

**PART II**

**SCHEME OF ARRANGEMENT**

Pursuant to Section 425 of the Companies Act 1985 of England and Wales

between

**AA MUTUAL INTERNATIONAL INSURANCE COMPANY LIMITED  
(IN ADMINISTRATION)**

(referred to in the Scheme as the "Company")

and

**THE SCHEME CREDITORS**

(as defined in the Scheme of Arrangement)

## PART II: THE SCHEME OF ARRANGEMENT

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## **PART II: THE SCHEME OF ARRANGEMENT**

### **1 PRELIMINARY**

#### **1.1 DEFINITIONS**

In this Scheme, unless the context otherwise requires or otherwise expressly provides, the words as defined in the Explanatory Statement on pages 2 to 7 shall apply.

#### **1.2 INTERPRETATION**

In this Scheme, unless the context otherwise requires or the Scheme expressly provides otherwise:

- (a) references to parts, clauses and appendices are references to parts, clauses and appendices (as the case may be) of the Scheme;
- (b) 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 agency thereof;
- (c) the singular includes the plural and vice versa; the masculine includes the feminine and vice versa;
- (d) references to any statute or statutory provision or subordinate legislation includes the same as modified or re-enacted from time to time, save that references to provisions of the Insolvency Act and the Insolvency Rules are references to those statutory provisions as in force and applicable at the Order Date; and
- (e) headings to parts and clauses are for ease of reference only and shall not affect the interpretation of the Scheme.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **2 THE SCHEME**

#### **2.1 PURPOSE OF THE SCHEME**

The purpose of the Scheme is to reduce the length and cost of the administration of the run-off of the Company's business, currently taking place within the Administration of the Company in England, by introducing a procedure whereby Claims against the Company may be agreed or adjudicated and the Property applied for the purpose of paying a dividend to Scheme Creditors as quickly as practicable.

#### **2.2 APPLICATION OF THE SCHEME**

The Scheme shall apply to any Claim against the Company except for UK EL Claims. UK EL Claims are to be dealt with by the FSCS Scheme Manager outside of the terms of the Scheme.

#### **2.3 EFFECTIVE DATE**

The Scheme shall become operational on the Effective Date.

#### **2.4 CLAIMS TO BE MADE UNDER THE SCHEME**

- (a) Save as provided in this Scheme, no Scheme Creditor shall take or continue any step or Proceeding or do or continue to do any act howsoever in any jurisdiction for the purpose of securing a determination of the amount of any Claim or a determination of any Claims Information upon which the Scheme Administrators and/or the Scheme Adjudicator determine or estimate or propose to determine or estimate the amount or value of any Scheme Creditor's Claim.
- (b) Save to the extent that the Company has failed to perform any obligations to make a payment to a Scheme Creditor under the provisions of the Scheme, no Scheme Creditor shall be entitled to commence or continue any proceedings against the Company or the Property of the Company in any jurisdiction whatsoever to enforce payment in whole or in part of any Claim made in the Scheme.

## 2.5 ACTS PROHIBITED BY CLAUSE 2.4

- (a) Each Scheme Creditor is deemed to acknowledge that if he commences or continues Proceedings against the Company in breach of clauses 2.4(a) or 2.4(b), the Scheme Administrators shall be entitled to obtain an order staying those Proceedings and providing for payment by the Scheme Creditor concerned of interest and of any costs, charges and expenses incurred by the Company or the Scheme Administrators as a result of those Proceedings.
- (b) If any Scheme Creditor commences or continues any action after the Effective Date which is prohibited by clause 2.4, that Scheme Creditor shall, without prejudice to any other rights of the Company and/or the Scheme Administrators (under clause 2.4), be treated as having received an advance distribution on account of his Claim equal to the amount or gross value of any property, benefit or advantage obtained by him at the expense of the Company as the result of such action, and the extent to which he is entitled to receive payment under the Scheme shall be determined accordingly.
- (c) For the purpose of this clause 2.5, the gross value of any property, benefit or advantage obtained by a Scheme Creditor shall be conclusively determined by the Company and, without limitation, may include such amount as the Company may consider to be appropriate by way of interest, costs, charges or expenses incurred by the Company as a consequence of the relevant Scheme Creditor acting in a manner prohibited by clause 2.4. If any advance distribution to a Scheme Creditor exceeds the amount of its Dividend, the balance shall be repaid immediately by the Scheme Creditor, failing which interest shall accrue on the balance at the Bank of England base rate applied by Barclays Bank Plc plus 4 per cent in the period from the date upon which the Dividend is payable under the Scheme to the date of repayment. Such sums shall be held on trust for the Company by the relevant Scheme Creditor until repaid. This is without prejudice to any other rights of the Company.

## 2.6 PROPERTY OF THE COMPANY

With effect from the Effective Date, the Property of the Company shall be applied by the Scheme Administrators as agents of the Company for the purposes of the Scheme.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **3 SUBMISSION OF CLAIMS AND DETERMINATION OF ASCERTAINED CLAIMS**

#### **3.1 ASCERTAINMENT DATE**

All Claims shall be valued as at the Ascertainment Date. For the avoidance of doubt any payments made between the Ascertainment Date and the Final Claims Submission Date are to be deducted in arriving at this valuation.

#### **3.2 NOTICE OF EFFECTIVE DATE**

- (a) The Company shall, within 14 days of the Effective Date, send by Post to each Known Scheme Creditor and each broker who appears to have dealt with Insurance Contracts made by the Company of whom the Company is aware (and, in the case of any Scheme Creditor of which it becomes aware prior to the Final Claims Submission Date, as soon as reasonably practicable after becoming aware of such Scheme Creditor), notice that the Scheme has become effective and that Claim Forms must be completed and returned by the Final Claims Submission Date.
- (b) In addition, the Company shall within 21 days of the Effective Date cause to be published in the same newspapers and publications in which the Creditors' Meeting was advertised, notice that the Scheme has become effective. In addition, the notice will call for all Scheme Creditors to complete and return their Claim Forms by no later than the Final Claims Submission Date.

#### **3.3 COMPLETING CLAIM FORMS**

- (a) Information to enable a Scheme Creditors Gross Claim to be agreed or determined and their Ascertained Claim subsequently established shall be provided by each Scheme Creditor completing his Claim Form.
- (b) At the time of submitting a Claim Form it is the responsibility of a Scheme Creditor to ensure that the Scheme Administrators are provided with the Scheme Creditors correct address and that the Scheme Administrators are promptly informed of any change.
- (c) Information submitted by a Scheme Creditor with the relevant Claim Form shall relate to that Scheme Creditor's Claims at the Ascertainment Date.
- (d) The information to be supplied by Scheme Creditors other than Trade Creditors must be by reference to each Insurance Contract pursuant to which the relevant Claim arises, together with such details that the Scheme Creditor may have of the brokers who placed the relevant business and an estimate of

the value of each Claim. The Scheme Creditor shall separate his Claims into Paid Loss Claims, Notified Outstanding Claims and IBNR Claims. In respect of:

- (i) Paid Loss Claims - Scheme Creditors shall provide with the Claim Form an analysis supporting each Claim in respect of their Paid Losses including, but not limited to, loss bordereaux certified by the leading underwriter and/or copies of loss reports from policyholders/cedants or their legal representatives;
- (ii) Notified Outstanding Claims - Scheme Creditors shall provide with the Claim Form an analysis supporting each Notified Outstanding Claim including, but not limited to, loss bordereaux certified by the leading underwriter and/or copies of loss reports from policyholders/cedants or their legal representatives and/or lawyer generated reports for reinsurers and reinsurance intermediaries and/or any other supporting information; and
- (iii) IBNR Claims – Scheme Creditors must provide an explanation of the basis upon which their IBNR Claim has been calculated together with the rationale supporting its suitability as a method of estimating their IBNR Claim. In addition, they must provide documentary evidence to support the assumptions used in estimating their IBNR Claim. The information which is appropriate will vary according to methodology applied (although items (A) and (B) below should be provided irrespective of the methodology adopted). It may include, but is not limited to, the following:
  - (A) Cumulative triangles showing historical development of paid losses - data should be split by loss type - in particular asbestos, pollution and other health hazard claims should be separated from the main data and presented in three separate triangles - similarly, property loss types should be separated from the liability claims types which have a longer emergence and settlement profile;
  - (B) Cumulative triangles showing historical development of incurred losses - data should be split by loss type - in particular asbestos, pollution and other health hazard claims should be separated from the main data and presented in three separate triangles - similarly, property loss types should be separated from the liability claims types which have a longer emergence and settlement profile;

- (C) Loss bordereaux for recent calendar years/quarters certified by the leading underwriter;
  - (D) Where exposure based techniques are used, details of the exposure analysis;
  - (E) Where actuarial analyses have been conducted, any relevant actuarial reports;
  - (F) Copies of loss reports from the Scheme Creditor's policyholders/cedants; and
  - (G) Where available, lawyer generated reports for reinsurers and reinsurance intermediaries.
- (f) On their Claim Forms Scheme Creditors (other than Trade Creditors) should set out their Notified Outstanding Claims and IBNR Claims on an undiscounted basis.
- (g) For the purposes of establishing their Ascertained Claim each Scheme Creditor is required to apply a present value discount of 5% per annum compounded annually to their Notified Outstanding Claims and IBNR Claims to reflect the time value of money to the Ascertainment Date. An analysis should be included with details of their Gross Claim.
- (h) Trade Creditors must provide details of their Claims in writing together with sufficient supporting documentation.
- (i) Scheme Creditors on their Claim Forms should set out any amounts that they owe to the Company and detail any applicable security.
- (j) An Authorised Person must certify:
- (i) the accuracy of the information set out on that Scheme Creditor's Claim Form,
  - (ii) that the Scheme Creditor has carried out sufficient enquiries and investigations to ascertain the accuracy of the information on his Claim Form; and
  - (iii) that the Claim submitted by the Scheme Creditor in respect of Notified Outstanding Claims and IBNR Claims is a true and fair quantification of the Company's indebtedness in respect of those categories of Claims.

If a Scheme Creditor's Claim is not certified in accordance with this clause, the value of that Claim will be deemed to be zero.

- (k) Subject to clause 3.5(c) a Claim Form completed by each Scheme Creditor detailing each Scheme Claim must be received by the Company at any time on or before the Final Claims Submission Date. For the avoidance of doubt, the notice provisions in clause 10.5 do not apply to the receipt by the Company of Scheme Creditors' Claim Forms.
- (l) Each Scheme Creditor shall be entitled to submit a new or revised Claim Form and to provide revised or further information in respect of its Claims, together with any relevant supporting documentation (as contemplated by clauses 3.3(b) and 3.3(c)), to the Company, in each case so as to reach the Company at any time on or before the Final Claims Submission Date.

#### **3.4 INTEREST**

There shall not be included as any part of a Claim for the purpose of paying or providing for dividends under the Scheme, any interest arising out of a contract, judgment, decree or otherwise except interest for a period or periods ending with the Order Date which would have been admissible in proof against the Company in accordance with Rule 4.93 of the Insolvency Rules if an order that the Company be wound up had been made on the Order Date. Any payment made under the Scheme in respect of an Ascertained Claim which represents interest shall be made net of any deduction or withholding for or on account of Tax.

#### **3.5 FAILURE TO RETURN A CLAIM FORM**

- (a) Subject to clause 3.5(c), the value of all Claims of any Scheme Creditor who fails to return a Claim Form on or before the Final Claims Submission Date shall be deemed to be zero. It is therefore vital that creditors submit details of their claims whether or not they consider certain claims to have been submitted previously. For the avoidance of doubt, in such a situation, the relevant Scheme Creditor shall be bound by the terms of the Scheme.
- (b) The value of all Claims of any Scheme Creditor of which the Company is unaware and fails to become aware, where such Scheme Creditor has therefore not been sent a notice in accordance with clause 3.2(a), shall be deemed to be zero. For the avoidance of doubt, in such a situation, the relevant Scheme Creditor shall be bound by the terms of the Scheme.
- (c) The Scheme Administrators may, at their absolute discretion, allow a Claim Form that was not received on or before the Final Claims Submission Date to be submitted in the Scheme as if that Claim Form had been received on or before the Final Claims Submission Date. The Scheme Administrators will only exercise this discretion in exceptional circumstances such as (but without limitation) a major postal strike.

### 3.6 REVIEW AND AGREEMENT OF CLAIM FORMS

- (a) The Company will consider the information concerning a Scheme Creditor's Claims contained in a completed Claim Form including, but not limited to, consideration of whether any submissions are accurate or adequately supported with relevant documentation, whether any estimates relating to Notified Outstanding Claims and IBNR Claims are reasonable and whether there is (and the extent of) any Security relating to such Scheme Creditor's Claims in order to establish a Scheme Creditor's Gross Claim. *For the avoidance of doubt, claims not contained in a completed claim form will not be considered by the Company.*
- (b) The Company will then review the discounting calculations provided by the Scheme Creditor in respect of the Notified Outstanding Claims and IBNR Claims and the details of any set off or other appropriate deduction in order to establish a Scheme Creditor's Ascertained Claim, which is the Claim on which dividend payments will be made.
- (c) The Company will also review the category of claim being made, ie direct or reinsurance and other, based on the information available in both the Company's and the claimant's records.
- (d) If the Company agrees with the information provided on a Claim Form, including the amount of any discount calculations, set-off and/or Security and categorisation, it shall, within 42 days of the Final Claims Submission Date, notify the relevant Scheme Creditor in writing of such agreement. This information, including any estimated values, shall, following the application of any agreed set-off or other deduction (pursuant to the terms of the Scheme), be that Scheme Creditor's Ascertained Claim in respect of his Gross Claim.
- (e) If the Company does not agree with all the information on a Claim Form (including the amount of any set-off or other deduction pursuant to the Scheme), it shall, within 42 days of the Final Claims Submission Date, notify the Scheme Creditor in writing of those matters which are not agreed, the reasons for failing to agree such matters and any such additional information that the Company may require. The relevant Scheme Creditor shall provide to the Company any such additional information within 21 days of such notice. The Company will then endeavour to agree each Claim together with the amount of any set-off or other deduction pursuant to the terms of the Scheme which have not been agreed by it by no later than 84 days after the Final Claims Submission Date and, in the event that all these matters are agreed, the Company shall notify the Scheme Creditor of its agreement by notice in writing. The agreed information making up a Scheme Creditor's Gross Claim, including any estimated values will, following the application of any agreed

set-off or deductions (pursuant to the terms of the Scheme) be that Scheme Creditor's Ascertained Claim.

- (f) Should the Company not agree all the information on a Claim Form within the 84 day period contemplated by clause 3.6(c), the Company will send the Scheme Creditor a copy of a Claim Form in relation to the relevant Claim including information as to the amount of any set-off or other deduction pursuant to the Scheme completed in such a manner as the Company is prepared to accept but will inform the Scheme Creditor that, if it is not accepted by the Scheme Creditor, it will refer any items not accepted by the Scheme Creditor to the Scheme Adjudicator as a Disputed Claim. If the Scheme Creditor wishes any items which he does not accept to be referred to the Scheme Adjudicator as a Disputed Claim, then he must respond to the Company within 21 days of the date of that communication confirming that the matter is to be referred to the Scheme Adjudicator. If such confirmation is received from the Scheme Creditor, the Company shall, as soon as reasonably practicable, refer the unagreed items to the Scheme Adjudicator as a Disputed Claim. If the Scheme Creditor either does not respond to the communication from the Company or does respond, but does not request that the unagreed items be referred to the Scheme Adjudicator as a Disputed Claim, within 21 days of the date of that communication, then the Claim Form so completed by the Company will be deemed to be determinative of the disputed matters and the claims information therein be the Scheme Creditor's Gross Claim and after the application of any set-off or deductions (pursuant to the terms of the Scheme), be that Scheme Creditor's Ascertained Claim.
- (g) The Gross Claim and Ascertained Claim in respect of a Disputed Claim referred to the Scheme Adjudicator in accordance with clause 3.6(d) shall be the amount of the Claim as agreed or determined by the Scheme Adjudicator and in respect of the Ascertained Claim following the application of any set-off or other deduction pursuant to the terms of the Scheme as agreed or determined by the Scheme Adjudicator.
- (h) The Gross Claim and Ascertained Claim determined or agreed under clauses 3.6(a), 3.6(b), 3.6(c), 3.6(d) and 3.6(e) shall be binding on the Company and the relevant Scheme Creditor and there shall be no right of appeal in respect thereof insofar as the law permits such exclusion.
- (i) In determining a Scheme Creditor's Gross or Ascertained Claim, the Company shall be entitled, at any time, by notice to the Scheme Creditor concerned, to require the production of such further information or documentary or other evidence as it may reasonably require to assist it in agreeing the relevant Claim. The Scheme Creditor must produce such information and ensure that it is provided to the Company within 21 days of receipt of such notice.

### 3.7 **BROKER FUNDING**

Claims made by brokers in the Scheme in respect of Claims (including claims relating to premiums) which brokers have funded on behalf of a Scheme Creditor shall not be admitted in the Scheme unless:

- (a) the broker received an assignment of such Claim before the Order Date in a form which the Scheme Administrators consider to be acceptable; or
- (b) the funding by the broker took place pursuant to contractual obligations existing between the broker and the Scheme Creditor assumed prior to the Order Date where, as a matter of law, the Company is liable to indemnify or reimburse the broker.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **4 THE INDEPENDENT SCHEME ADJUDICATOR AND THE ADJUDICATION PROCEDURE**

#### **4.1 QUALIFICATION, APPOINTMENT RESIGNATION AND REMOVAL OF THE SCHEME ADJUDICATOR**

- (a) Colin Czapiewski shall be the Scheme Adjudicator.
- (b) The office of Scheme Adjudicator shall be vacated if the person appointed:
  - (i) dies;
  - (ii) becomes bankrupt or makes any arrangement or composition with his Scheme Creditors generally;
  - (iii) becomes mentally disordered;
  - (iv) is convicted of an indictable offence and the Scheme Administrators give notice to him following such conviction terminating his appointment;
  - (v) is disqualified from acting as a director of a company under the Company Directors' Disqualification Act 1986; or
  - (vi) resigns his office by 30 days' notice in writing to the Scheme Administrators.
- (c) If there is a vacancy in the office of Scheme Adjudicator, the Scheme Administrators may appoint another person to hold office as Scheme Adjudicator who is not otherwise ineligible by virtue of clause 4.1(b) and the provisions of this clause 4 shall apply to him.
- (d) In the event that the Scheme Adjudicator considers that he has a conflict of interest in relation to any matter referred to him under the Adjudication Procedure, he shall inform the Scheme Administrators of such conflict forthwith, and the Scheme Administrators shall, if they consider that a substantial conflict of interest exists appoint an alternative Scheme Adjudicator for the purpose of adjudicating on the relevant matter only. For the avoidance of doubt, the Scheme Adjudicator's appointment shall, subject to clause 4.1, continue during the appointment of the alternate and he shall continue to adjudicate on all other matters referred under the Adjudication Procedure, unless a conflict shall arise in respect of any of those matters, in which case this clause 4.1(d) shall apply.

## 4.2 POWERS, RIGHTS, DUTIES AND FUNCTIONS

- (a) The Scheme Adjudicator shall be responsible for the adjudication and determination of Disputed Claims and shall have the powers, rights, duties and functions conferred upon him by the Scheme for such purposes.
- (b) The Scheme Adjudicator shall be paid such remuneration for the exercise and performance of his powers, rights, duties and functions under the Scheme as may be agreed between the Scheme Adjudicator and the Company such remuneration to be paid in accordance with clauses 4.3(f), 4.3(g) and 4.3(h).
- (c) The Scheme Adjudicator shall act as an expert and not as an arbitrator with respect to all matters submitted to him.

## 4.3 ADJUDICATION OF CLAIMS

- (a) In referring any matter to the Scheme Adjudicator as a Disputed Claim the Scheme Administrators shall provide to the Scheme Adjudicator a copy or copies of the relevant Claim Form(s), the relevant Claims Information, any other information provided by the relevant Scheme Creditor to the Scheme Administrators in accordance with clause 3.3 or otherwise, a copy of any correspondence sent or received by the Scheme Administrators in connection with the relevant Claim and a summary of the nature and extent of the dispute. The Scheme Adjudicator shall have access to all the Company's records and information in the possession or under the control of the Scheme Administrators which the Scheme Adjudicator reasonably considers he needs to resolve the dispute concerning the Disputed Claim. The Scheme Adjudicator shall have the power to obtain relevant expert advice to assist him with his adjudication on any Disputed Claim.
- (b) In relation to each Disputed Claim, the Scheme Adjudicator shall use his reasonable endeavours to determine what he considers to be the value of the matters comprising the Disputed Claim and shall certify such determination in writing sending it by Post to the Scheme Administrators and to the relevant Scheme Creditor as soon as is reasonably practicable and in any event within 91 days from such referral.
- (c) In carrying out his duties, the Scheme Adjudicator shall be entitled to require the Scheme Administrators and the relevant Scheme Creditor or any person whom the Scheme Administrators (reasonably) believe to be a Scheme Creditor and in respect of whom any Disputed Claim has been referred, to provide him with such documentary or other evidence as he may reasonably require within such time as he may specify. In the absence of any such evidence the Scheme Adjudicator shall be entitled to carry out his duties on such information and evidence as is available to him.

- (d) A determination made by the Scheme Adjudicator in relation to any Disputed Claim shall (save in the case of manifest error) be final and binding on the Company, the Scheme Administrators and the relevant Scheme Creditor as far as permitted by law and none of them shall have any right of appeal of such determination nor shall they have any right to make a claim against the Scheme Adjudicator.
- (e) In the event of a manifest error, the Scheme Adjudicator will be permitted to reconsider his determination in accordance with this clause 4.3.
- (f) The Scheme Adjudicator shall in respect of any Disputed Claim be entitled in his absolute discretion to order the Company or the relevant Scheme Creditor to give security for the other party's costs or to give to either party such other directions in relation to the other party's costs, charges and expenses and/or in respect of his own remuneration, costs, charges and expenses which in his absolute discretion he considers appropriate in all the circumstances.
- (g) If the Scheme Adjudicator directs that any remuneration, costs, charges and expenses be paid by the Company, the same shall forthwith be paid in full by the Scheme Administrators out of the Property of the Company.
- (h) If in accordance with clause 4.4(f) the Scheme Adjudicator orders any Scheme Creditor to pay any amount the same shall forthwith be paid in full by the Scheme Creditor concerned and, if not so paid, then the Scheme Administrators shall be entitled to set-off such amount against that Scheme Creditor's Dividend. Insofar as the Dividend is insufficient to allow such amount to be set-off in full, the Scheme Administrators shall be entitled to recover the balance due through Court's processes.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **5 PAYMENT OF ASCERTAINED CLAIMS**

#### **5.1 SETTING THE DIVIDEND**

- (a) As soon as practicable after all Direct Claims have been established as Ascertained Claims in accordance with Parts 3 and 4 of the Scheme, the Company shall pay in full all such Direct Claims and Scheme Costs and provide for those Scheme Costs which are not then due. After this, £50,000 (or the balance if lower) shall be paid to the FSCS Scheme Manager.
- (b) The Scheme Administrators shall, after the Ascertained Claims which are Direct Claims have been paid, after all Scheme Costs have been paid or provided for and £50,000 (or the balance if lower) has been paid to the FSCS Scheme Manager, and as soon as practicable after the Gross Claims and Ascertained Claims of all other Scheme Creditors have been established in accordance with Parts 3 and 4 of the Scheme, review the Property of the Company and the Liabilities of the Company, as established pursuant to the Scheme, to determine the Distributable Amount. The Distributable Amount shall be split, 50% paid to the FSCS Scheme Manager and 50% (hereafter referred to as the Available Distributable Amount) paid by way of Dividends to all other Scheme Creditors *pari passu*. If after payment of the Direct Claims, the balance payable to the FSCS is lower than £50,000, then there will be no Distributable Amount and the subsequent split referred to above will not apply.
- (c) The Available Distributable Amount shall be the amount, if any, of the resulting balance which in the opinion of the Scheme Administrators is prudently available on the Dividend Declaration Date for distribution by way of Dividends to the remaining Scheme Creditors in respect of their Ascertained Claims.
- (d) Should the value of a Scheme Creditor's Dividend be \$50 or £25 or less such Dividend will not be paid unless requested by the relevant Scheme Creditor on his Claim Form. This is because the administration costs (to both the Company and the Scheme Creditor concerned) of processing such a Dividend may outweigh the value of the Dividend itself.

#### **5.2 PAYMENT OF DIVIDENDS**

On the Dividend Declaration Date the Scheme Administrators will pay a Dividend to each remaining Scheme Creditor in respect of its Ascertained Claim where such Dividend exceeds \$50 or £25 or where requested pursuant to 5.1(d).

### 5.3 NO RELEASE

Nothing in the Scheme shall be construed as resulting in any release, extinguishment, modification, compromise or waiver of any Liability owed by the Company but the amount of a claim as agreed or determined under Part 3 or Part 4 of the Scheme shall constitute the Company's entire liability to the Scheme Creditor concerned in respect of the relevant Claim made in the Scheme and payment in full of the Direct Claim Creditors or payment of the Dividend in accordance with clause 5.2 of any other Scheme Creditor's Ascertained Claim shall be a full and final settlement of all and any Claim(s) of that Scheme Creditor against the Company pursuant to the Scheme.

In respect of Direct Claim Creditors to whom payment is made in full, and where such Direct Claim Creditors are or may be Protected Policyholders, that Direct Claim Creditor or Protected Policyholder agrees, on which agreement it acknowledges that the FSCS Scheme Manager is entitled to rely, that with respect to all its Claims against the Company (whether or not submitted on a Claim Form):

1. it irrevocably waives and relinquishes any rights to protection under the FSCS;
2. it agrees that the payment by the Company of Direct Claims is made and accepted in full and final settlement of the obligations of the FSCS to it in respect of any Claim against the Company for which it has or may in the future have rights as a Protected Policyholder.
3. it releases the FSCS from any claim, cost, demand, liability or rights to protection however arising under the FSCS, and in particular (and without limitation) it shall have no recourse in any way whatsoever to the FSCS in respect of any such claim, liability or otherwise under the FSCS (whether or not the scheme continues in effect).

### 5.4 METHOD OF PAYMENT

- (a) Subject to clause 5.4(b) below, all payments to Scheme Creditors under the Scheme shall be made by way of cheque in favour of the Scheme Creditor concerned or to such other person as the Scheme Creditor may direct in writing. Cheques shall be sent by Post at the risk of the relevant Scheme Creditor to the last known address of such Scheme Creditor or to such other address as that Scheme Creditor may from time to time notify in writing to the Company.
- (b) At a Scheme Creditor's request, the Company may, at its sole discretion and with the relevant Scheme Creditor bearing all risk, cost and expense of the same, make payment by telegraphic transfer to such bank account as the

Scheme Creditor concerned or to such other person as the Scheme Creditor may direct in writing.

- (c) Payment of a dividend under the Scheme shall be deemed to have been made on the day that the telegraphic transfer instruction is given to the relevant bank or the relevant cheque is posted (as the case may be).
- (d) Any payment by cheque pursuant to clause 5.4(a) which is not presented for payment within 6 months of the date on which it was sent by Post, shall be deemed never to have been made and the Scheme Creditor's right to such payment shall be extinguished and the Ascertained Claim to which it relates shall be deemed to have been satisfied in full.
- (e) Notwithstanding clause 5.4(a), 5.4(c) and 5.4(d), if a Scheme Creditor notifies the Scheme Administrators in writing that a cheque was received by him but then lost or that no cheque was received by him, then the Company will make payment to that Scheme Creditor by means of telegraphic transfer on the terms set out at clause 5.4(b) provided that the Scheme Creditor's written notification is actually received by the Scheme Administrators within 5 months of the date on which the cheque was sent by Post to the relevant Scheme Creditor and provided also that no monies have in fact been drawn (by any person) in respect of the cheque posted to that Scheme Creditor. For the avoidance of doubt, the notice provisions in clause 10.5 do not apply for the purpose of this clause.

## **5.5 CURRENCY OF PAYMENT**

All Dividends shall be paid in US dollars or £GBP should the Scheme Creditor so wish and is contractually entitled to receive.

## **5.6 PAYMENT OF ANY BALANCE REMAINING**

If during the currency of the Scheme, following the payment of all Direct Claims, Scheme Costs, payments to the FSCS Scheme Manager (as referred to in clause 5.1(a)) and Dividends the Scheme Administrators retain any Property (including any Unclaimed Balances) which is not in their view required for the purpose of providing for any potential further liability, cost or expense, then this Property shall be paid over to one or more charities established in the UK. Any charity or charities will be selected by the Scheme Administrators.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **6 SET-OFF AND SECURITY**

#### **6.1 SET-OFF**

- (a) The Scheme Administrators shall be entitled (but shall not be bound) to treat any underwriting agent (including, but not limited to, any manager of an underwriting pool, managing general agent, holder of a line slip or binding authority or manager of any other co-insuring arrangement) as a Scheme Creditor in substitution for his principal(s) and so that mutual debts and credits as between the Company and the principal(s) of that underwriting agent in respect of the business conducted on its or their behalf by their underwriting agent within such common co-insuring arrangements shall be set-off as at the Order Date as if the agent were the principal Scheme Creditor. However, if in the Scheme Administrators' absolute discretion they believe it is in the best interests of all Scheme Creditors generally to do so, they may treat members of such co-insurance arrangements as independent Scheme Creditors for the purposes of the Scheme.
- (b) The Company shall be obliged to treat the members of a Lloyd's Syndicate which has a Claim as if they were a single Scheme Creditor of the Company in respect of that Claim and the members of a Lloyd's Syndicate which owes money to the Company as a single debtor of the Company in respect of the sum due, in each case on the basis that the effect of closing a year of account by means of reinsurance to close into a later year is that the rights and liabilities of the members of the syndicate in such closing year become instead the rights and liabilities of the members of the successor syndicate or syndicates in such later year.
- (c) As part of the process of determining Gross Claims and Ascertained Claims under Part 3 and Part 4 above, the Scheme Administrators and/or the Scheme Adjudicator shall identify and agree or determine the amount of any Debt(s) due or becoming due to the Company from any Scheme Creditor using the same principles that apply to the valuation of Scheme Claims under the Scheme. The aggregate of all such Debts shall be set-off against the relevant Scheme Creditor's Claims. This will provide a Scheme Creditor's Gross Claim, and following the application of any other deductions required by the Scheme, a Scheme Creditor's Ascertained Claim or Established Debt as the case may be.
- (d) All Scheme Creditors are deemed to acknowledge that if, after the application of set-off under this clause 6.1, it is established that a net amount is due to the Company from such Scheme Creditor, such sum due shall be

the undisputed Established Debt of that Scheme Creditor. Such Established Debt will be payable immediately.

- (e) No Claim which has been assigned, sold, novated or otherwise transferred to a person after the Order Date may be applied in extinguishing or reducing any Debt of that person to the Company.
- (f) No Debt of a Scheme Creditor to the Company which arises out of an obligation incurred by such Scheme Creditor after the Order Date may be extinguished or reduced by any Claim which such Scheme Creditor has against the Company.
- (g) For the purposes of set-off of Debts in currencies other than the currency applying to the relevant Claim, the Scheme Administrators may at their discretion convert the amounts of such Claims and the Debts due from Scheme Creditor/Debtors in the same manner as that described in clause 10.2 below applying to Claims.
- (h) Save as provided in clauses 6.1(a) to 6.1(g) the provisions of the Insolvency Legislation relating to set-off in liquidation shall apply to Liabilities and Debts due to the Company as if the Order Date were the time of the commencement of the liquidation.

## 6.2 SECURITY

- (a) A Secured Creditor may obtain payment by means of his Security at any time provided that this is done strictly in accordance with the terms of the contract pursuant to which such Security was established and the terms (if any) of the Security.
- (b) If and insofar as a Secured Creditor has submitted a Claim in the Scheme as a Scheme Creditor and that Scheme Creditor's Ascertained Claim has been determined referable to an Insurance Contract which is supported by Security, the Secured Creditor may enforce its Security to the limit of the Ascertained Claim. If the Secured Creditor's Ascertained Claim is less than the amount of all Security held by that Secured Creditor in respect of its Insurance Contracts with the Company, the Secured Creditor shall, as a precondition to receiving payment under the Scheme, release and account for the excess Security.
- (c) Any Scheme Creditor who obtains or receives payment by enforcing, drawing down or withdrawing any Security in an amount which exceeds either the amount which is due to him in respect of the Insurance Contract(s) for which that Security was issued or established, the amount which he is contractually entitled to receive from that Security at the time when he receives or obtains payment or the Ascertained Claim referable to such

Insurance Contract(s), shall hold the amount of such excess on trust for the Company to apply the same in accordance with the terms of the Scheme and shall forthwith pay the same to the Scheme Administrators without set-off, deduction, retention, abatement or counterclaim. The proceeds of any enforcement, drawdown or withdrawal under a Security established by the Company or on its behalf in respect of an Insurance Contract shall only be applied to a Liability arising under that Insurance Contract or to any other Liability to which the Secured Creditor is contractually entitled to apply it. Any surplus remaining after discharge of such Liability shall not be applied in satisfaction or reduction of any other Liability but shall be held on trust for the purposes of the Scheme and paid to the Scheme Administrators as aforesaid.

- (d) Nothing in the Scheme shall affect the rights of the Company under any applicable law against any person in respect of any wrongful or excessive enforcement, drawdown or withdrawal of funds in respect of any Security.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **7 THE SCHEME ADMINISTRATORS**

#### **7.1 DUTIES, POWERS AND RESPONSIBILITIES OF THE SCHEME ADMINISTRATORS**

- (a) The Scheme Administrators shall have the powers conferred on them under the Scheme. Any act required to be done by the Scheme Administrators may be done by either or both of them.
- (b) The Scheme Administrators and the Scheme Adjudicator may perform their duties and exercise their powers under the Scheme through agents and employees and any act or determination of such persons on behalf of the Scheme Administrators and the Scheme Adjudicator shall be deemed to be an act or determination of the Scheme Administrators themselves and the Scheme Adjudicator as the case may be.
- (c) A Scheme Administrator shall be an individual qualified to act as a licensed insolvency practitioner within the meaning of Section 390 of the Insolvency Act. The Scheme Administrators shall be Douglas Nigel Rackham and Dan Yoram Schwarzmann of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom.
- (d) The office of Scheme Administrator shall be vacated if he:
  - (i) dies, becomes bankrupt or mentally disordered;
  - (ii) is convicted of an indictable offence;
  - (iii) ceases to be a licensed insolvency practitioner;
  - (iv) is disqualified from acting as a director of a company under the Company Directors Disqualification Act 1986; or
  - (v) resigns his appointment at any time by giving not less than 6 months' notice in writing to the Company or such shorter period of notice as the other Scheme Administrator may agree in writing.
- (e) If the office of either of the Scheme Administrators is vacated in accordance with clause 7.1(d), the other Scheme Administrator shall be entitled to appoint a replacement Scheme Administrator provided that such replacement is qualified in accordance with clause 7.1(c) and is not otherwise disqualified by reference to the matters contained in clause 7.1(d).
- (f) The Scheme Administrators shall have the power to supervise and ensure the carrying out of the Scheme, manage and control the business affairs of

the Company in accordance with the Scheme, realise the Property of the Company and distribute it to the Scheme Creditors and for these purposes shall:

- (i) have power in the name and on behalf of the Company as agents 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 7.1(g) and 7.1(h).
- (g) Without prejudice to the generality of clause 7.1(f), in carrying out their functions and powers under the Scheme the Scheme Administrators shall be entitled:
- (i) to agree Claims for Dividend purposes only, collect reinsurance recoveries and other Debts;
  - (ii) to exercise their discretion as regards whether a Claim is a Direct Claim as defined on page 3 of the Explanatory Statement;
  - (iii) to take possession of, collect and get in the Property of the Company and property to which the Company appears to be entitled and to do all such things as may be necessary for the realisation of the Property of the Company;
  - (iv) to do all things (including but without limitation the power to bring any Proceedings) which may be necessary or expedient for the realisation or protection of the Property of the Company (or of any property that appears to belong to the Company);
  - (v) to be remunerated (such remuneration to be calculated by reference to time spent at the usual rates of their firm) out of the Property of the Company for the carrying out of such functions and powers and to be reimbursed out of the Property of the Company for all expenses properly incurred by them in relation thereto;
  - (vi) to employ and remunerate as a Scheme Cost accountants, actuaries, lawyers and other professional advisers or agents (including the partners and staff of all PricewaterhouseCoopers LLP, associates and companies or their successors or any of them) for the purposes of exercising their functions and powers under the Scheme;
  - (vii) to present a petition and/or seek an order for the winding-up of the Company on behalf of its Scheme Creditors or the Company;
  - (viii) to apply, or to cause the Company to apply, to Court for directions in relation to any particular matter arising in the course of the Scheme;

- (ix) to extend any time limits contained in the Scheme other than the Final Claims Submission Date;
  - (x) on behalf of the Company to negotiate, compromise, waive or settle claims by and against the Company and in particular, without limitation, to agree on behalf of the Company with the reinsurers, retrocessionaires and Scheme Creditors to the commutation of any Liability owed to or by the Company and to treat the sum agreed as being due from the Company in respect of any debt subject to such compromise, settlement or commutation as an Ascertained Claim and to treat any sum which has been agreed to be paid to the Company under such compromise, commutation or settlement as a Debt due to the Company;
  - (xi) to petition the courts of any jurisdiction to obtain recognition or enforcement of the Scheme or to bring, commence or defend any Proceedings in the name and, insofar as is permitted by law, on behalf of the Company in any matter affecting the Company in any jurisdiction, or to prevent the continuation or commencement of any Proceedings against the Company or its Property and/or to seek such other relief as they deem appropriate or which the relevant court may grant;
  - (xii) to do all acts and to execute in the name and, insofar as permitted by law, on behalf of the Company any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for or incidental to the full and proper implementation of the Scheme;
  - (xiii) in the name and on behalf of the Company to rank and claim in the bankruptcy, insolvency, sequestration, liquidation or other similar or analogous proceedings of any person indebted to the Company in any jurisdiction and to receive dividends and to accede to trust deeds, compromises and arrangements in relation to the Scheme Creditors of any such person;
  - (xiv) to pass to a charity any Property that is not required for the purposes of the Scheme or for meeting any potential further liability or cost or expense; and
  - (xv) to do all other things and make any payment that may be necessary or incidental to the exercise of the functions and powers referred to in this clause 7.1(g).
- (h) The Scheme Administrators may cause the Company to enter into arrangements with third parties in order to assign, sell or otherwise dispose of benefits under the Company's outward Insurance Contracts if the Scheme Administrators consider that to do so would be in the best interests of the

Scheme Creditors (other than those with whom such arrangements are made). This power is without prejudice to the generality of clause 7.1(g) and is to be exercised in connection with the Scheme Administrators carrying out the functions and powers referred to in clause 7.1(g).

- (i) In the event of a dispute or conflict arising during the course of the Scheme (whether between the Company and the Scheme Administrators or between the Scheme Administrators themselves) the Company and the Scheme Administrators may from time to time enter into such arrangements as they consider appropriate to deal with such dispute or conflict including but not limited to appointing a suitable person to act to resolve the same.
- (j) No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with reasonable care by the Scheme Administrators or the Scheme Adjudicator, in pursuance of the Scheme or in the exercise or performance or purported exercise or performance by any such person of any power, duty or function conferred upon such person for the purpose of the Scheme and the Scheme Administrators and the Scheme Adjudicator shall not be liable to any person for any loss unless such loss is attributable to his own negligence, wilful default, breach of duty, breach of trust, fraud or dishonesty.
- (k) The Scheme Administrators may out of the Property of the Company pay costs incurred by the Scheme Administrators or Scheme Adjudicator in defending Proceedings against any of them alleging breach of duty, negligence, wilful default, breach of trust, fraud or dishonesty which relate to the operation of the Scheme provided that the Company obtains from such person an undertaking to reimburse the Company (with interest) for any amount paid hereunder, if judgment is not given in his favour at first instance.
- (l) The Scheme Administrators may negotiate with and enter into any arrangement with the FSCS Scheme Manager which is, in the reasonable opinion of the Scheme Administrators, in the interests of Scheme Creditors as a whole;
- (m) without prejudice to sections 219 and 221 of FSMA, for the purpose of enabling or assisting the FSCS Scheme Manager to perform its function or exercise its rights under the Scheme or generally to carry out its powers, functions or responsibilities at any time, the Company and the Scheme Administrators will (i) promptly provide to the FSCS Scheme Manager all such information in their possession or under their control or the control of their agents (including, but not limited to, Claim Forms and supporting evidence) as the FSCS Scheme Manager may from time to time reasonably request or (ii) permit any person authorised by the FSCS Scheme Manager to have access to (and be provided with copies of) the books and records of the Company and (in so far as they relate to the Company) of its agents.

## **7.2 POWERS OF INVESTMENT**

The Scheme Administrators shall have the power to invest the Property of the Company in such manner as they consider prudent from time to time, with full power from time to time to vary such investment.

## **7.3 CO-OPERATION BETWEEN SCHEME CREDITORS AND THE SCHEME ADMINISTRATORS**

Scheme Creditors shall co-operate with and lend such assistance to the Scheme Administrators and, in respect of Protected Policyholders, to the FSCS Scheme Manager as they may reasonably require, including (but not limited to) the provision of loss information and documentation and assistance in connection with the enforcement of obligations due by or owed to the Company.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **8 THE CREDITORS' COMMITTEE**

#### **8.1 CONSTITUTION OF THE CREDITORS' COMMITTEE**

- (a) There shall be a single Creditors' Committee for the purposes set out in the Scheme. It is proposed that this Committee will comprise of the same members as the committee established for the purposes of the Administration.
- (b) The Creditors' Committee shall consist of not less than two and not more than four persons (unless the Scheme Administrators in consultation with the Creditors' Committee decide otherwise) plus the FSCS Scheme Manager (each a 'Committee Member').
- (c) If the number of Committee Members is at any time, for whatever reason, less than two (plus the FSCS Scheme Manager), the continuing Committee Members may only act for the purpose of convening a meeting of Scheme Creditors to fill the vacancy or vacancies in the number of Committee Members but for no other purpose. For the purpose of electing persons to be Committee Members in accordance with this clause 8.1(c), clause 8.2(e) shall apply and Committee Members shall be appointed by Creditors Resolution. If the number of Committee Members does fall below two (plus the FSCS Scheme Manager), the continuing Committee Members shall act for the purposes set out in this clause 8.1(c) as soon as reasonably practicable. In so far as a meeting of Scheme Creditors convened for this purpose fails to appoint sufficient Committee Members, then the provisions of clause 8.2(b) shall apply.
- (d) Any Scheme Creditor or any authorised representative of any one or more Scheme Creditors (whether an individual, a body corporate or a partnership) shall be eligible for appointment as a Committee Member. If a partnership is appointed as a Committee 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 8.8.

#### **8.2 MEMBERSHIP OF THE CREDITORS' COMMITTEE**

- (a) The Creditors' Committee shall consist of those persons chosen as members of the Creditors' Committee as set out at clause 8.1(a).
- (b) Subject to clause 8.2(d), the Creditors' Committee may resolve at any time, by a simple majority of the Committee Members present at a meeting of the Creditors' Committee, to appoint any person who is eligible to be so appointed

to be a Committee Member, whether to fill a vacancy or as an additional Committee Member, but so that the total number of Committee Members shall not exceed the maximum number specified in clause 8.1(b). In appointing additional Committee Members, the Creditors' Committee shall endeavour to ensure that the composition of the Creditors' Committee is such that it represents a proper balance of the interests of the Scheme Creditors as a whole.

- (c) Subject to clause 8.1(c), the Scheme Creditors may, by Creditors' Resolution, remove any Committee Member (other than the FSCS Scheme Manager) from office and may by Creditors' Resolution appoint any person who is eligible to be appointed under clause 8.1(d) to be a Committee Member either to fill a vacancy or in addition to the existing Committee Members, but so that the total number of Committee Members shall not exceed the maximum number nor be less than the minimum number specified in clause 8.1(b).
- (d) Any Committee Member removed as such by the Scheme Creditors pursuant to clause 8.2(c) shall only be re-appointed as a Committee Member by the Scheme Creditors and not by the Creditors' Committee.
- (e) No person shall be appointed as a Committee Member under either clause 8.1(c) or 8.2(c) at any meeting of Scheme Creditors unless -
  - (i) he is recommended by the Creditors' Committee; or
  - (ii) not less than seven and not more than 28 clear days before the date appointed for the meeting, a notice executed by a Scheme Creditor qualified to vote at the meeting has been given to all Committee Members of the intention to propose that person for appointment together with a written notice signed by that person of his willingness to be appointed.

### **8.3 CEASING TO BE A COMMITTEE MEMBER**

- (a) The office of a Committee Member (other than the FSCS Scheme Manager) shall be vacated if that Committee Member, being an individual -
  - (i) resigns by notice in writing addressed to any one of the Scheme Administrators, such notice being effective on receipt;
  - (ii) is removed from office by a Creditors' Resolution, pursuant to clause 8.2(c);
  - (iii) is convicted of an indictable offence (other than offences in relation to road traffic);
  - (iv) ceases to be (or is found never to have been) a Scheme Creditor or an authorised representative of a Scheme Creditor;

- (v) fails to attend three consecutive meetings of the Creditors' Committee, unless the Creditors' Committee (excluding that Committee Member) resolves by a simple majority of the Committee Members present at a meeting of the Creditors' Committee that he should continue as a Committee Member;
  - (vi) dies;
  - (vii) becomes bankrupt or the equivalent under the law of any jurisdiction to which he is subject;
  - (viii) becomes mentally disordered under the law of any jurisdiction to which he is subject, including, without prejudice to the generality of the foregoing, Mentally Disordered; or
  - (ix) becomes disqualified from acting as a director under the law of any jurisdiction to which he is subject, including, without prejudice to the generality of the foregoing, The Company Directors Disqualification Act 1986.
- (b) The office of a Committee Member (other than the FSCS Scheme Manager) shall be vacated if that Committee Member, being a body corporate or partnership -
- (x) resigns by notice in writing addressed to any one of the Scheme Administrators, such notice being effective on receipt;
  - (xi) is removed from office by a Creditors' Resolution, pursuant to clause 8.2(c);
  - (xii) ceases to be (or is found never to have been) a Scheme Creditor or an authorised representative of a Scheme Creditor;
  - (xiii) fails to attend three consecutive meetings of the Creditors' Committee, unless the Creditors' Committee (excluding that Committee Member) resolves by a simple majority of the Committee Members present at a meeting of the Creditors' Committee that he should continue as a Committee Member; or
  - (xiv) is dissolved.
- (c) The FSCS Scheme Manager may resign or suspend its membership of the Creditors' Committee by notice in writing to the Scheme Administrators and signed by the chairman for the time being of the FSCS Scheme Manager. Such resignation or suspension shall be for such period as may be specified in any such notice, or until such time as the FSCS Scheme Manager notifies the Company in writing that it wishes to be re-appointed or end its suspension as a Committee Member in which case such appointment shall recommence

on receipt of such notice. Any such notice shall be deemed to have been received by the Scheme Administrators on the delivery by hand addressed to the Company, c/o PricewaterhouseCoopers LLP, Plumtree Court, London, EC4A 4HT or if sent by Post, other than by hand, addressed to the Company at the aforementioned address, 48 hours after such notice was posted.

#### **8.4 FUNCTIONS OF THE CREDITORS' COMMITTEE**

- (a) The Creditors' Committee shall be responsible for overseeing the implementation by the Scheme Administrators of the Scheme including, without prejudice to the generality of the foregoing, providing their views on any matter relating to the Scheme as and when requested to do so by the Scheme Administrators.
- (b) The Creditors' Committee shall, insofar as it is able, ensure that there is a Scheme Administrator in office at all times throughout the Scheme Period. If the office of both of the Scheme Administrators is vacated in accordance with 7.1(d) the Creditors' Committee may at any time appoint a replacement Scheme Administrator provided such person is qualified in accordance with clause 7.1(c) and is not otherwise disqualified by reference to the matters contained in clause 7.1(d).
- (c) The Creditors' Committee shall consider and if, acting reasonably, they believe it is in the interests of Scheme Creditors to do so, approve any material change to any investment policy proposed for any Property of the Company by the Scheme Administrators prior to its implementation except where it is impractical to do so for whatever reason, at the sole discretion of the Scheme Administrators, in which case such investment policy shall be considered by the Creditors' Committee as soon as practicable after its implementation.
- (d) The Creditors' Committee shall have the other functions specifically referred to in the Scheme.

#### **8.5 INFORMATION TO BE GIVEN TO THE CREDITORS' COMMITTEE**

- (a) The Creditors' Committee may from time to time resolve what information it requires from the Scheme Administrators relating to the operation of the Scheme and other matters concerning the affairs of the Company, and the Creditors' Committee may request any one Committee Member to apply in writing to, and receive from, the Scheme Administrators all such information.
- (b) Nothing in clause 8.5(a) shall require the Scheme Administrators to provide to the Creditors' Committee any information the release of which they determine would be detrimental to the interests of the Company and/or the Scheme Creditors as a whole, or any information which the Company (or any of its agents) is under a legal duty not to disclose. If the Scheme Administrators

refuse to provide information under clause 8.5(a), they shall give the Creditors' Committee reasons for their decision.

- (c) Without prejudice to Sections 219 to 221 of the FSMA, 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 Committee Member and, subject to their duties under the Scheme, the Scheme Administrators shall use reasonable endeavours, insofar as it is cost-effective for them to do so, to respond to such questions or to comply with any such request for a meeting.

## **8.6 DUTIES OF COMMITTEE MEMBERS**

- (a) Each Committee Member and Nominated Representative (as defined in clause 8.8(d)) shall, in performing his functions as such, act in good faith and with due care and diligence in the interests of the Scheme Creditors as a whole.
- (b) Each Committee Member shall use his best endeavours to avoid conflicts of interest in performing his duties under the Scheme. It shall be the duty of each Committee Member who is in any way, whether directly or indirectly, interested in a contract, arrangement or proposed contract or arrangement with the Company to declare (or procure that his Nominated Representative declares) the nature of his interest at a meeting of the Creditors' Committee. For this purpose, a general notice given to the Creditors' Committee to the effect that the Committee Member is an associate (within the meaning of Section 435 of the Insolvency Act) of a specified company or firm and is to be regarded as interested in any contract with that company or firm shall be deemed a sufficient declaration of interest in relation to any such contract or arrangement. The provisions of clause 8.7(h) shall apply to any Committee Member with such an interest.
- (c) Each Committee Member shall (and shall procure that any Nominated Representative, its officers and employees shall) preserve the confidentiality of all information received in his capacity as Committee Member or Nominated Representative concerning the Company and the operation of the Scheme and shall use such information only for the purpose of performing his responsibilities and functions under the Scheme unless he shall have obtained the prior written approval of the Scheme Administrators.
- (d) Notwithstanding clause 8.6(c), each Nominated Representative shall be entitled to report to the Committee Member appointing him on the proceedings of the Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of and relating to the Company to those officers, employees and professional advisers of that Committee Member who need to know it in connection with (where a Nominated Representative is

disclosing information) the performance of his responsibilities as a member of the Creditors' Committee, provided that such information does not to his knowledge (after due enquiry) relate to any matter where any such appointer has an conflict of 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 as Scheme Creditors). Each member of the Creditors' Committee, other than the FSCS Scheme Manager, shall, and shall procure that its his Nominated Representative and his officers, employees and professional advisers shall, preserve the confidentiality of such information and shall use such information only for the purpose of performing their responsibilities and functions in relation to the Creditors' Committee.

- (e) Notwithstanding clause 8.6(c), the Nominated Representative of the FSCS Scheme Manager shall be entitled to report to the FSCS Scheme Manager or to any regulatory or governmental body or authority on the proceedings of the Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of the Company to the board of the FSCS Scheme Manager and/or any regulatory or governmental body provided that such information does not to his knowledge (after due enquiry) relate to any matter where FSCS Scheme Manager has a conflict of interest with the Company (other than a general conflict arising as a result of the status of the FSCS Scheme Manager as a creditor of the Company). Without prejudice to clause 6.7 and subject to the disclosure permissible by the FSCS Scheme Manager as provided in this clause, the FSCS Scheme Manager shall, and shall procure that its Nominated Representative and the individual board members of the FSCS Scheme Manager 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.

## **8.7 PROCEEDINGS OF THE CREDITORS' COMMITTEE**

- (a) Subject to the provisions of the Scheme, the Creditors' Committee may convene, adjourn or otherwise regulate its meetings as it sees fit.
- (b) The Chairman at any meeting (the '**Chairman**' for this Section 8) shall be one of the Scheme Administrators or a person nominated by them so to act, or in their absence such person as may be nominated by the Creditors' Committee.
- (c) The Creditors' Committee shall meet at least once in each calendar year commencing in 2006 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 deems necessary for the purpose of performing its functions under the Scheme.
- (d) The Scheme Administrators may summon and three Committee Members may at any time request the Scheme Administrators to summon a meeting of

the Creditors' Committee. Notwithstanding clause 8.7(c), the Scheme Administrators shall call a meeting of the Creditors' Committee as soon as practicable after receiving a request to do so under this clause 8.7(d).

- (e) When summoning a meeting of the Creditors' Committee, the Scheme Administrators shall send written notice to each Committee Member of such meeting setting out the time and place of the meeting (which shall be in London or such other place as the Scheme Administrators may reasonably direct) and indicating the nature of the business to be transacted.
- (f) Except with the consent of all Committee Members, no meeting of the Creditors' Committee may be called upon less than 14 clear days' notice and no business may be transacted at any meeting of the Creditors' Committee other than as set out in the notice of that meeting.
- (g) The quorum necessary for the transaction of business shall be three Committee Members. If a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to such time and place as the Chairman may reasonably determine and the quorum at any such adjourned meeting shall be four Committee Members.
- (h) Each Committee Member shall have one vote. Except as otherwise provided in the Scheme, matters arising at any meeting shall be decided by a simple majority of votes of the Committee Members (for the avoidance of doubt, excluding the Chairman) attending at such meeting and entitled to vote and voting on such matter. In the case of equality of votes, the Chairman shall have the casting vote in respect of that particular resolution voted upon. A Committee Member, and his Nominated Representative, shall not be entitled to vote or to form part of the quorum in relation to any matter in which he is in any way, in the opinion of the Scheme Administrators, interested (other than a general interest arising by reason only of his status as a Scheme Creditor) and, if requested to do so, shall absent himself from the meeting for so long as such matter is discussed and voted upon and shall not receive any information nor be entitled to inspect any part of the minutes of a meeting of the Creditors' Committee, relating thereto.
- (i) The Scheme Administrators shall be entitled to attend, speak and/or make written submissions at all meetings of the Creditors' Committee. However, they shall not be entitled to vote at any such meeting unless as Chairman in accordance with clause 8.7(h) or otherwise as agreed by the Creditors' Committee.
- (j) A resolution in writing, including a facsimile copy, signed in any number of counterparts by all the Committee Members for the time being shall be as

valid and effective as if passed at a meeting of the Creditors' Committee duly convened and held.

- (k) A Committee Member and/or a Scheme Administrator may participate in a meeting of the Creditors' Committee by conference telephone or similar form of communication equipment if all persons participating in the meeting are at all material times able to hear and speak to each other. A person participating in this way shall be deemed to be present in person at the meeting and in the case of a Committee Member shall be counted in a quorum and entitled to vote, if appropriate. All business transacted in this way by the Creditors' Committee shall be deemed to be validly and effectively transacted at a meeting of the Creditors' Committee.
- (l) The Chairman shall cause proper minutes to be kept of all proceedings of the Creditors' Committee and such minutes shall at all reasonable times be open to inspection by any Committee Member (except in so far as a Committee Member is interested in any matter detailed in the minutes as contemplated by clause 8.7(h)) and/or by the Scheme Administrators.

#### **8.8 APPOINTMENT OF NOMINATED REPRESENTATIVES**

- (a) Each Committee Member, other than the FSCS Scheme Manager, which is a body corporate or a partnership may, by notice to the Scheme Administrators, appoint a senior executive or other senior employee as its representative to represent that Committee Member at any meeting of the Creditors' Committee.
- (b) Any Committee Member who is an individual may, by notice in writing to the Scheme Administrators, appoint a responsible individual as its representative to attend and vote in his place at any meeting of the Creditors' Committee.
- (c) The FSCS Scheme Manager shall be entitled to appoint one person to represent it at any meeting of the Creditors' Committee.
- (d) 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 alternative shall have the powers and shall be subject to the same limitations as the Nominated Representative who has appointed him.

#### **8.9 POWERS OF NOMINATED REPRESENTATIVES**

Any Nominated Representative shall have the same powers and shall be subject to the same duties and limitations as the Committee Member whom the Nominated Representative represents.

#### **8.10 REVOCATION AND TERMINATION OF APPOINTMENT OF NOMINATED REPRESENTATIVES**

- (a) Any person entitled to appoint a Nominated Representative may from time to time revoke any appointment that he has made (and the appointment therefore of any alternate shall automatically be revoked) and appoint another Nominated Representative by notice in writing to the Scheme Administrators.
- (b) The appointment of a Nominated Representative, and of any alternate appointed by him, shall terminate automatically if -
  - (i) his appointment is revoked by his appointor;
  - (ii) the person whom that Nominated Representative represents ceases to be a Committee Member;
  - (iii) in the case of a Committee Member which is a body corporate or partnership, the Nominated Representative ceases to be a senior executive, senior employee or other senior officer of the Committee Member whom he represents;
  - (iv) the Nominated Representative dies, becomes mentally disordered or bankrupt under the law of any the jurisdiction to which he is subject including, without prejudice to the generality of the foregoing, Mentally Disordered;
  - (v) the Nominated Representative is disqualified from acting as a director under the law of any jurisdiction to which he is subject including, without prejudice to the generality of the foregoing, The Company Directors Disqualification Act 1986; or
  - (vi) the Nominated Representative is convicted of an indictable offence (other than offences in relation to road traffic).

#### **8.11 VALIDATION**

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

- (a) No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with reasonable care by a Committee Member, in pursuance of the Scheme or in the exercise or performance or purported exercise or performance by any such person of any power, duty or function conferred upon such person for the purpose of the Scheme and the Committee Members shall not be liable to any person for any loss unless

such loss is attributable to his own negligence, wilful default, breach of duty, breach of trust, fraud or dishonesty.

- (b) The Scheme Administrators may out of the Property of the Company pay costs incurred by the Committee Members in defending Proceedings against any of them alleging breach of duty, negligence, wilful default, breach of trust, fraud or dishonesty which relate to the operation of the Scheme provided that the Company obtains from such person an undertaking to reimburse the Company (with interest) for any amount paid hereunder, if judgment is not given in his favour at first instance.

#### **8.12 EXPENSES**

- (a) The Company shall pay the reasonable costs incurred in summoning meetings of the Creditors' Committee (irrespective of who requests the meeting) and the reasonable out of pocket expenses incurred by the Committee Members and the Scheme Administrators in attending such meetings.
- (b) The Company shall also pay, at the Scheme Administrators' sole discretion, any other costs and expenses reasonably incurred by any Committee Member in carrying out his duties and functions as Committee Member under the Scheme.
- (c) All amounts payable under clauses 8.12(a) and 8.12(b) shall be payable out of the Property of the Company as Scheme Costs.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **9 TERMINATION OF THE SCHEME AND LIQUIDATION**

#### **9.1 DURATION OF THE SCHEME**

270 days after the despatch of the last cheque or telegraphic transfer, as the case may be, to the last Scheme Creditor to whom payment is to be made under the terms of the Scheme, the Scheme Administrators shall;

- (i) give notice to the Company by letter to its registered office
- (ii) give notice to the FSCS Scheme Manager at its registered office

Alternatively, if the Scheme Administrators at any time form the view that the Scheme is no longer in the interests of the Scheme Creditors they will notify the Creditors Committee as soon as practicable of the view they have reached. If the Creditors Committee sanctions the giving of notice earlier than the time set out above the Scheme Administrators shall give notice in writing to the Scheme Creditors that they have concluded and the Creditors Committee concurs, that the Scheme is no longer in the interests of the Scheme Creditors, giving reasons for their conclusion.

At any time after the Scheme Administrators have given notice as set out above, the Scheme Administrators, on behalf of the Company, may seek an order from the Court for the Company to be wound up, and the Scheme in those circumstances shall terminate on the date of that order. Alternatively, if the Scheme Administrators in their discretion consider that it is not in the best interests of the Company for a winding up order to be made by the Court, they may include a statement to that effect and provide for a date of termination in the notices given as set out above and the Scheme shall terminate on that date.

In the event that Direct Claim Creditors are not paid in full, steps will be taken to place the Company in liquidation and terminate the Scheme, unless the Scheme Administrators and the FSCS agree otherwise.

The termination of the Scheme shall not prejudice any Distribution already made.

#### **9.2 EFFECT OF LIQUIDATION EVENT**

- (a) Unless Direct Claim Creditors are not paid in full so that clause 9.1 applies, if the Company goes into creditors' voluntary liquidation or compulsory liquidation pursuant to the Insolvency Act prior to the Date of Termination:
  - (i) the Scheme will continue in operation in its existing form; and

- (ii) in any conflict between the provisions of the Insolvency Legislation and the Scheme as they apply to Scheme Creditors following a Liquidation Event, those of the Scheme shall prevail.
- (b) If the Company goes into liquidation under clause 9.2(a) above:
- (iii) all Dividends and other payments made under the Scheme shall remain undisturbed including, without limitation, the Scheme Administrators' costs of implementing the Scheme and those relating to the winding-up order;
  - (iv) any Dividends paid to Scheme Creditors under the Scheme will be treated in the liquidation of the Company as past dividend payments; and
  - (v) subject to clauses 9.2(b)(i) and 9.2(b)(ii) the Insolvency Legislation shall apply to the Company.

## **PART II: THE SCHEME OF ARRANGEMENT**

### **10 GENERAL SCHEME PROVISIONS**

#### **10.1 UNCLAIMED BALANCES**

Copies of all notices in the Scheme including a notice that that Direct Claims have been paid and notice that a Dividend has been paid to other Scheme Creditors will be available on the PwC website at [www.pwc.com/uk/aamii](http://www.pwc.com/uk/aamii). It is the responsibility of each Scheme Creditor to monitor the information posted on that website and any Scheme Creditor who believes that they should have received a payment but has not received one must contact the Scheme Administrators immediately. Failure to contact the Scheme Administrators within 6 months of a relevant payment cheque being issued will mean that the Scheme Creditor will be deemed to have received payment. Every cheque must be cashed within 6 months of the date of issue. The Scheme Administrators will be at liberty to cancel any cheques which have not been cashed within six months of the date of issue. The Scheme Claim of the relevant Scheme Creditor will nonetheless be deemed to have been satisfied in full. The sums representing such unclaimed distributions (“Unclaimed Balances”) will be held by the Scheme Administrators who, in consultation with the Creditors’ Committee, will decide how such funds will be administered. This may involve further payments to Scheme Creditors or the Scheme Administrators may consider whether to make any such funds available for one or more charities established in the UK. Any charity or charities will be selected by the Scheme Administrators.

#### **10.2 CURRENCY CONVERSION**

Any amount payable to a Scheme Creditor under the Scheme in respect of a Claim shall be paid in US Dollars or £GBP should the Scheme Creditor so wish and is contractually entitled to receive. The Claim of a Scheme Creditor in respect of any Claim which was incurred in a currency other than US Dollars or £GBP shall be converted into US Dollars or £GBP (at the Scheme Creditors request and contractually entitled to receive) at the Relevant Rate of Exchange as shown in Appendix 6 to the Explanatory Statement. If a currency does not appear in the Currency Conversion Table it shall be converted into US dollars or £GBP at the rate of exchange appearing in the Financial Times Guide to World Currencies at the date nearest the Ascertainment Date.

#### **10.3 TIME LIMITS**

- (a) The Scheme Administrators may at their absolute discretion extend any time period (except the Final Claims Submission Date which cannot be changed except pursuant to clause 3.5(c)) referred to in the Scheme (save for any time period in Part 4 which may only be extended at the sole discretion of the Scheme Adjudicator). The power to extend time periods under this clause

10.3(a) may be exercised for any one or more Scheme Creditors or for all Scheme Creditors.

- (b) Time periods laid down by the Scheme shall be calculated by reference to elapsed days and not Business Days. In the event that a time period expires on a day which is not a Business Day, such period of time shall be deemed not to expire until close of business on the next following Business Day.

#### 10.4 PARTIAL INVALIDITY

If at any time any provision of the Scheme is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction, nor the legality, validity or enforceability of any other provision under the law of that or any other jurisdiction shall in any way be affected or impaired thereby.

#### 10.5 SUBMISSIONS AND NOTICES

- (a) Claim Forms submitted by Scheme Creditors to the Scheme Administrators shall be sent either by pre-paid first class Post or by airmail if posted outside the United Kingdom, addressed as follows:

The Scheme Administrators of AA Mutual International Insurance Company Limited  
c/o PricewaterhouseCoopers LLP  
Plumtree Court  
London EC4A 4HT  
United Kingdom  
Reference: Caroline Turnbull

or to such other address as may be notified to Scheme Creditors from time to time.

- (b) Any notice to be given by or to the Scheme Administrators or any Scheme Creditor 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 or by air mail (if it is delivered to a different country from that in which it is posted). Notices to be given to the Scheme Administrators should be delivered to the following address:

c/o PricewaterhouseCoopers LLP  
Plumtree Court  
London EC4A 4HT  
United Kingdom  
Reference: Caroline Turnbull

alternatively by fax addressed as above and transmitted to the following fax number +44 (0) 207 804 5203 (Ref: Caroline Turnbull). Notices to be given to Scheme Creditors shall be delivered to the registered office or last known address of the Scheme Creditor or its agents, as the case may be.

- (c) Subject to clause 10.5(d) notices shall be deemed to be given on the second or, if by air mail, the seventh day in the place of receipt following the date on which it is posted. Notices given by fax shall be deemed to be received on the date of the transmission of the fax.
- (d) Any Claim Form sent to the Scheme Administrators shall be regarded as received only at the actual time of receipt by the Scheme Administrators. Clauses 10.5(b) and 10.5(c) do not (for the avoidance of doubt) apply to Claim Forms.

#### **10.6 GOVERNING LAW AND JURISDICTION**

- (a) The Scheme shall be governed by and construed in accordance with English law and the Company and the Scheme Creditors hereby irrevocably submit to the exclusive jurisdiction of the English Court.
- (b) Notwithstanding the provisions of clause 10.6(a), the Scheme Administrators retain the right to bring Proceedings, in the name of the Company or otherwise, in the courts of any country having jurisdiction under its own laws to hear such Proceedings and/or to seek such other relief as they deem appropriate or which the relevant court may grant.

**NOTICE OF MEETINGS OF SCHEME CREDITORS  
IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT**

**IN THE MATTER OF AA MUTUAL INTERNATIONAL INSURANCE COMPANY LIMITED  
(IN ADMINISTRATION)**

and

**IN THE MATTER OF THE COMPANIES ACT 1985**

NOTICE IS HEREBY GIVEN that by an Order dated 28 February 2006 the High Court of Justice in England and Wales has directed that separate Meetings of Scheme Creditors (as defined in the Proposed Scheme) of AA Mutual International Insurance Company Limited (in administration) ("the Company") are to be held on 26 April 2006 at PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT commencing at 11:00 am. All Scheme Creditors are requested to attend at such place and time either in person or by proxy. Please allow adequate time for registration prior to the meetings.

The purpose of the Meetings of Scheme Creditors will be to consider and, if thought fit, to approve (with or without modification) a scheme of arrangement proposed to be made between the Company and the Scheme Creditors pursuant to s425 of the Companies Act 1985 ("the Proposed Scheme").

Two separate meetings of Scheme Creditors are to be held as follows:

- (a) a meeting of all Direct Claim Creditors, defined in the Proposed Scheme as Scheme Creditors with claims arising out of an insurance contract entered into with the Company by a Scheme Creditor other than in the capacity of insurer, reinsurer or retrocessionaire ceding business to the Company; and,
- (b) a meeting of all other Scheme Creditors of the Company.

Claims which arise in respect of a liability insured by the Company and required to be covered under section 1 of the Employer's Liability (Compulsory Insurance) Act 1969 or Article 5 of the Employer's Liability Order (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 (defined in the Proposed Scheme as "UK EL Claims") are not Scheme Claims for the purposes of the Proposed Scheme, and creditors of the Company are not Scheme Creditors in respect of such claims.

A short statement explaining the effect of the Scheme, as required to be provided to Scheme Creditors by section 426 of the Companies Act 1985, together with a Voting Form and Form of Proxy for use at the Meetings of Scheme Creditors, is being sent to known Scheme Creditors as well as to known brokers who have been asked to notify the proposed Scheme to any of their clients who may be Scheme Creditors and inform them how to obtain copies of the various Scheme documents. Copies of the Proposed Scheme, Explanatory Statement, Voting Form and Form of Proxy may be downloaded from [www.pwc.com/uk/aamii](http://www.pwc.com/uk/aamii), or are available from the Joint Administrators by post or email on request to Caroline Turnbull ([caroline.j.turnbull@uk.pwc.com](mailto:caroline.j.turnbull@uk.pwc.com)) or to the address given below.

Scheme Creditors may vote in person at the Meetings of Scheme Creditors or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

Completed Voting Forms and Forms of Proxy should be lodged with the Joint Administrators, AA Mutual International Insurance Company Limited, c/o Caroline Turnbull at PricewaterhouseCoopers LLP, Plumtree Court, London, EC4A 4HT, Fax: +44 (0)207 804 5203 as soon as possible and no later than 4pm (London time) on 25 April 2006. Faxed copies will be accepted if legible. Voting Forms and Forms of Proxy may also be handed in at the registration desk at the Meetings of Scheme Creditors prior to their commencement.

By its Order, the Court has appointed Douglas Nigel Rackham of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom, or failing him Dan Yoram Schwarzmann of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom, or in the absence of both of them their alternate or a partner of PricewaterhouseCoopers LLP, to act as Chairman of the Meetings of Scheme Creditors and has directed the Chairman to report the result of the Meetings of Scheme Creditors to the Court.

In the event that the Scheme Creditors vote in favour of the Scheme, it will be subject to the subsequent approval of the Court.

Dated this 28 day of February 2006.

Charles Russell, 8-10 Fetter Lane, London EC4A 1RS United Kingdom (Ref: Tobey Butcher)  
Solicitors for the Joint Administrators of AA Mutual International Insurance Company Limited