

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

ENGLISH & AMERICAN INSURANCE COMPANY LIMITED

and

IN THE MATTER OF THE COMPANIES ACT 1985

SCHEME OF ARRANGEMENT

(pursuant to section 425 of the Companies Act 1985)

between

**ENGLISH & AMERICAN
INSURANCE COMPANY LIMITED ***

and its

SCHEME CREDITORS

(as defined in the scheme of arrangement)

* *The general insurance business of Providence Capitol Life Assurance Company Limited (formerly Slater Walker Life Assurance Company Limited, Slater Walker Insurance Company Limited and Arrow Life Assurance Company Limited) was transferred to English & American Insurance Company Limited in accordance with section 51 of the Insurance Companies Act 1982.*

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PART 1 – PRELIMINARY

1.1 Definitions

1.1.1 In the Scheme, unless the context otherwise requires or otherwise expressly provides, the following expressions shall bear the meanings set opposite them:

“3 July 1980–6 October 1983 ILU Policyholder” a creditor of the Company who has a valid and enforceable claim properly due and payable by the Company under a policy signed and issued by the Institute of London Underwriters on the Company’s behalf with an inception date between 3 July 1980 and 6 October 1983 (both dates inclusive);

“Admissible Interest” shall have the meaning given to such expression in clause 2.7;

“Board” the board of directors of the Company from time to time;

“Capped Sterling Equivalent” shall have the meaning given to such expression in clause 4.2.3;

“Cash Assets” the aggregate at any time of:

- (a) any cash deposits (excluding any cash deposits subject to any security or trust); and
- (b) those other assets of the Company at that time which are invested in accordance with the provisions of clause 2.13 (excluding any investments in subsidiaries or investments made for the purposes of effecting the run-off of the Company’s business);

“Claims Submission Period” the period of six months commencing on the Operative Date;

“Co-Insurer” any insurer or reinsurer (apart from the Company);

“Common Liability” any liability (including, but not limited to, any liability for compensatory damage, consequential damage, contractual damage, extra-contractual damage and damage provided for under statute or other law) arising under or otherwise in connection with a contract (whether of insurance, reinsurance, retrocession or otherwise) made between the Company, a Scheme Creditor and one or more Co-Insurers (whether by way of a single multi-lateral contract or by way of a number of contracts, on substantially identical terms, made variously between the Company, the Scheme Creditor and one or more Co-Insurers), such that the Company’s and the Co-Insurers’ rights and liabilities under the said contract relate to the same layer of cover (where the contract in question is of insurance, reinsurance or retrocession and where the risk giving rise to the liability is insured in layers) and are substantially identical, whether they are joint, several or differing in quantum;

“Companies Act” the Companies Act 1985 of England, Scotland and Wales;

“Company” English & American Insurance Company Limited (incorporated in England under the Companies Acts 1908 to 1917 with registered number 240656);

“Court”	the High Court of Justice in England;
“Creditors Committee”	the committee established pursuant to part 6;
“Current Policy”	a policy of insurance issued by the Company in respect of which the policy period has not expired on the Effective Date. For the avoidance of doubt, any ‘extended discovery’ or ‘extended claims reporting’ period shall not count as part of the policy period.
“Default Judgment”	<p>any order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is obtained or entered by virtue only of a Co-Insurer having omitted to take a procedural step in relation to a Proceeding brought by a Scheme Creditor, including any such order, judgment, decision or award which has been obtained by virtue of the Co-Insurer having failed:</p> <ul style="list-style-type: none"> (a) to acknowledge the commencement and/or service of the process whereby the Scheme Creditor commenced such Proceeding; (b) to serve a defence, answer or other response to the Scheme Creditor’s claim; or (c) to comply with any order or direction of the court or tribunal which was interlocutory, procedural or intermediate in nature, or with any procedural rules of the court or tribunal;
“Delegate”	any person to whom the Scheme Administrators may delegate any of their functions and powers under clause 5.3.3(k);
“Designated Representative”	shall have the meaning given to such expression in clause 6.1.4;
“Effective Date”	the date on which a copy of the order sanctioning the Scheme shall have been delivered to the registrar of companies in England and Wales for registration in accordance with clause 10.1.1;
“Employee”	a partner in the same firm as a Scheme Administrator, or any individual employed, whether under a contract of service or a contract for services, by that firm or by any company owned by that firm, who is employed by the Scheme Administrators in accordance with clause 5.3.3(g) in connection with the conduct of their functions and powers under the Scheme;
“Established Scheme Liability”	a liability of the Company which has become an Established Scheme Liability in accordance with clause 2.6;
“Explanatory Statement”	the statement dated 28 October 1994 (and the appendices thereto) explaining the effect of the Scheme, in compliance with section 426 of the Companies Act;
“Final Settlement”	a binding agreement, evidenced in writing, which of itself determines the obligations of a Co-Insurer under the contract in question (either as to liability or as to quantum);

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“General Scheme Creditor”	a Scheme Creditor other than a Protected Policyholder or a 3 July 1980 – 6 October 1983 ILU Policyholder;
“Insolvency Act”	the Insolvency Act 1986 of England, Scotland and Wales;
“Interim Appointees”	shall have the meaning given to such expression in clause 6.9.1;
“liability”	any liability of a person, whether it is present, future, prospective or contingent, whether or not its amount is fixed or liquidated, whether or not it involves the payment of money and whether it arises at common law, in equity or by statute, in England or in any other jurisdiction, or in any other manner whatsoever, but such expression does not include any liability which is barred by statute or otherwise unenforceable; and, for the avoidance of doubt, a person who does not have a legal liability under a contract or policy because such contract or policy is void or, being voidable, has been duly avoided will not have a liability for the purposes of the Scheme;
“Nominated Representative”	shall have the meaning given to such expression in clause 6.1.6;
“Non-Sterling Amount”	shall have the meaning given to such expression in clause 4.2.3;
<u>“Operative Date”</u>	<u>the date on which the Special Resolution is passed in accordance with the terms of the Scheme;</u>
“Payment Percentage”	in relation to an Established Scheme Liability, the percentage of such Established Scheme Liability which is payable by the Company from time to time under the Scheme, as the same is from time to time set under clause 3.2;
“Petition Date”	23 March 1993 being the date of presentation of the Winding up Petition in relation to the Company;
“Policyholders Protection Act”	the Policyholders Protection Act 1975 of the United Kingdom as amended and in force on the Record Date (but incorporating also any amendment made after that date which has effect in relation to a company which was a company in liquidation on or before that date);
“Policyholders Protection Board”	the Policyholders Protection Board established by the Policyholders Protection Act <u>and any statutory successor of it;</u>
“Preferential Claim”	any claim against the Company which would have been preferential under section 386 of the Insolvency Act if the Company were being wound up and the Provisional Liquidation Date were the relevant date for the purposes of section 387 of the Insolvency Act;
“Pre-Scheme Costs”	all such costs, charges, expenses, disbursements and remuneration as are referred to in clause 10.2.1;
“Proceeding”	Any action or other legal proceeding: (a) including, for the avoidance of doubt, (i) arbitration (insofar as the same is provided for under the terms of a contract giving rise to a Scheme Claim) and (ii) any judicial action or proceeding; but

- (b) excluding (i) arbitration (insofar as not provided for under the terms of a contract giving rise to a Scheme Claim) and (ii) any other dispute resolution procedure which does not involve submission to the courts;

“Protected Liability”	any Established Scheme Liability in respect of which and to the extent to which the Policyholders Protection Board would owe a duty under sections 6 to 8 of the Policyholders Protection Act if the Company were a “company in liquidation” and the Record Date were 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 were references to the amount as established in the case of an Established Scheme Liability in accordance with the Scheme (and, for the avoidance of doubt but without limitation, where such a 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, only an Established Scheme Liability which is also such a liability shall be capable of qualifying as a Protected Liability);
“Protected Percentage”	in relation to a Protected Liability, that percentage of such Protected Liability which the Policyholders Protection Board would have a duty to pay under sections 6 to 8 of the Policyholders Protection Act;
“Protected Policyholder”	in relation to a Protected Liability, any Scheme Creditor to whom the Company owes that Protected Liability and who, in addition, is eligible for protection under section 16(9) of the Policyholders Protection Act;
“Provisional Liquidation Date”	19 March 1993, being the date of the appointment of the Provisional Liquidators of the Company;
“Provisional Liquidators”	Anthony James McMahon and Roger Smith, in their capacity as joint provisional liquidators of the Company;
“Record Date”	28 October 1994, being the date of the Scheme;
“Relevant Date”	shall have the meaning given to such expression in clause 4.2.3;
“Review Date”	the Effective Date and 31 December of each year (commencing on 31 December 1995) or such other date as the Scheme Administrators may from time to time, in consultation with the Creditors Committee, in their absolute discretion decide;
“Scheme”	this scheme of arrangement in its present form subject to any modification, term or condition which the Court may think fit to approve or impose in accordance with clause 10.3;
“Scheme Administrators”	in the first instance, Anthony James McMahon and Roger Smith, or such other person as may be appointed as a Scheme Administrator in accordance with the provisions of the Scheme;
“Scheme Amount”	shall have the meaning given to such expression in clause 9.2(b)(i);

“Scheme Assets”

all assets of the Company whether actual, prospective or contingent;

“Scheme Claim”

any claim against the Company (not being a Preferential Claim and not being a claim in respect of Pre-Scheme Costs) in respect of a liability to which the Company is subject at the Record Date or to which the Company may become subject after the Record Date by reason of an obligation incurred before that date save that if:

- (a) Protected Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors’ meeting convened to consider the Scheme (or any adjournment thereof), the expression “Scheme Claim” shall exclude any liability of the Company owed to Protected Policyholders; and/or
- (b) 3 July 1980 – 6 October 1983 ILU Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors’ meeting convened to consider the Scheme (or any adjournment thereof), the expression “Scheme Claim” shall exclude any liability of the Company owed to 3 July 1980 – 6 October 1983 ILU Policyholders but, for the avoidance of doubt, shall include any liability of the Company to Marsh & McLennan Companies, Inc following payment by the Institute of London Underwriters to a creditor of the Company pursuant to the letter of credit arrangements summarised in section 5.1 of the Explanatory Statement;

“Scheme Conflicts Administrator”

Gareth Howard Hughes, or such other person as may be appointed as a Scheme Conflicts Administrator in accordance with the provisions of the Scheme;

“Scheme Costs”

all such costs, charges, expenses, disbursements and remuneration as are referred to in clause 10.2.2;

“Scheme Creditor”

a creditor of the Company in respect of a Scheme Claim (and such expression shall include any assignee or other person entitled to claim in succession to or in substitution for any such Scheme Creditor in respect of the same Scheme Claim), save that if:

- (a) Protected Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors’ meeting convened to consider the Scheme (or any adjournment thereof), the expression “Scheme Creditor” shall exclude Protected Policyholders; and/or
- (b) 3 July 1980 – 6 October 1983 ILU Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors’ meeting

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convened to consider the Scheme (or any adjournment thereof), the expression "Scheme Creditor" shall exclude 3 July 1980 – 6 October 1983 ILU Policyholders;

"Special Meeting"

a meeting of each class of Scheme Creditor convened by the Scheme Administrators to consider and, if thought fit, to pass a Special Resolution;

"Special Resolution"

a resolution in substantially the form set out in Appendix 2 to the Scheme (but with such amendments and modifications as the Scheme Administrators and the Creditors Committee (and, in the case of any amendment or modification which, in the opinion of the Policyholders Protection Board, would directly or indirectly adversely affect its interest, the Policyholders Protection Board) shall deem appropriate in the light of the circumstances prevailing at the time when the Special Meeting is convened) which is passed by a majority in number representing 75 per cent in value of each class of Scheme Creditors which, being entitled to do so, vote in person or by proxy at a Special Meeting;

"sterling"

pounds sterling in the lawful currency of the United Kingdom for the time being;

"Substantive Judgment"

in relation to a Common Liability, an order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is:

- (a) final and conclusive in relation to the merits of a Scheme Creditor's rights against a Co-Insurer under the contract in question, in that the tribunal has established certain facts as proved or as not in dispute, identified the relevant principles of law applicable to such facts and reached its decision by applying those principles to such facts, such that the Co-Insurer's obligations under the contract in question (either as to liability or as to quantum) have been determined;
- (b) not subject to any pending appeal or to any right of appeal; and
- (c) not a Default Judgment;

"Trust Deed"

the deed to be executed by the Company, English & American Group Plc (in administration), English & American Insurance Holdings PLC (in administration) and the Trustee and having effect from the Effective Date;

"Trustee"

The Law Debenture Trust Corporation p.l.c. (incorporated in England under the Companies Acts 1948 to 1981 with registered number 1675231) or such other trustee for the time being under or by virtue of the Trust Deed;

"US dollars"

dollars in the lawful currency of the United States of America for the time being; and

"Winding up Petition"

the petition to wind up the Company numbered 002717 of 1993 presented to the Court on 23 March 1993.

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- 1.1.2 Clause and part headings and the index to the Scheme are inserted for convenience of reference only and shall be ignored in the interpretation of the Scheme.
- 1.1.3 In the Scheme, unless the context otherwise requires or otherwise expressly provided for:
- (a) references to clauses and parts are to be construed as references to the clauses and the parts respectively of the Scheme;
 - (b) references to (or to any specified provision of) the Scheme shall be construed as references to the Scheme (or that provision) as in force for the time being and as modified in accordance with the terms of the Scheme;
 - (c) words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
 - (d) except in relation to the definitions of “Protected Liability” and “Protected Policyholder”, references to a person shall be construed as including references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or any state agency; and
 - (e) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended.

1.2 The Company

The Company was incorporated in England on 28 June 1929. Its authorised share capital is £25,000,000, divided into 25,000,000 shares of £1 each, 20,000,000 of which have been issued and are fully paid and the remainder of which are unissued. With effect from the Effective Date, the Trustee will be the registered holder of the 20,000,000 shares in issue in the capital of the Company and such shares will be held on trust pursuant to the terms of the Trust Deed for English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration) (subject to the provisions of the Scheme and the rights of the Scheme Creditors thereunder).

1.3 Parties other than the Company and the Scheme Creditors

- 1.3.1 Each of the Trustee, the Policyholders Protection Board, English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration) has agreed with the Company and the Provisional Liquidators to appear by counsel on the hearing of the petition to sanction the Scheme, to undertake to the Court to be bound thereby, 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 it or on its behalf for the purpose of giving effect to the Scheme and, subject to the Scheme becoming effective, to be bound thereby. The agreement of The Law Debenture Trust Corporation p.l.c. as the proposed Trustee under the Trust Deed is subject to no fact or matter arising prior to the Effective Date which in its opinion would prevent it from acting as the Trustee under the Trust Deed.
- 1.3.2 The Trustee carries on business as a trust corporation under the laws of England and Wales and has its principal office at Princes House, 95 Gresham Street, London EC2V 7LY.
- 1.3.3 Each of Anthony James McMahon and Roger Smith has given and has not withdrawn his consent to act as a Scheme Administrator from the Effective Date.
- 1.3.4 Gareth Howard Hughes has given and has not withdrawn his consent to act as Scheme Conflicts Administrator from the Effective Date.
- 1.3.5 The members of the Creditors Committee shall be as established pursuant to part 6.

1.3.6 Alan Kenneth MacKenzie and John Mitchell Wardrop have each given and have not withdrawn their consent to serve as a member of the Board from the Effective Date.

1.4 Purpose of the Scheme

1.4.1 The purpose of the Scheme is:

- (a) (subject to certain restrictions on the taking or continuing of any Proceeding against the Company) to enable the liabilities of the Company in respect of Scheme Claims to be established and ascertained in the normal course; and
- (b) to provide for the payment of dividends by the Company to those of its creditors whose Scheme Claims have from time to time become established; whilst
- (c) providing for the retention by the Company of sufficient cash assets to enable the same dividends to be paid by the Company to those of its creditors whose Scheme Claims become established at a later date.

1.4.2 The Policyholders Protection Board has agreed to join in the Scheme and to make payments in accordance with the Scheme to creditors of the Company who are policyholders protected under the Policyholders Protection Act (if the Scheme becomes binding on them).

PART 2 – THE SCHEME

2.1 Application of the Scheme

The Scheme shall apply to all liabilities of the Company in respect of Scheme Claims including all liabilities which have been established before or may be established after the Record Date in respect of obligations incurred before that date.

2.2 Stay of Proceedings

2.2.1 Without prejudice to clauses 2.2.2 and 2.2.3, no Scheme Creditor shall institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company to establish the existence or amount of a Scheme Claim unless the Scheme Creditor shall first have given to the Company notice of such Scheme Claim in accordance with clause 10.4, which notice shall include:

- (a) fully particularised details of how and when the claim arose, of the contract (whether of insurance, reinsurance, retrocession or otherwise) pursuant to which the claim arose (where applicable), and of the quantum of the claim (if reasonably calculable); and
- (b) legible copies of all contracts, orders, judgments, decisions and awards which are relevant to the claim, and of all other items required to be provided to the Company pursuant to the terms of the contract between the Company and the Scheme Creditor, together with such other supporting information and documentation as the Scheme Administrators shall reasonably require.

2.2.2 Subject to clauses 2.2.1 and 2.2.8, no Scheme Creditor shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to this clause 2.2.2), institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company to establish the existence or amount of a Scheme Claim in relation to which there is a Common Liability until the later of:

- (A) the expiration of a period of six months after having given notice of its claim in the manner prescribed in clause 2.2.1, and
- (B) the expiration of a period of six months after notice by the Scheme Creditor to the Company in accordance with clause 2.2.4 of the occurrence of any one or more of the following events:
 - (a) a Substantive Judgment having been obtained in any Proceedings between the Scheme Creditor (or its predecessor in title) and a Co-Insurer in relation to the Common Liability giving rise to such Scheme Claim; or
 - (b) such Scheme Creditor (or its predecessor in title) having entered into a Final Settlement with a majority in value of the Co-Insurers in relation to the Common Liability giving rise to such Scheme Claim (a 'majority in value' being calculated by comparing the aggregate total of all Co-Insurers' proportionate shares in relation to the relevant contract (but leaving out of account those Co-Insurers against whom Proceedings have been stayed or restrained or have resulted in a Default Judgment in the manner described in clause 2.2.2(B)(c)) with the aggregate of the proportionate shares of the Co-Insurers with whom such Scheme Creditor (or its predecessor in title) has entered into the Final Settlement in question); or
 - (c) all Proceedings between such Scheme Creditor (or its predecessor in title) and all Co-Insurers in relation to the same Common Liability giving rise to such Scheme Claim having:

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- (i) been stayed or restrained by operation of law (other than by virtue of an agreement between such Scheme Creditor (or its predecessor in title) and Co-Insurers or any of them), and/or
 - (ii) resulted in such Scheme Creditor (or its predecessor in title) entering or obtaining a Default Judgment,
- as against all such Co-Insurers.

Upon the expiration of the later of the two six month periods referred to in this clause 2.2.2, a Scheme Creditor shall be entitled to institute or continue appropriate legal proceedings against the Company in relation to the Scheme Claim in question, save that the Scheme Creditor shall not be entitled to institute or continue such proceedings to establish the amount of its Scheme Claim unless:

- (A) the relevant Substantive Judgment or Final Settlement determined the quantum of the Co-Insurer's liability; or
- (B) the relevant Substantive Judgment or Final Settlement determined the Co-Insurer's liability and the Scheme Creditor can demonstrate, to the Scheme Administrators' reasonable satisfaction, that the quantum of the Co-Insurer's liability is not and will not be in dispute as between the Scheme Creditor (or its predecessor in title) and the Co-Insurer.

2.2.3 Subject to clause 2.2.8, no Scheme Creditor in relation to whose Scheme Claim there is no Common Liability shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to this clause 2.2.3), institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company to establish the existence or amount of such Scheme Claim until the expiration of a period of six months after having given notice of its claim in the manner prescribed in clause 2.2.1.

2.2.4 For the purposes of clause 2.2.2 and subject to the Scheme Administrators' discretion conferred by clause 2.2.5, notice shall take effect only upon delivery by the Scheme Creditor concerned to the Company of:

- (a) in the case of notice of an event under clause 2.2.2(B)(a), either:
 - (i) a legible copy of the Substantive Judgment, certified by the issuing tribunal; or
 - (ii) a legible copy of the Substantive Judgment, certified as accurate by such Scheme Creditor (or its predecessor in title); or
 - (iii) a legible copy of the transcript of the Substantive Judgment, either certified by the tribunal which issued the judgment or certified as accurate by such Scheme Creditor (or its predecessor in title); or
 - (iv) a written certification from such Scheme Creditor's lawyer or attorney (or the lawyer or attorney of its predecessor in title) as to the fact of the Substantive Judgment and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators;
- (b) in the case of notice of an event under clause 2.2.2(B)(b), a copy of the Final Settlement, signed by or on behalf of all the parties thereto, certified as accurate by such Scheme Creditor (or its predecessor in title), or, where no such document exists, such other documentary evidence as is available, certified as accurate by such Scheme Creditor (or its predecessor in title), of the Final Settlement and its terms, together with legible copies of any orders, judgments, decisions or awards made by a court or tribunal in proceedings between such Scheme Creditor (or its predecessor in title) and the relevant Co-Insurers relating to the claim in question; and
- (c) in the case of notice of an event under clause 2.2.2(B)(c), either:

- (i) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified by the issuing tribunal; or
- (ii) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified as accurate by such Scheme Creditor (or its predecessor in title); or
- (iii) (where applicable) a legible copy of the transcript of the relevant order, judgment, decision or award, either certified by the issuing tribunal or certified as accurate by such Scheme Creditor (or its predecessor in title); or
- (iv) a written certification from such Scheme Creditor's lawyer or attorney (or the lawyer or attorney of its predecessor in title) as to the fact of the stay, restraint or Default Judgment in question and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators.

The items set out in paragraphs (i) to (iv) of paragraphs (a) and (c) above are in order of priority, so that (subject to the Scheme Administrators' discretion conferred by clause 2.2.5) the delivery to the Company by the Scheme Creditor of one of these items will suffice for the purposes of this clause 2.2.4 only if none of the preceding items is available.

- 2.2.5 Notwithstanding the provisions of clause 2.2.4, the Scheme Administrators shall have absolute discretion to acknowledge that any of the events referred to in clause 2.2.2 has occurred, even if none of the items referred to in clause 2.2.4 has been delivered to them, if they consider it reasonable to do so. In such a case, the six month period referred to in clause 2.2.2 shall be deemed to commence as at the date when the Scheme Administrators give such an acknowledgement in writing to the Scheme Creditor concerned, which acknowledgement, to be binding, must refer expressly to this clause 2.2.5.
- 2.2.6 Subject to clause 2.2.5, where a Substantive Judgment has been obtained as is referred to in clause 2.2.2(B)(a) or a Final Settlement has been entered into as is referred to in clause 2.2.2(B)(b) and following receipt of the documents and information referred to in clauses 2.2.1 and 2.2.4, the Company shall make all reasonable efforts to reach agreement with the Scheme Creditor concerned as to such Scheme Creditor's Scheme Claim on the basis of the Substantive Judgment or Final Settlement provided that, in so doing, the Company will take into account:
 - (a) the similarity of interests of the Company and Co-Insurer(s) party to the Substantive Judgment or Final Settlement;
 - (b) any material difference in the defences relied on by or claims made by the Co-Insurer(s) in the relevant Proceeding and the defences or claims which would or might be available to the Company in relation to the Scheme Claim; and
 - (c) the best interests of the Scheme Creditors of the Company generally.
- 2.2.7 If and to the extent that a Scheme Creditor obtains against the Company in relation to a Scheme Claim an order, judgment, decision or award of a court or tribunal in contravention of clauses 2.2.1, 2.2.2 or 2.2.3, such order, judgment, decision or award shall not give rise to an Established Scheme Liability in respect of the Scheme Claim and shall be disregarded when determining the liability of the Company in respect of the Scheme Claim.
- 2.2.8 Nothing in the Scheme shall preclude the Company from either:
 - (a) commencing or continuing any Proceeding against a Scheme Creditor; or
 - (b) seeking to be joined into any subsisting Proceeding between a Scheme Creditor and a Co-Insurer as an additional party thereto.

Where the Company commences, continues or is joined into any Proceeding against a Scheme Creditor as aforesaid, and without prejudice to the Scheme Creditor's rights of set-off referred to in

clause 2.5 and the Scheme Creditor's right to argue that the Proceeding in question has been commenced or is continuing in an inappropriate forum, nothing in the Scheme shall preclude the Scheme Creditor from asserting and prosecuting against the Company in that Proceeding (whether by way of claim or counterclaim) a Scheme Claim so long as:

- (i) the Scheme Claim arises out of the same transaction or occurrence that is the subject matter of the Company's claim in that Proceeding; and
- (ii) the Scheme Claim does not require for its adjudication the presence of third parties over whom the court or tribunal in question cannot acquire jurisdiction.

For the purposes of this clause 2.2.8, the Company shall not be deemed to be continuing any Proceedings which commenced prior to the Effective Date and in which the Company is not actively prosecuting its claims.

2.3 Enforcement of Scheme Claims

2.3.1 Except to the extent that the Company has failed to perform any obligation to make a payment to a Scheme Creditor under the provisions of the Scheme and subject to the rights of Scheme Creditors under clauses 2.2, 2.4 and 2.5, no Scheme Creditor shall be entitled to take any proceeding or step (whether by way of demand, legal proceedings, execution of judgment, arbitration proceedings or otherwise howsoever) against the Company or its property in any jurisdiction whatsoever for the purpose of enforcing payment of any Scheme Claim or any part thereof.

2.3.2 If any Scheme Creditor takes any such action as is prohibited by clause 2.3.1 after the Effective Date it shall be treated as having received, on account of its Scheme Claim, an advance payment under clause 3.3 equal to the amount or gross value of any money, property, benefit or advantage obtained by it at the expense of the Company as the result of such action; and the extent, if any, to which it is entitled to any payment under clauses 3.3.1(a) or 3.3.1(b) shall be reduced accordingly. For this purpose, the gross value of any such property, benefit or advantage shall be conclusively determined by the Scheme Administrators and, without limitation, may include such amount as the Scheme Administrators may consider to be appropriate by way of interest or costs, charges or expenses incurred by the Company as a consequence thereof.

2.4 Security, letters of credit and trusts

2.4.1 Nothing in the Scheme shall affect the right of any person to take any appropriate action to enforce:

- (a) any security over the property of the Company which could have been enforced if the Company were being wound up pursuant to the Winding up Petition and the order that the Company be wound up had been made on the Effective Date or which has been created after the Effective Date in accordance with clause 2.11.3; or
- (b) any letter of credit issued or trust created (expressly, by implication or by operation of law) in respect of the Company and of which he is a beneficiary, if such letter of credit or trust was issued or created before the Record Date or has been issued or created after the Effective Date in accordance with clause 2.11.3.

2.4.2 Nothing in the Scheme shall affect the right of the Company against any person in respect of any wrongful drawdown or enforcement of any security, letter of credit issued or trust created in respect of the Company.

2.5 Set-off

2.5.1 Subject to clause 2.5.2, a Scheme Creditor which is under a liability to the Company may rely on any set-off or cross claim upon which it could have relied if the Company were being wound up pursuant to the Winding up Petition and the order that the Company be wound up had been made on the Effective Date.

2.5.2 For the avoidance of doubt:

- (a) no Scheme Claim against the Company which has been assigned to a person after the Effective Date or which was assigned to him prior to that date but after he had notice of the Winding up Petition may be applied in extinguishing or reducing any liability of that person to the Company; and
- (b) no liability of a Scheme Creditor to the Company which arises out of an obligation incurred by such Scheme Creditor after the Effective Date may be extinguished or reduced by any Scheme Claim which such Scheme Creditor has against the Company.

2.6 Established Scheme Liabilities

2.6.1 Subject to clauses 2.2, 2.3, 2.6.2, 2.7 and 2.12.1(a)(ii), a liability of the Company in respect of a Scheme Claim shall be an Established Scheme Liability when there has been established (whether (i) by agreement or (ii) by Proceedings which are not subject to any appeal) in relation thereto a present obligation of the Company to pay an ascertained sum of money after account has been taken (whether (i) by agreement or (ii) by Proceedings which are not subject to any appeal) of:

- (a) any security over the property of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with clause 2.4.1(a);
- (b) any letter of credit issued or trust created in respect of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with clause 2.4.1(b); and
- (c) any set-off or cross claim which may be taken into account from time to time in accordance with clause 2.5.

2.6.2 For the purposes of the Scheme, the amount of an Established Scheme Liability shall be the amount at which it was established in accordance with clause 2.6.1, notwithstanding any payment which has been made (or is treated as having been made) under the Scheme.

2.7 Interest

For the purpose of paying or providing for payments under the Scheme, there shall not be included as part of an Established Scheme Liability (save as provided for in clause 3.3.2) any interest except interest (Admissible Interest) to which a Scheme Creditor is entitled by reason of contract, judgment against the Company, decree or otherwise for a period or periods ending on the Record Date. 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.

2.8 Payment of Preferential Claims

As soon as practicable after the Effective Date the Company shall pay all debts due from it in respect of Preferential Claims but nothing herein shall oblige it to pay any such debt at any time before the date on which such debt would, apart from the Scheme, otherwise have become due and payable.

2.9 Currency of payment

2.9.1 Any amount payable to a Scheme Creditor under the Scheme in respect of an Established Scheme Liability owed to such a Scheme Creditor (whether by the Company under part 3 or, without prejudice to the provisions of clause 4.2.3, by the Policyholders Protection Board under part 4) shall be paid in the currency in which such Established Scheme Liability was incurred (or where the relevant contract allows such Scheme Creditor to elect to make a claim in any other currency, and any such election is made in accordance with the terms of such contract (but not after an amount in respect of such Established Scheme Liability has already been paid under the Scheme), in that currency).

2.9.2 In determining any set-off or cross claim in relation to a Scheme Claim, where the set-off or cross claim is expressed in a currency other than that of the relevant Scheme Claim, the set-off or cross claim shall, in the absence of agreement otherwise between the Scheme Creditor and the Company, be converted into the currency of the relevant Scheme Claim at the rate of exchange specified in the contract to which the Scheme Claim relates or, if there is no such rate specified, the rate of exchange published in the *Financial Times* for the purchase of such currency at close of business (London time) on the date upon which the Scheme Administrators accept that the set-off or cross claim is available to the relevant Scheme Creditor or the set-off or cross claim is otherwise determined, or, if no such rate is published in the *Financial Times* in respect of that currency on that date, the mid-market rate for that currency on such date quoted by Lloyds Bank Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators.

2.10 Method of payment

2.10.1 Payments to a Scheme Creditor under the Scheme may be made, in the absolute discretion of the Scheme Administrators or, in the case of payments to be made by the Policyholders Protection Board, of the Policyholders Protection Board:

- (a) by cheque in favour of the Scheme Creditor concerned or as such Scheme Creditor may direct and sent through the post at the risk of such Scheme Creditor to the last known address of such Scheme Creditor or to such other address as such Scheme Creditor may from time to time notify to the Company (or, as the case may be, the Policyholders Protection Board);
- (b) by telegraphic transfer to such bank account as the Scheme Creditor concerned may from time to time notify to the Company (or, as the case may be, the Policyholders Protection Board); or
- (c) in such other manner as the Scheme Administrators or, as the case may be, the Policyholders Protection Board may from time to time determine.

The cost of using any such payment method in a particular case shall be an expense of the Scheme Creditor concerned.

2.10.2 Payment under the Scheme shall be deemed to have been made on the day that the cheque is posted or telegraphic transfer instruction given to the relevant bank (as the case may be). Payment of any such cheque by the banker on whom it is drawn shall be satisfaction of the monies in respect of which it was drawn; and receipt of the amount of such telegraphic transfer into such account shall be satisfaction of the monies in respect of which it was paid.

2.10.3 The Scheme Administrators may determine that any payment under the Scheme (when aggregated with any amounts to be paid to the Scheme Creditor under part 4) of less than a certain amount (not being greater than £50 or its equivalent in any other currency from time to time or such greater amount as the Scheme Administrators may reasonably determine from time to time (the de minimis amount)) shall not be sent to a Scheme Creditor because of the costs involved in making and/or receiving such payment, in which case any such amount shall be retained for the benefit of such Scheme Creditor, such Scheme Creditor shall be notified of any such retention and such amount shall be paid to such Scheme Creditor upon the earlier of demand made by that Scheme Creditor or such time as the aggregate of sums owed to such Scheme Creditor under the Scheme exceeds the de minimis amount.

2.10.4 Without prejudice to clause 2.10.2, payment by the Company or the Policyholders Protection Board, as the case may be, in respect of an Established Scheme Liability or a Protected Liability:

- (a) to a Scheme Creditor or a Protected Policyholder; or
- (b) where two or more persons comprise a Scheme Creditor or a Protected Policyholder, to any one such person; or

- (c) to any person acting on behalf of a Scheme Creditor or Protected Policyholder,

shall for all purposes constitute a valid discharge of the Company or the Policyholders Protection Board, as the case may be, in respect of such Established Scheme Liability or Protected Liability to the extent of such payment.

2.11 Carrying on of insurance business

2.11.1 The Company shall not:

- (a) enter into any further, or renew, replace or extend any existing, contracts (whether of insurance, reinsurance, retrocession or otherwise) or vary the same in a manner which would increase the total amount of any liability of the Company to any person under such a contract except:
- (i) contracts of insurance protecting the Company or its directors, officers, employees or agents against risks incurred in the run-off of the Company's business; and
 - (ii) contracts of reinsurance in relation to liabilities of the Company arising out of obligations incurred by the Company prior to the Record Date; nor
- (b) carry on any other business except in connection with the carrying out of the Scheme and all other matters which are incidental thereto; nor
- (c) without prejudice to clause 2.11.3, create or cause or permit to be created any trust of or in relation to any of its assets (including, without limitation, any cash deposit) or appropriate or set aside any asset to meet a liability of the Company (otherwise than in accordance with clause 2.11.3 or clauses 3.2.4 and ~~3.2.5~~ 3.2.6).

2.11.2 The Company may, after consultation with the Policyholders Protection Board, enter into, vary or terminate arrangements with an agent for the provision of such services to the Company as it may require for the run-off of its existing insurance business (including agreeing and adjusting claims under any insurance contracts).

2.11.3 If the Scheme Administrators consider that to do so would be in the best interests of the Scheme Creditors, the Company may arrange for the issue or creation of new letters of credit, trusts, bonds or other instruments or security over any of its assets:

- (a) to replace existing letters of credit or trusts; or
- (b) to secure liabilities incurred after the Record Date; or
- (c) to provide security for the purposes of any Proceeding in relation to any liabilities of the Company,

but not otherwise and the Company may renew or permit to be renewed any existing letter of credit.

2.12 Commutations, settlements and other agreements

2.12.1 Subject to clause 2.12.2, if the Scheme Administrators consider that to do so would be in the best interests of the Scheme Creditors (excluding in the case of contractual arrangements entered into pursuant to paragraph (a) below, the Scheme Creditor with whom such contractual arrangements are made), the Company may enter into contractual arrangements:

- (a) with a Scheme Creditor under which:

- (i) all or part of the liability (which may include, without limitation, a liability to provide or fund the costs of that Scheme Creditor's defence) of the Company to that Scheme Creditor is discharged in full in consideration of payment made by the Company; or
- (ii) all or part of the liability of the Company to that Scheme Creditor becomes an Established Scheme Liability otherwise than as a result of an obligation to pay an ascertained sum of money being established in accordance with clause 2.6.1; or
- (b) with any of its reinsurers for the discharge of any of such reinsurer's liabilities to the Company under reinsurance contracts in consideration for payment to the Company.

2.12.2 The Company may not enter into a contractual arrangement of the nature described in clause 2.12.1(a) unless either:

- (a) the Policyholders Protection Board has consented in writing to such arrangement; or
- (b) the Scheme Creditor concerned has confirmed, in a legally binding form satisfactory to the Policyholders Protection Board, that he is not a Protected Policyholder in relation to the liability concerned or that he waives any rights which he may have against the Policyholders Protection Board in relation to that liability and agrees to the discharge of the liability.

2.12.3 Without prejudice to clauses 2.12.1 and 2.12.2, the Scheme Administrators shall consider any request made by a Scheme Creditor, supported by appropriate actuarial information, for the Company to enter into any such contractual arrangements as are referred to in clause 2.12.1 with such Scheme Creditor.

2.13 Investment

The Company shall have power to invest all or any of its assets in such manner as the Scheme Administrators consider prudent from time to time, with full power from time to time to vary or transpose any such investments into others of any nature hereby authorised.

2.14 Current Policies

Notwithstanding any other provision of the Scheme, the liability of the Company under the Scheme in relation to that part of the policy period of a Current Policy which has not expired on the Effective Date shall be calculated as if a winding-up order had been made in relation to the Company on the Effective Date and, for the avoidance of doubt, (a) any claim in respect of such liability shall be a Scheme Claim and (b) any Established Scheme Liability in respect of such a liability shall not give rise to a Protected Liability.

PART 3 – PAYMENTS TO SCHEME CREDITORS

3.1 Application of assets of the Company

On and from the Effective Date the Scheme Assets assets of the Company shall be applied for the benefit of Scheme Creditors in accordance with the provisions of the Scheme.

3.2 Computation of the Payment Percentage

3.2.1 Subject as hereinafter provided in this part 3, the Scheme Administrators shall from time to time:

- (a) set the Payment Percentage; and
- (b) revise a Payment Percentage previously set by setting a new Payment Percentage of a greater or lesser amount.

3.2.2 As soon as practicable after each Review Date before an initial Payment Percentage has been set, the Scheme Administrators shall consider, in the light of clauses 3.2.4 ~~3.2.5~~, and 3.2.5 ~~3.2.6~~, whether an initial Payment Percentage should be set.

3.2.3 As soon as practicable after each Review Date after the initial Payment Percentage has been set, the Scheme Administrators shall review the Payment Percentage and consider, in the light of clauses 3.2.4 and 3.2.5, ~~and 3.2.6~~ whether it should be revised.

3.2.4 The Scheme Administrators shall not set a Payment Percentage unless they consider, on the basis of the information and advice referred to in clause 3.2.7 ~~3.2.8~~, that after:

- (a) the Company has (by reference to a Payment Percentage at that rate) complied with the provisions of clause 3.3 in relation to all Established Scheme Liabilities owed by it as at the Review Date concerned; and
- (b) ~~subject to clause 3.2.5~~ such reserves have been created by the Company as they consider to be prudent to enable the Company to meet its liabilities for Pre-Scheme Costs, Preferential Claims and Scheme Costs as and when they fall due,

the Company will retain ~~Cash~~ Scheme Assets of an amount which the Scheme Administrators consider sufficient to enable the Company to comply with the provisions of clause 3.3 (by reference to a Payment Percentage at that rate) in relation to all liabilities of the Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned.

~~3.2.5 In considering whether sufficient reserves have been created in accordance with clause 3.2.4(b), the Scheme Administrators shall be entitled to take into account:~~

- ~~(a) all assets of the Company including, without limitation, its rights against reinsurers and retrocessionaires whether actual, prospective or contingent (and the prospects of actually successfully enforcing such rights); and~~
- ~~(b) the prospect of future income, including income derived from Cash Assets retained in accordance with clause 3.2.4 and any other cash deposits which may from time to time be subject to any security or trust (provided the income is not subject to any security or trust).~~

3.2.56 Subject to clause 3.2.4, for the purposes of 3.2.2 or 3.2.3, the Payment Percentage, if set, in relation to the Company shall be set at, or increased to, such rate as the Scheme Administrators consider will ensure that all the Cash Assets of the Company remaining after:

- (a) the Company has retained ~~Cash~~ Scheme Assets of an amount which the Scheme Administrators consider sufficient to enable it to comply with the provisions of clause 3.3 (by

reference to a Payment Percentage at that rate) in relation to all liabilities of the Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned; and

(b) the creation of the reserves referred to in clause 3.2.4(b),

are distributed proportionately in respect of all the Established Scheme Liabilities owed by the Company as at the Review Date concerned.

3.2.67 If on considering the current Payment Percentage pursuant to clause 3.2.3 the Scheme Administrators shall consider that there are not sufficient Cash Scheme Assets for such Payment Percentage to be set at that level and for the provisions of clause 3.2.4 to be complied with, they shall reduce such Payment Percentage to such level as they consider appropriate. ~~to comply with the provisions of clause 3.2.6 but provided that the provisions of clause 3.2.4 are not infringed.~~

3.2.78 For the purpose of setting the Payment Percentage as at a particular Review Date, the Scheme Administrators shall obtain and consider such financial and/or actuarial information and advice as the Scheme Administrators, following consultation with the Creditors Committee, shall consider appropriate.

3.3 Payments to Scheme Creditors

3.3.1 In respect of an Established Scheme Liability, the Company shall, subject to clause 2.3.2:

(a) as soon as reasonably practicable but, in any event, within ninety days following the date on which it becomes an Established Scheme Liability or on which the relevant initial Payment Percentage has been set (whichever is the later), pay to the Scheme Creditor concerned an amount equal to the then current Payment Percentage of such Established Scheme Liability; and

(b) as soon as reasonably practicable, but in any event within ninety days following an increase in the Payment Percentage under clause 3.2, pay to the Scheme Creditor concerned (whether or not the same person who received payment under clause 3.3.1(a)), a further amount equal to the difference between (A) the Payment Percentage (as increased) of such Established Scheme Liability and (B) the amount of such Established Scheme Liability which has previously been discharged by the Company or is treated as having been discharged under clause 2.3.2.

3.3.2 Notwithstanding clause 2.7, if all liabilities of the Company in respect of Scheme Claims shall have become Established Scheme Liabilities and been paid in full (including for this purpose only liabilities for interest, other than Admissible Interest referred to in clause 2.7, which shall then become payable) the Company shall pay additional interest in respect of each such Established Scheme Liability in accordance with this clause 3.3.2. The amount of such additional interest shall be an amount equal to fifteen per cent per annum (or such higher rate of interest as may be from time to time prescribed pursuant to section 17 of the Judgments Act 1838 of England, Scotland and Wales) on the unpaid amount of such Established Scheme Liability from time to time (such additional interest to be calculated on a daily basis from the later of the Effective Date and the date on which the liability of the Company in respect of the relevant Scheme Claim became an Established Scheme Liability up to the date of payment of such additional interest), Provided that the amount of such additional interest shall not exceed the surplus assets of the Company after adequate provision has been made for all other liabilities of the Company (otherwise than in respect of share capital) in existence at the time of payment of such additional interest (and so that the amount of additional interest payable in respect of each such Established Scheme Liability shall, if necessary, be reduced *pro rata* accordingly).

3.3.3 The Scheme Administrators shall suspend payments under clause 3.3.1 for such period (not exceeding six months) as they consider appropriate if information becomes available to them concerning the financial position of the Company as a result of which they require to consider whether or not to set a reduced Payment Percentage. As soon as practicable during, and in any event at the end of, such period, the Scheme Administrators shall set a reduced Payment Percentage or conclude that the Payment Percentage need not be reduced, and thereupon the suspension of payments shall be lifted.

RESTATED SCHEME
OF ARRANGEMENT

PART 4 – PAYMENTS TO PROTECTED POLICYHOLDERS

4.1 Payments by the Policyholders Protection Board

4.1.1 Subject to the following provisions of this part 4, the Policyholders Protection Board shall pay to each Protected Policyholder in respect of each Protected Liability owed to him an amount equal to:

- (a) the Protected Percentage of that Protected Liability; less
- (b) the aggregate of:
 - (i) whichever is the greater of the Payment Percentage of that Protected Liability already paid, or treated as having been paid, by the Company and the Payment Percentage of that Protected Liability in force at the time when the Policyholders Protection Board makes its payment;
 - (ii) the amount of any Admissible Interest paid or payable at that time pursuant to clause 2.7, save to the extent that it arises under the terms of the relevant policy; and
 - (iii) the amount of any payment previously made by the Policyholders Protection Board pursuant to section 15 of the Policyholders Protection Act in respect of that Protected Liability.

4.1.2 Payment under clause 4.1.1 in respect of a Protected Liability shall be made as soon as reasonably practicable following whichever is the later of:

- (a) the date on which the Company notifies the Policyholders Protection Board that the liability is an Established Scheme Liability;
- (b) the date on which the Policyholders Protection Board agrees or it is otherwise determined (so as to bind the Policyholders Protection Board) that the Established Scheme Liability concerned is a Protected Liability;
- (c) if there is a Payment Percentage which is in excess of zero, the date of payment by the Company of all amounts payable in respect of the Protected Liability under clause 3.3.1;
- (d) if there is no Payment Percentage, or if the Payment Percentage is zero, the date which is thirty days after the Effective Date; and
- (e) in any case where it appears to the Policyholders Protection Board that the funds available to it fall short of what it requires to make the payment in question and to meet its responsibilities under or pursuant to the Policyholders Protection Act (as in force at any time) or otherwise, the date on which it appears to the Policyholders Protection Board that its funds are adequate for those purposes;

and, if at any time payments have been suspended under clause 3.3.3, such payment under clause 4.1.1 in respect of a Protected Liability (other than a Protected Liability in respect of which the period for payment under clause 3.3.1 shall have expired on or prior to the date on which payments are suspended without payment having been made by the Company) shall be made as soon as reasonably practicable following whichever is the later of the dates referred to in this clause 4.1.2(a), (b), (d) or (e) in relation to the liability in question.

4.2 Limitations on the Policyholders Protection Board's obligations

4.2.1 Any obligation of the Policyholders Protection Board to a Protected Policyholder under this part 4 in respect of a Protected Liability 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, sections 9, 13(1) to (3) and 14 of the Policyholders Protection Act (and, for the avoidance of doubt, so that for the purposes of section 13(3) in its application to the Scheme the Policyholders Protection Board shall be entitled to have regard both to its obligations under the Scheme and to its responsibilities otherwise than under the Scheme) as the duty which the Policyholders Protection Board 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 Liability if the Company were a company in liquidation (as defined in that Act).

4.2.2 Any obligation of the Policyholders Protection Board to make a payment under clause 4.1.1 in respect of a Protected Liability shall:

- (a) if there is a Payment Percentage which is in excess of zero and save during any period when payments have been suspended under clause 3.3.3 (other than where the Protected Liability in question is one in respect of which the period for payment by the Company under clause 3.3.1 shall have expired on or prior to the date on which payments are suspended without payment having been made by the Company), be conditional on payment by the Company of all amounts payable in respect of that Protected Liability under clause 3.3.1 before the time when the payment by Policyholders Protection Board falls, or would but for this clause 4.2.2 fall, to be made; and
- (b) unless the Policyholders Protection Board otherwise consents in any case, be conditional on the Protected Policyholder being entitled and able to assign to the Policyholders Protection Board all the rights and claims mentioned in clause 4.3.1, as originally arising and free from any lien, charge, prior assignment, equity, encumbrance or other third party right.

4.2.3 (a) Any sum payable in respect of any Protected Liability by the Policyholders Protection Board under clause 4.1.1 in a currency other than sterling (the Non-Sterling Amount) shall not exceed its Capped Sterling Equivalent.

(b) For the purpose of clause 4.2.3(a) the Capped Sterling Equivalent in relation to any Non-Sterling Amount means the amount in the currency in which such Non-Sterling Amount is denominated, determined as follows: convert the equivalent of the Non-Sterling Amount in sterling at the Specified Exchange Rate into the currency in which the Non-Sterling Amount is denominated at the exchange rate prevailing on the business day (the Relevant Date) falling immediately prior to the date of payment under clause 4.1.1 in respect of the relevant Protected Liability.

(c) For the purpose of this clause 4.2.3:

- (i) the Specified Exchange Rate shall be twelve and a half per cent below the exchange rate into sterling for the currency in which the Non-Sterling Amount is denominated prevailing on the Effective Date;
- (ii) the exchange rate prevailing on the Effective Date shall be taken, in relation to any currency, as the average daily exchange rate over the period three months prior to the Effective Date taken from the rates published on each business day during that period in the *Financial Times* or, if on any such business day no such rate is published in the *Financial Times* in respect of that currency, as the mid-market rate for that currency on such date quoted by Lloyds Bank Plc, or if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and the Policyholders Protection Board; and
- (iii) the exchange rate prevailing on the Relevant Date shall be taken, in relation to any currency, as the exchange rate for that date published in the *Financial Times* or, if no such rate is published in the *Financial Times* for that date in respect of that currency, as the mid-market rate for that currency on the Relevant Date quoted by Lloyds Bank Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and the Policyholders Protection Board.

- 4.2.4 (a) Subject to clause 4.2.4(b), the Policyholders Protection Board shall not have any greater obligation under the Scheme in respect of any Scheme Creditor or liability of the Company than it would have had (and neither Scheme Creditors nor the Company shall have any different or greater relief or remedy against the Policyholders Protection Board than they or 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 Record Date, and the payment to be made by the Policyholders Protection Board in respect of each Protected Liability had been reduced by the amounts referred to in clause 4.1.1(b); and no right of, or condition imposed by, the Policyholders Protection Board under the Scheme in relation to any Scheme Creditor shall be limited or restricted by virtue of any obligation of the Policyholders Protection Board to that Scheme Creditor under the Scheme being less than the obligation which the Policyholders Protection Board would have had to it if the Company had been a company in liquidation (as so defined).
- (b) For the purpose of clause 4.2.4(a) it shall be assumed that:
- (i) the currency of payment by the Policyholders Protection Board in respect of any liability (and where that currency is not sterling, its rate of exchange) would be the same on a liquidation of the Company as under the Scheme (including for these purposes the exchange rate limit set out in clause 4.2.3); and
 - (ii) the amount of any liability of the Company in liquidation would be as established in the case of an Established Scheme Liability in accordance with the Scheme.

4.2.5 For the avoidance of doubt, the Policyholders Protection Board:

- (a) shall not be liable in respect of any interest payable in relation to a Scheme Claim to the extent that it is payable in respect of any period after the Record Date; and
- (b) without prejudice to clauses 4.2.1 and 4.2.4, shall not have any greater obligation under the Scheme by virtue of any amount of any such letter of credit, trust fund, guarantee, guarantee fund or deposit as is described in sections 5.1, 5.3, 5.4, 5.5 and 5.6 of the Explanatory Statement (or any other amount falling to be taken into account under clause 2.6.1) being deductible in the calculation of any Established Scheme Liability than it would have had if that amount (as well as the amounts referred to in clause 4.1.1(b)) had been treated under section 14(1) of the Policyholders Protection Act as reducing any sum which would have been payable by it in respect of the liability concerned if the Company had been a company in liquidation (as defined in that Act) and the beginning of the liquidation (as so defined) had been on the Record Date (but making the assumption in clause 4.2.4(b)(i)),

nor shall the Policyholders Protection Board have any obligation under the Scheme towards any person who has paid or is liable to pay any such amount.

4.2.5A For the avoidance of doubt, the Policyholders Protection Board shall not by virtue of, or of anything in, the Amending Scheme or the Restated Scheme (as those expressions are respectively defined in the document dated 1 June 2000 and sent to Scheme Creditors containing a proposal in relation to an amending scheme of arrangement) have any obligation in respect of any policyholder or liability of the Company which it would not have had, or greater than it would have had (and neither any Scheme Creditor nor the Company shall by reason of, or of anything in, the Amending Scheme or the Restated Scheme have any different or greater relief or remedy against the Policyholders Protection Board than he or 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 Record Date and the payment to be made by the Policyholders Protection Board had been reduced by the amounts referred to in clause 4.1.1(b); and if by virtue of the Company going into liquidation after the Record Date the Policyholders Protection Board would, or would but for this clause 4.2.5A, be required to pay any amount to or on behalf of a policyholder in respect of a liability of the Company which it would not have been required to pay if the beginning of the liquidation had been on the Record Date, the liability shall for all purposes be treated as not

being a liability under the terms of a policy, but as being a liability only under the Scheme (and admissible for proof in the liquidation as such).

4.2.6 The Policyholders Protection Board shall not have an obligation to make a payment in respect of an Established Scheme Liability if it appears to the Policyholders Protection Board that such a payment would result in a benefit being conferred on either:

- (a) any person who was a member of the Company at the Petition Date; or
- (b) any person who had any 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 paragraphs (a) and (b) above any benefit which might accrue to such persons therein mentioned who are policyholders of the Company in their capacity as such.

4.3 Assignments to the Policyholders Protection Board

4.3.1 Immediately upon any payment being made by the Policyholders Protection Board to a Protected Policyholder pursuant to clause 4.1 in respect of a Protected Liability, there shall automatically be assigned to the Policyholders Protection Board absolutely, without any further act or document:

- (a) all rights of the Protected Policyholder in respect of that Protected Liability (including in respect of the debt or claim constituted by or arising out of or relating to that Protected Liability) under or in respect of the policy relating to that Protected Liability and the Scheme;
- (b) any rights and claims such Protected Policyholder may have in respect of payments made by him by way of premiums under the policy relating to that Protected Liability; and
- (c) any rights and claims such Protected Policyholder may have against any other persons in respect of any event giving rise to that Protected Liability (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 4.3.1 in relation to any Protected Liability to which the event has also given rise) or by reference to or in connection with the policy relating to that Protected Liability, to the intent that the assignment in their entirety under this clause 4.3.1 of rights and claims to which this clause 4.3.1(c) refers will be by way of security for payment to the Policyholders Protection Board of the amount of the Protected Liability,

whether, in any such case, those rights or claims arise under or in respect of the policy relating to that Protected Liability, under or in respect of the Scheme, by virtue of any trust or legislation (primary or subordinate) or otherwise howsoever, and whatever the nature of those rights or claims. If, before making payment pursuant to clause 4.1 in any particular case, the Policyholders Protection Board in its absolute discretion determines that the terms of the assignment of rights and claims which would otherwise apply under clause 4.3.1(c) should be varied in that case, then subject to the consent of the Protected Policyholder concerned to the variation, clause 4.3.1(c) shall have effect as if those terms of assignment as so varied applied in that case. If any question arises as to the identification of any Protected Liability, and accordingly as to whether that liability is or is not the subject of an assignment to the Policyholders Protection Board under this clause 4.3.1, a certificate from the Policyholders Protection Board that it has made a payment in respect of that liability shall be binding and conclusive on all persons for all purposes. Without prejudice to the provisions of clause 4.3.5, the Policyholders Protection Board shall provide to the Company such information relating to the date and amount of payments it makes to Protected Policyholders in respect of Protected Liabilities and relating to the form of any variation of the assignment of rights and claims provided for by this clause 4.3.1 as the Company may from time to time reasonably request.

4.3.2 Following an assignment pursuant to clause 4.3.1 and without prejudice to the generality of its terms, the Policyholders Protection Board shall have a right to payment by the Company, in accordance with the terms of the Scheme, of all sums subsequently due or payable in respect of the Protected Liability to which the assignment relates or in respect of any other of the rights and claims so assigned, whether those sums are due and payable under the Scheme or under or in respect of the policy to which the Protected Liability relates, and accordingly:

- (a) the Policyholders Protection Board shall (subject to clause 9.2) be admitted as a creditor in respect of such sums on any winding up of the Company; and
- (b) the receipt of the Policyholders Protection Board shall constitute a valid discharge of the Company in respect of such sums;

and so that the Company shall not remain under or incur any liability with respect to any Protected Policyholder by reason of having paid any such sums to the Policyholders Protection Board.

4.3.3 Without prejudice to clause 4.3.1, a Protected Policyholder to whom a payment is made pursuant to clause 4.1 shall do such acts and things and execute such deeds and documents, and in particular such forms of assignment, transfer or assurance, as the Policyholders Protection Board 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 Liability to which such payment relates, or to perfect or evidence the vesting in it of the same. Each Protected Policyholder hereby irrevocably and unconditionally appoints the chairman of the Policyholders Protection Board 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 4.3.3, if such Protected Policyholder fails to comply promptly with his obligations hereunder. Without prejudice to clause 4.3.1, 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 Policyholders Protection Board under that clause upon any payment being made does not for any reason immediately vest fully and effectively in the Policyholders Protection Board, the same shall be held by the Protected Policyholder on trust absolutely for the Policyholders Protection Board until it does so vest (whether pursuant to that clause or the preceding provisions of this clause or otherwise).

4.3.4 Without prejudice to clause 4.3.1, any obligation of the Policyholders Protection Board to make a payment to a Protected Policyholder under clause 4.1 in respect of a Protected Liability shall, if the Policyholders Protection Board so elects, be conditional on there first being assigned to it, in such form as it may request, all such rights and claims as are mentioned in clause 4.3.1(a) to (c) (but as if the references there to Protected Policyholder or to Protected Liability were references to the Protected Policyholder or Protected Liability in respect of whom or which the election is made) or such of those rights and claims as the Policyholders Protection Board may determine. Where any such obligation is so conditional, clause 4.1.2 shall apply as if after clause 4.1.2(e) there were added: “; and (f) the date when the condition imposed under clause 4.3.4 is satisfied”; and the word “and” were deleted from the end of clause 4.1.2(d); and the reference to the later of the dates referred to in clause 4.1.2(a), (b), (d) or (e) were deleted and replaced by a reference to the later of the dates referred to in clause 4.1.2(a), (b), (d), (e) or (f).

4.3.5 Clause 4.3.1 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.

4.3.6 For the avoidance of doubt (and without prejudice to clause 2.6.1), rights and claims to which clause 4.3.1 applies include all rights and claims which a Protected Policyholder may have in respect of a Protected Liability to any payment out of, interest in, or recourse to or otherwise by virtue of, any such letter of credit, trust funds, guarantees, guarantee fund and deposits as are described in sections 5.1, 5.3, 5.4, 5.5 and 5.6 of the Explanatory Statement.

4.4 Information to be provided to the Policyholders Protection Board

- 4.4.1 The Company and the Scheme Administrators shall promptly provide the Policyholders Protection Board with all such information in their respective possession or under their respective control or the control of their respective agents as the Policyholders Protection Board may from time to time request in order to establish whether (or the extent to which) any Established Scheme Liability is a Protected Liability or whether (or the extent to which) a Scheme Creditor is a Protected Policyholder or otherwise for the purpose of enabling or assisting the Policyholders Protection Board to perform its obligations or exercise its rights under the Scheme or to carry out its functions or responsibilities under the Policyholders Protection Act as from time to time in force. The Company or as the case may be the Scheme Administrators shall, so far as it or they are able, authorise and instruct any third party with any such information to disclose it to the Policyholders Protection Board. The Company's and the Scheme Administrators' obligations set out in this clause 4.4.1 shall not extend to any information which the Company or as the case may be the Scheme Administrators are under a legal duty not to disclose, but neither the Company nor the Scheme Administrators shall, without the prior written consent of the Policyholders Protection Board, enter into any agreement or incur any obligation which precludes or restricts disclosure to the Policyholders Protection Board of any such information as is reasonably capable of being the subject matter of a request under this clause 4.4.1.
- 4.4.2 Subject to receiving reasonable notice in any case, the Company shall, for the purpose referred to in clause 4.4.1, permit (and, so far as it is able, authorise and instruct its agents to permit) any person authorised by the Policyholders Protection Board to have access to, and to be provided with copies of, all or any of the books and records of the Company and, in so far as they relate to the Company, of such agents, during normal business hours. Such obligation shall not extend to any such information which the Company or any such agent is under a legal duty not to disclose. The Policyholders Protection Board shall pay the reasonable photocopying costs of providing such copies.
- 4.4.3 Without limitation to clause 4.4.1, the Company shall, as soon as reasonably practicable after payment of any amount to a Scheme Creditor under clause 3.3.1, give notice of such payment to the Policyholders Protection Board to the extent required by the Policyholders Protection Board in order to fulfil its obligations under the Scheme.

4.5 Other provisions applicable to the Policyholders Protection Board

- 4.5.1 References in this part 4 to the Policyholders Protection Board paying or making payment of any sum include references to the Policyholders Protection Board securing the payment of that sum; and references to the securing of payment in sections 9, 13 and 14 of the Policyholders Protection Act, as they apply by virtue of clause 4.2.1 to the obligations of the Policyholders Protection Board under this part 4, shall be construed accordingly.
- 4.5.2 A payment by the Policyholders Protection Board under the Scheme shall not operate to reduce or discharge any liability of the Company or any part of such liability.
- 4.5.3 Without prejudice to any other rights and remedies which the Policyholders Protection Board may have, any person receiving a payment under clause 4.1.1 in respect of a liability who has knowingly provided false, misleading or incomplete information to the Policyholders Protection Board in support of an application for that payment shall be bound on demand to repay to the Policyholders Protection Board all such amounts as have been paid by the Policyholders Protection Board in respect of that liability, together with interest at fifteen per cent per annum (or such higher rate of interest as may be from time to time prescribed pursuant to section 17 of the Judgments Act 1838 (or such other rate as a court of competent jurisdiction may specify for the purpose of this clause 4.5.3)) calculated on a daily basis from the date of payment to the date of repayment.
- 4.5.4 Where, in relation to any policy, the Policyholders Protection Board would be required or entitled under the Policyholders Protection Act to make a payment to any person other than, or instead of, the policyholder, if the Company were in liquidation, the Policyholders Protection Board may similarly perform any obligation to make a payment under the Scheme in relation to that policy and references to a Protected Policyholder shall be construed accordingly.

PART 5 – THE SCHEME ADMINISTRATORS

5.1 Qualification, appointment and resignation

- 5.1.1 A Scheme Administrator shall be an individual qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act. The initial Scheme Administrators shall be Anthony James McMahon and Roger Smith.
- 5.1.2 Subject to clause 6.9.2(b), a Scheme Administrator may resign his appointment at any time by giving not less than six months' notice in writing to the Company and to the Creditors Committee.
- 5.1.3 The Scheme Administrators shall, with effect from the Effective Date, ensure that there is in force in relation to the Company such bond as would have had to be in force if the Company had been wound up in England on such date and they had been appointed its liquidators.

5.2 Power to act jointly or severally

Where more than one person has been appointed as a Scheme Administrator, the functions and powers of the Scheme Administrators under the Scheme may be performed and exercised jointly or severally and any act required to be done by the Scheme Administrators pursuant to the Scheme may be done by all or any one or more of them.

5.3 Functions and powers

5.3.1 The Scheme Administrators shall:

- (a) manage the run-off of the Company's business;
- (b) realise the assets of the Company and apply them for the benefit of Scheme Creditors in accordance with the Scheme; and
- (c) supervise and ensure the carrying out of the Scheme,

and for these purposes shall:

- (i) have power in the name and on behalf of the Company to manage the affairs, business and property of the Company; and
- (ii) without prejudice to the generality of the foregoing, have the powers specified in clause 5.3.3.

5.3.2 Any function of or power conferred on the Company or its officers, whether by statute or by its memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the Scheme Administrators of their functions and powers in relation to the Company shall not be exercisable except with the consent of the Scheme Administrators, which may be given either generally or in relation to particular cases (Provided however that nothing in this clause 5.3.2 shall relieve the Board from its duty to act in accordance with the Companies Act).

5.3.3 Without prejudice to the generality of clause 5.3.1, in carrying out their functions and powers under the Scheme, the Scheme Administrators shall be entitled:

- (a) to agree claims and process reinsurance recoveries as part of the run-off of the Company's business;
- (b) to take possession of, collect and get in all the property and assets (of whatever nature) to which the Company is or appears to be entitled and to do all such things as may be necessary for the realisation of any such property or assets;

- (c) to have full access at all times to all books, papers and other documents of the Company, to receive all such information as they may require in relation to its affairs and to receive notice of and attend all meetings of the Board;
- (d) to do all things which may be necessary or expedient for the protection of the Company's assets or of any assets that appear to belong to the Company;
- (e) to bring or defend any action or other legal proceedings in the name and on behalf of the Company or otherwise;
- (f) to be remunerated in accordance with clause 6.4.5 for the carrying out of such functions and powers and to be reimbursed for all expenses properly incurred by them in connection therewith;
- (g) to employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in connection with the conduct of their functions and powers under the Scheme;
- (h) to give directions to the Board and the shareholders of the Company in relation to the exercise by them of their rights and powers in connection with the Company;
- (i) to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document and to use the Company's seal;
- (j) to borrow and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received by the Company;
- (k) to delegate to any person (being, other than in the case of delegation to the Scheme Conflicts Administrator, a partner in the same firm as a Scheme Administrator) qualified to act as an insolvency practitioner as mentioned in clause 5.1.1 and approved for the time being by the Creditors Committee for the purposes of this clause 5.3.3(k), all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under the Scheme and from time to time to revoke any such delegation (other than in the case of delegation to the Scheme Conflicts Administrator which shall be, subject to the provisions of any such agreement as is referred to in clause 5.5, irrevocable), provided that (other than in the case of delegation to the Scheme Conflicts Administrator) the Scheme Administrators shall be personally responsible for any act or omission of any such delegate to the same extent as if they had expressly authorised it;
- (l) to the extent that the Court has jurisdiction, to apply, or to 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 any provision of the Policyholders Protection Act (as in force at any time) whether as such or as it applies to the obligations of the Policyholders Protection Board under, or as otherwise incorporated into the Scheme, unless the Policyholders Protection Board, in its absolute discretion, consents;
- (m) (subject to the agreement of the Creditors Committee) to propose, where they consider it to be in the interests of Scheme Creditors as a whole, in relation to one or more classes of Scheme Creditor a further scheme of arrangement, with a view either to amending the provisions of the Scheme or to implementing a new scheme of arrangement between the Company and the Scheme Creditors concerned. In the event that any such scheme is proposed in relation to one or more classes of Scheme Creditor which include Protected Policyholders, the implementation of any such scheme will require the agreement of the Policyholders Protection Board;
- (n) to attend meetings of the Creditors Committee (subject to the provisions of clause 6.3.3); and

(o) to do all other things incidental to the exercise of the functions and powers referred to in this clause 5.3.3 and in clause 5.3.1.

5.3.4 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 material to the Scheme, which for the avoidance of doubt shall include, without limitation, the setting of and revisions to a Payment Percentage pursuant to clause 3.2.

5.4 Responsibility and indemnity

5.4.1 In carrying out their functions and exercising their powers under the Scheme, the Scheme Administrators shall act bona fide and with due care and diligence in the interests of Scheme Creditors as a whole and shall use their powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

5.4.2 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 in accordance with, and to implement the provisions of, the Scheme or the exercise by the Scheme Administrators in good faith and with due care of any power conferred upon them for the purposes of the Scheme if exercised in accordance with, and to implement the provisions of, the Scheme and the Scheme Administrators shall not be liable for any loss unless such loss is attributable to their own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee or Delegate other than the Scheme Conflicts Administrator).

5.4.3 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 any Employee in accordance with and to implement the provisions of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no Employee shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty.

5.4.4 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 any Delegate in accordance with and to implement the provisions of the Scheme or the exercise by such Delegate in good faith and with due care of any power conferred upon the Scheme Administrators for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no Delegate shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee).

5.4.5 Subject to the Companies Act, each Scheme Administrator (in his capacity as such) (and each Employee and Delegate) shall be entitled to an indemnity out of the assets of the Company against:

- (a) all actions, claims, proceedings and demands brought or made against such Scheme Administrator (or Employee or Delegate) in respect of any act done or omitted to be done by such Scheme Administrator (or Employee or Delegate) in good faith without negligence, default, breach of duty, breach of trust, fraud or dishonesty in the course of implementing the Scheme in accordance with its terms; and
- (b) all expenses and liabilities properly incurred by such Scheme Administrator (or Employee or Delegate) in carrying out his functions and powers (or the functions for which such Employee is employed by the Scheme Administrators or any Delegate) in the course of implementing the Scheme in accordance with its terms.

5.4.6 Without prejudice to the generality of clause 5.4.5, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which he is entitled to such an indemnity) shall be entitled to an indemnity out of the assets of the Company:

- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of the Company.

5.4.7 The Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase and maintain for any such person as is referred to in clause 5.4.5 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with clauses 5.4.5 and 5.4.6; and
- (b) pay costs incurred by any such person as is referred to in clause 5.4.6 in defending proceedings of the nature described in clause 5.4.6 provided that the Company obtains from a Scheme Administrator an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under clause 5.4.6.

5.5 Procedure for the resolution of conflicts

The Company and the Scheme Administrators may from time to time, and after consultation with the Creditors Committee, enter into such agreement as they consider appropriate to deal with disputes or conflicts that arise or may arise during the course of the Scheme, whether between the Company and the Scheme Administrators or between the Scheme Administrators themselves (in their professional capacity, whether as insolvency practitioners or otherwise, or because a resolution concerning the Scheme Administrators is to be put before a meeting of Scheme Creditors pursuant to clause 6.4.4(a)), which agreement may provide for the delegation in relation to a particular dispute or conflict of the Scheme Administrators' functions, powers, rights, authorities and discretion pursuant to clause 5.3.3(k) to a Scheme Conflicts Administrator to represent one or more of the parties to the dispute or conflict in question.

PART 6 – THE CREDITORS COMMITTEE

6.1 Constitution of the Creditors Committee

- 6.1.1 There shall be a Creditors Committee under the Scheme.
- 6.1.2 The Creditors Committee shall consist of (a) not less than three nor more than seven of the Scheme Creditors (or their Designated Representatives), unless the Scheme Administrators in consultation with the Creditors Committee agree otherwise and (b) the Policyholders Protection Board.
- 6.1.3 Any individual, body corporate or partnership who or which is a Scheme Creditor shall be eligible for appointment as a member of the Creditors Committee. If a partnership is appointed as a member, the appointment shall be treated as though the partnership were a body corporate and no person shall be entitled to act as a member of the Creditors Committee on behalf of (or by reason of being a partner in) such partnership except a person appointed by such partnership to represent it in accordance with clause 6.1.6 or a person appointed as the alternate of such person in accordance with that clause.
- 6.1.4 Any body corporate or partnership (which may be but need not be a Scheme Creditor) designated by notice in writing to the Creditors Committee by any two or more Scheme Creditors to act as a member of the Creditors Committee as their Designated Representative shall be eligible for appointment as a member of the Creditors Committee.
- 6.1.5 The Policyholders Protection Board shall be entitled to appoint one person to represent it on the Creditors Committee and may from time to time remove such representative and appoint another person in his place by written notice to the Creditors Committee signed by the chairman of the Policyholders Protection Board. The chairman of the Policyholders Protection Board or such representative shall be entitled to appoint any person as an alternate to such representative to attend and vote at any meeting of the Creditors Committee in his place, or to revoke such appointment, by way of written notice to the Creditors Committee. Any such alternate shall have the same powers and be subject to the same duties and limitations as such representative.
- 6.1.6 Each member of the Creditors Committee which is a body corporate (other than the Policyholders Protection Board) or a partnership may, by notice in writing to the Creditors Committee, appoint a director, senior executive, partner or professional adviser as its Nominated Representative to represent that member at meetings of the Creditors Committee. Each Nominated Representative may, by notice in writing to the Creditors Committee, appoint any person qualified to act as a Nominated Representative as his alternate to attend and vote at any meeting of the Creditors Committee in his place. Any such alternate shall have the powers and shall be subject to the same duties and limitations as the Nominated Representative who has appointed him. Any person entitled to appoint a Nominated Representative or an alternate may from time to time revoke that appointment and appoint another person qualified to act as a Nominated Representative as a replacement by notice in writing to the Creditors Committee.

6.2 Membership of the Creditors Committee

- 6.2.1 The initial Creditors Committee shall consist of (a) the Policyholders Protection Board and (b) those persons established as members of the initial Creditors Committee in accordance with the procedure set out in appendix 1.
- 6.2.2 If, in accordance with the procedure set out in appendix 1, a vote is required on the initial Creditors Committee, the Informal Creditors Committee and the Policyholders Protection Board shall be the interim Creditors Committee and the provisions of clauses 3.2 and 6.4.4 shall be suspended until the result of the vote on the initial Creditors Committee is ascertained and the initial Creditors Committee is constituted.

- 6.2.3 The Creditors Committee may with the agreement of the Scheme Administrators resolve, by at least two-thirds of the members present, to appoint any eligible person to be a member, either to fill a vacancy or as an additional member, subject to (a) the maximum number of members provided for in clause 6.1.2 and (b) a resolution requiring ratification of such appointment being put before the next meeting of the Scheme Creditors, pending which the appointee shall have full power to act as a member of the Creditors Committee.
- 6.2.4 The Creditors Committee may with the agreement of the Scheme Administrators resolve, by at least two-thirds of the members present, to remove any member of the Creditors Committee (other than the Policyholders Protection Board) from office, subject to (a) the minimum number of members provided for in clause 6.1.2 and (b) a resolution requiring ratification of such removal being put before the next meeting of the Scheme Creditors, pending which the power of the removed member of the Creditors Committee to act as a member of the Creditors Committee shall be suspended.
- 6.2.5 An individual shall cease to be a member of the Creditors Committee upon the occurrence of any of the following events:
- (a) if he ceases to be, or is found never to have been, a Scheme Creditor;
 - (b) if he resigns by notice in writing addressed to the Creditors Committee;
 - (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales;
 - (d) if he fails to attend three consecutive meetings of the Creditors Committee and the Creditors Committee resolves, by a majority of two-thirds of the members present, that he be removed; or
 - (e) if he is removed from office pursuant to clause 6.2.4.
- 6.2.6 A body corporate (other than the Policyholders Protection Board) or partnership shall cease to be a member of the Creditors Committee upon the occurrence of any of the following events:
- (a) (other than in the case of a member which is a Designated Representative) if it ceases to be, or is found never to have been, a Scheme Creditor;
 - (b) if it is a Designated Representative of two or more Scheme Creditors, if it ceases to represent at least two Scheme Creditors as a result of persons it represents ceasing to be, or being found never to have been, Scheme Creditors and/or as a result of persons it represents notifying the Creditors Committee in writing that such member has ceased to be their Designated Representative;
 - (c) if it resigns by notice in writing addressed to the Creditors Committee;
 - (d) if it is dissolved;
 - (e) if it fails to attend (by its duly appointed Nominated Representative or his alternate) three consecutive meetings of the Creditors Committee and the Creditors Committee resolves, by a majority of two-thirds of the members present, that it be removed; or
 - (f) if it is removed from office pursuant to clause 6.2.4.
- 6.2.7 The Policyholders Protection Board shall cease to be a member of the Creditors Committee if it resigns by notice in writing to the Creditors Committee signed by its representative or by its chairman.
- 6.2.8 The appointment of a Nominated Representative or his alternate shall terminate automatically upon the occurrence of any of the following events:

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- (a) if the person whom that Nominated Representative or alternate represents ceases to be a member of the Creditors Committee;
 - (b) if he ceases to be a director, senior executive, partner or a professional adviser to the member of the Creditors Committee whom he represents;
 - (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales;
 - (d) in the case of an alternate, upon termination of the appointment of the Nominated Representative who appointed him;
 - (e) if his appointment is revoked by his appointor; or
 - (f) if the Creditors Committee resolves, by a majority of two-thirds of all the members of the Creditors Committee for the time being (excluding the member who has appointed such Nominated Representative or whose Nominated Representative has appointed such alternate), that such appointment shall terminate.

6.2.9 Whenever there is a proposed change in the composition of the Creditors Committee, the Creditors Committee in consultation with the Scheme Administrators shall endeavour to ensure that the composition of the Creditors Committee is such as to secure a proper balance of the interests of the Scheme Creditors in relation to the Company as between the members of the Creditors Committee.

6.3 Proceedings

6.3.1 Save as otherwise specifically provided in the Scheme, the Creditors Committee may convene, adjourn and otherwise regulate its meetings in such manner as it shall consider appropriate. The quorum at any meeting of the Creditors Committee shall be at least two-thirds of the members, provided that if a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be determined by the majority of the members present and the members present at any such adjourned meeting shall constitute a quorum. Each member of the Creditors Committee shall have one vote and, except as otherwise provided in the Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting.

6.3.2 The Creditors Committee shall meet once in each calendar year for the purpose of receiving a report from the Scheme Administrators on the progress of the Scheme. The Creditors Committee shall hold such further meetings as it shall consider desirable for the purpose of performing its functions under the Scheme. A meeting of the Creditors Committee shall be called as soon as reasonably practicable if so requested by at least three members of the Creditors Committee or if the Scheme Administrators otherwise consider it appropriate. Except with the consent of all members of the Creditors Committee and the Scheme Administrators, no meeting of the Creditors Committee may be called upon less than fourteen clear days' notice and, except with the consent of all members of the Creditors Committee, no business may be transacted at any such meeting other than that set out in the notice of that meeting.

6.3.3 Each member of the Creditors Committee and the Scheme Administrators (or their representative) shall be entitled to receive notice of all meetings of the Creditors Committee. The Scheme Administrators shall be entitled to attend and speak, but not to vote, at all meetings of the Creditors Committee. If so requested by the Creditors Committee, a Scheme Administrator (or his representative) shall absent himself from such part of a meeting of the Creditors Committee as the Creditors Committee may specify.

6.3.4 Proper minutes shall be kept of all proceedings of the Creditors Committee and such minutes shall at all reasonable times be open to inspection by (subject to clause 6.5.2) any member of the Creditors

Committee. Copies of such minutes shall be sent as soon as practicable after their preparation to the Scheme Administrators.

6.3.5 A member of the Creditors Committee and a Scheme Administrator may participate in a meeting of the Creditors Committee through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person participating in this way is deemed to be present in person at the meeting and, in the case of a member of the Creditors Committee, is counted in a quorum and entitled to vote. All business transacted in this way by the Creditors Committee is deemed to be validly and effectively transacted at a meeting of the Creditors Committee although fewer than two-thirds of the members of the Creditors Committee are physically present at the same place.

6.3.6 Other than in relation to such a resolution as is referred to in clause 6.4.4(a), a resolution in writing signed by all members of the Creditors Committee for the time being (or their Nominated Representatives (or in the case of the Policyholders Protection Board its representative)) shall be as valid and effective as if passed at a meeting of the Creditors Committee duly convened and held.

6.4 Functions

6.4.1 Without prejudice to the specific provisions of this clause 6.4, the Creditors Committee shall monitor the carrying out of the Scheme and supervise the Scheme Administrators in the exercise of their functions under the Scheme.

6.4.2 Before each meeting of Scheme Creditors convened pursuant to clause 8.1.1(a), the Scheme Administrators shall submit to the Creditors Committee a report on the conduct of the affairs of the Company and the operation of the Scheme during the period since the last such report was prepared (or, in the case of the first such meeting, since the Effective Date) and shall (or shall appoint a representative to) attend at any meeting of the Creditors Committee at which that report is considered for the purpose of giving such explanations and information as the Creditors Committee may require. A copy of that report, incorporating such amendments (if any) as may be agreed by the Scheme Administrators and the Creditors Committee, shall be made available to Scheme Creditors in accordance with clauses 8.1.2 and 8.1.3.

6.4.3 The Creditors Committee may from time to time resolve what information it is desirable to seek from the Scheme Administrators concerning the affairs of the Company or the operation of the Scheme, and may depute any one member of the Creditors Committee to apply in writing to and receive from the Scheme Administrators all such information. The Scheme Administrators shall promptly give to the Creditors Committee all such information concerning the affairs of the Company or the operation of the Scheme as the Creditors Committee shall from time to time resolve to seek and in respect of which a written request shall have been received by the Scheme Administrators. Each member of the Creditors Committee shall be entitled at any time to raise questions or to request a meeting with the Scheme Administrators in connection with the performance of his responsibilities as a member of the Creditors Committee and, subject to their duties under the Scheme, the Scheme Administrators shall use reasonable endeavours to respond to such questions or to comply with any such request for a meeting. Notwithstanding the preceding provisions of this clause 6.4.3, the Scheme Administrators shall not be obliged to disclose any confidential information of the Company to a member of the Creditors Committee if the information relates to any matter where such member (and, where such member is a Designated Representative, its appointors) has an interest in conflict with the Company (other than a general conflict arising as a result of the status of the members of the Creditors Committee (or appointors) as creditors of the Company).

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6.4.4 The Creditors Committee shall be entitled:

- (a) by a resolution passed by at least three-quarters of all of the members of the Creditors Committee for the time being at any time to call upon a Scheme Administrator to resign, provided that such Scheme Administrator has been given at least twenty-eight days' notice of the proposed resolution and of the reasons why the resolution is to be put to the Creditors Committee and has been given a reasonable opportunity to make representations at the meeting at which the resolution is proposed (and if such Scheme Administrator declines to resign a resolution requiring his removal shall be put before the next meeting of Scheme Creditors); and
- (b) upon removal of a Scheme Administrator or if a Scheme Administrator ceases to hold office for any other reason, to appoint any person qualified to act under clause 5.1.1 to be a Scheme Administrator in his place (and a resolution requiring ratification of such appointment shall be put before the next meeting of Scheme Creditors pending which the appointee shall have full power to act as a Scheme Administrator) save that if a resolution is passed at a meeting of Scheme Creditors requiring the removal of a Scheme Administrator pursuant to clause 6.4.4(a) such appointment may be made by the Scheme Creditors at such meeting.

6.4.5 The Creditors Committee shall consider and, if thought fit, approve (such approval not to be unreasonably withheld or delayed), on behalf of the Company, the level and payment of the fees and expenses of the Scheme Administrators from time to time (and so that such function may, with the prior written consent of the Scheme Administrators, be delegated to one or more members of the Creditors Committee).

6.4.6 The Creditors Committee shall, so far as it is able, ensure that there is a Scheme Administrator in office at all times.

6.5 Duties

6.5.1 Each member of the Creditors Committee, each Nominated Representative, the representative of the Policyholders Protection Board and their respective alternates shall, in performing their functions as such in relation to the Company, act bona fide in the interests of the Scheme Creditors as a whole.

6.5.2 It shall be the duty of each member of the Creditors Committee who is in any way, whether directly or indirectly, interested or, where such member is a Designated Representative, any of whose appointors is, whether directly or indirectly, interested in a contract or proposed contract with the Company (other than any which arises as a result of the provisions of the Scheme) to declare (or procure that its Nominated Representative shall declare) the nature of his, its or such appointor's interest at a meeting of the Creditors Committee. For this purpose a general notice given to the Creditors Committee to the effect that a member or an appointor of a Designated Representative is associated (within the meaning of section 435 of the Insolvency Act) with a specified company or firm and is to be regarded as interested in any contract with that company or firm is deemed a sufficient declaration of interest in relation to any such contract. Such a member of the Creditors Committee shall not be counted in the quorum, shall not be entitled to vote in relation to any matter relating specifically to any such contract, shall retire from the meeting for so long as the 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.

6.5.3 Each Nominated Representative shall be entitled to report to the member appointing him, and each Designated Representative shall be entitled to report to the Scheme Creditors appointing it, on the proceedings of the Creditors Committee and, so far as necessary for that purpose, to disclose confidential information of the Company to those officers, employees and professional advisers of that member or appointor who need to know it in connection with (where a Nominated Representative is disclosing information) the performance of its responsibilities as a member of the Creditors Committee or (where a Designated Representative is disclosing information) the performance of the Designated Representative's responsibilities as a member of the

Creditors Committee, provided that such information does not to his or its knowledge (after due enquiry) relate to any matter where any such appointor has an interest in conflict with the Company (other than a general conflict arising as the result of the status of the members of the Creditors Committee or the appointors of a Designated Representative as creditors of the Scheme Company). Each member of the Creditors Committee other than the Policyholders Protection Board shall, and shall procure that its Nominated Representative and its officers, employees and professional advisers shall, and where such member is a Designated Representative shall procure that its appointors and their officers, employees and professional advisers shall, preserve the confidentiality of such information and shall use such information only for the purposes of their performing their responsibilities and functions (or their Designated Representative's responsibilities and functions) in relation to the Creditors Committee.

6.5.4 Each representative of the Policyholders Protection Board shall be entitled to report to the Policyholders Protection Board on the proceedings of the Creditors Committee and, so far as necessary for that purpose, to disclose confidential information of the Company to the members of the Policyholders Protection Board, provided that such information does not to his knowledge (after due enquiry) relate to any matter where the Policyholders Protection Board has an interest in conflict with the Company (other than a general conflict arising as a result of the status of the Policyholders Protection Board as a creditor of the Company). Without prejudice to clauses 4.4.1 and 4.4.2, the Policyholders Protection Board shall, and shall procure that its representative and the individual members of the Policyholders Protection Board shall, preserve the confidentiality of such information and shall use such information only for the purposes of performing its responsibilities and functions in relation to the Creditors Committee.

6.6 Responsibilities and indemnity

6.6.1 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 any member of the Creditors Committee (or Nominated Representative, representative of the Policyholders Protection Board or alternate) in accordance with and to implement the provisions of the Scheme or the exercise by any such person in good faith and with due care of any power conferred upon it or him for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no such person shall be liable for any loss unless such loss is attributable to its or his own wilful default, fraud, dishonesty or wilful breach of duty or trust.

6.6.2 Subject to the Companies Act, each member of the Creditors Committee (and each Nominated Representative, representative of the Policyholders Protection Board and alternate) (in each case in their capacity as such) shall be entitled to an indemnity out of the assets of the Company against all actions, claims, proceedings and demands brought or made against it or him in respect of any act done or omitted to be done in relation to the Company in good faith and with due care by such person in the course of implementing the Scheme in accordance with its terms.

6.6.3 Without prejudice to the generality of clause 6.6.2, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which it or he is entitled to such an indemnity) shall be entitled to an indemnity out of the assets of the Company:

- (a) against any liability incurred by it or him in defending any proceedings, whether civil or criminal, in respect of any wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the Company in which judgment is given in its or his favour or in which it or he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to it or him by a court from liability for wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the affairs of the Company.

6.6.4 The Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):

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- (a) purchase and maintain for any such person as is referred to in clause 6.6.2 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with clauses 6.6.2 and 6.6.3; and
 - (b) pay costs incurred by any such person as is referred to in clause 6.6.2 in defending any actions, claims, proceedings and demands of the nature described in clauses 6.6.2 and 6.6.3 which relate to the Company provided that the Company obtains from such person (or, where such person is a Nominated Representative, representative of the Policyholders Protection Board or an alternate, the member of the Creditors Committee which such person represents) an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under those clauses.

6.7 Validation of acts

All acts done by the Creditors Committee or any meeting of the Creditors Committee or any person acting as a member of the Creditors Committee or as a Nominated Representative or alternate shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a member of the Creditors Committee or person acting as aforesaid, or that any of them were disqualified, be valid as if every such person had been duly appointed and qualified.

6.8 Expenses

Each member of the Creditors Committee, each Nominated Representative, the representative of the Policyholders Protection Board and their respective alternates shall be entitled to be reimbursed by the Company for their reasonable expenses of attending meetings of the Creditors Committee, provided that such meetings are held in London or New York or in such other place as the Scheme Administrators may from time to time agree.

6.9 No Creditors Committee

- 6.9.1 If at any time there are less than three members of the Creditors Committee then the Creditors Committee may continue to exercise all its functions under the Scheme (other than those provided for in clauses 6.4.4(a), 8.1.1(b) and 9.1.1(a) and 9.1.1(e)) for a period of twenty-eight days, during which time the remaining members of the Creditors Committee shall endeavour to fill the vacancies on the Creditors Committee. If they shall fail to do so within such period of twenty-eight days, the Scheme Administrators shall, within a further fourteen days, appoint such additional Scheme Creditors (Interim Appointees) as are required to fill such vacancies. In appointing any such Interim Appointees, the Scheme Administrators shall endeavour to ensure that the composition of the Creditors Committee including such Interim Appointees is such as to secure a proper balance of the interests of the Scheme Creditors as between themselves in relation to the Company. In the event of such vacancies being filled, whether by appointees of the Creditors Committee or by Interim Appointees, the full powers and functions of the Creditors Committee under the Scheme will be restored, provided that no Interim Appointee shall be entitled to vote in relation to any resolution to appoint an additional member of the Creditors Committee. Any Interim Appointee will be liable to be removed as a member of the Creditors Committee at any time without notice if the Creditors Committee (excluding any Interim Appointees) appoints a Scheme Creditor to fill the vacancy which had been filled by such Interim Appointee (and the members of the Creditors Committee (excluding any Interim Appointees) shall use their reasonable endeavours to fill any such vacancy accordingly as soon as possible).

6.9.2 If, following the procedure set out in clause 6.9.1, there are less than three members of the Creditors Committee (including Interim Appointees appointed under clause 6.9.1) then, for so long as that is the case, the Creditors Committee shall not exercise any functions or have any powers under the Scheme and the following provisions shall apply:

- (a) the Scheme Administrators shall use all reasonable endeavours to find additional members of the Creditors Committee to enable it to function;
- (b) a Scheme Administrator may resign under clause 5.1.2, and a new Scheme Administrator may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by the Scheme Administrators;
- (c) a Scheme Administrator may be removed, and a new Scheme Administrator may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by the Scheme Administrators or any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any fifty Scheme Creditors;
- (d) the remuneration of the Scheme Administrators shall be payable at the same rate at which it had last been set by the Creditors Committee unless and until varied by the Scheme Creditors; and
- (e) the requirements for obtaining the consent, approval or agreement of and for consulting with or notifying the Creditors Committee contained in clauses 1.1.1, ~~3.2.73-2.8~~, 5.1.2, 5.3.3(k), 5.3.4, 5.4.7, 5.5, 6.6.4, 7.1.9, 7.2.3, 7.2.5, 8.1.1(a), 8.6.1, 9.1.1(a), ~~and 9.1.1(e)~~, the Special Resolution and for submitting a report to the Creditors Committee pursuant to clause 6.4.2 shall be suspended.

PART 7 – THE BOARD AND THE SHAREHOLDERS OF THE COMPANY

7.1 The Board

- 7.1.1 The Board shall consist of such directors as shall have been nominated from time to time by the Scheme Administrators.
- 7.1.2 The Scheme Administrators shall ensure that the composition of the Board complies with the Companies Act.
- 7.1.3 The Trustee shall when called upon to do so by the Scheme Administrators, forthwith take such steps as lie within its power to appoint or remove (as the Scheme Administrators may direct) any director of the Company who has been nominated (or is to be treated as having been nominated) by the Scheme Administrators.
- 7.1.4 The initial members of the Board shall be the persons whose names are set out in clause 1.3.6.
- 7.1.5 The powers of the Board shall be restricted in the manner described in clause 5.3.2.
- 7.1.6 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 any member of the Board in accordance with and to implement the provisions of the Scheme or the exercise by any such person in good faith and with due care of any power conferred upon him for the purposes of the Scheme if exercised in accordance with and to implement those provisions and no such person shall be liable for any loss unless such loss is attributable to his negligence, default, breach of duty or breach of trust.
- 7.1.7 Subject to the Companies Act, each director (in his capacity as such) shall be entitled to an indemnity out of the assets of the Company against:
- (a) all actions, claims, proceedings and demands brought or made against him in respect of any act done or omitted to be done in good faith without negligence, default, breach of duty, breach of trust, fraud or dishonesty by such director in the course of implementing the Scheme in accordance with its terms; and
 - (b) all expenses and liabilities properly incurred by such director in carrying out his functions in the course of implementing the Scheme in accordance with its terms.
- 7.1.8 Without prejudice to the generality of clause 7.1.7, each director (in his capacity as such) shall be entitled to an indemnity out of the assets of the Company:
- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his favour or in which he is acquitted; or
 - (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of the Company.
- 7.1.9 The Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):
- (a) purchase and maintain for any director insurance against any liability in respect of which the Company would be obliged to indemnify him in accordance with clause 7.1.8; and
 - (b) pay costs incurred by a director in defending proceedings of the nature described in clause 7.1.8 which relate to the Company provided that the Company obtains from the director an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under clause 7.1.8.

7.2 The shareholders

7.2.1 Forthwith upon the Scheme becoming effective, the Company will enter into the Trust Deed.

7.2.2 Subject to the terms and provisions of the Trust Deed and subject to clauses 7.2.3, 7.2.4 and 7.2.5, the Trustee:

- (a) upon being called upon to do so, shall take such steps as lie within its power to exercise or to have exercised on its behalf all rights and powers to which it or any nominee is entitled in relation to the shares in the Company (including, without limitation, rights and powers to appoint and dismiss directors, to vote at general meetings and to present a petition asking for an order that the Company be wound up by the court) as the Scheme Administrators may direct; and
- (b) shall not exercise any of such rights and powers to which it is entitled, and shall direct any nominee not to exercise on its behalf such rights and powers, except at the direction of the Scheme Administrators.

7.2.3 Save with the consent of the Scheme Administrators and the Creditors Committee and (if and whilst each of them is a beneficiary under the Trust Deed) of English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration), the Trustee shall not sell, transfer or otherwise dispose of, encumber or create any interest in or deal with any of the shares in the Company.

7.2.4 If either:

- (a) the Scheme Administrators give notice in accordance with clause 9.1.1(e); or
- (b) a resolution is passed by the Scheme Creditors of the Company in accordance with clause 9.1.1(f),

the Trustee shall (subject to the terms and provisions of the Trust Deed) forthwith take such steps as lie within its power to place the Company in voluntary liquidation pursuant to section 84 of the Insolvency Act.

7.2.5 The Trustee shall, until termination of the Scheme, in relation to shares in the Company which it holds ensure, and in relation to shares in the Company held on its behalf by a nominee direct the nominee to ensure, that no resolution for the voluntary winding up of the Company shall be passed without the prior written consent of, save for the purposes of complying with clause 7.2.4, the Creditors Committee and (if and whilst each of them is a beneficiary under the Trust Deed) of English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration).

PART 8 – MEETINGS OF SCHEME CREDITORS

8.1 Convening of meetings

8.1.1 Meetings of Scheme Creditors are to be convened as follows:

- (a) The Scheme Administrators shall convene a meeting of the Scheme Creditors at least once in every year, the first such meeting being held in 1995 and thereafter not more than fifteen months elapsing between one meeting and the next, unless the Scheme Administrators and the Creditors Committee agree that any such meeting should not be held.
- (b) The Creditors Committee may at any time convene a meeting of the Scheme Creditors to consider a resolution:
 - (i) for the removal of a Scheme Administrator pursuant to clause 6.4.4(a);
 - (ii) for the appointment of a Scheme Administrator pursuant to clause 6.4.4(b); or
 - (iii) for such other purpose as it thinks fit.
- (c) The Scheme Administrators may at any time convene a meeting of the Scheme Creditors for such purpose as they think fit.
- (d) Any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any fifty Scheme Creditors may by notice in writing signed by them or on their behalf and deposited at the registered office of the Company require the Scheme Administrators to convene a meeting of Scheme Creditors for such purpose as they think fit. The notice must specify the purpose for which the meeting is required and it shall be the duty of the Scheme Administrators forthwith to summon a meeting of Scheme Creditors for that purpose and to give such notice of the meeting as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme. The Policyholders Protection Board shall, for the purposes of convening a meeting of Scheme Creditors, be counted as a separate Scheme Creditor in respect of each Established Scheme Liability assigned to it (provided that where more than one Established Scheme Liability has been assigned to it by the same Protected Policyholder, such Established Scheme Liabilities shall be counted as one for such purposes).

8.1.2 There shall be laid before each meeting of Scheme Creditors convened pursuant to clause 8.1.1(a) the report referred to in clause 6.4.2 unless the Scheme Administrators and the Creditors Committee agree that any such meeting should not be held, in which case a copy of the report referred to in clause 6.4.2 shall be sent to Scheme Creditors free of charge.

8.1.3 At least twenty-eight days' notice shall be given of a meeting of Scheme Creditors. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall (in the case of a meeting convened pursuant to clause 8.1.1(a)) specify the place and time of the meeting and the place from which a copy of the report referred to in clause 6.4.2 can be obtained by Scheme Creditors free of charge prior to the meeting.

8.1.4 Notice of a meeting of Scheme Creditors shall be given:

- (a) to each Scheme Creditor to whom the Company owes an Established Scheme Liability, and to any other Scheme Creditor who has applied in writing to the Company to receive notice of such meeting, by sending notice by pre-paid post to such Scheme Creditor at his last known address; and
- (b) to all other Scheme Creditors by placing advertisements containing the requisite information in such newspaper or newspapers as the Scheme Administrators shall consider appropriate.

Any such notice shall be deemed to have been served on the date on which it is posted or, as the case may be, the latest date on which the advertisement appears.

- 8.1.5 The accidental omission to give notice of a meeting of Scheme Creditors to, or the non-receipt of a notice of such a meeting by, any Scheme Creditor entitled to receive notice shall not invalidate the proceedings at that meeting.

8.2 Resolutions

- 8.2.1 If a meeting of Scheme Creditors is convened at a time when a resolution is to be put to the next meeting of Scheme Creditors pursuant to clauses 6.2.3, 6.2.4 or 6.4.4(a), the business of the meeting shall include the resolution concerned, and in the case of a resolution to remove a Scheme Administrator pursuant to clause 6.4.4(a) which, if passed, would result in there being no Scheme Administrators in office, shall also include a resolution that a named person qualified to act under clause 5.1.1, and willing to be appointed, be appointed as a Scheme Administrator in his place.
- 8.2.2 No meeting shall be convened unless the notice of the meeting sets out the text of each resolution, or an adequate summary thereof, which is to be proposed at the meeting (or if no resolution is to be proposed at the meeting, the nature of the business to be discussed thereat) and (in the case of a notice which is sent by post) is accompanied by a letter explaining (in relation to each such resolution) why the meeting is being convened.

8.3 Voting

- 8.3.1 A resolution put to a meeting of Scheme Creditors shall be effective only if it is approved by a majority in number representing at least twenty-six Scheme Creditors and three-quarters in value of the Scheme Creditors present and voting either in person or by proxy at the meeting.
- 8.3.2 Every Scheme Creditor entitled to vote shall have the right to appoint any person as his proxy to attend and vote instead of him. The instrument appointing a proxy may be in any form which the Scheme Administrators may approve and must be lodged at the place specified in the notice of meeting for the lodging of proxies not less than forty-eight hours before the meeting (or adjourned meeting) at which it is to be used.
- 8.3.3 No business shall be transacted at any meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Fifty Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum, unless the Scheme Administrators and the Creditors Committee agree a smaller number. All resolutions put to the vote of any meeting shall be decided on a poll (rather than on a show of hands). The Policyholders Protection Board shall, for the purposes of calculating whether a quorum is present and for voting on a resolution of Scheme Creditors, be counted as a separate Scheme Creditor in respect of each Established Scheme Liability assigned to it (provided that where more than one Established Scheme Liability has been assigned to it by the same Protected Policyholder, such Established Scheme Liabilities shall be counted as one for such purposes).
- 8.3.4 A Scheme Administrator shall preside (or shall nominate a representative to preside) at each meeting of the Scheme Creditors (other than at a meeting at which a resolution to remove a Scheme Administrator is proposed, when the Scheme Conflicts Administrator shall preside), but if a Scheme Administrator (or his nominated representative) or, if relevant, the Scheme Conflicts Administrator is not present within thirty minutes after the time appointed for opening the meeting or is unwilling to preside, the Scheme Creditors present in person or by proxy shall choose some member of the Creditors Committee, or, if no such member is present or if all such members present decline to preside, one of themselves, to be chairman of the meeting. If no person is willing to preside as chairman of the meeting, the meeting shall be adjourned for seven days, and, if no person is willing to preside as chairman of the adjourned meeting, the meeting shall be dissolved.

8.4 Separate meetings

8.4.1 The Creditors Committee or the Scheme Administrators may at any time convene separate meetings of the Scheme Creditors who are Protected Policyholders, Scheme Creditors who are 3 July 1980 – 6 October 1983 ILU Policyholders and Scheme Creditors who are General Scheme Creditors for the purpose of considering a resolution that the Scheme be terminated and that the Company be wound up. Any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any fifty Scheme Creditors may also by notice in writing signed by them or on their behalf and deposited at the registered office of the Company require the Scheme Administrators to convene such separate meetings of Scheme Creditors for such purpose. It shall be the duty of the Scheme Administrators forthwith to summon such separate meetings of Scheme Creditors for such purpose and to give such notice of the meetings as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme.

8.4.2 To every such separate meeting the provisions of clauses 8.1.3, 8.1.4, 8.1.5, 8.2.2 and 8.3 shall apply (*mutatis mutandis*) but so that the resolution shall only be effective if:

- (a) it is approved by a majority in number representing at least twenty six Scheme Creditors who are Protected Policyholders and three-quarters in value of the Scheme Creditors with Scheme Claims who are Protected Policyholders present and voting either in person or by proxy at the separate meeting (applying, for the avoidance of doubt, the last sentence of clause 8.3.3);
- (b) it is approved by a majority in number representing at least twenty six Scheme Creditors who are 3 July 1980 – 6 October 1983 ILU Policyholders and three-quarters in value of the Scheme Creditors with Scheme Claims who are 3 July 1980 – 6 October 1983 ILU Policyholders present and voting either in person or by proxy at the separate meeting; and
- (c) it is approved by a majority in number representing at least twenty six General Scheme Creditors and three-quarters in value of General Scheme Creditors present and voting either in person or by proxy at the separate meeting.

8.5 Valuation of Scheme Claims for the purposes of meetings

8.5.1 For the purposes of valuing any Scheme Claim for any of the purposes referred to in clauses 8.1.1 (d), 8.3.1 and 8.4.2, the value of the Scheme Claim shall, in the case of a Scheme Claim which has become an Established Scheme Liability, be the amount of the liability so established (less the amount of any payments paid, or treated as having been paid, by the Company under the Scheme in respect thereof), and, in the case of any other Scheme Claim, be such amount as may, for the purposes of such meeting only, be estimated as the value of such Scheme Claim by the Scheme Administrators.

8.5.2 In the event that a Scheme Creditor disputes the value which has been put on its Scheme Claim pursuant to clause 8.5.1 or otherwise the amount for which its vote should be counted, the dispute shall be referred to the president for the time being of the Society of Practitioners of Insolvency (or, if a Scheme Administrator or the Scheme Conflicts Administrator or any of their partners at such time occupies such office, the president at that time of the Institute of Chartered Accountants in England and Wales or, if a Scheme Administrator or the Scheme Conflicts Administrator or any of their partners at such time occupies both such offices, the president of the Law Society of England and Wales), or such other individual qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act as he may nominate who shall consult with such relevant experts as he thinks appropriate and who shall act as an expert not an arbitrator and whose decision (including as to who should bear the costs of such referral) shall be final (but only as regards the convening of the meeting or the vote on that occasion).

8.5.3 For the purposes of ascertaining whether or not the requisite percentage for the convening of any meeting of Scheme Creditors or the requisite majority at any meeting of Scheme Creditors has been

obtained, the amount of each Scheme Claim which is denominated in a currency other than US dollars shall be converted into US dollars at the rate of exchange published in the *Financial Times* for the purchase of US dollars with such currency at close of business (London time) on the last business day preceding the date for which the meeting has been convened, or, in the case of an adjourned meeting, the date to which the meeting has been adjourned (or, if no such rate is published in the *Financial Times* on that date, the mid-market rate for US dollars on such date quoted by Lloyds TSB Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators).

8.6 **Special Meetings**

8.6.1 At any time, and subject as set out below, the Scheme Administrators may, with the agreement of the Creditors Committee, convene a Special Meeting of the Scheme Creditors.

8.6.2 The Scheme Administrators shall give notice of a Special Meeting in accordance with the provisions of clause 8.1.

8.6.3 Clauses 8.1.5, 8.3, 8.4 and 8.5 shall apply *mutatis mutandis* to a Special Meeting.

8.6.4 The provisions of a Special Resolution shall take effect forthwith upon its being duly passed in accordance with the provisions of the Scheme.

RESOLVED
SIGNED
CHAIRMAN

PART 9 – TERMINATION OF THE SCHEME

9.1 Termination Events

9.1.1 Subject to clauses 7.2.4 and 9.2 (which shall survive such termination), the Scheme shall terminate if:

- (a) over the period of five years from the Effective Date the aggregate payment made by the Company in respect of Established Scheme Liabilities is less than would have been made if the Payment Percentage had been set at the Effective Date and maintained for five years thereafter at a level of five per cent (unless prior to the expiration of the said period:
 - (i) the Scheme Administrators shall have agreed otherwise and given written notice of such agreement to the Company; and
 - (ii) the Creditors Committee shall have agreed otherwise by a resolution passed by a majority which includes the Policyholders Protection Board); or
- (b) all the liabilities of the Company (including liabilities arising pursuant to clause 3.3.2) have been discharged in full; or
- (c) the Company is wound up by order of the Court; or
- (d) there is an order made by the Court appointing an administrator in relation to the Company and the Policyholders Protection Board consents to the termination of the Scheme; or
- (e) the Scheme Administrators, with the agreement of the Creditors Committee, give notice in writing to the Company at its registered office that, after due enquiry, they have concluded that the Scheme is no longer in the interests of the Scheme Creditors and that the Company should be wound up (provided that, in reaching such conclusion, no account shall be taken of changes in currency exchange rates after the Record Date); or
- (f) a resolution that the Scheme should be terminated and that the Company should be wound up is passed at a meeting of the Scheme Creditors; or
- (g) the Company goes into liquidation by reason of a resolution of its members passed in accordance with section 84 of the Insolvency Act.

9.1.2 If the Scheme terminates the following provisions shall apply:

- (a) termination of the Scheme shall be without prejudice to any right or obligation which shall have arisen under the Scheme as a result of any act or omission which took place prior to the termination of the Scheme including, without limitation:
 - (i) any right to an indemnity out of the assets of the Company as a result of an act or omission which took place, or as a result of liabilities or expenses which were incurred, prior to the termination of the Scheme; and
 - (ii) any rights of the Policyholders Protection Board arising by reason of clauses 4.3.1, 4.3.2, 4.3.3 and 4.3.4 and the provisions of this clause and clauses 4.2.5A and 4.5.3 together with the provisions of paragraph 8 of the Special Resolution shall continue in full force and effect and the obligations of the Policyholders Protection Board under the Scheme shall cease; and
- (b) as soon as practicable following termination, the Scheme Administrators shall cause notices stating that the Scheme has terminated to be placed in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks following such termination.

9.2 Effect of winding up

If the Company is wound up the following provisions shall apply:

- (a) the assets of the Company shall be applied in discharge of:
 - (i) all its liabilities that are given preference in its winding up by virtue of the statute pursuant to which the winding up is conducted;
 - (ii) all liabilities proved in its winding up in respect of all claims against it (which shall include, without limitation, Pre-Scheme Costs and Scheme Costs) other than Scheme Claims; and
 - (iii) Scheme Claims,

and to the extent that any such liabilities are in excess of the amount of the Company's assets, they shall be paid in the order set out in this clause 9.2(a) and rateably within each category of liabilities referred to in paragraphs (i), (ii) and (iii) above;

- (b) the entitlement to dividends in the winding up of the Company of each Scheme Creditor who has received a payment under the Scheme in respect of a Scheme Claim shall be determined as follows:
 - (i) such Scheme Creditor shall be treated as having proved in the winding up for the amount for which he actually proves in the winding up increased by the aggregate amount (the Scheme Amount) of payments, converted into sterling at the rate of exchange prevailing in the winding up, received by him in respect of the Scheme Claim under clause 3.3.1 (a) or (b) or treated as having been so received under clause 2.3.2 or otherwise; and
 - (ii) such Scheme Creditor shall be treated as having received by way of dividend in the winding up an amount equal to the Scheme Amount and shall not be entitled to any dividend in the winding up unless and until all the Scheme Creditors proving in the winding up have received an equivalent percentage dividend; but subject thereto
 - (iii) such Scheme Creditor shall be entitled to receive dividends in the winding up of the Company (calculated by reference to the amount for which he is treated as having proved as aforesaid) *pari passu* with all the Scheme Creditors of the Company; and
- (c) accordingly:
 - (i) for the purposes of any duty which the Policyholders Protection Board may owe under sections 6 to 8 of the Policyholders Protection Act (as then in force) in respect of any liability of the Company towards a policyholder or other person arising out of a Scheme Claim, the amount of that liability shall be the amount for which that person shall be treated as having proved in the winding-up in respect of such Scheme Claim, calculated in accordance with clause 9.2(b)(i); and
 - (ii) any amount treated as having been received by that person under clause 9.2(b)(ii) shall, for the purposes of section 14 of the Policyholders Protection Act, be treated as a payment referable to such liability towards that person and as reducing any sum payable by the Policyholders Protection Board under that Act by reference to such liability.

PART 10 – GENERAL SCHEME PROVISIONS

10.1 Effective Date

- 10.1.1 Subject to clause 10.1.2, the Scheme shall become effective as soon as a copy of the order of the Court sanctioning the Scheme shall have been delivered for registration to the registrar of companies in England and Wales as required by section 425(3) of the Companies Act.
- 10.1.2 The final step to make the Scheme effective shall not be taken unless the Winding up Petition shall have previously been dismissed.

10.2 Scheme costs

- 10.2.1 As soon as practicable after the Effective Date there shall be paid by the Company:
- (a) all costs, charges, expenses and disbursements reasonably incurred by the Company on or after the Provisional Liquidation Date, but prior to the Effective Date, in connection with the negotiation, preparation and implementation of the Scheme, including the costs of holding the meeting of its Scheme Creditors convened to consider the Scheme and the costs of obtaining the sanction of the Court;
 - (b) insofar as they do not fall within clause 10.2.1(a), all costs, charges, expenses and disbursements reasonably incurred by, and the remuneration of, the Provisional Liquidators (including, without limitation, all such expenses as are payable to the Provisional Liquidators out of the property of the Company pursuant to rule 4.30(3) of the Insolvency Rules 1986 made pursuant to the Insolvency Act) which are payable by the Company to the Provisional Liquidators as provisional liquidators of the Company; and
 - (c) the costs incurred by the Trustee prior to the Effective Date in connection with the negotiation, preparation and implementation of the Scheme for the Company.
- 10.2.2 So long as the Scheme remains in force (but subject to clause 10.2.2(e)) there shall be paid in full out of the assets of the Company:
- (a) all costs, charges, expenses and disbursements incurred by the Company in the course of carrying out the Scheme and of complying with the provisions of the Companies Act;
 - (b) insofar as they do not fall within clause 10.2.2 (a), and without prejudice to the provisions of clause 6.4.5, all costs, charges, expenses, and disbursements incurred by, and the remuneration of, the Scheme Administrators to the extent that such costs, charges, expenses, disbursements and remuneration are referable to the affairs of the Company;
 - (c) the expenses payable under clause 6.8 and the costs, charges, expenses and disbursements incurred by, and the remuneration of, the Trustee in its capacity as trustee of the trusts constituted by the Trust Deed;
 - (d) insofar as it does not fall within clauses 10.2.2 (a) or (b), any sum which the Company is obliged to pay by reason of the obligations imposed on it by clauses 5.4.5, 5.4.6, 5.4.7, 6.6.2, 6.6.3, 6.6.4, 7.1.7, 7.1.8 and 7.1.9; and
 - (e) notwithstanding that the Scheme shall have terminated, the costs of placing the notices required by clause 9.1.2 (b).

10.3 Modification of the Scheme

- 10.3.1 Subject to clause 10.3.2, the Company may, at any hearing to sanction the Scheme, consent on behalf of all those concerned to any modification of the Scheme or any terms or conditions which the Court

may think fit to approve or impose and which would not directly or indirectly have a materially adverse effect on the interests of any Scheme Creditor under the Scheme.

- 10.3.2 Any modification, term or condition as is referred to in clause 10.3.1 which, in the opinion of the Policyholders Protection Board, would directly or indirectly adversely affect the interest of the Policyholders Protection Board in the Scheme shall not take effect unless approved by the Policyholders Protection Board.

10.4 Notice

Any notice to be given to the Company under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand or sent by pre-paid first class post, and by air mail where it is addressed to a different country from that in which it is posted, to the Company at 20 Farringdon Street, London EC4A 4PP, United Kingdom (or at such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this clause 10.4 in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks), and any notice posted as aforesaid shall be given also by telefax to the Company at such address and shall be deemed to have been given on the seventh (or, if by airmail, the fourteenth) day following the date on which it is posted.

10.5 Governing law and jurisdiction

The Scheme shall be governed by, and construed in accordance with, English law and the Scheme Creditors hereby agree that 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 the Explanatory Statement or any provision of the Scheme, or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme, and, for such purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the Court provided, however, that nothing in this clause 10.5 shall affect the validity of other provisions determining governing law and jurisdiction as between the Company and any of the Scheme Creditors, whether contained in any contract or otherwise.

Dated 28 October 1994.

APPENDIX 1

Procedure for the appointment of the Initial Creditors Committee

- 1 Expressions used in this appendix shall bear the meanings given to them in part 1 of the scheme of arrangement pursuant to section 425 of the Companies Act 1985 between English & American Insurance Company Limited and its Scheme Creditors (as defined in the scheme of arrangement) ("the Scheme"), unless otherwise expressly provided for.
- 2 The members of the informal creditors committee are The Institute of London Underwriters, Lloyd's Insurance Brokers Committee, Lloyd's Underwriters' Association, The International Policyholders Association and Participant Run-Off Limited ("the Informal Creditors Committee").
- 3 Each member of the Informal Creditors Committee has given and has not withdrawn its consent to serve as a member of the Creditors Committee from the Effective Date¹.
- 4 In addition to the members of the Informal Creditors Committee and the Policyholders Protection Board, Scheme Creditors may submit nominations for proposed members of the initial Creditors Committee ("Proposed Members").
- 5 Any nomination for a Proposed Member must be submitted on a nomination paper ("a Nomination Paper") which may be obtained from the Provisional Liquidators at KPMG Peat Marwick, 20 Farringdon Street, London EC4A 4PP, United Kingdom. Nomination Papers must be completed and returned to the Provisional Liquidators at the same address by 11:00 am (London time) on 15 December 1994.
- 6 A Proposed Member shall only be eligible for nomination to the initial Creditors Committee if:
- (a) it is either: (i) an individual, body corporate or partnership who or which is a Scheme Creditor; or (ii) a Designated Representative; and
 - (b) either: (i) the value of its Scheme Claim is in excess of US\$100,000 (or the equivalent thereof in another currency); or (ii) it is supported (such support to be demonstrated by signing the Nomination Paper in relation to the Proposed Member) by a Scheme Creditor who has a Scheme Claim in excess of US\$100,000 (or the equivalent thereof in another currency) or Scheme Creditors who have combined Scheme Claims in excess of US\$100,000 (or the equivalent thereof in another currency); and
 - (c) a Nomination Paper is completed by it or on its behalf and returned to the Provisional Liquidators in accordance with paragraph 5.
- 7
- (a) If there are no Proposed Members or the total number of Proposed Members when taken with the Informal Creditors Committee does not exceed the maximum number of members of the Creditors Committee pursuant to part 6 of the Scheme, the Informal Creditors Committee (in its entirety or with the Proposed Members) and the Policyholders Protection Board shall be the initial Creditors Committee; or
 - (b) If the total number of Proposed Members when taken with the Informal Creditors Committee is not greater than nine, the Scheme Administrators may increase the maximum number of members of the Creditors Committee pursuant to part 6 of the Scheme and the Informal Creditors Committee (in its entirety and with the Proposed Members) and the Policyholders Protection Board shall be the initial Creditors Committee; or
 - (c) If the total number of Proposed Members when taken with the Informal Creditors Committee is greater than nine, Scheme Creditors shall vote on the initial Creditors Committee.

¹ A brief explanation of each member of the Informal Creditors Committee's interest in the Company appears in appendix 9.2 of the Explanatory Statement on pages 59 to 61.

- 8 If there is a vote on the initial Creditors Committee, the Informal Creditors Committee and the Policyholders Protection Board shall be the interim Creditors Committee and the provisions of clauses 3.2 and 6.4.4 of the Scheme shall be suspended until the result of the vote on the initial Creditors Committee is ascertained.
- 9 If a vote is required on the initial Creditors Committee, the Scheme Administrators shall notify Scheme Creditors by post and by advertisement in the following newspapers and periodicals:
- the *Financial Times* (London edition);
 - the *Financial Times* (European edition);
 - *Lloyd's List* (London);
 - the *Wall Street Journal* (New York edition);
 - the *Wall Street Journal* (European edition);
 - the *Wall Street Journal* (Asian edition);
 - *Business Insurance*; and
 - *Best's Review Magazine* (Property Casualty Division).
- 10 Each Scheme Creditor shall be entitled to vote for up to seven members of the initial Creditors Committee and the seven Proposed Members who receive the greatest aggregate value of votes cast in their favour shall, together with the Policyholders Protection Board, become the initial Creditors Committee. For the avoidance of doubt, Scheme Creditors shall only be entitled to cast one vote in relation to each Proposed Member.
- 11 (a) All Scheme Creditors shall be entitled to vote on the initial Creditors Committee, whether they voted for or against the Scheme or abstained.
- (b) The votes of Scheme Creditors who voted on the Scheme shall be assessed according to the value of the Scheme Claims which they submitted for the purposes of voting on the Scheme.
- (c) Scheme Creditors who did not vote on the Scheme but nevertheless wish to vote on the Creditors Committee, shall be required to provide details of their Scheme Claims for the purposes of voting on the initial Creditors Committee by completing a form which may be obtained from the Provisional Liquidators at KPMG Peat Marwick, 20 Farringdon Street, London EC4A 4PP, United Kingdom. The form must be completed and returned to the Provisional Liquidators at the same address by the time and date specified on it.
- 12 Forms for voting on the initial Creditors Committee shall be sent to Scheme Creditors and/or may be obtained from the Provisional Liquidators at KPMG Peat Marwick, 20 Farringdon Street, London EC4A 4PP, United Kingdom.
- 13 The results of the vote on the initial Creditors Committee shall be notified to Scheme Creditors by advertisement in the newspapers and periodicals set out in paragraph 9.

APPENDIX 2

Draft Special Resolution

THAT the Company, acting by the Scheme Administrators, shall, in accordance with the procedures set out in the Annex hereto, seek to agree or have adjudicated the values of any Notifiable Claim (as defined in the Annex) which as at [insert date] (the "Operative Date"), by reason of their being subject to any contingency or for any other reason, do not bear a certain value, on the basis that such values (when agreed or adjudicated and all relevant appeal periods having expired) shall become Established Scheme Liabilities.

ANNEX

1 Notification of claims

- 1.1 Upon this Resolution being duly passed at the Special Meeting and subject to paragraph 3 no Scheme Creditor shall be entitled to receive any Payment Percentage payable under the Scheme in respect of any Scheme Claim which is not at the date of the Special Meeting an Established Scheme Liability unless prior to the expiration of the Claims Submission Period written notice of such Scheme Claim ("Notifiable Claim") shall have been received by the Scheme Administrators from or on behalf of the Scheme Creditor concerned, such written notice to be given in the form and manner required by the Scheme Administrators on a form (a "Claim Form") to be provided by the Scheme Administrators for such purpose.
- 1.2 Within 21 days after the Operative Date the Scheme Administrators shall give notice to every Scheme Creditor to whom notice was given of the Special Meeting, and to any other person whom the Scheme Administrators believe to be a Scheme Creditor, at his last known address, stating that this Resolution has been passed and enclosing a Claim Form for use in respect of any claims of such Scheme Creditor.
- 1.3 The Scheme Administrators may, with the consent of the Creditors Committee, and either generally or in respect of any particular Notifiable Claim, extend (by not more than 6 months and not on more than one occasion in relation to any claim) the time within which written notice is to be received in accordance with paragraph 1.1.
- 1.4 Notifiable Claims notified to the Scheme Administrators in accordance with this paragraph 1 are referred to below as "Notified Scheme Claims". For the avoidance of doubt, Notified Scheme Claims may be outstanding claims or estimates placed by Scheme Creditors on the value of a contract of insurance or reinsurance in respect of which there are currently no outstanding claims.

2 Appointment of the Adjudicator

- 2.1 There shall be an Adjudicator (the "Adjudicator") appointed for the purposes mentioned in this Resolution.
- 2.2 The first Adjudicator shall be [●].
- 2.3 The Adjudicator may resign his appointment at any time by giving not less than one month's notice in writing to the Company and the Creditors Committee.
- 2.4 The provisions of clause 6.4.4 of the Scheme shall apply *mutatis mutandis* to the removal of the Adjudicator and appointment of any additional Adjudicator.
- 2.5 In the event that there is a vacancy in the office of the Adjudicator (otherwise than by reason of his removal from office at a meeting of Scheme Creditors at which another individual is appointed in his place) the Scheme Administrators may with the consent of the Creditors Committee fill the vacated office by appointing another person as Adjudicator.

3 Determination of Notified Scheme Claims by the Scheme Administrators

3.1 Subject to the following provisions of this paragraph, in relation to each Notified Scheme Claim, the Scheme Administrators shall use their reasonable endeavours to reach agreement with the Scheme Creditor concerned before the expiration of six months from the date on which notice has been received by the Scheme Administrators as to the admissible amount in respect of such Notified Scheme Claim after taking into account:

- (a) any security over the property of the Company or any letters of credit or trust issued or created in respect of the Company which the Scheme Creditor is entitled to enforce in accordance with clause 2.4 of the Scheme;
- (b) any right of set-off upon which the Scheme Creditor is entitled to rely;
- (c) the valuation of any contingent or prospective debts owed by the Scheme Creditor to the Company (such valuation to be agreed between the Scheme Administrators and the Scheme Creditor or, absent such agreement, by the Adjudicator).

and upon agreement being reached, the Notified Scheme Claim shall be deemed to be an Established Scheme Liability of an amount equal to the amount so agreed.

3.2 A Notified Scheme Claim shall not become an Established Scheme Liability pursuant to paragraph 3.1 unless either:

- (a) the Policyholders Protection Board has consented in writing to the terms of the agreement reached between the Scheme Administrators and Scheme Creditor concerned or the terms of the certificate issued by the Adjudicator pursuant to paragraph 4.1 (as the case may be); or
- (b) the Scheme Creditor concerned has confirmed, in a legally binding form acceptable to the Policyholders Protection Board, that he is not a Protected Policyholder or that he waives any rights which he might have against the Policyholders Protection Board and the Policyholders Protection Board has confirmed in writing that in its opinion, the Notified Scheme Claim will not give rise to a Protected Liability.

3.3 Any Notified Scheme Claim in respect of which such agreement has not been reached before the expiration of six months (or such longer period as may be provided under paragraph 3.4 below) after the end of the Claims Submission Period shall be referred immediately thereafter by the Scheme Administrators to the Adjudicator for determination by him in accordance with paragraph 4.

3.4 The Scheme Administrators may, with the consent of the Creditors Committee, and either generally or in respect of any particular Notified Scheme Claim, extend the time after which the Scheme Administrators are required to refer claims to the Adjudicator pursuant to paragraph 3.3.

3.5 Any consent of the Policyholders Protection Board to be given for the purpose of paragraph 3.2(a) may be given (without prejudice to how it may be given for any other purpose):

- (a) in respect of a particular Notified Scheme Claim or any description of Notified Scheme Claims specified by the Policyholder Protection Board; or
- (b) in relation to any terms, either before or after the relevant agreement has been reached or relevant certificate has been issued (and in the former case, may be given to the terms of any such agreement as may be reached or any such certificate as may be issued or to any such terms within limits specified by the Policyholders Protection Board), and, for the avoidance of doubt, any such consent given by the Policyholders Protection Board pursuant to which a Notified Scheme Claim becomes an Established Scheme Liability shall be without prejudice to whether or not that Liability is also a Protected Liability.

4 Determination of Notified Scheme Claims by the Adjudicator

- 4.1 On any Notified Scheme Claim being referred to the Adjudicator for determination by him in accordance with this paragraph, the Adjudicator shall, before the expiration of six months from the date on which such claim was referred to him by the Scheme Administrators, certify in writing to the Scheme Administrators and to the Scheme Creditor concerned what he considers subject to paragraph 3.1 to be the value of such Notified Scheme Claim, and upon such certificate being given, the Scheme Claim concerned shall, subject to paragraph 3.2, be deemed to be an Established Scheme Liability of an amount equal to the amount so certified.
- 4.2 The Adjudicator shall be entitled to lay down such reasonable provisions and prescribe such reasonable procedures as in his absolute discretion he may consider appropriate for the purpose of assisting him in reaching his decision and shall be entitled for such purpose to call for such information in relation to the relevant Notified Scheme Claim concerned as he may require.
- 4.3 At the time of the giving of any such certificate as is referred to in paragraph 4.1 in relation to a Notified Scheme Claim, the Adjudicator may make such directions in respect of his remuneration and in respect of the costs, charges and expenses incurred by him, by the Scheme Administrators, by the Policyholders Protection Board, or by the Scheme Creditor concerned, as he shall think fit.
- 4.4 If the Adjudicator shall direct that any such remuneration, costs, charges and expenses be paid by the Scheme Administrators, the same shall forthwith be paid in full by the Scheme Administrators out of the assets of the Company.
- 4.5 If the Adjudicator shall direct any such remuneration, costs, charges and expenses be payable by a Scheme Creditor and the Scheme Creditor does not pay the same in full within one month after such direction, the Company may pay any unpaid balance thereof in full out of the assets of the Company. In any such case, for the purposes of determining whether such Scheme Creditor is entitled to receive any payments pursuant to paragraph 6, he shall be treated as having received on account of all Scheme Claims in respect of which he is so entitled an amount equal to the unpaid balance so paid by the Company and the extent, if any, to which he is entitled to any payment pursuant to paragraph 6 shall be reduced accordingly.
- 4.6 Subject to paragraph 3.2, a certificate given by the Adjudicator in relation to a Notified Scheme Claim shall be final and no Scheme Creditor shall have any right to appeal therefrom or any claim against the Adjudicator in respect thereof except as provided in paragraph 4.7.
- 4.7 Subject to clause 2.2 of the Scheme, if at the expiration of six months from the date which a Notified Scheme Claim is referred to the Adjudicator as aforesaid, no certificate shall have been given by the Adjudicator in accordance with paragraph 4.1, or if at any time after the Notified Scheme Claim has been referred to the Adjudicator but before such certificate has been given there is no Adjudicator in office for a period in excess of three months, then nothing in the Scheme shall preclude the Scheme Creditor who submitted that Notified Scheme Claim from taking appropriate action in the Court which shall have exclusive jurisdiction for the purpose of securing a determination of the value of such claim.
- 4.8 The Scheme Administrators may, with the consent of the Creditors Committee, and either generally or in respect of any particular Notified Scheme Claim, extend the time within which the Adjudicator is to provide his certificate pursuant to paragraph 4.1.

5 Costs, charges and expenses

Subject to paragraphs 4.3 and 4.4, the Company shall pay all costs, charges and expenses incurred by the Adjudicator in the course of exercising and performing his powers, duties and functions under the Scheme and shall pay such remuneration to the Adjudicator for the exercise of his performance, duties and functions as may be agreed between the Adjudicator and the Scheme Administrators and approved by the Creditors Committee. The Company shall pay all such amounts as Scheme Costs. The Adjudicator shall also be entitled to an indemnity out of the assets of the Company and the terms of the

indemnity provided for the Scheme Administrators in Clauses 5.4.5 and 5.4.6 of the Scheme shall apply mutatis mutandis to the Adjudicator.

6 Payment to Scheme Creditors

6.1 Upon each Notified Scheme Claim becoming an Established Scheme Liability the provisions of part 3 of the Scheme shall take effect in relation to each such Established Scheme Liability.

6.2 For the avoidance of doubt and subject to paragraph 8, Scheme Claims which at the date of the Special Meeting are Established Scheme Liabilities shall continue to be eligible to receive payments and otherwise dealt with under the Scheme, without being affected by the preceding provisions of this Special Resolution.

6.3 For the avoidance of doubt, the Policyholders Protection Board shall not have any obligation or liability under the Scheme or by virtue of this Special Resolution or otherwise (including by virtue of any consent given by it pursuant to paragraph 3.2) in respect of any Notified Scheme Claim which becomes or is deemed to be an Established Scheme Liability except and to the extent that it arises under the terms of a policy and otherwise falls within the definition of Protected Liability.

7 Conversion of assets into cash

As soon as practicable after all Notified Scheme Claims have been determined in accordance with paragraph 4, such of the assets of the Company as shall not previously have been realised for cash shall be realised for cash by the Scheme Administrators to the extent practicable.

8 Effect on Scheme Claims

Any Scheme Claim which is neither an Established Scheme Liability at the date of the Special Meeting nor becomes an Established Scheme Liability in accordance with the provisions of paragraphs 1 to 4 shall for all purposes cease to be, or to be capable of becoming, a liability of or enforceable against the Company (and, accordingly the Policyholders Protections Board shall have no obligation or duty in respect of it).

9 Interpretation

9.1 References in this Special Resolution to paragraph numbers shall, unless the contrary intention appears, be construed as references to paragraphs of this Special Resolution.

9.2 Terms used in this Special Resolution which are defined in the Scheme shall, in this Special Resolution, have the meanings ascribed to them in the Scheme.

9.3 If there is any inconsistency between the provisions of this Special Resolution and the terms of the Scheme, the provisions of this Special Resolution shall prevail.