

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Before the Honourable Mr[s] Justice [•]

Dated this [•] day of [•] 2013

**IN THE MATTER OF
ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

AND

**IN THE MATTER OF THE TRUSTEE ACT 1925
BETWEEN**

(1) JOHN MITCHELL WARDROP

(2) MICHAEL STEVEN WALKER

**(in their capacity as trustees of a trust declared on 29th May 2003
by Anthony James McMahon, Thomas Alexander Riddell
and the Institute of London Underwriters)**

Claimants

-and-

THE INSTITUTE OF LONDON UNDERWRITERS

Defendant

DRAFT ORDER

UPON the application of the Claimants (the "**Trustees**") by Part 8 Claim Form dated [•]
pursuant to section 57 of the Trustee Act 1925

AND UPON hearing counsel for the Claimants and the Defendant

AND UPON reading the Witness Statement of the First Claimant

AND UPON the Court being satisfied that the transaction referred to hereunder is expedient but cannot be effected without the assistance of the Court by reason of the wording of clause 2.2 of the relevant trust instrument

IT IS ORDERED that:

1. The Trustees shall hereby have conferred on them the power to apportion the trust fund held by the Trustees on the terms of the trust declared on 29th May 2003 by Anthony James McMahon, Thomas Alexander Riddell and the Institute of London Underwriters (the "**Trust Fund**" and the "**Trust Deed**") so that from the whole of the present Trust Fund:

- (1) assets [to the value of [x] percentage of the Trust Fund / from the Trust Fund to the value of £[x] and US\$[x]] as at the date of this Order ("**Apportioned Fund A**") may be apportioned by the Trustees so as to be held on the trusts set out in the Trust Deed subject to this Order for the benefit of those Beneficiaries (as defined in the Trust Deed) whose claims are as at the date hereof subject to the Scheme of Arrangement sanctioned by the High Court and with an effective date of 12 October 2010 which is annexed hereto at Annex 1 (the "**Apportioned Fund A Beneficiaries**" and the "**Closing Scheme**" respectively) and

- (2) the balance of the assets of the Trust Fund (the "**Reserve Fund**") may be apportioned by the Trustees so as to be held on the trusts set out in the Trust Deed subject to this Order for the benefit of those Beneficiaries whose claims are as at the date hereof not subject to the Closing Scheme because their claims are excluded from it by reason of their being entitled under an irrevocable letter of credit issued in their favour by Marsh & McLennan Companies Inc as described in the First Claimant's Witness Statement (the "**Reserve Beneficiaries**").

2. Upon and following such apportionment taking place:

- (1) Payments shall be made from Apportioned Fund A to the Apportioned Fund A Beneficiaries only after the Trustees are satisfied that all liabilities of EAIC to the Apportioned Fund A Beneficiaries have become Established Liabilities, as defined by the Trust Deed, (or the equivalent in the event of the winding up of EAIC) or have ceased to be liabilities of EAIC to Apportioned Fund A Beneficiaries, whereupon Apportioned Fund A shall, after payment of or allowance for all costs, charges, expenses and disbursements, be distributed amongst the Apportioned Fund A Beneficiaries *pari passu*.

- (2) Payments shall be made from Reserve Fund to the Reserve Fund Beneficiaries only after the Trustees are satisfied that all liabilities of EAIC to the Reserve Fund Beneficiaries have become Established Liabilities, as defined by the Trust Deed, (or the equivalent in the event of the winding up of EAIC) or have ceased to be liabilities of EAIC to Reserve Fund Beneficiaries, whereupon the Reserve Fund shall, after payment of or allowance for all costs, charges, expenses and disbursements, be distributed amongst the Reserve Fund Beneficiaries *pari passu*.

Alternatively:

1. The Trustees shall hereby have conferred on them power in relation to the trust fund held by the Trustees on the terms of the trust declared on 29th May 2003 by Anthony James McMahon, Thomas Alexander Riddell and the Institute of London Underwriters (the "**Trust Fund**" and the "**Trust Deed**") to make interim payments from the Trust Fund to those Beneficiaries whose claims are as at the date hereof subject to the Scheme of Arrangement sanctioned by the High Court and with an effective date of 12 October 2010 which is annexed hereto at Annex 1 (the "**Closing Scheme Beneficiaries**" and the "**Closing Scheme**" respectively) notwithstanding that certain Relevant Liabilities have not either become Established Liabilities or ceased to be Relevant Liabilities (in each case as defined in the Trust Deed), subject to the following:

- (1) The Trustees shall make such payments only once they are satisfied that all liabilities of EAIC to the Closing Scheme Beneficiaries have become Established Liabilities as defined by the Trust Deed (or the equivalent in the event of the winding up of EAIC) or have ceased to be liabilities of EAIC to such Beneficiaries; and
- (2) The Trustees shall retain a sum of £[x] and US\$[x] to meet the claims of any other Beneficiaries who are found hereafter to have Established Liabilities as defined by the Trust Deed. In the event that such claims do not arise or do not exhaust such retained fund, the balance thereof shall be distributed amongst all Beneficiaries with valid claims *pari passu* pursuant to the terms of the Trust Deed, subject to any further order of the Court.