim, and
- 30 1 2 to the extent that the Company has not been repaid an equivalent amount from the FSCS in respect of those Defence Costs,

the Company shall deduct the amount of those Defence Costs (less the amount of any reimbursement from FSCS) from any amount payable by way of dividend to that Scheme Creditor on that Scheme Creditor's Admitted Scheme Claims under the Scheme so that only the net balance of any dividend amount remaining after such deduction shall be payable by the Company to that Scheme Creditor under the Scheme

- 30 2 For the purpose of Clause 30 1, unless the Scheme Creditor has opted out of the recoupment of Defence Costs, a Scheme Creditor's Admitted Scheme Claims shall include an amount equivalent to the amount of Defence Costs paid or payable in respect of

30 2 1 the Scheme Claim, or

30 2 2 the claim made against a policyholder of the Company,

less in either case any amounts received from third parties in respect of those Defence Costs

- 30 3 The amount deducted in respect of Defence Costs in accordance with Clause 30 1 above shall be treated as an advance dividend received in full by the Scheme Creditor during the course of the Provisional Liquidation

- 30 4 Where the total amount of the Defence Costs paid or agreed to be paid by the Company as referred to in Clause 30 1 above is equal to or exceeds the total amount of dividends payable to a Scheme Creditor on its Admitted Scheme Claims before recoupment of Defence Costs

30 4 1 that Scheme Creditor shall not be entitled to any dividend payments under the Scheme in respect of its Admitted Scheme Claims and shall be treated as having received in full and in advance during the course of the Provisional Liquidation all dividends payable to it under the Scheme, but

30 4 2 the amount by which the Defence Costs exceeds the total amount of dividends payable to a Scheme Creditor on its Admitted Scheme Claims before recoupment of Defence Costs shall not constitute a debt due from that Scheme Creditor to the Company and shall therefore not be recoverable by the Company from the Scheme Creditor.

### **31. PROCEDURE AFTER THE PAYMENT OF THE FINAL DISTRIBUTION**

At such time as the Scheme Administrators believe that any distribution to Scheme Creditors is likely to be the final distribution, they shall cause to be prepared a final report setting out all relevant information relating to the operation of the Scheme. The Scheme Administrators shall make their report in English available for download from the Website but shall not be required to send a copy by Post to any Scheme Creditor

### **32. MECHANICS OF PAYMENTS TO SCHEME CREDITORS**

32 1 Any amount payable by the Company to a Scheme Creditor under the Scheme in respect of an Admitted Scheme Claim which was incurred in Pounds Sterling, Euros or US Dollars shall be paid in Pounds Sterling, Euros or US Dollars as the case may be. The amount payable to any Scheme Creditor which was incurred in any other currency shall be paid at in Pounds Sterling converted at the Scheme Exchange Rate by reference to the relevant values of each Admitted Scheme Claim

32.2 All payments may be made, in the absolute discretion of the Company

32 2 1 by telegraphic transfer to such bank account as the Scheme Creditor may from time to time notify to the Company, or

32 2 2 by cheque in favour of the Scheme Creditor or as it may direct and sent by Post at the risk of the Scheme Creditor to the last known address of the Scheme Creditor or to such other address as the Scheme Creditor may from time to time notify in writing to the Company provided that, if no address for the Scheme Creditor is known, such payments may be sent by Post at the risk of the Scheme Creditor to the last known address of the insurance broker through whom the relevant Insurance Contract was effected or to such other address as such broker may from time to time notify to the Company in writing,

and the Company may, in connection with the making of the payment under the Scheme, deduct any payment expense from the amount of the relevant payment and/or require the Scheme Creditor or broker to execute such forms of discharge or receipt or other document as it may from time to time determine

32 3 Without prejudice to Clause 32 2 above, payment by the Company in respect of an Admitted Scheme Claim (including any deemed payment of dividends or dividends expressed to have been paid as advance dividends)

32 3 1 to a Scheme Creditor, or

32 3 2 where two or more persons comprise a Scheme Creditor, to any one such person, or

32 3 3 to any person who is authorised to act on behalf of the Scheme Creditor (whether actually or ostensibly), or

32 3 4 otherwise pursuant to Clause 32 2 above,

shall, for the purposes of and to the extent of such payment, constitute a valid discharge of the Company in respect of its payment obligations under the Scheme in respect of that particular Admitted Scheme Claim

32 4 Subject to Clause 33, payment of any cheque by the bank on which it is drawn shall be satisfaction of the obligation to pay the amount in which it was drawn; and receipt by the receiving bank of the amount of any telegraphic transfer shall be satisfaction of the obligation to pay the amount transferred.

### **33. ASSIGNMENTS**

If a Scheme Creditor gives notice in writing to the Scheme Administrator that it has



assigned its entitlement to another person, the Scheme Administrator shall, subject to the Scheme Creditor providing evidence satisfactory to the Scheme Administrator of the lawful assignment, make such payment to that other person accordingly and payment to such person shall constitute a good discharge of the Company and the Scheme Administrators. Any such notice must specify the name and address of the person to whom payment is to be made.

#### **34. UNCLAIMED PAYMENTS**

- 34 1 Any Scheme Creditor who fails to cash a cheque sent to it under the Scheme within 6 (six) months of its issue date shall have no right to any further payment from the Company in respect of the relevant distribution to which the uncashed cheque relates and all amounts in respect of all such uncashed cheques shall be added to the Company's Property available for subsequent distribution to Scheme Creditors or if the Company decides (in consultation with the Creditors' Committee) that there is no subsequent distribution, shall be paid to a charity chosen by the Company (in consultation with the Creditors' Committee).
- 34 2 The Company may at its discretion cancel and reissue a cheque if notified promptly by the Scheme Creditor (and in any case within the period of 6 (six) months from the issue of the first cheque) that the cheque is lost or missing.

## **PART 6 – THE FINANCIAL SERVICES COMPENSATION SCHEME**

### **35. PAYMENT OF PROTECTED CLAIMS AFTER THE EFFECTIVE DATE UNTIL TERMINATION OF THE SCHEME**

- 35.1 The Company's Liabilities in respect of any Protected Claims or Protected Contingent Claims (if any) owing or which may in the future become owing to each Scheme Creditor on an individual basis shall not be estimated under the Scheme and accordingly no dividend shall be paid or payable by the Company under the Scheme to a Scheme Creditor in respect of any Protected Claim or (subject to the provisions of Clause 21 3) Protected Contingent Claim
- 35 2 All Protected Claims for which the Liability of the Company is established in the period starting on the Effective Date and ending on the Termination Date by the agreement of or on behalf of the Company outside of the terms of the Scheme or by way of judgment against the Company on or after the Effective Date or by a decision of the FSCS that a Liability of the Company is a Protected Claim shall be paid by the FSCS at the Protected Percentage in accordance with Clause 35 4 below
- 35 3 Subject to Clause 36, a Protected Policyholder to whom the Company has or may have a Liability in respect of a Protected Claim or a Protected Contingent Claim on or after the Effective Date
- 35 3 1 shall not have any right to any payment from the Company in respect of that Protected Claim, but
- 35 3 2 shall instead, subject to the terms of the Scheme, retain the right to receive payment from the FSCS at the rate of the Protected Percentage on any such Protected Claim for which the Company has a Liability during the term of the Scheme and thereafter when the Company is in liquidation (subject to the terms and requirements of the Policyholders Protection Act and /or the FSCS Rules as applicable) a Protected Policyholder shall have such rights as may arise to payment from the FSCS when the Company is in liquidation
- 35 4 During the term of the Scheme the FSCS shall pay to a Protected Policyholder in respect of its Protected Claim an amount equal to
- 35 4 1 the Protected Percentage of that Protected Claim, less
- 35 4 2 the aggregate of
- (A) the amount of any payment which (notwithstanding Clause 35 3 above) has been made to the Protected Policyholder by the Company under the Scheme in respect of that Protected Claim (including, without limitation, any dividend paid by the Company to the Protected Policyholder on the Protected Claim as a result of Clause 21 3), and
- (B) the amount of any payment previously made by the FSCS and/or the Policyholders Protection Board in respect of that Protected Claim or any payment previously made in respect of that Protected Claim
- 35 5 Payments may be made, in the absolute discretion of the FSCS
- 35 5 1 by cheque in favour of the Scheme Creditor or as it may direct The cheque shall

be sent by Post at the risk of the Scheme Creditor to the last known address of the Scheme Creditor according to the Company's books and records or to such other address as the Scheme Creditor may from time to time notify in writing to the FSCS provided that, if no address for the Scheme Creditor is known, such payments may be sent by Post at the risk of the Scheme Creditor to the last known address of the insurance broker through whom the relevant Insurance Contract was effected or to such other address as such broker may from time to time notify to the Company in writing, or

- 35 5 2 at the option of the FSCS and at the expense of the Scheme Creditor (which expense may be deducted from the amount of the relevant payment) by telegraphic transfer to such bank account as the Scheme Creditor may from time to time notify to the FSCS,

and the FSCS may, in connection with the making of the payment under the Scheme, require the Scheme Creditor or broker to execute such forms of discharge or receipt or other document as they may from time to time determine

**35 6 Payment by the FSCS in respect of a Protected Claim**

- 35.6 1 to a Protected Policyholder, or

- 35 6 2 where two or more persons comprise a Protected Policyholder, to any one such person, or

- 35 6 3 to any person who is authorised to act on behalf of a Protected Policyholder (whether actually or ostensibly),

shall, for the purposes of and to the extent of such payment, constitute a valid discharge of the FSCS in respect of its payment obligations under the Scheme in respect of that particular Protected Claim

- 35 7 Payment of any cheque by the bank on which it is drawn shall be satisfaction of the obligation to pay the amount in which it was drawn, and receipt by the receiving bank of the amount of any telegraphic transfer shall be satisfaction of the obligation to pay the amount transferred

- 35 8 Payment by the FSCS in respect of each Protected Claim shall be made as soon as reasonably practicable following whichever is the later of

- 35 8 1 the date on which liability for the Protected Claim is established by agreement by or on behalf of the Company or judgment is obtained establishing such Liability, and

- 35 8 2 the date on which the FSCS agrees or it is otherwise determined (so as to bind the FSCS) that the Scheme Claim is a Protected Claim

**36. THE CLAIMS OF THE FSCS IN THE SCHEME**

- 36 1 Subject to the FSCS having complied with the provisions of Clause 15, the FSCS shall be entitled to dividend payments under the Scheme with other Admitted Scheme Claims (after the application of Clause 30, as appropriate, to Admitted Scheme Claims) on its FSCS Assigned Claims which are or have become Admitted Scheme Claims in accordance with the Scheme For the avoidance of doubt, the FSCS shall have no right to any payment

under the Scheme in respect of any assignment of a Scheme Claim to it where such assignment was taken or obtained on or after the Effective Date, unless the FSCS has submitted a claim in respect of that assignment by the Bar Date in accordance with the terms of the Scheme on a Claim Form, any such claim to be submitted as a Non-Insurance Claim

- 36 2 As soon as reasonably practicable after the Bar Date, the Company shall with the assistance of the Scheme Actuarial Adviser and by application of projection techniques equivalent to those set out in the Estimation Guidelines, estimate the total aggregate value of all IBNR Claims and Notified Outstanding Claims as a whole as at the Bar Date which are Protected Contingent Claims (the "**FSCS Claims Estimate**") The FSCS Claims Estimate will
- 36 2 1 exclude amounts of defence costs paid by the Company in respect of Protected Claims that have been paid by the Company prior to the Bar Date and that have not been repaid by FSCS to the Company;
- 36 2 2 be calculated in the aggregate, rather than solely on the basis of information provided by individual Scheme Creditors with Protected Contingent Claims;
- 36 2 3 be based initially on a reserving exercise conducted by the Company as at 31 December 2013, rolled forward to allow for
- (A) Unpaid Agreed Claims agreed between 31 December 2013 and 31 December 2014 and material variations in the value of Notified Outstanding Claims and the numbers of disease claims notified to the Company (both compared to expected values) between 31 December 2013 and 31 December 2014, and
- (B) Unpaid Agreed Claims agreed between 31 December 2014 and the Bar Date and any information provided as at the Bar Date by Scheme Creditors with Protected Claims and/or Protected Contingent Claims which is inconsistent with the rolled forward estimate as at the Bar Date, and
- 36 2 4 be discounted in accordance with Clause 22 3 to produce a discounted estimate as at the Bar Date
- 36 3 The Company shall notify the FSCS in writing of the amount of its calculation of the FSCS Claims Estimate and explain to the FSCS in writing the basis upon which the FSCS Claims Estimate has been calculated. The FSCS shall be provided with such supporting working papers, calculations, documentation and information as the FSCS may reasonably request within 21 days of receiving notice from the Company under this Clause 36 in connection with the FSCS Claims Estimate and the Company or Scheme Actuarial Adviser as appropriate shall deal promptly with any queries raised by the FSCS on how the projection techniques have been applied and/or how the FSCS Claims Estimate has been calculated whether generally or to particular classes of business or claims
- 36 4 Following the Company's notice to the FSCS of its calculation of the FSCS Claims Estimate, the Company and the FSCS shall use reasonable endeavours to agree the FSCS Claims Estimate
- 36 5 If within what the Company considers to be a reasonable time (and no later than 120 days after the Company's notice to the FSCS of the FSCS Claims Estimate, unless such period is

extended by agreement between the Company and the FSCS) the Company and the FSCS have not reached agreement with respect to the FSCS Claims Estimate, the Company shall refer any outstanding dispute to the Scheme Adjudicator for adjudication under the Scheme, save that the following disputes shall not be capable of being referred to the Scheme Adjudicator for adjudication

36.5 1 the discounting of the aggregate value of the Protected Contingent Claims in accordance with Clause 22 3, and

36 5 2 the Discount Rate to be applied in accordance with Clause 22 3.

36 6 The amount of the FSCS Claims Estimate (as agreed between the Company and the FSCS or determined by adjudication under the Scheme) shall be an Admitted Scheme Claim. The Company shall pay dividends on that Admitted Scheme Claim to the FSCS *pari passu* with other Admitted Scheme Claims in accordance with the Scheme

36 7 The Company shall also make a cash payment to the FSCS of £5 million as a Scheme Cost as a contribution towards the costs and expenses of the FSCS in carrying out the run-off of Protected Claims from the Bar Date to the date of final settlement of all such claims or expiry thereof in accordance with the terms agreed thereon with the FSCS (the "**FSCS Claims Handling Contribution**") Such payment shall be made to the FSCS within 15 Business Days of the Effective Date The Claims Handling Contribution will be paid in full, and not *pari passu* with the Admitted Scheme Claims under the Scheme

### **37. LIMITATIONS ON THE FSCS' OBLIGATIONS**

37 1 Any obligation of the FSCS to make a payment in respect of a Protected Claim under the Scheme shall be conditional on

37 1 1 that Protected Claim being a Scheme Claim, and

37.1 2 the Protected Policyholder being entitled and able to assign, or having assigned, to the FSCS all the rights and claims mentioned in Clause 38 1 as originally arising and free from any lien, charge, prior assignment, equity, encumbrance or other third party right

37.2 Any obligation of the FSCS to a Protected Policyholder in respect of a Protected Claim under the Scheme shall be subject to the same conditions, limitations, qualifications and other provisions (*mutatis mutandis*) contained or referred to in, or capable of being imposed under the FSCS Rules (as may be applicable) and/or sections 9, 13(1) to (3) and 14 of the Policyholders Protection Act as the duty which the FSCS would have had under Sections 6 to 8 of that Act to secure the making of a payment to any policyholder or any other person in respect of that Protected Claim if the Company was a company in liquidation (as defined in the Policyholders Protection Act)

### **38. ASSIGNMENTS TO THE FSCS**

38 1 Immediately upon any payment being made by the FSCS in respect of a Protected Claim there shall automatically be assigned to the FSCS absolutely without any further act or document all rights, whether present or future, actual or contingent which the Protected Policyholder may have

38 1 1 in respect of that Protected Claim (including in respect of the debt or claim

- constituted by or arising out of or relating to that Protected Claim under or in respect of the Insurance Contract relating to that Protected Claim),
- 38 1 2 in respect of payments made by the Protected Policyholder by way of premiums under the Insurance Contract relating to the Protected Claim,
- 38 1 3 against any other person in respect of any event giving rise to that Protected Claim (other than another insurer which has insured the Protected Policyholder in respect of the same event but without prejudice to the application of this Clause 38 1 3 in relation to any other Protected Claim to which the event has also given rise) or by reference to or in connection with the Insurance Contract relating to the Protected Claim, and
- 38 1 4 in respect of that Protected Claim to any payment out of, interest in, or recourse to or otherwise by virtue of, any letters of credit, trust funds, guarantees, guarantee funds and deposits provided that if the Protected Policyholder has any right under such letter of credit, trust fund, guarantee, guarantee fund or deposit then such right shall not be assigned to the FSCS to the extent that if it was taken into account in calculating the FSCS's payment in respect of the Protected Claim under the Scheme it would result in a reduction in the amount which would otherwise have been payable by the FSCS in respect of that Protected Claim under the Scheme (except that if and to the extent that it is determined in a Proceeding (or the effect of a determination in any Proceedings is) that this proviso causes, or would but for this exception cause, the assignment of such right or any other rights to be invalid or unenforceable, the provision shall not have effect), whether, in any such case, those rights or claims arise under or in respect of the Insurance Contract relating to that Protected Claim, under or in respect of the Scheme, by virtue of any trust or enactment (primary or subordinate) or otherwise howsoever, and whatever the nature of those rights or claims
- 38 2 If any question arises as to the identification of any Protected Claim and accordingly as to whether that Protected Claim is or is not the subject of an assignment to the FSCS under this Clause 38 a certificate by the FSCS that it has made a payment in respect of that Liability shall be binding and conclusive on all persons for all purposes
- 38 3 A Protected Policyholder shall do such acts and things and execute such deeds and documents, and in particular such forms of assignment, transfer or assurance, as the FSCS may from time to time request to vest in it fully and effectively all rights and claims of that Protected Policyholder against the Company or other persons under or in respect of the Protected Claim to which such payment or agreement to pay relates, or to perfect or evidence the vesting in it of the same Each Protected Policyholder hereby irrevocably and unconditionally appoints the chief executive of the FSCS for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such acts and things and execute such deeds and documents as may be required to give effect to this Clause 38 3, if such Protected Policyholder fails to comply promptly with his obligations hereunder
- 38 4 If and to the extent that any interest in any such right or claim of a Protected Policyholder as falls to be assigned to the FSCS upon any payment being made by the FSCS does not for any reason immediately vest fully and effectively in the FSCS, the same shall be held by the Protected Policyholder on trust absolutely for the FSCS until it does so vest

- 38 5 On the Assignment Date, the provisions of Clauses 38 1 to 38 4 shall apply to each Scheme Claim which is a Protected Contingent Claim that has not become a Protected Claim before termination of the Scheme
- 38 6 The assignment contemplated by Clause 38 1 insofar as it applies to any Protected Contingent Claim shall be conditional upon the FSCS, where the Company is in liquidation and the Scheme has terminated, making any payment to the relevant Protected Policyholder in respect of the Scheme Claim after the Assignment Date under the provisions of, and in accordance with its powers and duties, under the Policyholders Protection Act and/or the FSCS Rules (to the extent applicable) and is also without prejudice to the terms of the Policyholders Protection Act, including, without limitation, Sections 13(4) and 14 of the Policyholders Protection Act
- 38 7 This Clause 38 shall be deemed to constitute for all purposes express notice in writing to the Company of all assignments effected pursuant to its provisions and relating to Liabilities of the Company

**39. OTHER PROVISIONS APPLICABLE TO THE FSCS**

- 39.1 The FSCS shall not be liable in respect of any interest Liability of the Company, in relation to a Protected Claim which does not constitute Admissible Interest and which Admissible Interest is not also payable under the relevant Insurance Contract or judgment giving rise to the Protected Claim
- 39 2 Save that the FSCS will be taking over responsibility for the claims handling of Protected Claims from the Bar Date, nothing in the Scheme shall impose any greater obligation on the FSCS in respect of any Scheme Creditor or Liability of the Company than the FSCS would have had (and neither such Scheme Creditor nor the Company shall have any different or greater relief or remedy against the FSCS than it would have had) if the Company had been a company in liquidation (as defined in the Policyholders Protection Act), the beginning of the liquidation (as so defined) had been the Petition Date, and the payment to be made by the FSCS in respect of each Protected Claim had been reduced by the amounts referred to in Clause 35 4 (as the case may be), and no right of, or condition imposed by, the FSCS under the Scheme in relation to any Scheme Creditor shall be limited or restricted by virtue of any obligation of the FSCS to that Scheme Creditor under the Scheme being less than the obligation which the FSCS would have had to it if the Company had been a company in liquidation (as so defined in the Policyholders Protection Act)
- 39 3 Where, in relation to any Insurance Contract, the FSCS is required or entitled to make a payment to any person other than, or instead of, the Protected Policyholder if the Company were in liquidation, the FSCS may similarly perform any obligation to make a payment under the Scheme in relation to that Insurance Contract and references to a Protected Policyholder shall be construed accordingly as including payment to such a person (as well as, for the avoidance of doubt, any person, whether or not a policyholder, to whom payment may otherwise be made by the FSCS for or on behalf of the Protected Policyholder)
- 39 4 The FSCS shall not have an obligation to make a payment
- 39 4 1 to any subsidiary or parent of the Company or any person who was a shareholder of the Company at the date of this Scheme, or

- 39 4 2 if it appears to the FSCS that such a payment would result in a benefit being conferred on either
- (A) any person who was a shareholder of the Company at the Petition Date, or
  - (B) any person who had responsibility for or who may have profited from the circumstances giving rise to the financial difficulties of the Company, provided that there shall be disregarded for the purposes of this Clause 39 4 2 any benefit which might accrue to such persons therein mentioned who are policyholders of the Company in their capacity as such
- 39 5 Without prejudice to any other rights and remedies which the FSCS may have, any person receiving a payment in respect of a Liability who has knowingly provided false, misleading or incomplete information to the FSCS in support of an application for that payment shall be bound on demand to repay to the FSCS all such amounts that have been paid by the FSCS in respect of that Liability, together with interest at 8 per cent. per annum (or, if higher, the Judgement Rate) (or such other rate as a court of competent jurisdiction may specify for the purpose of this Clause 39 5) calculated on a daily basis from the date of payment to the date of repayment
- 39 6 The FSCS shall not for any purpose under or in connection with the Policyholders Protection Act or the FSCS Rules be bound by any estimation made under the Scheme of any Scheme Claims which are Notified Outstanding Claims or IBNR Claims either as to existence, liability or quantum Unless and until a Scheme Claim becomes established either as a liability under a policy within the meaning of the Policyholders Protection Act or under the terms of the FSCS Rules (as applicable) and subject also to all other conditions and requirements of the Policyholders Protection Act or the FSCS Rules being complied with, such a Scheme Claim shall not be eligible for protection from the FSCS
- 39 7 The participation and obligations of the FSCS under the Scheme shall be governed by the terms of the Scheme until the Scheme terminates in accordance with its terms Thereafter the FSCS shall assess and pay compensation in accordance with its obligations, powers and duties which arise in the liquidation of the Company, provided that:
- 39 7.1 payment by the FSCS in respect of each Protected Claim shall not be made until the later of
- (A) the date on which liability for the Protected Claim is established by agreement by the FSCS or its agent pursuant to Clause 40 1 or judgment is obtained establishing such liability, and
  - (B) the date on which the FSCS agrees or it is otherwise determined (so as to bind the FSCS) that the liability is a Protected Claim, and
- 39 7.2 payment by the FSCS shall not be made in respect of any Protected Contingent Claim until such contingent or prospective liability matures into a present liability and the conditions of Clause 39 7 1 above are satisfied
- 39 8 The provisions of Clause 39 shall continue to apply notwithstanding termination of the Scheme and any winding up or dissolution of the Company



**40. THE RUN-OFF OF FUTURE PROTECTED CLAIMS WILL BE CARRIED OUT BY THE FSCS**

- 40 1 In return for the Company agreeing to make the payment of the FSCS Claims Handling Contribution under Clause 36 7, and in consideration of the Protected Policyholders being bound by the terms of the Scheme (including in relation to Clause 38 above), the FSCS agrees that it shall accept the irrevocable appointment by the Company with effect from the Bar Date to conduct the run-off, handling and agreement of all Liabilities of the Company which may give rise to Protected Claims. The appointment of the FSCS shall survive and continue in full force and effect notwithstanding termination of the Scheme. In the event that as a matter of law such appointment would terminate in the event of a liquidation or other insolvency process applicable to the Company, the FSCS shall be deemed to have been reappointed immediately by the Company (and accepted that reappointment) with automatic effect in any liquidation or other insolvency process so that the appointment of the FSCS and its obligation to conduct the run-off, handling and agreement of all Liabilities of the Company which may give rise to Protected Claims notwithstanding the liquidation of the Company shall for all purposes continue in full force and effect.
- 40 2 The FSCS shall at all times employ sufficient staff and/or appoint suitably qualified agents and comply with all applicable laws, rules and regulations at its own cost to ensure that all Liabilities of the Company which may give rise to Protected Claims will, in the interests of the Protected Policyholders, be handled by it to expiry of those Liabilities.
- 40 3 The Company shall on the Effective Date make available to the FSCS its books and records in its possession or under its control or that of its agents insofar as they relate to Liabilities which may give rise to Protected Claims and the run-off of those Liabilities. The Company shall permit (and authorise and instruct its agents to permit) the FSCS or any person authorised by it to take, at the expense of the FSCS, copies of any such information it deems fit or to download or take in computer transferable format copies of any such information to allow it to carry out or appoint agents to carry on the run-off of Protected Claims and the payment of compensation in respect thereof.

## **PART 7 – THE SCHEME ACTUARIAL ADVISER AND THE SCHEME ADJUDICATOR**

### **41. THE SCHEME ACTUARIAL ADVISER**

- 41 1 There shall be a Scheme Actuarial Adviser having the powers, rights, duties and functions conferred upon it by the Scheme. The Scheme Actuarial Adviser shall provide advice and assistance to the Company in connection with the review of Claim Forms, the agreement and/or estimation of Scheme Claims in accordance with the Estimation Guidelines, the calculation and/or application of any Offset Amount and/or Security and any discount to be applied in accordance with Clause 22.3
- 41 2 In exercising its powers and in carrying out his duties and functions under the Scheme, the Scheme Actuarial Adviser shall act in good faith and with due care and diligence
- 41 3 The first Scheme Actuarial Adviser shall be PricewaterhouseCoopers LLP
- 41 4 The office of Scheme Actuarial Adviser shall be vacated if at any time the appointee to that office is subject to a Removal Event
- 41 5 In the event of a vacancy in the office of the Scheme Actuarial Adviser, the Scheme Administrators shall appoint a replacement Scheme Actuarial Adviser
- 41 6 The Company shall pay as a Scheme Cost reasonable remuneration to the Scheme Actuarial Adviser for the exercise and performance of its powers, duties and functions under the Scheme as may be agreed between the Scheme Actuarial Adviser and the Scheme Administrators and as approved by the Creditors' Committee (such approval not to be unreasonably withheld)
- 41 7 The Scheme Actuarial Adviser's remuneration shall be drawn down and be paid from the Company's Property on a regular basis subject to the proviso that any professional fees which are not subsequently approved by the Creditors' Committee or the Court shall be repaid to the Company plus interest thereon

### **42. THE SCHEME ADJUDICATOR**

- 42 1 There shall be a Scheme Adjudicator having the powers, rights, duties and functions conferred upon him by the Scheme. In exercising his powers and rights and carrying out his duties and functions under the Scheme, the Scheme Adjudicator shall act independently from the Company and the Scheme Administrators and in good faith and with due care and diligence in the interests of Scheme Creditors as a whole
- 42 2 The first Scheme Adjudicator shall be Colin Czapiewski
- 42 3 The office of Scheme Adjudicator shall be vacated if at any time the appointee to that office is subject to a Removal Event
- 42 4 In the event of a vacancy in the office of the Scheme Adjudicator, the Company shall appoint a replacement Scheme Adjudicator.
- 42 5 The Scheme Adjudicator shall be responsible for adjudicating and determining any disputes concerning the matters listed in Clause 20.5, Clause 22.6 and Clause 36.2 which are referred to him, subject to the terms of the Scheme

- 42 6 Any determination by the Scheme Adjudicator shall, insofar as the law allows, be final and binding on the relevant Scheme Creditor, the Company and the Scheme Administrators for all purposes, and no Scheme Creditor, the Company or the Scheme Administrators shall have any right of appeal therefrom, or have any claim or other remedy whatsoever against the Scheme Adjudicator in respect thereof, except in so far as is permitted by law
- 42 7 The Company shall pay as a Scheme Cost such reasonable remuneration to the Scheme Adjudicator for the exercise and performance of his powers, duties and functions under the Scheme as may be agreed between the Scheme Adjudicator and the Company or as is required to be paid by the Company under the Scheme The Company shall pay all such amounts in full as a Scheme Cost

## **PART 8 – THE PROVISIONAL LIQUIDATORS**

### **43. THE PROVISIONAL LIQUIDATORS**

- 43 1 Save to the extent that such powers or functions would conflict with the powers and functions of the Scheme Administrators, the Provisional Liquidators shall continue to exercise and perform all the powers and duties in relation to the Company conferred on them by law for so long as the Provisional Liquidators continue to hold such office
- 43 2 Without prejudice and without limitation to the generality of their existing functions powers and duties the Provisional Liquidators
  - 43 2 1 shall not have any duties or responsibilities in relation to matters related to the Scheme other than those expressly set out herein, and
  - 43 2 2 shall not incur any personal liability in connection with the preparation, negotiation or implementation of the Scheme or any ancillary arrangement

## **PART 9 – THE SCHEME ADMINISTRATORS**

### **44. QUALIFICATION AND APPOINTMENT OF THE SCHEME ADMINISTRATORS**

- 44 1 There shall be appointed Scheme Administrators having the powers, rights, duties and functions conferred upon them by the Scheme. In exercising their powers and rights and carrying out their duties and functions under the Scheme, the Scheme Administrators shall act as agents of the Company without personal liability (which agency shall continue notwithstanding any Liquidation Event or other insolvency proceeding of the Company), in good faith and with due care and diligence in the interests of the Scheme Creditors as a whole, and shall exercise their powers under the Scheme for the purpose of ensuring that the Scheme is applied and operated in accordance with its terms.
- 44 2 The Scheme Administrators shall be individuals qualified to act as insolvency practitioners within the meaning of Section 390 of the Insolvency Act. Where more than one person has been appointed as Scheme Administrator, each must be qualified to act as an insolvency practitioner.
- 44 3 The first Scheme Administrators shall be the Dan Schwarzmenn and Mark Batten of PricewaterhouseCoopers LLP.

### **45. RESIGNATION AND REMOVAL OF THE SCHEME ADMINISTRATORS**

A Scheme Administrator shall vacate office if he ceases to be a person qualified to act as an insolvency practitioner within the meaning of Section 390 of the Insolvency Act, resigns his office by giving not less than three months' notice in writing to the other Scheme Administrators, the Company and the Creditors' Committee, or is otherwise subject to a Removal Event.

### **46. GENERAL POWERS AND DISCRETIONS OF THE SCHEME ADMINISTRATORS**

- 46 1 The Scheme Administrators shall have general powers of management and control over the Company's Property for the purpose of implementing and applying the Scheme. The Scheme Administrators shall also have the powers specifically conferred on them by the Scheme.
- 46 2 Where one or more persons are appointed as Scheme Administrator, the functions and powers of the Scheme Administrators under the Scheme may be performed and exercised jointly and severally and any act required to be done by the Scheme Administrators under the Scheme may be done by any one or more or all of them.
- 46 3 The performance of any act, the making of any determination or any other matter, including without limitation any of the provisions of Clause 47 (*Specific Powers of the Scheme Administrators*), which is, whether expressly or impliedly, at the discretion or in the opinion of the Scheme Administrators, shall, unless expressly stated otherwise, be at their reasonable discretion and the provisions of Clause 62 (*Indemnity*) shall apply thereto.
- 46 4 In carrying out their functions and exercising their powers under the Scheme the Scheme Administrators shall consult with, and take account of the views expressed by, the Creditors' Committee on any matter which the Scheme Administrators consider material to the Scheme.

#### **47. SPECIFIC POWERS OF THE SCHEME ADMINISTRATORS**

- 47 1 The Scheme Administrators shall be entitled, without prejudice to the generality of the general powers of management and control over the Company's Property
- 47 1 1 to have full access at all times to all information as they shall from time to time require in relation to the business, affairs and the Company's Property or the operation of the Scheme and to all books, papers, documents and other information contained or represented in any format whatsoever in the possession, custody or under the control of the Company, and any such information and documents may, subject, where applicable, to appropriate undertakings of confidentiality, be disclosed by the Scheme Administrators to the Creditors' Committee,
- 47 1 2 to employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in relation to the business, affairs and Company's Property and the Scheme Administrators' powers, rights, duties and functions under the Scheme,
- 47 1 3 to delegate to any person qualified to act as an insolvency practitioner within the meaning of Section 390 of the Insolvency Act and approved for the time being by the Creditors' Committee for the purposes of this Clause 47, all or any of the powers, rights, duties and functions conferred upon the Scheme Administrators under the Scheme and from time to time to revoke any such delegation, provided that the Scheme Administrators shall be responsible for any act or omission of any such delegate to the same extent as if they had expressly authorised it,
- 47 1 4 to the extent that the Court has jurisdiction, to apply or cause the Company to apply to the Court for directions in relation to any particular matter arising in the course of the Scheme but no such application shall be made for directions concerning the interpretation or construction of the Policyholders Protection Act or the FSCS Rules whether as such or as it applies to the obligations of the FSCS under, or otherwise as incorporated into, the Scheme unless the FSCS in its absolute discretion consents,
- 47 1 5 to be paid and reimbursed for the carrying out of their duties and the exercise of their powers, rights, duties and functions under the Scheme and for all expenses properly incurred by them in connection therewith;
- 47 1 6 either to attend themselves or appoint a delegate to attend any meeting of the Creditors' Committee, for the purpose of giving such explanations and information as the Creditors' Committee may require,
- 47.1 7 to collect any assets including reinsurance recoveries in accordance with the Scheme as part of the run-off of the Company's business;
- 47 1 8 to do all acts and execute in the name of and on behalf of the Company any deed, receipt or other document and to use the Company's seal,
- 47.1 9 to pay Priority Liabilities and Scheme Costs in accordance with the Scheme;
- 47 1 10 to pay dividends to Scheme Creditors in accordance with the Scheme, and
- 47 1 11 to exercise any other powers necessary for or incidental to the full and proper

implementation of the Scheme

**48. REPRESENTATIVES**

The Scheme Administrators may, at their absolute discretion, deal with those persons acting on behalf of Scheme Creditors (including, but not limited to managing general agents, the managers of underwriting pools, the holders of line slips or binding authorities or similar representative bodies) on the basis that those representatives are fully authorised to represent the Scheme Creditors concerned for all purposes in connection with the Scheme

**49. PROFESSIONAL FEES, COSTS, CHARGES AND EXPENSES OF THE SCHEME ADMINISTRATORS**

49 1 There shall be paid out of the Property, in priority to all other Priority Liabilities, all costs, charges and expenses of the Scheme Administrators and their firm payable or incurred in the course of exercising or performing their functions, powers, rights, duties, authorities and discretions under the Scheme including the professional fees of the Scheme Administrators and their staff (to be charged at the usual hourly rates charged by their firm for this type of work) and the costs incurred by the Scheme Administrators in employing agents and professional advisers, including legal advisers, to assist them in implementing and giving effect to the Scheme and its terms

49 2 The Scheme Administrators shall seek the approval of the Creditors' Committee from time to time to the payment of their professional fees and in that approval process there shall be taken into account

49 2 1 the time properly given by the Scheme Administrators and their staff in attending to the Company's affairs,

49 2 2 the complexity of the various aspects of the matter,

49 2 3 any respects in which, in connection with the Company's affairs, there falls on the Scheme Administrators any responsibility of an exceptional kind or degree,

49 2 4 the effectiveness with which the Scheme Administrators appear to be carrying out, or to have carried out, their duties, and

49 2 5 the value and nature of the Property with which they have to deal

49 3 Should the Creditors' Committee not approve the level of professional fees as submitted by the Scheme Administrators, the Scheme Administrators shall be at liberty to apply to the Court for the approval of their fees

49 4 The Scheme Administrators shall be entitled to draw down and be paid from the Company's Property their professional fees, costs, charges and expenses on a regular basis subject to the proviso that any professional fees which are not subsequently approved by the Creditors' Committee or the Court shall be repaid to the Company plus interest thereon

49 5 Neither the Scheme Administrators, nor any partner, employee, agent, advisor, representative, affiliate, director, officer, member, beneficiary, investor, servant, shareholder, trustee, attorney, or other person acting on behalf of, or otherwise related to or affiliated with the Scheme Administrators or the Company, nor any of their respective

successors, shall have any personal liability directly or indirectly, under or in connection with

- 49 5 1 this Scheme, the Explanatory Statement and any notices convening a Scheme Meeting,
- 49 5 2 any agreement made or entered into under or pursuant to the Explanatory Statement, the Scheme and any such notices, or
- 49 5 3 any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter

This exclusion of personal liability shall survive the termination of the Scheme and any winding up or dissolution of the Company



## **PART 10 – CREDITORS' COMMITTEE**

### **50. CONSTITUTION OF THE CREDITORS' COMMITTEE**

- 50 1 There shall be a Creditors' Committee for the purposes set out in the Scheme
- 50 2 The Creditors' Committee shall consist of not less than three and not more than five persons (each a "**Committee Member**") unless the Scheme Administrators in consultation with the Creditors' Committee decide otherwise
- 50 3 Any Scheme Creditor or any authorised representative of any one or more Scheme Creditors (whether an individual, a body corporate or a partnership) shall be eligible for appointment as a Committee Member. The FSCS shall be entitled for the duration of the Scheme to membership of the Creditors' Committee as one Committee Member

### **51. MEMBERSHIP OF THE CREDITORS' COMMITTEE**

- 51 1 The initial Creditors' Committee shall consist of those persons currently acting as members of the informal Creditors' Committee in the Provisional Liquidation
- 51 2 Subject to Clause 51 3 below, the Creditors' Committee may resolve at any time, by a simple majority of those Committee Members present at a meeting of the Creditors' Committee, to appoint any person who is eligible to be so appointed to be a Committee Member, whether to fill a vacancy or as an additional Committee Member, but so that the total number of Committee Members shall not exceed five
- 51 3 Apart from the FSCS, no person shall be appointed as a Committee Member unless
- 51 3 1 he is recommended by the Creditors' Committee, or
- 51 3 2 not less than seven and not more than 28 clear days before the date appointed for the meeting of the Creditors' Committee, a notice executed by a Scheme Creditor qualified to vote at the meeting has been given to all Committee Members of the intention to propose that person for appointment together with a written notice signed by that person of his willingness to be appointed

### **52. CEASING TO BE A COMMITTEE MEMBER**

- 52.1 The office of a Committee Member (other than the FSCS) shall be vacated if that Committee Member, being an individual
- 52 1 1 resigns by notice in writing addressed to any one of the Scheme Administrators, such notice being effective on receipt,
- 52 1 2 ceases to be (or is found never to have been) a Scheme Creditor,
- 52 1 3 fails to attend three consecutive meetings of the Creditors' Committee, unless the Creditors' Committee (excluding that Committee Member) resolves by a simple majority of the Committee Members present at a meeting of the Creditors' Committee that he should continue as a Committee Member, or
- 52 1 4 is subject to a Removal Event

- 52 2 The office of a Committee Member (other than the FSCS) shall be vacated if that Committee Member, being a body corporate or partnership.
- 52 2 1 resigns by notice in writing addressed to any one of the Scheme Administrators, such notice being effective on receipt,
- 52 2 2 is convicted of an indictable offence (other than offences in relation to road traffic),
- 52 2 3 ceases to be (or is found never to have been) a Scheme Creditor or an authorised representative of a Scheme Creditor,
- 52 2 4 fails to attend three consecutive meetings of the Creditors' Committee, unless the Creditors' Committee (excluding that Committee Member) resolves by a simple majority of the Committee Members present at a meeting of the Creditors' Committee that he should continue as a Committee Member; or
- 52 2 5 goes into liquidation or administration or is dissolved
- 52 3 The FSCS may resign by notice in writing to the Creditors' Committee and signed by an authorised representative of the FSCS

### **53. APPOINTMENT OF NOMINATED REPRESENTATIVES**

- 53 1 Each Committee Member may, by notice to the Scheme Administrators, appoint a responsible individual as its representative (a "**Nominated Representative**") to represent that Committee Member at any meeting of the Creditors' Committee.
- 53 2 Each Nominated Representative appointed pursuant to Clause 53 1 above may only represent one Committee Member at any one time

### **54. FUNCTIONS OF THE CREDITORS' COMMITTEE**

- 54 1 The Creditors' Committee shall provide their views on any matter relating to the Scheme, as and when requested to do so by the Scheme Administrators.
- 54 2 The Creditors' Committee shall have the function of approving the professional fees of the Scheme Administrators and Scheme Actuarial Adviser

### **55. INFORMATION TO BE GIVEN TO THE CREDITORS' COMMITTEE**

- 55.1 Nothing in the Scheme shall require the Scheme Administrators to provide to the Creditors' Committee any information the release of which they think could be detrimental to the interests of the Company and/or Scheme Creditors as a whole, or any information which the Company (or any of its agents) is under a legal duty not to disclose.

### **56. DUTIES OF COMMITTEE MEMBERS**

- 56 1 Each Committee Member shall, in performing its functions as such, act in good faith and with due care and diligence in the interests of the Scheme Creditors as a whole
- 56 2 Each Committee Member shall use its best endeavours to avoid conflicts of interest in performing its duties under the Scheme It shall be the duty of each Committee Member

who is in any way, whether directly or indirectly, interested in a contract, arrangement or proposed contract or arrangement with the Company to declare the nature of its interest at a meeting of the Creditors' Committee (other than a general interest arising by reason only of the Committee Member's status as a Scheme Creditor)

- 56 3 Each Committee Member shall preserve the confidentiality of all information received in its capacity as Committee Member concerning the Company and the operation of the Scheme and shall use such information only for the purpose of performing its responsibilities and functions under the Scheme unless it shall have obtained the prior written approval of the Scheme Administrators

#### **57. PROCEEDINGS OF THE CREDITORS' COMMITTEE**

- 57 1 Subject to the provisions of the Scheme, the Creditors' Committee may convene, adjourn or otherwise regulate its meetings as it sees fit

- 57 2 The Scheme Administrators may summon and three Committee Members may at any time request the Scheme Administrators to summon a meeting of the Creditors' Committee. The Scheme Administrators shall call a meeting of the Creditors' Committee as soon as practicable after receiving a request to do so under this Clause 57

- 57 3 When summoning a meeting of the Creditors' Committee, the Scheme Administrators shall send written notice to each Committee Member of such meeting setting out the time and place of the meeting (which shall be in London or such other place as the Scheme Administrators may direct) and indicating the nature of business to be transacted

- 57.4 The quorum necessary for the transaction of business shall be three Committee Members. If a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to such time and place as the chairman may reasonably determine and the quorum at any such adjourned meeting shall be three Committee Members

- 57 5 Each Committee Member shall have one vote. Matters arising at any meeting shall be decided by a simple majority of votes of the Committee Members (for the avoidance of doubt, excluding the chairman) attending at such meeting and entitled to vote and voting on such matter. In the case of equality of votes, the chairman shall have the casting vote in respect of that particular resolution voted upon

- 57 6 A Committee Member shall not be entitled to vote or to form part of the quorum in relation to any matter in which the Committee Member is in any way, in the opinion of the Scheme Administrators, interested (other than a general interest arising by reason only of the Committee Member's status as a Scheme Creditor) and, if requested to do so, shall absent itself from the meeting for so long as such matter is discussed and voted upon and shall not receive any information nor be entitled to inspect any part of the minutes of a meeting of the Creditors Committee relating thereto

- 57 7 The Scheme Administrators shall be entitled to attend, speak and/or make written submissions at all meetings of the Creditors' Committee. However, they shall not be entitled to vote at any such meeting unless agreed by the Creditors' Committee

- 57 8 A resolution in writing signed in any number of counterparts by all the Committee Members for the time being shall be as valid and effective as if passed at a meeting of the Creditors' Committee duly convened and held.

- 57 9 A Committee Member and/or a Scheme Administrator may participate in a meeting of the Creditors' Committee by conference telephone or similar form of communication equipment if all persons participating in the meeting are at all material times able to hear and speak to each other. A person participating in this way shall be deemed to be present in person at the meeting and shall be counted in a quorum and entitled to vote, if appropriate. All business transacted in this way by the Creditors' Committee shall be deemed to be validly and effectively transacted at a meeting of the Creditors' Committee.
- 57 10 The Scheme Administrator shall cause proper minutes to be kept of all proceedings of the Creditors' Committee and such minutes shall at all reasonable times be open to inspection by any Committee Member (except insofar as a Committee Member is interested as contemplated by Clause 57.6 in any matter detailed in the minutes).

## **58. VALIDATION**

All acts done by a Committee Member or Nominated Representative at any meeting of the Creditors' Committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of the Committee Member be as valid as if such person had been duly appointed and qualified.

## **59. EXPENSES**

- 59.1 The Company shall pay the reasonable costs incurred in summoning meetings of the Creditors' Committee (irrespective of who requests the meeting) and the reasonable out of pocket expenses incurred by the Committee Members and the Scheme Administrators in travelling to and attending such meetings.
- 59 2 The Company shall also pay, at the Scheme Administrators' sole discretion, any other costs and expenses reasonably incurred by any Committee Member in carrying out its duties and functions as Committee Member under the Scheme as Scheme Costs.

## **PART 11 – RELEASES**

### **60. RELEASES**

- 60 1 To the fullest extent allowed by law, each Scheme Creditor shall treat the Provisional Liquidators, the Scheme Administrators, Scheme Actuarial Adviser, the Scheme Adjudicator, the Creditors' Committee and the FSCS and, as applicable, each of their firms, fellow members, partners, officers and employees, and each of their legal and other professional advisors including their fellow members, partners and employees (together the "**Released Parties**") as being released from any Liability (whether present, future, prospective or contingent) arising in connection with the preparation, negotiation, operation and implementation of the Scheme or any matter ancillary to the Scheme except, in relation to the FSCS, any Liability relating to an obligation imposed on or accepted by the FSCS by or in Part 6 of the Scheme
- 60 2 The Company shall hold the benefit of the obligation of each Scheme Creditor under Clause 60 1 above on trust for the Released Parties
- 60.3 Each Scheme Creditor hereby authorises the Company (such authority being treated for all purposes as if it were granted by deed executed by that Scheme Creditor) to execute such deeds of release on behalf of that Scheme Creditor as are necessary to give effect to Clause 60 1 above
- 60 4 Neither the Scheme Administrators, nor any partner, employee, agent, advisor, representative, affiliate, director, officer, member, beneficiary, investor, servant, shareholder, trustee, attorney, or other person acting on behalf of, or otherwise related to or affiliated with the Scheme Administrators or the Company, nor any of their respective successors, shall have any personal liability directly or indirectly, under or in connection with
- 60 4 1 this Scheme, the Explanatory Statement and any notices convening a Scheme Meeting,
- 60 4 2 any agreement made or entered into under or pursuant to the Explanatory Statement, the Scheme and any such notices, or
- 60 4 3 any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter

This exclusion of personal liability shall survive the termination of the Scheme and any winding up or dissolution of the Company

## **PART 12 – TERMINATION OF THE SCHEME**

### **61. TERMINATION OF THE SCHEME**

- 61 1 The Scheme and (without limitation) all appointments made hereunder of Scheme Administrators, Scheme Actuarial Adviser and Scheme Adjudicator and their respective powers and duties shall not be affected in any way nor terminate on the occurrence of a Liquidation Event but shall continue in full force and effect unless and until the Scheme is terminated in accordance with its terms. No Scheme Creditor shall in any event initiate or take any steps to initiate a Liquidation Event.
- 61 2 The Scheme shall terminate on the date that the Scheme Administrators give notice to the Company and to the FSCS that in their opinion there is no further Property of the Company that can be cost-effectively collected and distributed under the Scheme.
- 61 3 If the Scheme is terminated in accordance with this Clause 61 and the Company is or becomes subject to a Liquidation Event, the Company shall remain liable in the liquidation in respect of any Protected Claims or liabilities which may give rise to a Protected Claim but no Protected Policyholder shall have any right to any payment from the Company. The Scheme Claims of Scheme Creditors other than in respect of Protected Claims are subject to the compromise contained in Clause 25 above and Scheme Creditors whose claims are compromised under Clause 25 shall not be entitled to prove in a liquidation for the purpose of seeking payment in respect of any Scheme Claim.
- 61 4 As soon as practicable following the Termination Date, the Scheme Administrators shall cause notices stating that the Scheme has terminated to be placed on the Website and in the same newspapers and publications in which notice of the Scheme Meetings were given together with such other newspapers and publications or by such other means as the Scheme Administrators deem appropriate. The cost of placing such notices shall be payable out of the Property of the Company as a Scheme Cost.
- 61 5 The provisions of Clauses 39, 40, 43, 49.5, 60 and 62 shall survive the termination of the Scheme and any winding up or dissolution of the Company.

## **PART 13 – GENERAL**

### **62. INDEMNITY**

62 1 Without prejudice to any statutory indemnity or indemnity arising by operation of law to which they may be entitled and subject to the Companies Act, the Provisional Liquidators, the Scheme Administrators, the Scheme Actuarial Adviser, the Scheme Adjudicator, the Scheme Manager, the Creditors' Committee (in their capacities as such) and the FSCS shall be entitled to an indemnity on demand out of the Property of the Company, against

62 1 1 all actions, claims, Proceedings and demands brought or made against any or all of such persons in respect of any act done or omitted to be done by any or all of them in good faith without negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty on any of their part in the course of the preparation, negotiation and implementation the Scheme in accordance with its terms (except, in relation to the FSCS, any Liability relating to an obligation imposed on or accepted by the FSCS by or in Part 6 of the Scheme or otherwise arising out of or in connection with the conduct of the run-off of Protected Claims to be carried out by the FSCS under Clause 40), and

62 1.2 all reasonable expenses and liabilities properly incurred by any of such persons (other than the FSCS) in carrying out their functions and powers in the course of the preparation, negotiation and implementation the Scheme in accordance with its terms.

62 2 Without prejudice to the generality of Clause 62 1, each such person as is expressed to be entitled to an indemnity in accordance with that Clause (in the capacity in which it is entitled to such an indemnity) shall be entitled to an indemnity out of the Property of the Company

62 2 1 against any liability incurred by it in defending any Proceedings, whether civil or criminal, in respect of any negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty on its part in relation to the operation of the Scheme in which judgment is given in its favour or in which it is acquitted, and/or

62 2 2 in connection with any application in any such Proceedings in which relief is granted to it by a court from liability for negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty on any of their part in relation to the operation of the Scheme

62 3 For the purposes of any indemnity in the Scheme, references to the Provisional Liquidators, Scheme Administrators, Scheme Actuarial Advisers, Scheme Adjudicator, the Scheme Manager, the Creditors' Committee and the FSCS shall, where the context so permits, include their present and future firm or firms, fellow members, partners and employees, and any legal entity or partnership of which they are a member, partner, officer or employee and the partners, fellow members, shareholders, officers and employees of such entity or partnership

### **63. MODIFICATIONS**

In so far as is permitted by law, the Scheme Administrator will have the power at any time after the Effective Date after consultation with the Creditors' Committee and without

reference to the Scheme Creditors, if they consider it expedient to do so and if it is in the best interests of each class of Scheme Creditors to which the relevant modification would apply, to modify the provisions of the Scheme provided such modifications do not adversely alter the effect or economic substance of the Scheme and/or if the modification is made to remove an obvious error in the Scheme. The Scheme Administrator shall inform the Scheme Creditors of any such modifications by posting details of the same on the Website. Any such modifications shall be binding on the Scheme Creditors and the Scheme Administrator and the Scheme shall be modified accordingly. Any modifications that have a material effect on the FSCS may only be made with the consent of the FSCS.

#### **64. NO ENTITLEMENT TO CHALLENGE**

To the extent permitted by law and in the absence of manifest error, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by the Scheme Administrators, the Company, the Provisional Liquidators, the Scheme Actuarial Adviser or the Scheme Adjudicator, the Creditors' Committee or the FSCS in accordance with and to implement the provisions of the Scheme or the exercise in good faith of any power conferred upon them for the purpose of the Scheme if exercised in accordance with and to implement the provisions of the Scheme. This Clause shall not apply to the activities of the FSCS in connection with the conduct of the run-off of Protected Claims to be carried out by the FSCS under Clause 40.

#### **65. NOTICES**

65 1 A notice or other communication to be given to the Scheme Administrators or the Company

65 1 1 must be given in writing,

65 1 2 may be sent by Post or may be hand delivered but shall only be deemed served upon actual receipt by the Scheme Administrators or the Company (as the case may be), provided that if such actual receipt occurs on a Saturday, Sunday or public holiday or after 5 00 p.m. (London time) on any Business Day such Claim Form or other such notice shall be deemed to have been received at 9 30 a.m. (London time) on the next Business Day, and

65 1 3 must be addressed to the Provisional Liquidators or Scheme Administrators

65 2 A notice shall be expressed in the English language. The Provisional Liquidators or Scheme Administrators shall be deemed to have rejected a notice which is expressed in any other language unless, in any particular case, they give written notice of their acceptance thereof to the sender.

65 3 Any notice given under the Scheme by the Company, the Provisional Liquidators or the Scheme Administrator to any person shall be sufficiently served by posting the same by first class or airmail post to or leaving the same at the address of such person last known to the Company. If such notice is posted, it shall be deemed to have been received by the addressee 48 hours after the same shall have been posted.

65 4 In the case of a Claim Form or other notice which is signed on behalf of a Scheme Creditor which is a corporation or other legally constituted person or a partnership, the Provisional Liquidators or Scheme Administrators shall not be required to make enquiry as to the authority of the signatory to sign such notice on behalf of such Scheme Creditor.



**66. EXTENSION OF TIME LIMITS**

Except in relation to the Bar Date, the Scheme Administrators may, in their absolute discretion, extend any time period referred to in this Scheme for any one or more or all Scheme Creditors and for such time as they see fit

**67. SCHEME CREDITORS MUST ASSIST THE SCHEME ADMINISTRATORS**

Each Scheme Creditor shall provide to the Company and the Scheme Administrators all reasonable assistance required by the Company and the Scheme Administrators in connection with the Scheme and shall provide such assistance and information that the Company and the Scheme Administrators may reasonably require in connection with the recovery of any Property or the enforcement of any obligation owed to the Company

**68. GOVERNING LAW**

68 1 The Scheme and any non-contractual obligations arising out of or in connection with the Scheme shall be governed by and construed in accordance with the law of England and Wales

68 2 The Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with the Explanatory Statement or any provision of the Scheme For such purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the Court

## PART 14 – DEFINITIONS AND INTERPRETATION

### 69. DEFINITIONS

In the Scheme, unless inconsistent with the subject or context, the following expressions shall have the following meanings

**"Admissible Interest"** means any interest which is payable and which has accrued up to and including the Effective Date, which would have been admissible in proof against the Company in accordance with Rule 4.93 of the Insolvency Rules were the Company being wound up pursuant to the Winding-up Petition and the order of the Court that the Company be wound up had been made on the Effective Date,

**"Admitted Scheme Claim"** means (i) the Scheme Claims of a Scheme Creditor as are agreed, or determined under the Scheme, and (ii) in the case of the FSCS, its claim under Clause 36.1,

**"Assignment Date"** means the date immediately preceding the Termination Date,

**"Available Cash"** has the meaning given to that term in Clause 28,

**"Bar Date"** means the date calculated in accordance with Clause 15.1,

**"Best Estimate"** means an estimate which is not biased either upwards or downwards and is intended to represent the mean of the distribution of possible outcomes

**"Business Day"** means any day (excluding Saturday, Sunday or public holidays in England) on which banks are open for general banking business in England,

**"Claim Form"** means the document in the form of Schedule 3 or any other written notice which, in the reasonable opinion of the Company, contains substantially the same information as is required to be submitted in the document in the form of Schedule 3,

**"Committee Member"** has the meaning given to that term in Clause 50.2,

**"Companies Act"** means the Companies Act 2006,

**"Company"** means Independent Insurance Company Limited (in provisional liquidation) (a company established under the laws of the England and Wales with registered number 00080623),

**"Costs of the Provisional Liquidation"** include

- (a) all Liabilities, costs, expenses and disbursements incurred or to be incurred in the provisional liquidation of the Company at any time after 17 July 2001 which are as a matter of law payable as expenses of the provisional liquidation and are thus payable out of the Company's Property in priority to payments to unsecured creditors and preferential creditors, and
- (b) all fees, remuneration and rights of indemnity of the Provisional Liquidators or their respective financial and professional advisors;

**"Court"** means the High Court of Justice of England and Wales,

**"Court Order"** means the order of the Court sanctioning the Scheme under section 899 of the Companies Act;

**"Creditors' Committee"** means the committee of the Scheme Creditors formed in accordance with Clause 50,

**"Current Insurance Contract"** means an Insurance Contract in respect of which the period of cover has not expired or been cancelled before the Effective Date,

**"Defence Costs"** means the fees and costs of any lawyer or loss adjuster or other advisor or professional (but excluding any Scheme Manager's costs) (including any disbursements and value added tax paid by the Company in connection therewith which it cannot recover) payable in connection with the handling and /or defence of a claim or potential claim commenced, brought or asserted against a policyholder of the Company or a Scheme Creditor (less any amounts received by the Company from third parties in respect of or on account of such fees and costs), which the Company has paid or which the Company is liable to pay in either case in or referable to the period between the Petition Date and the Effective Date, notwithstanding the fact that the relevant Insurance Contract may not give rise to a Liability or an obligation on the Company to make such payments,

**"Discount Rate"** means, in respect of a

- (a) Scheme Claim payable or Offset Amount recoverable in US dollars, the yield as at the Bar Date on US Treasury bonds of an appropriate term to the overall nature of the relevant Liability,
- (b) Scheme Claim payable or Offset Amount recoverable in Pounds Sterling, the yield as at the Bar Date on UK Government bonds of an appropriate term to the overall nature of the relevant Liability, or
- (c) Scheme Claim payable or Offset Amount recoverable in Euros, the yield as at the Bar Date on German Government bonds of an appropriate term to the overall nature of the relevant Liability.

**"Effective Date"** means the date on which the Scheme becomes effective in accordance with Clause 5,

**"Email"** means any communication sent to or received from [iclscheme@capita.co.uk](mailto:iclscheme@capita.co.uk),

**"Estimation Guidelines"** means the estimation guidelines contained in Schedule 1;

**"Euro"** and **"€"** mean the single currency of the member states of the European Communities that adopt or have adopted the Euro as their lawful currency

**"Excluded Employment Claims"** means those parts of the Employment Tribunal awards of Mr Craig Dudley-Evans (namely, a protective award and basic award) and Mrs Teresa O'Callaghan (namely, a protective award) against the Company arising out of their former employment with the Company that (i) would qualify for payment from the National Insurance Fund if the Company was to be wound up pursuant to the Winding Up Petition, but (ii) are not a Preferential Debt,

**"Explanatory Statement"** means the explanatory statement issued in connection with the Scheme,

**"FSCS"** means the Financial Services Compensation Scheme Limited (company number 03943048),

**"FSCS Assigned Claim"** means an Unpaid Agreed Claim which the FSCS has obtained by way of assignment prior to the Bar Date,

**"FSCS Claims Estimate"** has the meaning given in section 36 2;

**"FSCS Claims Handling Contribution"** means the payment to be made to the FSCS in accordance with Clause 36 7

**"FSCS Rules"** means the rules of Financial Services Compensation Scheme made pursuant to section 213 of FSMA as contained in the FSA Handbook and in force on the Effective Date,

**"FSMA"** means the Financial Services and Markets Act 2000,

**"IBNR Claim"** means a claim against the Company, in respect of a loss which has been incurred but has not been reported to or discovered by the Company and general adjustments to Notified Outstanding Claims, to the extent that any estimate of claims included as Notified Outstanding Claims may prove to be inadequate or excessive,

**"Insolvency Act"** means the Insolvency Act 1986,

**"Insurance Contract"** means any contract or policy of insurance or reinsurance entered into by or on behalf of the Company or under which the Company has assumed liability;

**"Judgement Rate"** means the rate of interest for the time being prescribed by Section 17 of the Judgements Act 1838,

**"Liability"** means any obligation of a person, whether it is present, future or contingent, whether or not its amount is fixed or liquidated, whether or not it is disputed, whether or not it involves the payment of money, whether it is secured or unsecured and whether it arises at common law, in equity or by statute in England and Wales or in any other jurisdiction or in any other manner whatsoever, but, without prejudice to the generality of the foregoing, excluding any liability which is barred by statute or is otherwise unenforceable;

**"Liquidation Event"** means either an order of the Court to compulsorily wind up the Company or the commencement of a creditors' voluntary liquidation (both under English Law),

**"Lloyd's"** means the society of that name incorporated by the Lloyd's Act 1871 of England and Wales,

**"Lloyd's Syndicates"** means a group of underwriting members of Lloyd's to which a number is assigned by the Council of Lloyd's,

**"Net Statement"** means the statement referred to in Clause 22 6,

**"Non-Insurance Claims"** means a Scheme Claim against the Company other than an Unpaid Agreed Claim, an IBNR Claim or a Notified Outstanding Claim or a claim of the FSCS under an assignment of a Protected Claim which has been paid by the FSCS under the Scheme after the Effective Date and before the Bar Date,

**"Non-Protected Claim"** means a Scheme Claim (other than a Scheme Claim of the FSCS) that is not a Protected Claim or a Protected Contingent Claim,

**"Notice of Effective Date"** means the notice sent by the Company in accordance with Clause 14 1,

**"Notified Outstanding Claim"** means a claim against the Company (which is not yet agreed or established) in respect of a loss or liability which has been reported to or discovered by the Scheme Creditor (which may include a claim for an indemnity under and in accordance with the relevant Insurance Contract for defence costs incurred by the Scheme Creditor after the Effective Date) but excluding any Unpaid Agreed Claim,

**"Official Receiver"** means any official receiver appointed by the Court and who remains in office,

**"Offset Amounts"** means any Liability of a Scheme Creditor to the Company which is due or may fall due in the future (and includes, without limitation, any amounts owed to the Company under a contract or policy of reinsurance),

**"Petition Date"** means 17 June 2001,

**"Policyholders Protection Act"** means the Policyholders Protection Act 1975 of the United Kingdom as having effect in relation to the Company on the Petition Date in accordance with the Transitional Order.

**"Policyholders Protection Board"** means the Policyholders Protection Board established by the Policyholders Protection Act and any statutory successor to it,

**"Pounds Sterling"** or **"£"** means pounds sterling or other lawful currency for the time being of the United Kingdom,

**"Post"** means first class post or air mail or fax or a generally recognised commercial courier service,

**"Preferential Debts"** means those Liabilities of the Company which would be preferential within the meaning of section 386 of the Insolvency Act if the Company was being wound up and the relevant date under section 387 of the Insolvency Act was the Petition Date,

**"Priority Liability"** means any Liability of the Company if and to the extent that it is a Scheme Cost, a Preferential Debt or a Cost of the Provisional Liquidation,

**"Proceeding"** means any step or proceeding, whether by way of demand, arrest, lien, legal proceedings, executions of judgment, arbitration proceedings or otherwise howsoever described in any jurisdiction,

**"Property"** means all forms of property including money, goods, things in action, land and every description of property wherever situated together with obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property,

**"Protected Claim"** means:

- (i) a present liability under a protected contract of insurance as that term is defined in Rule 5.4 5 of the FSCS Rules and which otherwise satisfies all other relevant

requirements of the FSCS Rules, or

- (ii) a present liability under a policy issued by the Company which liability has been established by agreement of or on behalf of the Company or judgment of the Court in respect of which and to the extent to which the FSCS would owe a duty under Sections 6 to 8 of the Policyholders Protection Act if the Company were a 'company in liquidation' and the Petition Date was the 'beginning of the liquidation' (in each case within the meaning of the Policyholders Protection Act), and references in those sections to the amount of any liability was a reference to the amount of the liability (reduced as aforesaid) concerned (and for the avoidance of doubt but without limitation, when such duty would be owed under that Act in respect of a liability towards a "private policyholder" or under the terms of a "United Kingdom Policy" as those expressions are respectively defined in that Act, or a liability of some other description such as a "liability subject to compulsory insurance" within the meaning of Section 6 (3) of that Act and where only a Scheme Claim which is also such a liability shall be capable of qualifying as a Protected Claim under part (ii) of this definition);

**"Protected Contingent Claim"** means a contingent or prospective liability under a policy issued by or on behalf of the Company which, on maturing into a present liability, would be a Protected Claim,

**"Protected Percentage"** means in relation to a Protected Claim, that percentage of such Protected Claim which the FSCS would be required to pay under Sections 6 to 8 of the Policyholders Protection Act or under the FSCS Rules (as applicable),

**"Protected Policyholder"** means in relation to a Protected Claim or a Protected Contingent Claim, any Scheme Creditor (other than the FSCS) to whom the Company owes that Protected Claim or Protected Contingent Claim,

**"Provisional Liquidation"** means the provisional liquidation of the company which commenced pursuant to an order of the Court made on the Petition Date (case no 3827 of 2001),

**"Provisional Liquidators"** means Mark Batten and Dan Schwarzmann of PricewaterhouseCoopers LLP and any liquidator provisionally appointed to the Company from time to time pursuant to the Insolvency Act and who remains in office,

**"Released Parties"** has the meaning given in Clause 60 1,

**"Removal Event"** means (as relevant)

- (a) death,
- (b) becoming bankrupt or subject to a voluntary arrangement with its creditors,
- (c) becoming mentally disordered under the law of any jurisdiction to which the relevant person is subject,
- (d) being convicted of an indictable offence (other than offences in relation to road traffic),
- (e) (in relation to the Scheme Actuarial Adviser or the Scheme Adjudicator) the resignation of its office by 60 (sixty) days' notice in writing sent by Post to the

Scheme Administrators,

- (f) becoming disqualified from acting as a director under the law of any jurisdiction to which he is subject including, without prejudice to the generality of the foregoing, the Company Directors Disqualification Act 1986; or
- (g) (in relation to the Scheme Actuarial Adviser or the Scheme Adjudicator) subject to the prior approval of the Creditors' Committee, being removed for good cause by the Scheme Administrators

**"Scheme"** means this scheme of arrangement in its present form or with or subject to any modification, addition or condition which the Court may think fit to approve or impose or as otherwise modified in accordance with Clause 62

**"Scheme Actuarial Adviser"** means PricewaterhouseCoopers LLP or such other person for the time being appointed as Scheme Actuarial Adviser under the Scheme,

**"Scheme Adjudicator"** means the person referred to in Clause 42 and any person appointed in substitution for him pursuant to the Scheme,

**"Scheme Administrator"** means each Scheme Administrator appointed pursuant to Clause 44 from time to time;

**"Scheme Claim"** means a claim in respect of any Liability of the Company to which the Company was or may have been subject to at the Petition Date or to which the Company became subject after the Petition Date by reason of an obligation incurred before the Petition Date arising out of any act, omission, Insurance Contract, contract, policy, transaction or arrangement, but excluding any Priority Liabilities and Excluded Employment Claims,

**"Scheme Costs"** means all Liabilities, costs, charges, expenses and disbursements incurred by the Company in connection with the negotiation, preparation, operation and implementation of the Scheme including but not limited to any unrecoverable fees and expenses incurred by the Company in the defence of claims in the period from the Effective Date to the Bar Date, the fees and expenses, including legal fees, of the Provisional Liquidators and the Scheme Administrators, all legal, financial and actuarial costs and any tax incurred by the Company after the Petition Date which would have been payable as an expense of the winding-up if a winding-up order had been made against the Company on the Effective Date, and all fees costs and expenses estimated by the Provisional Liquidators to be required in order to wind up the Company after the termination of the Scheme.

**"Scheme Creditor"** any person who has a Scheme Claim including (where the context permits) that person's successors in title, assignees and transferees,

**"Scheme Exchange Rate"** means the mid-market rate of exchange for the relevant currency quoted in the Financial Times on the Bar Date;

**"Scheme Manager"** means Capita Insurance Services Limited or such other person appointed by the Company to receive and process Scheme Claims and Claim Forms and deal with the day-to-day administration of the continued run-off of the Company

**"Scheme Meetings"** means the meetings of Scheme Creditors convened by the Company to consider and, if thought fit, approve the Scheme,

**"Security"** means:

- (a) any mortgage, encumbrance, charge, lien, assignment by way of security, bond or other Security over any of the Company's Property,
- (b) any letter of credit or guarantee issued to or for the benefit of a Scheme Creditor in respect of any one or more or all of its Scheme Claims, and/or
- (c) any trust created (whether expressly, by implication or by operation of law) in respect of the Company,

**"Set Off"** means the set-off as described in Clause 8,

**"Supporting Information"** means all information and documentation required to be submitted with a Claim Form by a Scheme Creditor to the Scheme Administrators in accordance with the guidance notes accompanying such Claim Form or Schedule 2 of this Scheme

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature,

**"Termination Date"** means the date of the notice given by the Scheme Administrators terminating the Scheme under Clause 61.2,

**"Transitional Order"** means The Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001 (SI 2001 No 2967),

**"Unpaid Agreed Claim"** means a Scheme Claim in respect of which a court of competent jurisdiction has ruled before the Effective Date that the Company has a Liability which is due and payable, a Scheme Claim which has been agreed by or on behalf of the Company before the Effective Date or as being due and payable by the Company (including for the avoidance of doubt, entitlements to payment of return of premium for which the Company accepts it has a Liability whether that acceptance of Liability has been communicated to the Scheme Creditor or not), to the extent such a claim has not been paid by the Company before the Effective Date, and (where applicable) the amount of any Defence Costs referable to or allocated by the relevant Scheme Creditor:

**"Unreconciled Proceeds"** has the meaning given in Clause 7 6

**"United States Dollars"** or **"US\$"** means the lawful currency of the United States of America

**"Valuation Date"** means 31 December 2014 or such other date notified by the Scheme Administrators to the Scheme Creditors as the date for the valuation of IBNR Claims and Notified Outstanding Claims in accordance with the Scheme

**"Voting Form"** means a form submitted by a Scheme Creditor for the purpose of voting at a Scheme Meeting

**"Website"** means the website at [www.independent-insurance.co.uk](http://www.independent-insurance.co.uk); and

**"Winding-up Petition"** means the petition to wind up the Company on 17 July 2001 numbered 3971 of 2001 issued at the Court



## **70. INTERPRETATION**

70.1 Part and Clause headings and the table of contents are for ease of reference only and shall not affect the interpretation of the Scheme

70.2 In the Scheme, unless the context otherwise requires

70.2.1 references to Parts and Clauses are to be construed as a reference to the parts and clauses of the terms of the Scheme and references to Annexes are to be construed as references to the annexes to the Scheme,

70.2.2 references to (or to any provision of) the Scheme shall be construed as a reference to the Scheme or that provision as in force for the time being and as amended in accordance with its terms,

70.2.3 words importing the plural shall include the singular and vice versa and the masculine, feminine or neuter gender shall each include the other genders,

70.2.4 references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any state or any agency thereof, and

70.2.5 references to any enactment or statutory instrument shall be to such enactment or statutory instrument as amended from time to time

## **SCHEDULE 1**

### **Estimation Guidelines**

#### **1. INTRODUCTION**

The Estimation Guidelines describe the approach which Scheme Creditors must follow when valuing and submitting Notified Outstanding Claims and/or IBNR Claims. The Company will review and assess submitted Scheme Claims against the requirements of the Estimation Guidelines when seeking to agree the estimated value of those claims and the existence and value of any Set Off.

The Estimation Guidelines set out estimation techniques generally accepted within the insurance market for the estimation of Notified Outstanding Claims and IBNR Claims. Scheme Creditors are not, however, prevented from using other actuarial projection techniques where they can show those techniques to be appropriate and robust and to use assumptions that can reasonably be justified by the Scheme Creditor.

If the Company considers that such projection techniques not referred to in the Estimation Guidelines can be supported and justified, those techniques will be used in valuing the relevant Scheme Claims of the Scheme Creditor concerned.

In all cases Scheme Creditors should value Scheme Claims as a Best Estimate. In valuing Scheme Claims, a Scheme Creditor should initially estimate its Notified Outstanding Claims and IBNR Claims as at the Valuation Date and then adjust those estimates to allow for

- any such claims which have become Unpaid Agreed Claims after the Valuation Date, and
- any losses which have been notified to or discovered by the Scheme Creditor after the Valuation Date, and
- any new information received by the Scheme Creditor after the Valuation Date.

The values of the Scheme Creditor's Notified Outstanding Claims and IBNR Claims after any such adjustment as provided for above should be the final values specified on that Scheme Creditor's Claim Form in respect of Notified Outstanding Claims and IBNR Claims.

The Company will not be bound by, or prepared to follow, any settlement made between the Scheme Creditor and another insurer or reinsurer if it believes that settlement to be unreasonable.

The Supporting Information that Scheme Creditors should provide in support of their estimates of Scheme Claims is set out in Schedule 2 of the Scheme.

The scope and application of the Estimation Guidelines and the required evidence to support a claim differ according to the type of Insurance Contract and the type of claim being made.

Scheme Creditors whose Insurance Contract with the Company is Direct Insurance should read and follow Sections 2, 3 and 4 of these Estimation Guidelines.

Scheme Creditors whose Insurance Contract with the Company is Facultative Reinsurance of Direct Insurance should read and follow Sections 2, 3 and 4 of these Estimation Guidelines

Scheme Creditors whose Insurance Contract with the Company is -

- Treaty Reinsurance,
- Treaty Retrocession, or
- Facultative Retrocession,

should read and follow Sections 2, 5 and 6 of these Estimation Guidelines

For each loss type the estimation approach varies according to whether the claim is related to disease losses ("Disease" losses) or not related to disease losses ("Non Disease" losses)

In some instances, the Estimation Guidelines make reference to certain traditionally used actuarial methodologies. For further information on the use of these methodologies and the circumstances in which they can be used, reference can be made to <http://www.actuaries.org.uk/research-and-resources/pages/claims-reserving-manual>, which sets out the purposes, common definitions, basic principles and explores common techniques in relation to loss reserving methodologies

If, at any stage of the process, a Scheme Creditor has any queries relating to the application or potential application of the Estimation Guidelines to its claim, it should telephone the helpline on +44 (0)161 274 8837 for further guidance. In particular, if a Scheme Creditor has a claim, or may in the future have a claim, where settlement may be based on a Periodic Payment Order ("PPO") or a Current Insurance Contract, then it should telephone the helpline for further guidance. Scheme Creditors may also wish to consult appropriate professional advisers in relation to their Scheme Claim against the Company

## 2. DEFINITIONS

**"Best Estimate"** means an estimate that is not biased either upwards or downwards and is intended to represent the mean of the distribution of possible outcomes,

**"Direct Insurance"** means the cover provided by an insurer to a policyholder who is not an insurance company, as opposed to Reinsurance cover which provides cover for insurance risks written by a policyholder which is itself an insurance company,

**"Facultative Reinsurance"** means a type of reinsurance under which an insurer obtains reinsurance for each risk it has insured individually where a) there is no obligation on the insurer to obtain reinsurance for any particular risk it has itself insured, b) it is the insurer's choice as to what proportion of its risk it will cede to the reinsurer and how much it will retain for itself on each risk and c) the reinsurer is under no obligation to reinsure any particular risk i.e. it can decline to reinsure any risk and/or agree with the insurer to accept a defined share of any risk,

**"Facultative Retrocession"** means a type of reinsurance under which a reinsurer (the retrocedant) obtains reinsurances for each risk it has reinsured individually where a) there is no obligation on the retrocedant to obtain reinsurance for any particular risk it has itself reinsured, b) it is the retrocedant's choice as to what proportion of its risk it will retrocede

and how much it will retain for itself on each risk and c) the reinsurer providing such retrocession (the retrocessionaire) is under no obligation to reinsure any particular risk i.e. it can decline to reinsure any risk or agree with the reinsured to accept a defined share of any risk,

**"Reinsurance"** means Facultative Reinsurance, Treaty Reinsurance and Retrocession, save that references in Sections 5 and 6 below to "Reinsurance" shall not include Facultative Reinsurance of Direct Insurance,

**"Retrocession"** means Treaty Retrocession and Facultative Retrocession,

**"Treaty Reinsurance"** means a method of reinsurance which is automatic and is an arrangement between one insurer (the ceding insurer) and one or a number of other insurers (the reinsurers) who agree to accept, automatically, any reinsurances falling within the terms of the treaty, where a) the treaty sets out the various terms and conditions that are to govern the acceptance of cessions by the reinsurer and b) the treaty is legally binding on both parties and both parties undertake obligations to each other that go beyond the mere ceding of individual risks or policies under the treaty,

**"Treaty Retrocession"** means a method of reinsurance which is automatic and is an arrangement between one reinsurer (the retrocedant) and one or a number of other reinsurers (the retrocessionaires) who agree to accept, automatically, any retrocessions (cessions) falling within the terms of the treaty, where a) the treaty sets out the various terms and conditions that are to govern the acceptance of cessions by the retrocessionaire and b) the treaty is legally binding on both parties and both parties undertake obligations to each other that go beyond the mere ceding of individual risks or policies under the treaty

### **3. NON DISEASE CLAIMS ARISING UNDER DIRECT INSURANCE OR THE FACULTATIVE REINSURANCE OF DIRECT INSURANCE**

This section describes the Estimation Guidelines that should be followed by Scheme Creditors with Non Disease claims arising under an Insurance Contract that is Direct Insurance or is Facultative Reinsurance of Direct Insurance

#### **3.1 Methodology**

When preparing an estimate of Scheme Claims, for each class of business, type of loss and underwriting year over the period that the Company has provided insurance coverage, a "frequency and severity" method should be used by Scheme Creditors

This method requires a Scheme Creditor to estimate the ultimate number of claims (past plus future) to be received by it in relation to Non Disease losses and then to estimate its likely liability (including costs) on each open claim and each potential future claim which may be received so that the Scheme Creditor's liability can be applied to all relevant insurance policies held by the Scheme Creditor (including policies issued by the Company) on the relevant underwriting year in order to derive the Company's share of the liability (including costs)

For each class of business, type of loss and underwriting year over the period that the Company has provided insurance coverage, the process may involve the following steps

- estimate the ultimate number of claims (past plus future) that will be made against the Scheme Creditor on each underwriting year by considering the

historical development of claims filed for the particular class of business and type of loss (both for that underwriting year and for other underwriting years),

- estimate the indemnity costs for each open and future claim on each underwriting year, allowing for future inflation, by considering the known information on open claims and the historical development of indemnity costs by notification year for the particular class of business and type of loss (both for that underwriting year and for other underwriting years),
- select expense costs (normally defence costs) for each open and future claim on each underwriting year, allowing for future inflation, by considering the known information on open claims and the historical development in expense costs by notification year for the particular class of business and type of loss (both for that underwriting year and for other underwriting years),
- apply the indemnity and expense costs selected at an individual claim level for both open and future claims for a particular underwriting year to the policy profile that is relevant to that year, and thus to each underlying claim, in order to derive the Company's share of those costs. This process should give due recognition to any relevant policy terms such as whether expenses are paid within or in addition to limits, both for the Company's policies and for any lower level policies

### **3.2 Alternative approaches where historical information/past claims experience may not be available**

If a Scheme Creditor has evidence that it is exposed or may be exposed to liability from a source from which it has no current claims experience, it may under certain circumstances be appropriate to use information which is not based on past claims history to support such a claim. A suitable methodology is likely to involve elements from epidemiological and demographic studies, industry comparisons and trend lines. Other methods, provided that the rationale and basis for the assumptions are clearly explained, might also be suitable.

The approach taken will need to draw on information available to the Scheme Creditor. A Scheme Creditor taking this approach should consider what information and supporting evidence it can gather and thus what approach should be developed which maximises its ability to provide supporting information and justification for the assumptions used.

Once potential claims against the Scheme Creditor have been established or can be shown to be a possibility, consideration then needs to be given to the likelihood of claims actually emerging to the extent indicated by the Scheme Creditor's methodology. The final claim will need to be adjusted to take this factor into account, all of which will need to be explained and documented in full.

## **4. DISEASE CLAIMS ARISING UNDER DIRECT INSURANCE OR THE FACULTATIVE REINSURANCE OF DIRECT INSURANCE**

This section describes the approach which should be used by Scheme Creditors with Disease claims arising under an Insurance Contract that is Direct Insurance or is Facultative Reinsurance of Direct Insurance.

If a Scheme Creditor has Facultative Reinsurance of Direct Insurance contracts, the points raised in the remainder of this section will need to be considered in relation to the claim.

being made by the underlying insured to the Scheme Creditor. Consideration will then need to be given to the resulting claim from the Scheme Creditor to the Company.

The approach to be taken under the Scheme to estimating Disease claims is to apply a frequency and severity methodology as is explained in Section 4.1 (Frequency and severity methodology) below. Where that approach is not possible due to a lack of data, a "benchmarking" approach detailed in Section 4.2 (Benchmarking) should be used.

#### **4.1 Frequency and severity methodology**

A "frequency and severity" method involves estimating the ultimate number of claims (past plus future) to be received by a Scheme Creditor and estimating the liabilities (damages and costs) that apply to each open claim and to each potential future claim so that those liabilities can be applied to all policies held by the Scheme Creditor (including policies issued by the Company). The Company's share of the estimated liabilities can then be established.

The following steps should be applied for each class of business and type of disease under consideration:

- estimate the ultimate number of claims (past plus future) that will be made against the Scheme Creditor,
- calculate indemnity costs for each open and future claim, allowing for future inflation,
- calculate expense costs (normally defence costs) for each open and future claim, allowing for future inflation,
- identify the coverage period over which these costs are to be allocated by reference to the appropriate trigger,
- allocate the indemnity and expense costs calculated as at an individual claim level for both open and future claims across the coverage period relevant to the Scheme Creditor, and
- apply the results of the above allocation to the policy profile of the Scheme Creditor in order to derive the Company's share of those indemnity and expense claims.

This process should give due recognition to:

- any relevant policy terms such as whether expenses are paid within or in addition to limits, both for the Company's policies and for any lower level policies, and
- the prevailing law in the jurisdiction that applies to the Scheme Creditor's insurance coverage, including the allocation methodology and the definition of an occurrence.

The above approach assumes that each claim for a particular loss type is treated as a separate occurrence. If the prevailing law that applies to the Scheme Creditor's insurance coverage treats all claims for a particular loss type as a single occurrence, then the above approach should be adjusted such that total open and future claims costs are aggregated with historical costs before they are allocated across the relevant coverage period.

### **Claim numbers and claim costs**

The estimates of claim numbers and indemnity and expense costs should take account of the historical development of claims and costs together with any independent studies of the incidence of the loss type in the relevant jurisdiction and the Scheme Creditor's knowledge of its underlying exposure to the loss type

Estimates of claim numbers and claim costs for UK asbestos exposures should take account of studies undertaken by the UK Institute of Actuaries UK Asbestos working party in 2009, 2011 and 2013 which can be found at the following web links

<http://www.actuaries.org.uk/sites/all/files/documents/pdf/b12asbestoswp.pdf>

<http://www.actuaries.org.uk/sites/all/files/documents/pdf/f10-giro-2011-awp-f10.pdf>

<http://www.actuaries.org.uk/sites/all/files/documents/pdf/c5-presentation.pdf>

Where possible, the estimates of indemnity and expense costs per claim should allow for factors such as the industry of employment, the average age of the claimants, their average work force period of employment and inflation

Scheme Creditors must notify the Company whether expenses are included in the limits or in addition to the limits for each policy

### **Trigger of coverage**

The most common approach adopted to determine the period over which losses should be allocated is the continuous trigger, whereby all policies available over the period from the date of first exposure up to the date when the disease became clinically evident are triggered

The selection of the coverage period should also take the following into consideration

- the treatment of any periods of self insurance,
- for asbestos losses, the period during which the Scheme Creditor used asbestos-containing products,
- exclusion clauses within the Scheme Creditor's insurance policies,
- settlements and other relevant agreements between the Scheme Creditor and its insurers,
- legal judgements in any coverage disputes between the Scheme Creditor and its insurers, and
- the latest approaches adopted by the courts in the relevant jurisdiction

### **Allocation of costs to the coverage period**

In most circumstances, the pro-rata allocation basis will be appropriate. Under this basis, claims are spread evenly over the entire period covered by the triggered policies. The Scheme Creditor is normally required to share in the allocation by bearing the loss allocated to periods of self insurance or non-insurance.

The Company will consider other methods of allocating costs to the coverage period provided that they are fully supported and use assumptions that can reasonably be justified by the Scheme Creditor

#### **4.2 Benchmarking**

It may be that it is not possible in all cases for the Scheme Creditor to estimate the claims it will receive and then set those against its various policies providing potential coverage for those losses because of a lack of historical data. In such cases, a benchmarking approach is likely to be the most appropriate method of estimating a Scheme Claim.

Benchmarks should be applied to paid, outstanding and incurred recoveries between the Scheme Creditor and the Company. Benchmarks could be based on an analysis of the Scheme Creditor's exposures and could include

- ratios of IBNR Claims to Notified Outstanding Claims,
- ratios of ultimate claims to incurred claims, and
- ratios of ultimate claims to paid claims

In using benchmarks, allowance should be made for the effect of large single claims movements or any other features of the experience that could distort these benchmark approaches.

Consideration should be given to the subdivisions of the Scheme Creditor's account which are used in the benchmarking process. A balance needs to be struck between subdividing to make the benchmarking process more appropriate to each subdivision of data and not subdividing so much that the resulting data being used in the benchmarking process lacks statistical credibility.

The types of subdivision will depend on the data available and may consist of any or all of the following

- class of business,
- type of loss (e.g. liability or property damage), and
- age of business

Where possible, the results from this approach should be additionally supported using data on the historical development of claim costs.

#### **4.3 Alternative approaches where historical information may not be available**

If a Scheme Creditor has evidence that it is exposed to liability from a source from which it has as yet no claims experience, it may under certain circumstances be appropriate to use information which is not based on past claims history to support its claim. A suitable methodology is likely to involve elements from epidemiological and demographic studies, industry comparisons and trend lines. Other methods, provided that the rationale and basis for the assumptions are clearly explained, might also be suitable.

The approach taken will need to use information available to the Scheme Creditor. The Scheme Creditor should consider what information and supporting evidence it can gather.



and thus what approach should be developed which maximises its ability to provide supporting information and justification for the assumptions used

Once the ground-up loss for the Scheme Creditor has been established, the liabilities can be applied to the Company's policies in the normal manner. Consideration then needs to be given to the likelihood of the claims actually emerging to the extent indicated by the selected methodology. The final result needs to be adjusted for this probability which should be documented in full

## **5. NON DISEASE CLAIMS ARISING UNDER TREATY REINSURANCE OR ANY FORM OF RETROCESSION**

This section describes the Estimation Guidelines that should be followed by Scheme Creditors with Non Disease claims arising under an Insurance Contract that is Treaty Reinsurance or is Treaty Retrocession or is Facultative Retrocession

### **5.1 Overview**

If possible, the Scheme Creditor should initially estimate its ultimate claims cost from its inwards claims. This ultimate claims cost should then be applied to the Scheme Creditor's outwards reinsurance programme to calculate the Company's share of that liability

To estimate the ultimate claims cost from its inwards claims, catastrophes or other single large distorting losses should first be extracted from the inwards data and analysed separately. Scheme Creditors should refer to Section 5.2 (Catastrophes or other single large distorting losses) for further detail

Then the ultimate claims cost in respect of the residual losses should be estimated for each class of business and year of account. Scheme Creditors should refer to Sections 5.3 (Residual losses on Direct Insurance, proportional or working layer excess of loss Reinsurance Contracts) and 5.4 (Residual losses on medium to high level excess of loss Reinsurance contracts) for further detail

Once gross ultimate claims have been estimated in accordance with the contents of Sections 5.2 to 5.4, the gross IBNR needs to be allocated in a manner that is suitable for the Scheme Creditor's outwards reinsurance programme to derive the Company's share of the costs. Scheme Creditors should refer to Section 5.5 (Application to reinsurance programme) for further detail

Where the Scheme Creditor's data or information are not sufficient to perform the techniques set out in Sections 5.2 to 5.5, they should refer to Sections 5.6 (Projections using outwards reinsurance data) and 5.7 (Benchmarking)

### **5.2 Catastrophes or other single large distorting losses**

Scheme Creditor's inwards catastrophes and any other single large distorting losses should be analysed individually. Note that these analyses should ideally be carried out on data that ensures that the results are appropriate to the Scheme Creditor's outwards reinsurance programme. If it becomes necessary to aggregate data across different business classes, it may be necessary to allocate resulting IBNR to the business classes that are suitable for the Scheme Creditor's outwards reinsurance programme. For further guidance in this area, refer to Section 5.5

The ultimate claims costs for catastrophes and other distorting losses should be estimated using some or all of projection approaches as described below

- Curve fitting historical paid or incurred claims development via use of an appropriate mathematical function, such as the Craighead curve, or, if such a curve cannot be closely enough fitted, a fit by eye can be used,
- Decay methods – for each loss, estimate a factor that represents a typical decline in incremental paid or incurred amounts over an appropriate period. The selected factor should then be applied to the latest paid or incurred increment over an appropriate period to project the applicable amounts of future paid or incurred claims. The projected future amounts can then be added to the cumulative paid or incurred position to determine the gross ultimate claims cost for the loss in question,
- Exposure-based analysis – estimate gross ultimate claims for the loss with reference to the Scheme Creditor's individual inwards exposures. The Scheme Creditor should determine which of its inwards policies are potentially exposed to the loss in question and estimate, on a policy-by-policy basis, the amount of coverage used, and
- Benchmarking – the Scheme Creditor may also adopt benchmarking techniques to produce a gross estimates of the ultimate cost of the loss in question. Further information is available in Section 5.7. In applying the approaches set out in Section 5.7, the policyholder will need to bear in mind that the benchmarks should be applied to gross data, rather than the reinsurance data that is the basis for that section

### **5.3 Residual losses on Direct Insurance, proportional or working layer excess of loss Reinsurance contracts**

The ultimate claims cost in respect of the residual losses should be estimated for each class of business and underwriting year using one of the following approaches

- chain-ladder method, in which the past development of individual years of account is used to estimate future development for less mature years of account, or
- empirical methodologies on individual years of account e.g. curve-fitting or survival ratio techniques. Curve-fitting techniques are as described in Section 5.2. In the survival ratio technique, a typical paid or incurred increment is selected before a multiplier is applied in order to estimate the future claims cost

The Scheme Creditor needs to ensure that any paid data that is used in these estimates is free of the distorting effects of structured settlements arising in the past

Scheme Creditors should estimate their gross inwards ultimate claims for each class of business and underwriting year

### **5.4 Residual losses on medium to high level excess of loss Reinsurance contracts**

The ultimate claims cost in respect of the residual losses impacting medium to high level excess of loss contracts (where losses are expected less frequently than would be the case

with working layers) should be estimated for each class of business, underwriting year and layer using, for example, an "average cost per claim" method as follows

- estimate the ultimate number of claims (past plus future) that will be received by the Scheme Creditor;
- select average indemnity and expense costs per claim allowing for future inflation, and
- multiply the ultimate number of claims by the selected average indemnity cost per claim to derive an estimate of the ultimate indemnity cost, and by the selected average expense cost per claim to derive an estimate of the ultimate expense cost.

## **5.5 Application to reinsurance programme**

The estimated ultimate claims costs deriving from inwards claims, as estimated in Sections 5.2, 5.3 and 5.4 should then be applied to the Scheme Creditor's outwards reinsurance programme to derive the Company's share of the costs

The results of the estimations described in sections 5.2, 5.3 and 5.4 should ideally already be in a format and at a level (e.g. individual loss level) that is suitable for direct application to the Scheme Creditor's outwards reinsurance programme. If aggregation of data is required in order to estimate inwards claims, then it will be necessary to allocate the resulting IBNR amounts back to the level that is suitable for the Scheme Creditor's outwards reinsurance programme (e.g. for each open and future loss)

Once this allocation has been carried out, the resulting estimates of gross claims costs can be applied to the Scheme Creditor's outwards reinsurance programme to derive estimates of the recoveries due from the Company. This application will need to take account of relevant features of the reinsurance coverage, such as the limit and excess points for excess of loss contracts and the proportion ceded for proportional contracts.

In certain circumstances, the Scheme Creditor may be able to apply alternative approaches designed to estimate its reinsurance recoveries at an overall level from all of its reinsurers. This analysis may not however permit an explicit identification of the Company's share of the Scheme Creditor's total reinsurance recoveries. In these circumstances, it may be possible to adjust the ratios derived from the Scheme Creditor's total reinsurance recoveries to make them applicable to the reinsurance coverage specific to the Company. Suitable ratios for use in these circumstances include ratios of IBNR Claims to Notified Outstanding Claims or the ratios of ultimate claims to paid or incurred claims. Necessary adjustments will depend on how the Company's coverage compares with the Scheme Creditor's total outwards reinsurance programme with respect to the nature, extent and level of the reinsurance coverage specific to the Company.

If the Scheme Creditor has made use of an approach that employs stochastic modelling techniques, the model may need to be tailored so that it is appropriate to the Scheme Creditor's submission. Following any tailoring necessary to make the model appropriate in estimating the Scheme Creditor's recoveries from the Company, it will be necessary to determine the mean of the distribution of recoveries emerging from the model (in order to be consistent with the requirement for a Best Estimate figure in the Scheme Creditor's claims submission).

## **5.6 Projections using outwards reinsurance data**

Where the Scheme Creditor is unable to carry out the techniques outlined in Sections 5.2 to 5.5 on part or all of the accounts reinsured by the Company, the Scheme Creditor may be able to apply any of the projection techniques in Sections 5.2 to 5.4 directly to its outwards ceded experience (with no requirement to follow the process described in Section 5.5 since this approach will estimate the Scheme Creditor's reinsurance recoveries directly)

The experience that forms the basis for projection within this Section will be in respect of the cessions under the cover that is the subject of the submission. This would need to be submitted together with reasons why it has not been possible for the Scheme Creditor to follow techniques applied to gross data (as outlined in Sections 5.2 to 5.4 and then set the results emerging from this process against the relevant reinsurance programmes (as outlined in Section 5.5). The Scheme Creditor should also support the submission with benchmarks for which detail is given in the next section.

Additional consideration will need to be given to features of the outwards reinsurance coverage that may lessen the reliability of results derived using these methods, such as policy limits applying to excess of loss covers.

## **5.7 Benchmarking**

Where the Scheme Creditor's data or information are not sufficient to perform the techniques set out in Sections 5.2 to 5.5 or 5.6, the Scheme Creditor should make use of benchmarking approaches. This would also be expected as support for a submission based on outwards ceded experience, as set out in Section 5.6. If benchmarking techniques are the sole methodology used by the Scheme Creditor, justification will need to be submitted as to why the approaches outlined in Section 5.2 to 5.5 or 5.6 could not be used.

Benchmarks should be applied to paid, outstanding and incurred recoveries between the Scheme Creditor and the Company. Benchmarks that could be used include ratios of IBNR Claims to Notified Outstanding Claims or ratios of ultimate claims to paid or incurred claims based on an analysis of the Scheme Creditor's exposures. Allowance should be made for the effect of large single movements, such as large losses or major commutations, and for any other features of the experience that could distort these benchmark approaches.

Consideration should be given to the subdivisions of the Scheme Creditor's data which are used in the benchmarking process. A balance needs to be struck between subdividing to make the benchmarking process more appropriate to each subdivision of data and not subdividing so much that the resulting data being used in the benchmarking process lacks statistical credibility.

The types of subdivision will depend on the data available and may consist of any or all of the following:

- class of business,
- type of loss (e.g. liability or property damage), and
- type of business (e.g. proportional or non-proportional)

Where possible, the results from this approach should be supported using development data for ceded paid and incurred claims.

## **6. DISEASE CLAIMS ARISING UNDER TREATY REINSURANCE OR ANY FORM OF RETROCESSION**

This section describes the Estimation Guidelines that should be followed by Scheme Creditors with Disease claims arising under an Insurance Contract that is Treaty Reinsurance or is Treaty Retrocession or is Facultative Retrocession

The preferred approach to estimating Disease claims for such Reinsurance or Retrocession contracts is to project the ultimate claims costs for each loss to the Scheme Creditor against underlying policies and apply those costs to the Scheme Creditor's Reinsurance contracts. Possible methodologies that the Scheme Creditor may adopt are detailed in Sections 6.1 (Estimation of underlying liabilities: Exposure-based model) and 6.2 (Benchmarking) below.

The approach in Section 6.1 requires detailed information regarding the Scheme Creditor's underlying liabilities which may not be held by some Scheme Creditors. In addition, this approach may not be suitable for certain types of Reinsurance, in particular Retrocession, owing to their complex nature. If the method in Section 6.1 can not be carried out with the data available, then the benchmark approach detailed in Section 6.2 should be used and the requested supporting evidence provided.

### **6.1 Estimation of underlying liabilities: Exposure-based model**

This approach requires detailed information regarding the Scheme Creditor's underlying insureds and is likely to be suitable where the contract that the Scheme Creditor has with the Company is a Treaty Reinsurance which protects an underlying direct account.

An exposure-based model should be used by the Scheme Creditor to estimate the individual open and future claims costs from each of its direct insureds. These individual claims costs should then be applied to the Scheme Creditor's outwards reinsurance programme to calculate recoveries from the Company. For guidance on estimating the claims costs from the direct insureds the Scheme Creditor should refer to Section 4 (Disease claims arising under Direct Insurance or the Facultative Reinsurance of Direct Insurance).

Other methods that consider the future claims experience of the underlying insureds may be used if they are fully supported with justifiable assumptions.

Where the Scheme Creditor has insufficient data available to use an exposure-based approach, other methods, for example the method outlined in Section 6.2 may be used. In these circumstances clear details of the methodology and assumptions should be provided and evidence should be supplied as to why the approach taken is appropriate.

### **6.2 Benchmarking**

It may be that it is not possible for the Scheme Creditor to relate its inwards liabilities to the Scheme Claims in all cases, because of a lack of data and/or a complexity of reinsurance contracts. In such cases, a benchmarking approach is likely to be the most appropriate method of estimating the Scheme Claims.

Benchmarks should be applied in respect of paid, outstanding and incurred recoveries between the Scheme Creditor and the Company. Benchmarks could be based on an analysis of the Scheme Creditor's exposures and could include

- ratios of IBNR Claims to Notified Outstanding Claims,
- ratios of ultimate claims to incurred claims,
- ratios of ultimate claims to paid claims, and
- paid and incurred survival ratios

In using benchmarks, allowance should be made for the effect of large single claims movements or any other features of the experience that could distort these benchmark approaches. Allowance should also be made for the effect of any policy conditions, for example limited reinstatement provisions, which could distort these benchmark approaches.

Consideration should be given to the subdivisions of the Scheme Creditor's data which are used in the benchmarking process. A balance needs to be struck between subdividing to make the benchmarking process more appropriate to each subdivision of data and not subdividing so much that the resulting data being used in the benchmarking process lacks statistical credibility.

The types of subdivision will depend on the data available and may consist of any or all of the following:

- type of loss (e.g. liability or property damage),
- type of business (e.g. proportional or non-proportional),
- age of business,
- class of business,
- underlying insured, and
- cedant or type of cedant

Where possible, the results from this approach should be additionally supported using development data for ceded paid and incurred claims.

## **7. UNANTICIPATED LATENT CLAIMS**

Where a Scheme Creditor has reason to believe that it has inwards exposure to types of claim that are not yet known about, then, subject to the conditions set out later in this section, the Scheme Creditor can submit a claim for this exposure. Such exposure is expected to diminish over time until it eventually reduces to an immaterial level. The exposure is expected to vary according to several factors, including:

- nature of claim;
- class of business,
- type of acceptance and other coverage aspects,
- nature of the (underlying) insured's business, and
- territory

The Scheme Creditor will first need to supply information to demonstrate the existence of the exposure. This information will have regard to the above factors and will need to draw on company and industry data to prove a reasonable likelihood that the future experience will occur at some level.

Having demonstrated that the future experience is likely to occur, the Scheme Creditor needs to provide an estimate of the ultimate cost of the experience together with appropriate supporting evidence. In view of the diverse nature of the underlying claims, the Company will accept any reasonable approach, provided that it is appropriately supported and takes into account the factors listed above.

## **SCHEDULE 2**

### **Supporting Information to Scheme Claims submitted using the Estimation Guidelines**

#### **1. INTRODUCTION**

This schedule sets out the level of supporting evidence that should be supplied by a Scheme Creditor in support of the different approaches used for estimating Scheme Claims for different Insurance Contract types and claim loss types as described in Schedule 1

#### **2. TECHNIQUES NOT COVERED IN SCHEDULE 1**

Wherever the Scheme Creditor adopts projection techniques other than those set out in Schedule 1, full supporting evidence should be provided, including full descriptions of the techniques adopted and the assumptions made, including supporting data to justify each of the assumptions made

#### **3. NON DISEASE CLAIMS ARISING UNDER DIRECT INSURANCE OR THE FACULTATIVE REINSURANCE OF DIRECT INSURANCE**

This section describes the supporting evidence that should be submitted by Scheme Creditors with Non Disease claims arising under an Insurance Contract with the Company that is Direct Insurance or Facultative Reinsurance of Direct Insurance

This section relates to a Scheme Claim arising under a Direct Insurance contract. If a Scheme Creditor has Facultative Reinsurance of Direct Insurance contract, it will need to supply information with respect to the underlying contracts and insureds that constitute the underlying claim source. This information will be in addition to the policy data described below. This additional information is needed in order to understand exactly how the underlying claim has resulted in a claim to the Company.

##### **3.1 Methodology**

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance Non Disease claims following the approach set out in Schedule 1 Section 3.1 should provide supporting evidence with the Claim Form that should include, for each class of business and type of loss

- Policy details as required by the Claim Form,
- The underlying data used and the methodology and assumptions applied to estimate the ultimate number of claims in each year over the period that the Company has provided coverage,
- The underlying data used and the methodology and assumptions applied to estimate the indemnity and expense costs for open and future claims;
- The historical development of claims filed against each year over the period that the Company has provided coverage,
- The historical development in indemnity and expense costs by notification year for each year over the period that the Company has provided coverage, and



- The value of Scheme Claims being claimed by the Scheme Creditor from the Company

### **3 2 Alternative approaches where historical information may not be available**

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance Non Disease claims following the approach set out in Schedule 1 Section 3 2 should provide supporting evidence with the Claim Form that should include full details of the approach taken and justification of assumptions made

## **4. DISEASE CLAIMS ARISING UNDER DIRECT INSURANCE OR THE FACULTATIVE REINSURANCE OF DIRECT INSURANCE**

This section describes the supporting evidence that should be submitted by Scheme Creditors with Disease claims arising under an Insurance Contract with the Company that is Direct Insurance or Facultative Reinsurance of Direct Insurance

This section relates to a Scheme Claim arising under a Direct Insurance contract. If a Scheme Creditor has Facultative Reinsurance of Direct Insurance contract, it will need to supply information with respect to the underlying contracts and insureds that constitute the underlying claim source. This information will be in addition to the policy data described below. This additional information is needed in order to understand exactly how the underlying claim has resulted in a claim to the Company.

### **4 1 Frequency and severity methodology**

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance asbestos claims following the approach set out in Schedule 1 Section 4 1 should provide supporting evidence with the Claim Form that should include

#### **Agreements or settlements with any insurer**

If there is a settlement agreement in place with any insurer, the Scheme Creditor should

- Provide a copy of the agreement (the Company and their advisers will sign a confidentiality agreement if necessary),
- Indicate the policy years covered by the agreement, and
- Indicate the extent to which the limits, where appropriate, provided by the agreement have been paid to date

#### **Claims estimation data**

The Scheme Creditor should provide details of

- The years the disease causing products (e.g. asbestos) were used by the Scheme Creditor,
- All claims information should be split by disease and in the case of asbestos losses should be split by disease type (e.g. mesothelioma, lung cancer, other cancer, asbestosis, other non-malignant),

- Number of claims filed against the Scheme Creditor, by year, by disease, for as many years as possible,
- Number of claims closed by the Scheme Creditor, by year, by disease, for as many years as possible,
- Date of first and last exposure to the hazard (e.g. asbestos) for each claimant,
- Indemnity and expense costs for claims closed by the Scheme Creditor, by year, by disease, for as many years as possible;
- Analysis of closed claims split into those settled at cost and those settled for zero cost, and
- Number and amounts of claims against the Scheme Creditor remaining open by year, by disease type

#### **Policy data**

The Scheme Creditor should provide policy data as follows

- A complete coverage chart of the policy profile of the Scheme Creditor, and
- A list of the policies written by the Company including, where appropriate, information on policy limits and excess points

#### **Basis of estimation**

The Scheme Creditor should indicate the basis of estimation that it has used and should provide

- The technique and basis used for projecting future numbers of claims filed;
- The technique and basis used for projecting indemnity and expense costs,
- Evidence of court or other rulings to substantiate the basis of estimation,
- Details of the methodology and assumptions used to allocate individual open and future claims cost to the Scheme Creditor's policies with the Company, and
- The value of Scheme Claims being claimed by the Scheme Creditor from the Company

### **4.2 Benchmarking**

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance Disease claims following the approach set out in Schedule 1 Section 4.2 should provide supporting evidence with the Claim Form that should include

- Type of claim,
- Details of the benchmarks and how they have been applied,
- Evidence to justify why the benchmarks used apply to the Scheme Creditor,

- The value of Scheme Claims being claimed by the Scheme Creditor from the Company, and
- Justification for why the approach outlined in Schedule 1 Sections 4.1 could not be applied

#### **4 3 Alternative approaches where historical information may not be available**

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance Disease claims following the approach set out in Schedule 1 Section 4 3 should provide supporting evidence with the Claim Form that should include full details of the approach taken and justification of assumptions made

### **5. NON DISEASE CLAIMS ARISING UNDER TREATY REINSURANCE OR ANY FORM OF RETROCESSION**

#### **5 1 Overview**

This section describes the supporting evidence that should be submitted by Scheme Creditors with Non Disease claims arising under an Insurance Contract with the Company that is Treaty Reinsurance or is Treaty Retrocession or is Facultative Retrocession

#### **5 2 Catastrophes or other single large distorting losses**

Scheme Creditor's inwards catastrophes and any other distorting losses should be analysed individually following the approach set out in Schedule 1 Section 5 2

Scheme Creditors should provide supporting evidence with the Claim Form that should include:

- The underlying data used and the methodology and assumptions applied to estimate the ultimate claims cost for each large loss,
  - where a curve has been successfully fitted, details of the mathematical function used together with the selected parameters,
  - where a decay method has been used, reasons why a paid decay method has been selected over an incurred decay (or vice versa) and reasons why the period selected is representative of a typical decay and is therefore suitable for the projection to ultimate,
  - where the exposure-based method has been used, details of the inwards exposures used in the projection together with reasons for the selections of the amounts of coverage used on each individual exposure,
- The historical development of paid and incurred claims for each large loss, at the level at which the projection is being performed, and
- Details of any court or other rulings being relied on, together with details of how these factors have influenced the projection to ultimate

### **5 3 Residual losses on proportional or low level excess of loss contracts**

Scheme Creditors with gross losses impacting proportional or low level excess of loss contracts following the approach set out in Schedule 1 Section 5 3 should provide supporting evidence with the Claim Form that should include

- The underlying data used to estimate the ultimate claims costs against the Scheme Creditor,
- The methodology and assumptions applied to estimate the ultimate claims costs against the Scheme Creditor,
- Where chain-ladder methodologies have been used, details of individual factors to ultimate together with reasons for the selection of a methodology based on paid claims and/or incurred claims,
- Where a survival ratio technique has been used, reasons why a paid increment has been selected over an incurred increment (or vice versa) and reasons why the period selected is representative of a typical decay and is therefore suitable for the projection to ultimate. In the selection of the ratio, the Scheme Creditor should refer to the contents of Section 5 7 on benchmarking,
- The historical development of paid and incurred losses to the policies, at the level at which the projection is being performed which should therefore exclude any losses considered in Section 5 2, and
- If applicable, details of how the paid data has been adjusted for the presence of structured settlements

### **5 4 Residual losses on medium to high level excess of loss contracts**

Scheme Creditors with gross losses impacting medium to high level excess of loss claims following the approach set out in Schedule 1 Section 5.4 should provide supporting evidence with the Claim Form that should include

- The underlying data used to estimate the ultimate number of claims and the average indemnity and expense costs per claim,
- The methodology and assumptions applied to estimate the ultimate number of claims,
- The methodology and assumptions applied to estimate the average indemnity and expense costs per claim; and
- The historical development of paid and incurred losses to the policies, at the level at which the projection is being performed

### **5 5 Application to reinsurance programme**

The results of sections 5 2, 5 3 and 5 4 should then be applied to the Scheme Creditor's outwards reinsurance programme to derive the Company's share of the costs following the approach set out in Schedule 1 Section 5 5. Scheme Creditors should provide supporting evidence with the Claim Form that should include

- Outwards policy details as required by the Claim Form, including details of policies that inure to the benefit of the Company's policies,
- Details of how the estimates of the projected costs for the inwards claims are converted into claims on the outwards reinsurance contracts,
- Where aggregation was used to estimate ultimate inwards claims, the methodology and assumptions used to allocate aggregate IBNR back to the level suitable for the Scheme Creditor's outwards reinsurance programme;
- If recoveries due on the Company's coverage have been derived with reference to adjustments made to ratios applying for the total outwards reinsurance programme, details of the ratios used together with reasoning to support the adjustments, which should include commentary on how the Company's coverage fits into the Scheme Creditor's outwards reinsurance programme, and
- The value of Scheme Claims being claimed by the Scheme Creditor from the Company

#### **5 6 Projections using outwards reinsurance data**

Scheme Creditors following the approach set out in Schedule 1 Section 5 6 should provide supporting evidence with the Claim Form that should include

- Outwards policy details as required by the Claim Form, including details of policies that inure to the benefit of the Company's policies,
- The outwards ceded paid and incurred experience used to estimate the value of the Scheme Claims being claimed by the Scheme Creditor,
- The methodology and assumptions applied to estimate the value of the Scheme Claims being claimed by the Scheme Creditor, together with detail to understand how potential short-comings of this approach have been overcome, such as the exhaustion of coverage available,
- The value of the Scheme Claims being claimed by the Scheme Creditor from the Company,
- Justification for why the approaches outlined in Schedule 1 Sections 5.2 to 5 5 could not be applied, and
- Supporting evidence for benchmarking techniques for which detail is given in Section 5 7

#### **5 7 Benchmarking**

Scheme Creditors following the approach set out in Schedule 1 Section 5 7 should provide supporting evidence with the Claim Form that should include

- Outwards policy details as required by the Claim Form, including details of policies that inure to the benefit of the Company's policies,
- Type of claim;

- Details of the benchmarks and how they have been applied,
- Evidence to justify why the benchmarks used apply to the Scheme Creditor,
- The value of Scheme Claims being claimed by the Scheme Creditor from the Company, and
- Justification for why the approaches outlined in Schedule 1 Sections 5.2 to 5.6 could not be applied

## **6. DISEASE CLAIMS ARISING UNDER TREATY REINSURANCE OR ANY FORM OF RETROCESSION**

This section describes the supporting evidence that should be submitted by Scheme Creditors with Disease claims arising under an Insurance Contract with the Company that is Treaty Reinsurance or is Treaty Retrocession or is Facultative Retrocession

### **6.1 Estimation of underlying liabilities: Exposure-based model**

Scheme Creditors with Reinsurance claims following the approaches set out in Schedule 1 Section 6.1 should provide supporting evidence with the Claim Form that should include a list of underlying insureds to which the Scheme Creditor is exposed and a means of referencing the Scheme Creditor's exposures to these insureds. For each underlying insured the Scheme Creditor should provide the following information in respect of the claims by the underlying insureds against the Scheme Creditor

- Name of insureds,
- Start and end dates of cover,
- Policy limits (including details of the aggregate and/or per occurrence combined single limits and, if applicable, separate bodily injury and property damage single limits),
- Excess points (to be supplied as a numerical and/or a text field. In many instances this field may only include a general description that the policy was in excess of primary or underlying coverage),
- The Scheme Creditor's share of each policy (supplied through London Order, Insurer Signed line, Global 100% amount, London 100% amount);
- Any information about primary layers and self-insured retentions,
- Paid and outstanding amounts on these underlying policies, including corresponding attorney report date,
- An estimate of the individual claims costs inwards to the Scheme Creditor in respect of each underlying policy,
- Latest copies of any relevant attorney reports, and
- Where the estimate of future recoveries is material, more detail should be provided based on the descriptions for Direct Insurance in Section 4

The supporting evidence to be provided with the Claim Forms should also include the following information in respect of the claims by the Scheme Creditor on the Company

- Listing of the relevant Reinsurance contracts of the Scheme Creditor with the Company, including start and end dates of cover, shares, limits and deductibles,
- Details of how the estimates of the individual claims costs for the underlying insureds are converted into claims on the Reinsurance contracts,
- Details of any court or other rulings being relied on, and
- The value of Scheme Claims being claimed by the Scheme Creditor from the Company

## **6.2 Benchmarking**

Scheme Creditors with Reinsurance Disease claims following the approach set out in Schedule 1 Section 6.2 should provide supporting evidence with the Claim Form that should include

- Type of claim;
- Names and geographical locations of underlying insureds and/or cedants,
- Details of the benchmarks and how they have been applied,
- Evidence to justify why the benchmarks used apply to the Scheme Creditor,
- Listing of the relevant Reinsurance contracts of the Scheme Creditor, including start and end dates of cover, shares, limits and deductibles, and
- The value of Scheme Claims being claimed by the Scheme Creditor from the Company.

## **7. UNANTICIPATED LATENT CLAIMS**

Scheme Creditors submitting a claim in respect of unanticipated latent claims, following the approach set out in Schedule 1 Section 7, should provide supporting evidence with the Claim Form that should include

- Policy details as required by the Claim Form, including details of policies that inure to the benefit of the Company's policies,
- Information to demonstrate the existence of the exposure, which will need to draw on company and industry data,
- The value of Scheme Claims being claimed by the Scheme Creditor from the Company, and
- The methodology and assumptions used to estimate the total value of the Scheme Claims being claimed by the Scheme Creditor from the Company

## **CLAIM FORM**

### **IN THE MATTER OF Independent Insurance Company Limited (In Provisional Liquidation) (the "Company") AND IN THE MATTER OF The Companies Act 2006**

Before completing and signing this Claim Form, you should read the instructions below. If you have any questions relating to the completion of this Claim Form, or if you require further copies of this Claim Form, the Explanatory Statement or the Scheme, please contact the Company helpline on 0161 274 8837 or visit [www.independent-insurance.co.uk](http://www.independent-insurance.co.uk).

Capitalised terms used in this Claim Form but not defined in it have the same meaning given to them in the Scheme. You are strongly advised to read the Scheme and the Explanatory Statement before you complete this Claim Form.

Failure to submit a Protected Claim or a Protected Contingent Claim to the Company before the Bar Date will not affect a Scheme Creditor's entitlement to be paid compensation by the FSCS in the future. However, if a Scheme Creditor does not submit a Claim Form and after the Bar Date the claim is found to be ineligible for FSCS compensation, that Scheme Creditor will have missed its opportunity to receive a dividend under the Scheme. Scheme Creditors are therefore encouraged to submit all Scheme Claims to the Company by the Bar Date to allow the Company to determine whether or not the Scheme Claim is a Protected Claim or Protected Contingent Claim.

This Claim Form is governed by, and shall be construed in accordance with, English Law.

#### **GENERAL NOTES**

**YOU MUST SUBMIT THIS CLAIM FORM BEFORE THE BAR DATE OR YOU WILL NOT BE ENTITLED TO RECEIVE A DIVIDEND UNDER THE SCHEME.**

- (A) Please complete all applicable fields in BLOCK CAPITALS
- (B) If the Company has records of the amount of your claim, the summary table in Section A will be pre-populated accordingly. If you agree with all of these pre-populated details and would like to submit these amounts as your final claim, please sign and date as indicated at Section A only. If you wish to amend these pre-populated details or Section A is not pre-populated, please provide details of your aggregate claims in Section A together with details of your individual claims in Sections B to D.
- (C) If you are a duly authorised agent and/or solicitor of a number of Scheme Creditors, you should complete a separate Claim Form in respect of each Scheme Creditor for whom you act. Blank copies of this Claim Form may be obtained via the Scheme website at [www.independent-insurance.co.uk](http://www.independent-insurance.co.uk) or from the Company at IICL – SOA, PO Box 5456, Manchester, M61 0LE, United Kingdom, marked for the attention of the Scheme Manager.
- (D) Please supply all necessary Supporting Information in accordance with Schedule 2 of the Scheme.
- (E) You may return your completed and signed Claim Form by e-mail to the Company at [uiclscheme@capita.co.uk](mailto:uiclscheme@capita.co.uk) or alternatively by post or personal delivery to the address at paragraph (B) above.
- (F) Returned Claim Forms will be duly considered by the Company in order to determine the value of each Scheme Creditor's Claim in the estate and, in due course, the dividend payable. The value to be attributed to each Scheme Creditor's Claim will be based on the information provided by the Scheme Creditor in this Claim Form and the information available from the Company's existing records.



## INSTRUCTIONS FOR THE COMPLETION OF SECTION A

- (1) Please check the name (including all former names), unique reference and address of the Scheme Creditor. Any alterations must be initialled by the person who signs the form.
- (2) Please enter the aggregate amount, for each different currency, of your Unpaid Agreed Claims (which includes Non-Insurance Claims), Notified Outstanding Claims and IBNR Claims. Any alterations must be initialled by the person who signs the form.
- (3) Please enter the aggregate amount, for each different currency, of any applicable Set Off amounts or Security. These should correspond to the total of any applicable Set Off amounts or Security you have listed in Section C and Section D.
- (4) For each different currency, the "Net Amount" field will be the total of your Scheme Claims less any Set Off and Security amounts.
- (5) "Defence Costs" are costs that have been paid by the Company since June 2001 in order to defend claims made against its policyholders by third parties. Had the Company not paid those costs, policyholders may have been forced to pay the costs themselves and seek to make a claim in the Scheme for a dividend on that claim. As a result of the Company defending these claims and bearing the associated costs, these Scheme Creditors have avoided incurring costs where they may otherwise have had no option but to bear themselves and the potential escalation in overall liabilities of the Company has been avoided, thereby clearly improving the dividend payable to Scheme Creditors generally. These Scheme Creditors have therefore benefitted both specifically in relation to the payment of their costs and generally in relation to an enhanced dividend pay-out percentage. In order, therefore, to achieve fairness between all policyholders, the Scheme contains provisions allowing the Defence Costs paid by the Company for the benefit of certain policyholders to be treated as an advance dividend and deducted from the amount of dividend otherwise payable to the policyholders concerned.

However, notwithstanding the benefits these Scheme Creditors have received, the Scheme allows Scheme Creditors who did not agree that Defence Costs paid by the Company in respect of their policies would be treated as an advance dividend, and who have no knowledge of any other basis upon which the Company is entitled to treat such Defence Costs as an advance dividend, to opt out of this provision of the Scheme. Scheme Creditors that opt out will receive any dividend to which they are entitled under the Scheme free from any deduction in respect of Defence Costs.

If there are no Defence Costs applicable to you this column will be blank.

- (6) If there is any outstanding premium due from you to the Company (according to the Company's records) this will be detailed on the enclosed schedule of balances. This amount remains payable to the Company notwithstanding the provisional liquidation. Under the terms of the majority of the Company's policies, the Company has no liability to pay a policyholder's claim unless and until the premium has been paid to the Company in respect of the policy. Accordingly, some policyholders will not be Scheme Creditors in respect of claims that would, if the policy premium had been paid, be Scheme Claims.

In such circumstances, unpaid premiums owed by a policyholder to the Company will not be eligible to be set off against any claim that the policyholder would otherwise have against the Company as the Company's liability will not have arisen (although in some cases the unpaid premium may be set off against Scheme Claims that the policyholder may have in respect of other policies where the premium has been paid).

If there are any unpaid premiums owing by you to the Company in respect of your policies, the Company will contact you on receipt of your Claim Form to inform you of the effect of such unpaid premium on the value of your claim. If there is no outstanding premium due from you to the Company this column will be blank.

- (7) If you are the duly authorised representative of a corporation or a partnership or other unincorporated body of persons, or the duly authorised agent and/or solicitor of a Scheme Creditor or a number of Scheme Creditors, enter the capacity in which you have signed the Claim Form (for example, director, partner, agent and/or solicitor). Signing this Claim Form shall constitute a warranty that the signatory has been duly authorised by the relevant Scheme Creditor to execute the Claim Form on their behalf.

## SECTION A) SUMMARY OF SCHEME CLAIMS

### Unique Reference<sup>(1)</sup>

**Address <sup>(1)</sup>**

For each different currency (if applicable), please enter in the table below your aggregate Scheme Claims

Please refer to the enclosed schedule of balances for a breakdown of any pre-populated amounts in the table below, according to the Company's records. If, according to the Company's records, you owe sums to the Company, these pre-populated amounts will be in brackets

[illegible]

Please tick this box if you consider that your aggregate Scheme Claims in each relevant currency may include a Protected Claim and/or a Protected Contingent Claim

# RECOUPMENT OF DEFENCE COSTS<sup>(E)</sup>

If the Company's records show that Defence Costs have been incurred in respect of your policies the amount of such Defence Costs are set out in the above table in the relevant currency in which they were incurred

Unless you can make the following declaration and opt-out by ticking the box above, this amount will be deducted from any dividend payable to you under the Scheme. Scheme Creditors who elect to opt out will receive any dividend payable to them under the Scheme free from any deduction in respect of Defence Costs.

**By ticking this box you are making the declaration to the Company and the Provisional Liquidators that**

- 1 You have not entered into any agreement with the Company, its agents or the Provisional Liquidators that the Defence Costs paid or incurred in defending claims made under your policies would be treated as an advance payment to you under a scheme of arrangement and would be deducted from any dividends payable to you in such a scheme. AND FURTHERMORE**

- 2 You have no knowledge of any other basis upon which the Company is entitled to treat such Defence Costs as an advance payment to you under a scheme of arrangement.

To the best of my knowledge and belief, the information on the Claim Form and any supporting schedules, as amended or otherwise, is correct and constitutes the amount of the Claim in the Company's estate

**Signed**

Name

Position/Capacity (7)

Date: \_\_\_\_\_

**For and on behalf of ..**

..... (enter the name (including all former names) of the Scheme Creditor)

## Telephone

### E-mail

10/47425748\_2

## INSTRUCTIONS FOR THE COMPLETION OF SECTIONS B) TO D)

Claims in addition to, or amending, any pre-populated amounts should be added per the following instructions

**(1) Insurance Contract reference number/ Policy number**

This is the Insurance Contract reference number in relation to each of the policies under which each of your claims against the Company arise. Please provide a copy of the policy schedule or cover note with particulars of each Claim as supporting schedules. Your insurance or reinsurance broker, intermediary or other agent should be able to assist you in confirming or identifying any additional Insurance Contracts and reference numbers. Please then insert the Insurance Contract reference numbers onto the Scheme Claims Schedule by inserting a separate line for each Insurance Contract.

**(2) Claim reference number**

Where available, please enter the Claim reference. If not known, please leave blank.

**(3) Participation percentage**

The participation percentage for each Insurance Contract represents the percentage line underwritten or assumed by the Company under the Insurance Contract. Insert the relevant percentage line for each Insurance Contract to apportion the value of each of your claims against the Company when completing columns (7), (8) and (9). Where the Company is the only insurer for your policy please insert 100%.

**(4) Date of Loss**

For Unpaid Agreed Claims and Notified Outstanding Claims, please insert the date on which the loss occurred (where known). For IBNR Claims please leave this field blank.

**(5) Inception date**

Specify the date when each Insurance Contract commenced. In the case of continuous Insurance Contracts or Insurance Contracts of more than 12 months, please insert the inception date of the overall policy (not each individual year).

**(6) Broker**

Specify the name of the broker who placed the Insurance Contract or, if the placing broker is not known, any other broker, agent or intermediary (if known) who acted on your behalf in relation to the Insurance Contract.

**(7) Unpaid Agreed Claims**

Specify the amount of any Unpaid Agreed Claims. These are Scheme Claims that have already been agreed by the Company but have not been paid and include any entitlements to payment of return of premium.

**(8) Notified Outstanding Claims**

Specify the estimated amount as at the Valuation Date (31 December 2014) of any Scheme Claim or (where there is more than one Scheme Claim) the aggregate estimated amount of any claims which you have classed as Notified Outstanding Claims arising under each Insurance Contract. Notified Outstanding Claims are claims that have been notified to the Company, but which have not yet given rise to a liability that is due and payable by the Company (for example, because the amount of the claim has not yet been agreed or is not currently ascertainable). For more information on estimating the value of Notified Outstanding Claims, please see the Estimation Guidelines in Schedule 1 of the Scheme. Please provide the Supporting Information required by Schedule 2 of the Scheme.

**(9) IBNR Claims**

Specify the estimated amount as at the Valuation Date (31 December 2014) of any Scheme Claim or (where there is more than one Scheme Claim) the aggregate estimated amount of any claims which you have classed as IBNR Claims arising under each Insurance Contract. IBNR Claims are claims in respect of liabilities that have been incurred, but have not been reported to or are not known by the Scheme Creditor. For more information on estimating the value of IBNR Claims, please see the Estimation Guidelines in Schedule 1 of the Scheme. Please provide the Supporting Information required by Schedule 2 of the Scheme.

**(10) Protected/ Protected Contingent Claims**

Please tick ( ✓ ) if you believe the claim may be a Protected Claim or Protected Contingent Claim.

**(11) Claims Total (for each currency)**

Insert the sum of the values entered in each relevant column for Unpaid Agreed Claims, Notified Outstanding Claims and IBNR Claims and ensure these are included in the relevant box in the table in Section A.

**(12) Non-Insurance Claims**

Enter a description and the value of any Non-Insurance Claims you have against the Company

**(13) Non-Insurance Claims Total**

Insert the sum of all values in the Total column and ensure this total amount is included in the relevant box in the table in Section A.

**(14) Security Details**

Enter a description and an estimate of the value of any security you hold over any of the Company's property (such as a letter of credit)

**(15) Security Total**

Insert the sum of all values in the Total column and ensure this total amount is included in the relevant box in the table in Section A

**(16) Set-Off**

Enter a description and the amount of any liabilities which are due (or which may fall due in the future) from you to the Company in respect of any mutual credits, mutual debts or other mutual dealings between you and the Company (including, without limitation, any amounts owed to the Company under a contract or policy of reinsurance) If, according to the Company's records, you owe such a liability to the Company, these pre-populated amounts on the enclosed schedule of balances are in brackets

**(17) Set Off Total**

Insert the sum of all values in the Total column and ensure this total amount is included in the relevant box in the table in Section A.

SECTION B) SCHEME CLAIMS SCHEDULE

UNPAID AGREED CLAIMS, NOTIFIED OUTSTANDING CLAIMS AND IBNR CLAIMS

If you have claims in more than one currency, please use a separate schedule for each currency. This schedule can be copied as many times as required.

Please insert the appropriate currency code from the table in Appendix 1

Claims (for each relevant currency)

(1) Insurance Contract reference number	(2) Claim reference number	(3) Participation percentage (%)	(4) Date of Loss	(5) Inception date	(6) Broker	(7) Unpaid Agreed Claims	(8) Notified Outstanding Claims	(9) IBNR Claims	(10) Protected Claim or Protected Contingent Claim?	Notes
CLAIMS TOTAL (for each relevant currency) <sup>(11)</sup>										



## SECTION C) SECURITY

If you have Security in more than one currency, please use a separate schedule for each currency. This schedule can be copied as many times as required.

Please insert the appropriate currency code from the table in Appendix 1

Security (for each relevant currency)

Security Details <sup>(14)</sup>	Total
<b>Security Total (for each relevant currency) <sup>(15)</sup></b>	





**APPENDIX 1 – CURRENCY CODES**

Currency Code Description	Currency Code
Australian Dollar	AUD
Bahamas Dollar	BSD
Bahraini Dinar	BHD
Barbados Dollar	BBD
Belarus Rouble	BRY
Bermuda Dollar	BMD
Brazilian Cruzeiro Real	BRR
Canadian Dollar	CAD
Cayman Islands Dollar	KYD
Danish Krone	DKK
Dominica East Caribb Dollar	XCD
Dominican Rep Peso	DOP
Euro	EUR
French Franc	FRF
German Mark	DEM
Hong Kong Dollar	HKD
Indian Rupee	INR
Irish Punt	IEP
Jamaican Dollar	JMD
Japanese Yen	JPY
Jordanian Dinar	JOD
Kuwaiti Dinar	KWD
Malaysian Ringgit	MYR

Currency Code Description	Currency Code
Mexican Peso	MXN
Maltese Lira	MTL
Moroccan Dirham	MAD
New Zealand Dollar	NZD
Norwegian Krone	NOK
Netherlands Antillean Gullder	NLG
Oman Rial	OMR
Philippine Peso	PHP
Portuguese Escudo	PTE
Qatari Rial	QAR
Saudi Riyal	SAR
Singapore Dollar	SGD
Solomon Islands Dollar	SBD
South Africa Rand	ZAR
South Korean Won	KRW
Spanish Peseta	ESP
Swedish Krona	SEK
Swiss Franc	CHF
Thai Baht	THB
Trinidad & Tobago Dollar	TTD
UAE Dirham	AED
UK Pound	GBP
US Dollar	USD

**No 1863 of 2015**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF INDEPENDENT  
INSURANCE COMPANY LIMITED (IN  
PROVISIONAL LIQUIDATION)**

**AND IN THE MATTER OF THE  
COMPANIES ACT 2006**

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**ORDER**

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