

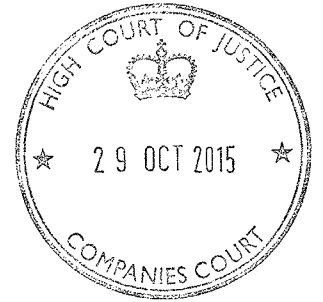
IN THE HIGH COURT OF JUSTICE

Claim Nos: 5812 and 5813 of 2014

CHANCERY DIVISION

COMPANIES COURT

THE HONOURABLE MRS JUSTICE ROSE



DATED 29 OCTOBER 2015

IN THE MATTER OF **OIC RUN-OFF LIMITED (FORMERLY RALLI BROTHERS INSURANCE COMPANY LIMITED AND THE ORION INSURANCE COMPANY PLC)**

AND IN THE MATTER OF **THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED (FORMERLY HULL UNDERWRITERS' ASSOCIATION LIMITED AND THE LONDON AND OVERSEAS INSURANCE COMPANY PLC)**

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

ORDER

UPON THE APPLICATIONS of (1) OIC Run-Off Limited and (2) The London and Overseas Insurance Company Limited (together the "**Scheme Companies**" and each a "**Scheme Company**") by Part 8 Claim Forms dated 15 August 2014 (the "**Claim Forms**")

AND UPON HEARING Barry Isaacs QC and Daniel Bayfield (Leading Counsel and Counsel for the Scheme Companies) and Martin Moore QC (Leading Counsel for Nationale-Nederlanden Overseas Finance and Investment Company)

AND UPON READING the Claim Forms and the written evidence filed relating to the said applications

AND UPON each of (i) the Financial Services Compensation Scheme and (ii) Serjeants' Inn Nominees Limited (as trustee), by Barry Isaacs QC, undertaking: (a) to be bound by; and (b) to execute and do or procure to be executed or done all such documents, acts and things as may be necessary or desirable to be executed or done by them for the purpose of giving effect to, the Amending Scheme

AND UPON each of (i) Nationale-Nederlanden Overseas Finance and Investment Company and (ii) the Institute of London Underwriters, by Martin Moore QC, undertaking: (a) to be bound by; and (b) to execute and do or procure to be executed or done all such documents, acts and things

as may be necessary or desirable to be executed or done by them for the purpose of giving effect to, the Amending Scheme

IT IS ORDERED THAT

1. This Court hereby sanctions the Amending Scheme in the form attached as the Schedule hereto.
2. Subject to the United States Bankruptcy Court issuing the Chapter 15 Order (as defined in the Amending Scheme) in a form satisfactory to the Scheme Administrators of the Scheme Companies, each Scheme Company shall, as soon as is reasonably practicable, deliver an office copy of this Order to the Registrar of Companies for England and Wales.

Service of the Order

The Court has sent sealed copies of this Order to:

Hogan Lovells International LLP at Atlantic House, 50 Holborn Viaduct, London EC1A 2FG

Slaughter and May, 1 Bunhill Row, London EC1Y 8YY

SCHEDULE

AMENDING SCHEME

PART II
THE AMENDING SCHEME

PROPOSAL IN RELATION TO
AN AMENDING SCHEME OF ARRANGEMENT
(pursuant to Part 26 of the Companies Act 2006)

between

OIC RUN-OFF LIMITED
(formerly Ralli Brothers Insurance Company Limited and The Orion Insurance Company plc)

THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED
(formerly Hull Underwriters' Association Limited and The London and Overseas Insurance Company plc)
(both subject to a scheme of arrangement)

and their respective

SCHEME CREDITORS
(as defined in the Amending Scheme)

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Section 1: Definitions and interpretation

1. Definitions

- 1.1. In the Amending Scheme, terms and expressions shall have the meanings given to them in Appendix 1 (*Definitions*).
- 1.2. Terms and expressions defined in the Original Scheme shall have the same meanings in the Scheme, unless otherwise expressly defined or modified in the Amending Scheme.
- 1.3. References in the Original Scheme to the Policyholders Protection Board and to officers of the Policyholders Protection Board shall be read as if they referred to the FSCS Scheme Manager and its equivalent officers.
- 1.4. In the event of any inconsistency or conflict between either the terms or definitions in the Original Scheme and the terms or definitions in the Amending Scheme, the terms and definitions in the Amending Scheme shall prevail over those in the Original Scheme.

2. Interpretation

- 2.1. The Amending Scheme includes the Appendices which accordingly form part of the Amending Scheme for all purposes.
- 2.2. Subject to paragraph 2.3, the principles of interpretation set out at clause 2 of the Original Scheme shall have effect as if set out in full in the Amending Scheme.
- 2.3. In the Amending Scheme:
 - (a) any reference to a "paragraph" and/or "Appendix" is, unless the context otherwise requires, a reference to a paragraph and/or Appendix in the Amending Scheme;
 - (b) any reference to a "section" is, unless the context otherwise requires, a reference to a section in the relevant Appendix in the Amending Scheme;
 - (c) any reference to an "individual" shall mean a natural person only; and
 - (d) any reference to "clear days" in relation to a time period means that in calculating the number of days in that time period:
 - (i) the day on which the time period begins; and
 - (ii) the day on which the time period ends,are not included for the purposes of such calculation.

Section 2: Preliminary

3. Participation in the Scheme

- 3.1. Each of the FSCS Scheme Manager, the Trustee, NNOFIC, the ILU and the Companies have agreed to be bound by the Scheme and to execute or do, or procure to be executed or done, all documents, acts or things as may be necessary or as the Court may direct to be executed or done by it or on its behalf for the purpose of giving effect to the Scheme.
- 3.2. NNOFIC will not pass a resolution for the voluntary winding-up of Orion or present a petition for the compulsory winding-up of either or both of the Companies without the prior written consent of the Scheme Administrators.
- 3.3. NNOFIC has further agreed that it will procure that any successor to NNOFIC ("**Successor**") that is acceptable to the Companies and the ILU (both acting reasonably) will also agree to be bound by the terms of both the Scheme and the Orion Trust Deed by executing a deed of adherence in the form of Appendix 6 (*Deed of adherence*) or a form substantially similar thereto.
- 3.4. Dan Yoram Schwarzmann and Paul Anthony Brereton Evans, the current Scheme Administrators, have each given and have not withdrawn their consent to continue to act as Scheme Administrators from the New Effective Date.
- 3.5. Mark Allen of PricewaterhouseCoopers LLP, the first Scheme Actuarial Adviser, has given and has not withdrawn his consent to act as the Scheme Actuarial Adviser from the New Effective Date and to be bound by the terms of the Scheme to the extent that they apply to him as Scheme Actuarial Adviser.
- 3.6. Raji Bhagavatula of Milliman, Inc, the first Scheme Adjudicator, has given and has not withdrawn her consent to act as Scheme Adjudicator from the New Effective Date and to be bound by the terms of the Scheme to the extent that they apply to her as Scheme Adjudicator.
- 3.7. Leo J. Jordan Sr, the first No Notice Adjudicator, has given and has not withdrawn his consent to act as No Notice Adjudicator from the New Effective Date and to be bound by the terms of the Scheme to the extent that they apply to him as No Notice Adjudicator.
- 3.8. Charles E. Bates, the first Individual Claimant Representative, has given and has not withdrawn his consent to act as Individual Claimant Representative from the New Effective Date and to be bound by the terms of the Scheme to the extent that they apply to him as Individual Claimant Representative.

4. Incorporation of the Amending Scheme

- 4.1. The provisions of the Original Scheme shall continue in full force and with effect from the New Effective Date save as amended by the Amending Scheme. With effect from the New Effective Date, the Original Scheme shall be amended and operate (and shall be read and construed) as if the provisions of the Amending Scheme were included in the Original Scheme.
- 4.2. The terms of the Amending Scheme which provide for the Liabilities of the Companies to become Established Liabilities other than by agreement and ascertainment of claims in the normal course of business shall take effect notwithstanding clause 19 of the Original Scheme.

5. Modification of the Amending Scheme

- 5.1. Subject to paragraphs 5.2 and 5.3, each of the Companies may, at any hearing of the Court, consent on behalf of the Scheme Creditors, the FSCS Scheme Manager, the Trustee, NNOFIC and the ILU to any modification of, or addition to, the Amending 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 Amending Scheme.
- 5.2. Any modification, addition, term or condition as is referred to in paragraph 5.1 which, in the opinion of the FSCS Scheme Manager, would directly or indirectly adversely affect the interests of the FSCS Scheme Manager in the Scheme shall not take effect unless approved by the FSCS Scheme Manager.

- 5-3. Any modification of, or addition to, the Amending Scheme or any of its terms and conditions which, in the reasonable opinion of either or both of NNOFIC and the ILU (as the case may be), would or might directly or indirectly adversely affect the interests of either or both of NNOFIC and the ILU (respectively, as the case may be) solely in relation to the CPLA, shall not take effect unless approved by either or both of NNOFIC and the ILU (as the case may be).

Section 3: General provisions

6. Purpose of the Amending Scheme

- 6.1. The purpose of the Amending Scheme is to allow for the agreement of Scheme Liabilities and distribution of Scheme Assets to Scheme Creditors (other than Opt Out Qualifying ILU Policyholders, Potentially Protected Policyholders and, in the circumstances set out in paragraph 42.3, Pre-1969 L&O Policyholders) earlier than would be achieved under the Original Scheme. In addition, the Amending Scheme enables Qualifying ILU Policyholders who wish to do so to opt out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme and instead have their Scheme Liabilities under their Qualifying ILU Policies agreed or determined (as the case may be) and paid in the ordinary course in accordance with the terms of the Original Scheme (as amended by paragraphs 1 to 10 (inclusive), 22 to 54 (inclusive) and Appendix 1 of the Amending Scheme).
- 6.2. The Opt Out Scheme Assets and the Post Bar Date Provision shall each be held on trust by the Companies for the purposes specified under the terms of the Scheme and shall only be dealt with in accordance with the provisions of paragraphs 41.6 and 44.10 respectively (including the requirement to make payment to NNOFIC in the circumstances referred to in paragraphs 41.5 and 44.9 respectively).

7. Conditions precedent and the New Effective Date

- 7.1. The Amending Scheme shall not proceed unless:
- (a) it is approved at all the Amending Scheme Meetings in relation to each Company by the majorities of Scheme Creditors prescribed by section 899(1) of the Companies Act;
 - (b) the Court shall have sanctioned the Amending Scheme in relation to the Companies under section 899 of the Companies Act; and
 - (c) the Chapter 15 Order has been issued by the United States Bankruptcy Court in a form satisfactory to the Scheme Administrators.
- 7.2. The Amending Scheme shall become effective as soon as a copy of the New Court Orders sanctioning the Amending Scheme in respect of each of the Companies has been delivered to the Registrar of Companies for registration in respect of each of the Companies as required by section 899(4) of the Companies Act.

8. Time periods and deadlines

- 8.1. The Scheme Administrators may, in their absolute discretion, either generally or in respect of any particular Claim Form or Scheme Creditor, and subject to such conditions as the Scheme Administrators in their absolute discretion may determine, extend any time periods referred to in the Scheme (except for the Bar Date) and the time periods applicable to the discharge by the Scheme Actuarial Adviser and/or Scheme Adjudicator of their respective functions.
- 8.2. Subject to paragraphs 8.3 and 8.4, time periods laid down by the Scheme shall be calculated by reference to elapsed clear days and not Business Days.
- 8.3. In the event that a time period expires on a Business Day, such period shall be deemed to expire at midnight (English time) on that Business Day.
- 8.4. In the event that a time period expires on a day which is not a Business Day, such period shall be deemed to expire at midnight (English time) on the next following Business Day.

9. Claims agreement outside the Scheme

- 9.1. Either Company may enter into contractual arrangements in accordance with clause 29.3(n) of the Original Scheme, whether or not the relevant Scheme Creditor is subject to the Amending Scheme but so that the reference to an Established Liability in clause 29.3(n)(i)(bb) shall be read as a reference to a Net Liability if the relevant Scheme Creditor is subject to the Amending Scheme.
- 9.2. When entering into contractual arrangements with Scheme Creditors subject to the Amending Scheme in accordance with clause 29.3(n) of the Original Scheme, the Scheme Administrators shall have regard to the best interests of the Scheme Creditors taken as a

whole in accordance with their respective rights under the Scheme, applying criteria consistent with the Estimation Guidelines. Without prejudice to the generality of the foregoing, the Scheme Administrators shall have:

- (a) the same regard to the interests of Qualifying ILU Policyholders as they have to the interests of other Scheme Creditors; and
- (b) no regard to the existence of the Facility or the Qualifying ILU Policyholder Premium.

The Scheme Administrators shall endeavour to adopt and maintain a consistent approach when entering into any contractual arrangements with Scheme Creditors in accordance with clause 29.3(n) of the Original Scheme.

- 9.3. This paragraph 9 shall not affect the obligations of a Scheme Creditor to submit its claim to the Companies in accordance with the provisions of the Amending Scheme.

Section 4: Determination of claims

10. Notice of New Effective Date, Bar Date and distribution of Claim Forms

- 10.1. The Scheme Administrators shall, as soon as reasonably practicable after the New Effective Date, send by Post those documents listed in paragraph 10.3 to the following persons at their respective last known addresses:
- (a) the FSCS Scheme Manager;
 - (b) each person they believe to be, or they know claims to be, a Scheme Creditor; and
 - (c) each broker or other person known by the Scheme Administrators to have placed business with the Companies and/or to be duly authorised to accept service on behalf of a Scheme Creditor (and of whom the Scheme Administrators are aware at the time), together with a request that such person pass on the same documents to any Scheme Creditor for which they act.
- 10.2. The Scheme Administrators shall, as soon as reasonably practicable after becoming aware between the New Effective Date and the Bar Date of any other person who is or may be a Scheme Creditor, send by Post those documents listed in paragraph 10.3 and (where applicable) paragraph 10.4 to each such person.
- 10.3. The documents referred to in paragraphs 10.1 and 10.2 are:
- (a) notices informing Scheme Creditors:
 - (i) that the Amending Scheme has become effective;
 - (ii) of the New Effective Date and the Bar Date and calling for each Scheme Creditor to complete and submit its Claim Form (to be made available on the Website within 60 days of the New Effective Date) together with all Supporting Information before the Bar Date;
 - (iii) that, by completing and submitting an Opt Out Form before the Bar Date, a Qualifying ILU Policyholder may, in respect of all Qualifying ILU Policies held by that Qualifying ILU Policyholder, opt out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme and instead have its Scheme Liabilities under such Qualifying ILU Policies agreed or determined (as the case may be) and paid in accordance with the terms of the Original Scheme (as amended by paragraphs 1 to 10 (inclusive), 22 to 54 (inclusive) and Appendix 1 of the Amending Scheme);
 - (iv) of the details of the Website and where and to whom Scheme Creditors may address queries relating to the Amending Scheme; and
 - (v) that the full text of the Amending Scheme and the Amending Explanatory Statement may be downloaded from the Website or obtained from the Scheme Administrators by sending a request to PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT (or such other address as may be notified by the Scheme Administrators to the Scheme Creditors from time to time), in each case free of charge; and
 - (b) a pre-addressed form for making a Postal Service Request that may be returned in accordance with paragraph 49.3.
- 10.4. The Scheme Administrators shall, as soon as reasonably practicable after the New Effective Date, send by Post to each Scheme Creditor or to each Scheme Creditor's authorised agent (where applicable) confirmation of an individual login ID and password applicable only to that Scheme Creditor which shall permit that Scheme Creditor to access its Claim Form (together with the Claim Form Guidance Notes) on the Website.
- 10.5. In respect of any such Scheme Creditor or person referred to in paragraph 10.2, neither the Companies nor the Scheme Administrators shall incur any Liability in the event that any of the documentation referred to in paragraphs 10.3 and 10.4 does not reach that Scheme

Creditor or person in time to enable him to comply with paragraph 14 or, if appropriate, paragraph 37.

- 10.6. In addition, the Scheme Administrators shall, as soon as reasonably practicable after the New Effective Date, cause to be published, in the same newspapers and publications in which the Amending Scheme Meetings were advertised and in such further newspapers and publications (if any) as the Scheme Administrators shall consider to be appropriate, an advertisement:
- (a) stating that the Amending Scheme has become effective and notifying Scheme Creditors of the New Effective Date and the Bar Date and confirming that the full text of the Amending Scheme and the Amending Explanatory Statement may be downloaded from the Website or obtained from the Scheme Administrators by sending a request to PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT (or such other address as may be notified by the Scheme Administrators to the Scheme Creditors from time to time), in each case free of charge;
 - (b) notifying Scheme Creditors of details of the Website and where and to whom Scheme Creditors may address queries relating to the Amending Scheme;
 - (c) calling for each Scheme Creditor to complete and submit its Claim Form together with all Supporting Information so as to be received by the Scheme Administrators before the Bar Date in accordance with paragraph 14.2 and, if appropriate, paragraph 14.7;
 - (d) notifying Qualifying ILU Policyholders that, by completing and submitting an Opt Out Form before the Bar Date, a Qualifying ILU Policyholder may, in respect of all Qualifying ILU Policies held by that Qualifying ILU Policyholder, opt out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme and instead have its Scheme Liabilities under such Qualifying ILU Policies agreed or determined (as the case may be) and paid in accordance with the terms of the Original Scheme (as amended by paragraphs 1 to 10 (inclusive), 22 to 54 (inclusive) and Appendix 1 of the Amending Scheme); and
 - (e) calling for any person believing himself to be a Scheme Creditor and who has not received any of the documents referred to in paragraphs 10.3 and (where applicable) 10.4 to contact the Scheme Administrators as soon as possible.

11. Notification of claims and cessation of payments under the Original Scheme

- 11.1. Any notification of a Scheme Liability received by the Companies before the New Effective Date will be processed by the Companies in accordance with sub-paragraphs (a) and (b) below.
- (a) If the relevant Scheme Liability becomes an Established Liability before the New Effective Date, the Companies shall make payment in respect of that Scheme Liability to the relevant Scheme Creditor in accordance with the Original Scheme and (if relevant) the 1996 CPLA. The provisions of paragraphs 15.1 and 15.2 shall apply in relation to the Claim Form to be produced by the Companies for that Scheme Creditor pursuant to paragraph 13, but the Scheme Creditor shall also ensure that the relevant Scheme Liability is included on its Claim Form as an Established Liability that has been or will be paid under the Original Scheme.
 - (b) If any such Scheme Liability does not become an Established Liability before the New Effective Date and that Scheme Creditor, in its capacity as a Qualifying ILU Policyholder, has not opted out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme pursuant to paragraph 37, that Scheme Creditor shall ensure that its Claim Form is completed or amended as necessary so as to include a claim for that Scheme Liability, but the provisions of paragraphs 15.1 and 15.2 shall apply to the extent that such Scheme Liability is an Agreed Liability.
- 11.2. In the event that a Scheme Creditor does not submit a Claim Form in accordance with paragraph 14 or an Opt Out Form in accordance with paragraph 37 so as to be received by the Companies before the Bar Date, but that Scheme Creditor:

- (a) has previously submitted a Voting Form to the Companies, receipt of which was acknowledged by the Companies to that Scheme Creditor, or notified the Companies of any of its Scheme Liabilities using a form other than a Claim Form that is received by the Companies before the Bar Date; and
- (b) has confirmed in writing to the Companies (so as to be received by the Companies before the Bar Date) that:
 - (i) it consents to such Voting Form or other form (as the case may be) being treated as its Claim Form for the purposes of the Amending Scheme; and
 - (ii) the information and amounts contained in such Voting Form or other form (as the case may be) and in any supporting documentation previously submitted to the Companies by that Scheme Creditor in respect of that Voting Form or other form (as the case may be) remain true and accurate and comply in all respects with the requirement for that Scheme Creditor to submit Supporting Information under paragraph 14.4 as if the reference in that paragraph to a Claim Form was to a Voting Form or such other form (as the case may be),

then that Voting Form or other form (as the case may be) shall be deemed to be the Claim Form and, for that Scheme Creditor, references to "Claim Form" for the purposes of the Amending Scheme shall be construed accordingly and the information and amounts contained in such Voting Form or other form (as the case may be) and any Supporting Information shall be used for the purposes of calculating and valuing the Gross Liabilities owed to that Scheme Creditor by the Companies under the Amending Scheme.

- 11.3. Subject to paragraph 8.1, in the event that a Scheme Creditor fails to provide the written confirmation required under paragraph 11.2(b) by the Bar Date and that Scheme Creditor fails to submit a Claim Form before the Bar Date, the provisions of paragraph 15 shall apply in respect of that Scheme Creditor's claim.
- 11.4. Subject to paragraphs 9, 11.2, 37 and 42.2 to 42.4, any notification of a Scheme Liability received by the Companies after the New Effective Date must be made using a Claim Form in accordance with the provisions of the Amending Scheme. Subject to paragraphs 9, 11.2, 37 and 42.2 to 42.4, any such notification made otherwise than by using a Claim Form will not be processed by the Companies, unless the Companies determine any such Scheme Liability to be a Protected Liability, in which case the provisions of paragraph 35 shall apply.
- 11.5. Subject to paragraphs 9, 11.1(a), 15.2, 41, 42.3(a), 43.4, 44.7 and 45, the Companies shall make payments in respect of Scheme Liabilities notified to them after the New Effective Date in accordance with, and subject to, the payment provisions contained in paragraph 21.

12. Valuation of claims

- 12.1. A Scheme Creditor's claim for Gross Liabilities may consist of Established Liabilities, Agreed Liabilities, Notified Outstanding Liabilities and IBNR Liabilities. In order for the Scheme Creditor to complete its Claim Form, the Scheme Creditor should initially estimate its Notified Outstanding Liabilities and IBNR Liabilities as at the Valuation Date and then adjust these estimates to allow for:
 - (a) any losses that have been notified to or discovered by the Scheme Creditor between the Valuation Date and the Bar Date;
 - (b) any Agreed Liabilities and/or Established Liabilities of that Scheme Creditor arising between the Valuation Date and the New Effective Date; and
 - (c) any new information received by the Scheme Creditor between the Valuation Date and the Bar Date in respect of its Notified Outstanding Liabilities and/or IBNR Liabilities.
- 12.2. The values of the Scheme Creditor's Notified Outstanding Liabilities and IBNR Liabilities after the adjustments referred to in paragraph 12.1 should be the final values that are included on that Scheme Creditor's Claim Form. In all cases Scheme Creditors should value Notified Outstanding Liabilities and IBNR Liabilities as a Best Estimate.

13. Provision of Claim Forms

- 13.1. The Scheme Administrators shall make available on the Website within 60 days of the New Effective Date a Claim Form for each Scheme Creditor known by the Companies, to which all other Scheme Creditors will be barred from access. The Scheme Administrators shall, in accordance with paragraph 10.4, send to each person they believe to be a Scheme Creditor an individual login ID and password permitting that Scheme Creditor to access its Claim Form on the Website.
- 13.2. The Website will also make available by the New Effective Date the full text of the Amending Explanatory Statement, the Amending Scheme, the Claim Form Guidance Notes and other relevant documents. The Website will include a facility for each Scheme Creditor to access, complete, amend and submit its Claim Form online at any time until the Bar Date.
- 13.3. The Scheme Administrators shall send a Claim Form (together with the Claim Form Guidance Notes) by Post to each Scheme Creditor who makes a Postal Service Request.
- 13.4. The Scheme Administrators shall send by Post to the FSCS Scheme Manager a copy of the Claim Form for each Scheme Creditor to whom the Companies might, in the opinion of the Scheme Administrators, owe a Potentially Protected Liability, whether or not the relevant Scheme Creditor makes a Postal Service Request.
- 13.5. Claim Forms and Claim Form Guidance Notes made available to Scheme Creditors on the Website or by Post under this paragraph 13 shall be substantially in the form set out in the drafts in section H of the Amending Explanatory Statement. Each Claim Form made available on the Website or sent by Post to a Scheme Creditor shall set out the quantum (if any) of that Scheme Creditor's Established Liabilities and Agreed Liabilities as contained in the Companies' books and records as at the New Effective Date.

14. Completing and returning Claim Forms and Supporting Information before the Bar Date

- 14.1. A Scheme Creditor (other than an Opt Out Qualifying ILU Policyholder or a Potentially Protected Policyholder) must complete and return its Claim Form in accordance with the Claim Form Guidance Notes, the Estimation Guidelines and the provisions of this paragraph 14.
- 14.2. Subject to paragraphs 11.2 and 43.1, a Scheme Creditor (other than an Opt Out Qualifying ILU Policyholder or a Potentially Protected Policyholder) must complete and return its Claim Form to the Companies so as to be received by the Companies before the Bar Date. Subject to paragraph 43.1, completed Claim Forms shall be submitted by Scheme Creditors using the facilities offered through the Website before the Bar Date or sent to the Scheme Administrators by Post or by email so as to be received by the Companies before the Bar Date. Subject to paragraph 43.1, the Scheme Administrators will consider only Claim Forms submitted through the Website or otherwise received by the Companies before the Bar Date.
- 14.3. During the period from the New Effective Date to the Bar Date, the Scheme Administrators shall place a notice on the Website of any and all dates on which officially sanctioned postal strikes which have been announced or made public are expected to occur in the United Kingdom. The Scheme Administrators shall also send any such notice by Post to those Scheme Creditors who have previously made a Postal Service Request.
- 14.4. Where a Scheme Creditor returns its Claim Form to the Companies under paragraph 14.2 and, if appropriate, paragraph 14.7, that Scheme Creditor shall submit to the Companies, by Post or by email, all Supporting Information relating to its Claim Form, so as to be received by the Companies before the Bar Date.
- 14.5. Each Scheme Creditor should complete its Claim Form to show:
 - (a) those Established Liabilities, Agreed Liabilities and Notified Outstanding Liabilities which arise under any:
 - (i) Qualifying ILU Policy(ies); and
 - (ii) Insurance Contract(s) other than a Qualifying ILU Policy,

held by that Scheme Creditor, by identifying such Liabilities against specific policies on the Claim Form; and

(b) those IBNR Liabilities which arise under any:

(i) Qualifying ILU Policy(ies); and

(ii) Insurance Contract(s) other than a Qualifying ILU Policy,

held by that Scheme Creditor, as indicated on the Claim Form.

- 14.6. Any Scheme Creditor (other than an Opt Out Qualifying ILU Policyholder or a Potentially Protected Policyholder) which fails to comply in all respects with paragraphs 14.2 and, if appropriate, 14.7, shall nevertheless be subject to and shall be bound by the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme.
- 14.7. Subject to paragraph 43.1, at any time before the Bar Date, a Scheme Creditor shall be entitled to complete, amend, add to or alter any Claim Form sent or made available to it under paragraphs 13.1 and 13.3 in accordance with the Claim Form Guidance Notes and the Estimation Guidelines, provided that the Scheme Creditor returns the Claim Form to the Companies so as to be received by the Companies before the Bar Date.
- 14.8. At any time before the Bar Date, each Scheme Creditor shall be entitled to submit revised or further Supporting Information to the Companies (overriding, subject to paragraph 14.9, Supporting Information previously submitted to the Companies to the extent inconsistent with the previously submitted Supporting Information) and so as to be received by the Companies before the Bar Date. The provisions of paragraphs 14 to 19 shall apply to revised or further Supporting Information submitted to the Companies under paragraph 14.8 with any changes necessary to reflect the application of those provisions to the revised or further Supporting Information.
- 14.9. Where the Scheme Administrators consider in their absolute discretion that the last Claim Form or version of a Claim Form received from a Scheme Creditor was not intended by that Scheme Creditor to prevail over any other Claim Form, the Scheme Administrators shall be entitled, but not bound, to consider whichever Claim Form or version of a Claim Form they, at their absolute discretion, consider to be the version intended by the Scheme Creditor so to prevail.
- 14.10. Where a Scheme Creditor has received a Claim Form by Post, it may, at any time before the Bar Date, request Electronically or by Post that a further Claim Form be sent to it by Post by the Scheme Administrators. A request for an additional Claim Form made before the Bar Date does not, subject to paragraph 37, alter the obligation of the Scheme Creditor to complete and submit its Claim Form to the Companies so as to be received by the Companies before the Bar Date. In no circumstances whatsoever will any delay on the part of the Scheme Administrators in responding to a request for a further Claim Form affect the obligation of the Scheme Creditor, subject to paragraph 37, to submit its Claim Form to the Companies so as to be received by the Companies before the Bar Date.
- 14.11. Scheme Creditors who return a Claim Form by Post must do so using the Claim Form provided by the Scheme Administrators.
- 14.12. As from the Bar Date, a Scheme Creditor shall not be entitled to revise its Claim Form or to provide further Supporting Information, except in response to a specific request received from the Scheme Administrators or the Scheme Adjudicator under paragraphs 17.18, 17.19 or 18.6 (as appropriate). Where a Claim Form or any Supporting Information has been revised as aforesaid, subject to paragraph 14.9, the revisions shall supersede any Claim Form and Supporting Information previously submitted by the Scheme Creditor to the extent that they are inconsistent therewith.
- 14.13. Subject to paragraphs 17.18, 17.19 and 18.6, for the purposes of seeking to agree or adjudicate upon any Gross Liabilities, Offset Amounts and/or future payment pattern for discounting in accordance with paragraphs 14 to 19, neither the Scheme Administrators nor the Scheme Adjudicator shall be obliged to take into account any Supporting Information which has not been received by the Companies before the Bar Date. For the purposes of seeking such agreement or adjudication, the Companies and the Scheme Adjudicator may, at any time,

take into account market information, whether such market information relates to periods before or after the Bar Date.

- 14.14. Without prejudice to paragraph 50, where a Scheme Creditor has assigned a claim to an Assignee and notice of that Assignment has been received by the Companies, the relevant Claim Form for determination of Net Liabilities taking into account that claim will be that of the Assignee and the provisions of clause 14.11 of the Original Scheme shall apply in respect of such Assignment. Without prejudice to paragraph 50, where a Scheme Creditor has assigned a claim to an Assignee and the Companies have not received notice of that Assignment, the relevant Claim Form for determination of Net Liabilities taking into account that claim will be that of the Assignor.

15. Consequences of failure to submit a Claim Form

- 15.1. Subject to paragraphs 11.2, 42.3 and 43 to 45, in the event that a Scheme Creditor (other than an Opt Out Qualifying ILU Policyholder or a Potentially Protected Policyholder) fails to submit a Claim Form before the Bar Date, such Scheme Creditor shall, subject to paragraph 15.2, only be entitled to receive any payments under the Scheme from either of the Companies in respect of those Established Liabilities and Agreed Liabilities set out in its Claim Form made available on the Website or sent by Post to it pursuant to paragraph 13 and then only to the extent to which such Established Liabilities and Agreed Liabilities:
- (a) as at the Bar Date, remain to be paid to that Scheme Creditor (or that Scheme Creditor's authorised agent); and
 - (b) are determined to be Net Liabilities due from the Companies to that Scheme Creditor in accordance with paragraph 20.
- 15.2. Notwithstanding paragraph 15.1, if the Scheme Administrators become aware (whether before or after the Bar Date but, in any event, before the payment of the final Payment Percentage) that, as a result of an administrative error, they have failed to insert details of any Established Liabilities or Agreed Liabilities of a Scheme Creditor on that Scheme Creditor's Claim Form pursuant to paragraph 13.5, the Scheme Administrators will include the amount of those Established Liabilities and Agreed Liabilities when determining the amount of that Scheme Creditor's Gross Liabilities pursuant to paragraph 17.1(b).
- 15.3. Nothing in the Amending Scheme shall affect the Companies' rights to pursue and recover (whether by Proceedings or otherwise) any Liability owed to them by a Scheme Creditor which fails to submit to the Companies a Claim Form in accordance with paragraph 14 or (if appropriate) an Opt Out Form in accordance with paragraph 37.
- 15.4. Without prejudice to the other provisions of paragraph 14, a Claim Form shall not be treated as having been submitted to the Companies before the Bar Date in accordance with paragraph 14.2, and, if appropriate, paragraph 14.7, unless it includes the relevant particulars of the identity and contact details of the Scheme Creditor concerned to the reasonable satisfaction of the Scheme Administrators.

16. Enforcement of claims

- 16.1. Subject to clauses 10.8 and 11 of the Original Scheme and to paragraphs 15.2, 16.2, 16.4 and 16.5, notwithstanding anything contrary in the Scheme, after the New Effective Date, no Scheme Creditor shall institute or continue any Proceedings (which for the purposes of this paragraph 16.1 shall include those matters referred to in sub-paragraphs (a)(i) and (a)(ii) of the definition of "Proceedings" in Appendix 1 and any suit, proceeding, demand, arbitration, alternative dispute resolution, adjudication, mediation, seizure, distraint, forfeiture, re-entry, execution or enforcement or judgment or any step taken for the purpose of creating or enforcing a lien) or other judicial, quasi-judicial, administrative or regulatory process whatsoever or wheresoever against or in respect of a Company or its assets to establish the existence, priority and/or amount of a Scheme Liability (which shall include any Notified Scheme Liability and whether or not in relation to a Common Liability) of such Scheme Creditor.
- 16.2. Nothing in this paragraph 16 shall affect the right of either:
- (a) an Opt Out Qualifying ILU Policyholder; or

(b) a Pre-1969 L&O Policyholder whose Pre-1969 L&O Claims have reverted to run-off in accordance with paragraphs 42.2 and 42.3 (but then only in respect of those Pre-1969 L&O Claims),

to commence or continue any Proceedings against a Company subject to and to the extent of the provisions of clauses 10 and 11 of the Original Scheme.

- 16.3. Nothing in this paragraph 16 shall affect the right of a Scheme Creditor to submit a claim against the Companies after the Bar Date pursuant to paragraph 43.1, provided that such Scheme Creditor has been allowed by the No Notice Adjudicator to submit such claim in accordance with that paragraph 43.1.
- 16.4. Nothing in this paragraph 16 shall affect the right of a Protected Policyholder or Potentially Protected Policyholder to commence or continue any Proceedings against a Company to the extent and subject to the provisions of clause 10 of the Original Scheme for the purpose of determining the existence, priority and/or amount of an Established Liability as a precondition to entitlement to claim compensation from the FSCS Scheme Manager under paragraph 35.
- 16.5. Without prejudice to clause 18.5 of the Original Scheme, paragraph 16 shall have no application to the rights of NNOFIC or the ILU in respect of any breach by either or both of the Companies of their obligations to NNOFIC or the ILU under the CPLA.

17. Review and agreement of Net Liabilities

- 17.1. The Scheme Administrators shall, as soon as reasonably practicable after receiving a Claim Form and Supporting Information in accordance with paragraph 14.2 and, if appropriate, paragraphs 14.7 and/or 14.8, with the assistance of the Scheme Actuarial Adviser, review the Claim Form and Supporting Information and use their reasonable endeavours to reach agreement with the Scheme Creditor concerned with regard to:
- (a) the information and amounts contained in the Claim Form and Supporting Information in relation to each Notified Scheme Liability;
 - (b) the Gross Liabilities owed by the Companies to that Scheme Creditor;
 - (c) any Offset Amounts owed by that Scheme Creditor to either or both of the Companies; and
 - (d) any discount for the time value of money applicable to Gross Liabilities.
- 17.2. When reviewing any IBNR Liabilities, the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, shall take into account any representations made, and Supporting Information submitted, by the Scheme Creditor in respect of proposed methods for calculating that Scheme Creditor's IBNR Liabilities, or other relevant background information.
- 17.3. In determining the Net Liabilities of a Scheme Creditor, any Offset Amounts owed by that Scheme Creditor shall, subject to paragraphs 17.10 and 17.11, be determined in accordance with paragraphs 17.4 to 17.9.
- 17.4. Where there are Offset Amounts owed by a Scheme Creditor (excluding any Offset Amounts under or in relation to Qualifying Protection), the Scheme Administrators shall take a General Account for each of the Companies in respect of that Scheme Creditor to obtain a balance owing to or from that Scheme Creditor.
- 17.5. After any application of paragraph 17.4, if a balance is owed by a Scheme Creditor to a Company (the "**First Company**") on that Scheme Creditor's General Account with the First Company and a General Account Balance is owed to that Scheme Creditor from the other Company (the "**Second Company**"), the First Company shall automatically assign to the Second Company absolutely either such amount of the balance on the relevant Scheme Creditor's General Account with the First Company as the Second Company requires to discharge the General Account Balance owed to that Scheme Creditor or, if less, the entire amount of the balance owed from that Scheme Creditor on its General Account with the First Company (the "**Assigned General Balance**"). The Second Company shall apply the Assigned General Balance in discharge, in whole or in part, of such General Account Balance.

- 17.6. Where there are Offset Amounts owed by a Scheme Creditor under or in relation to Qualifying Protection, the Scheme Administrators shall take a Qualifying Account for each of the Companies in respect of that Scheme Creditor to obtain a balance owing to or from that Scheme Creditor.
- 17.7. After any application of paragraph 17.6, if a balance is owed by a Scheme Creditor to a Company (the "**First Company**") on that Scheme Creditor's Qualifying Account with the First Company and a Qualifying Account Balance is owed to that Scheme Creditor from the other Company (the "**Second Company**"), the First Company shall automatically assign to the Second Company absolutely either such amount of the balance on the relevant Scheme Creditor's Qualifying Account with the First Company as the Second Company requires to discharge the Qualifying Account Balance owed to that Scheme Creditor or, if less, the entire amount of the balance owed from that Scheme Creditor on its Qualifying Account with the First Company (the "**Assigned Qualifying Balance**"). The Second Company shall apply the Assigned Qualifying Balance in discharge, in whole or in part, of such Qualifying Account Balance.
- 17.8. After any application of paragraphs 17.4 to 17.7, if a balance is owed by a Scheme Creditor to a Company on that Scheme Creditor's General Account or Qualifying Account (as the case may be) and a General Account Balance or Qualifying Account Balance (as the case may be) is owed to that Scheme Creditor by that Company, such sums shall be set off against each other to obtain a balance owing to or from that Scheme Creditor.
- 17.9. After any application of paragraphs 17.4 to 17.8, if a balance is owed by a Scheme Creditor to a Company (the "**First Company**") on that Scheme Creditor's General Account or Qualifying Account (as the case may be) with the First Company and a General Account Balance or Qualifying Account Balance respectively is owed to that Scheme Creditor from the other Company (the "**Second Company**"), the First Company shall automatically assign to the Second Company absolutely either such amount of the balance on the relevant Scheme Creditor's General Account or Qualifying Account (as the case may be) with the First Company as the Second Company requires to discharge the General Account Balance or Qualifying Account Balance (as the case may be) owed to that Scheme Creditor or, if less, the entire amount of the balance owed from that Scheme Creditor on its General Account or Qualifying Account (as the case may be) with the First Company (the "**Assigned Balance**"). The Second Company shall apply the Assigned Balance in discharge, in whole or in part, of such General Account Balance or Qualifying Account Balance (as the case may be).
- 17.10. Where an Opt Out Qualifying ILU Policyholder is also a Scheme Creditor with claims that arise under any Insurance Contract(s) other than a Qualifying ILU Policy, any claims that the Companies may have against such Scheme Creditor will be determined to produce an Offset Amount. This Offset Amount may be set off, at the Scheme Administrators' discretion, against either that Scheme Creditor's:
- (a) Gross Liabilities determined in respect of its claims arising under any Insurance Contract(s) other than a Qualifying ILU Policy in accordance with paragraphs 14 to 19; or
 - (b) Qualifying Established Liabilities agreed or determined (as the case may be) in respect of its claims arising under all of its Qualifying ILU Policies in accordance with clause 6 of the Original Scheme.
- 17.11. Where a Pre-1969 L&O Policyholder whose Pre-1969 L&O Claims have reverted to run-off under paragraph 42 is also a Scheme Creditor with claims that arise under any other Insurance Contract(s), any claims that the Companies may have against such Scheme Creditor will be determined to produce an Offset Amount. This Offset Amount may be set off, at the Scheme Administrators' discretion, against either that Scheme Creditor's:
- (a) Gross Liabilities determined in respect of its claims arising under any Insurance Contract(s) being dealt with under the Amending Scheme in accordance with paragraphs 14 to 19; or
 - (b) Established Liabilities agreed or determined (as the case may be) in respect of its relevant Pre-1969 L&O Claims being dealt with in accordance with clause 6 of the Original Scheme.

- 17.12. In circumstances where, in the opinion of the Scheme Administrators, after any application of paragraphs 17.4 to 17.11, a Scheme Creditor is under a Liability to the Companies as a result of the Offset Amounts owed by that Scheme Creditor exceeding the Gross Liabilities (after discounting to allow for the time value of money) in respect of that Scheme Creditor, the Scheme Administrators shall, at the time referred to in paragraph 17.1, seek to agree the existence and value of that Liability with the Scheme Creditor concerned. For the purposes of endeavouring to reach agreement with the Scheme Creditor concerned, the Scheme Administrators shall supply that Scheme Creditor with such supporting information in the Companies' possession relating to that Liability as may be reasonably requested by that Scheme Creditor.
- 17.13. Where a Scheme Liability has been or is assigned to a person after such person had notice of the existence of either or both of the Winding-up Petitions or if earlier of the Original Scheme, such Assignee may not set off the amount of such Scheme Liability against a Liability owed by it to either of the Companies. Any such Assignment executed after such notice shall be deemed to have been taken by the Assignee subject to any Liabilities of the Assignor to either of the Companies and Gross Liabilities, if any, of either of the Companies to the Assignor and the Assignee shall be determined as regards any set-off under paragraphs 17.3 to 17.12 as if the Assignment had not occurred.
- 17.14. No Liability of a Scheme Creditor to either of the Companies which arises out of an act, omission, contract, policy, transaction or arrangement effected by that Scheme Creditor at or after the time of the presentation of the Winding-up Petitions may be reduced by reference to any Scheme Liability of either Company to that Scheme Creditor.
- 17.15. Paragraphs 17.5, 17.7 and 17.9 shall be deemed to constitute for all purposes express notice in writing to the relevant Scheme Creditor of all assignments effected pursuant to their provisions. As between the relevant Company and the FSCS Scheme Manager, the amount of any Protected Liability or Potentially Protected Liability shall, following any assignment to the FSCS Scheme Manager, whether pursuant to paragraph 36 or otherwise, not be altered by the subsequent application of paragraphs 17.3 to 17.12 and clause 23.5(b) of the Original Scheme.
- 17.16. The Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, will discount Notified Outstanding Liabilities and IBNR Liabilities to allow for the time value of money. This will be achieved by the Scheme Administrators applying the Risk Free Rate to expected future payment patterns, as at the Valuation Date, that the Scheme Administrators consider are appropriate to the nature of the relevant Liabilities. The Scheme Administrators will also apply this discounting approach when determining any Offset Amounts. No Scheme Creditor may in any circumstances dispute or challenge the Risk Free Rate applied to its Notified Outstanding Liabilities, IBNR Liabilities and any Offset Amounts. Such Risk Free Rate shall not under any circumstances constitute a Disputed Matter. A Scheme Creditor may, however, suggest an alternative payment pattern for discounting, provided that the Scheme Creditor can supply a calculation that, in the opinion of the Scheme Administrators, is fully supported and includes justifiable underlying assumptions.
- 17.17. Where a Claim Form includes details of any Notified Outstanding Liability and/or any IBNR Liability and the relevant Scheme Creditor has notified the Scheme Administrators that it considers that it is or may be a Potentially Protected Policyholder, or the Scheme Administrators consider that the relevant Scheme Creditor is or may be a Potentially Protected Policyholder, the Scheme Administrators shall consider such details and shall make reasonable endeavours to check whether any such details could give rise to a Potentially Protected Liability. Since the determination of whether a Scheme Creditor is a Potentially Protected Policyholder will in any event be made by the FSCS Scheme Manager, the Scheme Administrators accept no Liability or responsibility for any error in the classification of any claim for an IBNR Liability and/or a Notified Outstanding Liability as a Potentially Protected Liability.

- 17.18. If and to the extent that the Scheme Administrators do not agree with a Claim Form submitted by a Scheme Creditor in relation to any Potentially Protected Liability, the Scheme Administrators shall be entitled to request further information and/or documents from the relevant Scheme Creditor. The information and/or documents in relation to any Potentially Protected Liability obtained by the Scheme Administrators may be passed to the Scheme Actuarial Adviser for the purposes of the Scheme Actuarial Adviser assisting the Scheme Administrators in calculating the Estimated Protected Value pursuant to paragraph 34.2.
- 17.19. At any time before or after the Bar Date, the Scheme Administrators shall be entitled to request that the Scheme Creditor concerned provides such further information, or produces such documentary or other evidence (including Supporting Information) relating to any Gross Liabilities, Offset Amounts and/or future payment pattern for discounting, as the Scheme Administrators consider necessary for the purpose of reaching agreement under paragraphs 17.1 to 17.16. Upon receipt of such a request, the Scheme Creditor concerned shall be obliged to comply with it. If the Scheme Creditor fails to provide such information or documentation or other evidence (including Supporting Information) within a reasonable period (which, subject to paragraph 8.1, shall in no case be later than 28 days after receiving the request), the Scheme Administrators shall be entitled to seek agreement with the Scheme Creditor under paragraphs 17.1 to 17.16 without regard to the information, documentation and/or other evidence which it had requested. Further, in the absence of agreement, the Scheme Administrators shall be entitled to refer for adjudication, in accordance with paragraph 18, any Gross Liabilities, Offset Amounts and/or future payment pattern for discounting in respect of which the information, documentation and/or other evidence (including Supporting Information) was requested and the adjudication may be conducted without regard to that information, documentation and/or other evidence.
- 17.20. In seeking to reach an agreement with a Scheme Creditor with regard to the information and amounts contained in the Scheme Creditor's Claim Form and Supporting Information in relation to any Gross Liabilities, Offset Amounts and/or future payment pattern for discounting as required by paragraphs 17.1 to 17.16, the Scheme Administrators shall apply the Estimation Guidelines in accordance with their terms and may:
- (a) consult with the Scheme Actuarial Adviser (for which purpose the Scheme Administrators shall make all the relevant books and records of the Companies available to the Scheme Actuarial Adviser) with a view to agreeing such amounts; and/or
 - (b) consider any information in the Companies' possession concerning matters or events relating to any Gross Liabilities, Offset Amounts and/or future payment pattern for discounting.
- 17.21. The Scheme Administrators shall not, unless legally obliged to do so, be bound by, or obliged to follow, any settlement made between the Scheme Creditor and another insurer or reinsurer (including, without limitation, any Co-Insurer in relation to a Common Liability) if they believe that settlement to be unreasonable or inappropriate.
- 17.22. The views of any of the Companies, the Scheme Administrators, the Scheme Actuarial Adviser and the Scheme Adjudicator (and/or any of their employees, partners, alternates, agents or advisers) as to the appropriate methodology, principles or assumptions to be applied in determining the value of any Gross Liabilities or Net Liabilities owed by the Companies to a Scheme Creditor, whether express or implied and whether contained in the Amending Scheme, the Estimation Guidelines or any other document or communication, are provided only for the purpose of determining those Gross Liabilities or Net Liabilities owed by the Companies to the Scheme Creditor and may not be relied upon for any other purpose. Furthermore, no such methodology, principle or assumption shall be construed as advice being given by all or any of the Companies, the Scheme Administrators, the Scheme Actuarial Adviser and the Scheme Adjudicator (and/or any of their employees, partners, alternates, agents or advisers) to that Scheme Creditor or any other person for any purpose.
- 17.23. The amount in respect of which any Scheme Creditor was admitted to vote at any one or more of the Amending Scheme Meetings shall not be binding on the Scheme Creditor, the Companies, the Scheme Administrators, the Scheme Actuarial Adviser or the Scheme Adjudicator for any purposes of the Amending Scheme (including, for the avoidance of doubt, the agreement or determination of any Gross Liabilities, Offset Amounts and/or future payment pattern for discounting).

- 17.24. If the Scheme Administrators reach agreement with a particular Scheme Creditor in respect of any Gross Liabilities, Offset Amounts or future payment pattern for discounting in relation to that Scheme Creditor, they shall, within 14 days of reaching agreement, notify the relevant Scheme Creditor of such agreement. The amounts so agreed shall be binding on the Companies and on the Scheme Creditor concerned for the purposes of the Scheme and shall be utilised by the Scheme Administrators in confirming that Scheme Creditor's Net Liabilities in accordance with paragraph 20.
- 17.25. If within what the Scheme Administrators consider to be a reasonable time (and, subject to paragraph 8.1, no later than 360 days after the Bar Date) the Scheme Administrators have not reached agreement with a particular Scheme Creditor in respect of any matter which may affect the amount of Gross Liabilities or Net Liabilities of that Scheme Creditor (including, but not limited to, whether or not such Scheme Creditor is a Qualifying ILU Policyholder), the Scheme Administrators shall send to that Scheme Creditor a statement of proposals setting out the value of that Scheme Creditor's Gross Liabilities, Offset Amounts and Net Liabilities or other matters, as the case may be, which the Scheme Administrators are willing to accept and inviting the Scheme Creditor to agree the amounts or other matters in the statement within (subject to paragraph 8.1) 30 days of receipt of that statement. The statement of proposals shall include any amounts in respect of Gross Liabilities and/or Offset Amounts which have previously been agreed or determined in accordance with paragraphs 17.1 to 17.16.
- 17.26. Subject to paragraph 8.1, if within 30 days of receipt of the Scheme Administrators' statement of proposals, the Scheme Creditor concerned either:
- (a) gives notice to the Scheme Administrators that it agrees with that statement; or
 - (b) does not give any such notice to the Scheme Administrators,
- the amounts or other matters set out in the statement (as sent to the Scheme Creditor under paragraph 17.25) shall thereupon become binding on the Companies, the Scheme Administrators and the Scheme Creditor concerned.
- 17.27. Subject to paragraph 8.1, if within 30 days of receipt by the Scheme Creditor of the Scheme Administrators' statement of proposals, the Scheme Administrators receive notice from the Scheme Creditor that it disputes any amount or other matter contained in that statement, then, subject to paragraph 18.3, the amounts or other matters which the Scheme Creditor states that it disputes shall be Disputed Matters. The Scheme Administrators shall, within 10 days of receipt of the Scheme Creditor's notice, refer the Disputed Matters to the Scheme Adjudicator for adjudication.

18. The Dispute Resolution Procedure

- 18.1. When referring any Disputed Matter to the Scheme Adjudicator, the Scheme Administrators shall provide the Scheme Adjudicator with a notice setting out details of the matter or matters comprising the Disputed Matters and shall enclose with that notice a copy of the Claim Form relating to those Disputed Matters and a copy of any notice, statement or correspondence sent or received by the Scheme Administrators in connection with the Disputed Matters, together with all other information available to the Companies and the Scheme Administrators in connection with the Disputed Matters, including, subject to paragraph 14.3, any Supporting Information.
- 18.2. At the same time as the Scheme Administrators give notice of the Disputed Matter to the Scheme Adjudicator in accordance with paragraph 17.27, the Scheme Administrators shall send to the relevant Scheme Creditor concerned a notice stating the fact that the Disputed Matters have been referred to the Scheme Adjudicator for adjudication and enclosing or attaching:
- (a) a copy of all documents and other materials which the Scheme Administrators have sent to the Scheme Adjudicator that have not previously been sent to the Scheme Creditor (other than those documents and materials received by the Scheme Administrators from that Scheme Creditor); and
 - (b) a list of all documents which the Scheme Administrators have sent to the Scheme Adjudicator that have previously been sent to the Scheme Creditor.

- 18.3. The Scheme Adjudicator may, prior to considering a Disputed Matter, require the relevant Scheme Creditor to enter into an agreement to provide such security as the Scheme Adjudicator may reasonably request to meet the costs and expenses incurred or likely to be incurred by the Scheme Adjudicator in reaching a determination of the Disputed Matter in accordance with paragraph 18. If the Scheme Adjudicator requires that such an agreement be entered into then he need not make any such determination until the relevant Scheme Creditor has complied with this requirement. If the relevant Scheme Creditor does not comply with this requirement within 30 days of receipt of the notice referred to in paragraph 18.2 (or, following a request by the relevant Scheme Creditor (acting reasonably), such longer period as the Scheme Adjudicator may agree (such agreement not to be unreasonably withheld)), the Scheme Adjudicator shall be entitled to determine that Disputed Matter in favour of the Scheme Administrators pursuant to paragraphs 18.12 and 18.13.
- 18.4. Notwithstanding the fact that Disputed Matters in respect of a Claim Form and/or Supporting Information have been referred to the Scheme Adjudicator under paragraph 17.27, any other information and/or amounts in the Claim Form and/or Supporting Information relating to that Scheme Creditor which have been agreed or deemed to have been agreed (save to the extent that the amount deemed to have been agreed is the subject of the dispute) between the Scheme Administrators and the Scheme Creditor shall be binding on the Scheme Creditor, the Companies and the Scheme Administrators.
- 18.5. Subject to paragraph 8.1, the Scheme Creditor concerned may, within 60 days of receipt of any notice given by the Scheme Administrators to that Scheme Creditor pursuant to paragraph 18.2, send written observations on that notice to the Scheme Adjudicator. Upon so doing, that Scheme Creditor shall send to the Scheme Administrators:
- (a) a copy of such written observations together with any enclosures that it has not previously sent to the Scheme Administrators or the Companies; and
 - (b) a list of all documents that the Scheme Creditor (or any person acting on its behalf) has previously sent to the Companies or the Scheme Administrators.
- 18.6. The Scheme Adjudicator shall, in relation to any Disputed Matter, consider the papers and documents before him and shall, within 60 days of receipt of the notice referred to in paragraph 17.27, send a notice to the Scheme Creditor or the Scheme Administrators (as the case may be) stating whether he requires:
- (a) further written explanations, documents, data or information from the Scheme Creditor and/or the Scheme Administrators and, if he does require them, the Scheme Adjudicator shall specify such requirements in that notice and the relevant person (or persons) shall, within 30 days of receipt of such notice, provide the Scheme Adjudicator with the required written explanations, documents, data or information and send a copy of the same to the other party or parties to the dispute who may in turn, within 30 days of receipt of the copy, send additional explanations, documents, data or information to the Scheme Adjudicator and shall send a copy to the other party or parties to the dispute; and/or
 - (b) the Scheme Administrators and/or the Scheme Creditor (or its duly authorised representative) to appear before him and address him on any matters which he specifies, and if he does so require, the Scheme Administrators and/or the relevant Scheme Creditor (or its duly authorised representative) shall appear on such date, which shall be within 30 days of receipt of such notice, as the Scheme Adjudicator may prescribe. At the discretion of the Scheme Adjudicator any appearance before him shall be either:
 - (i) at such place as the Scheme Adjudicator may prescribe; or
 - (ii) by way of audio visual links or telephone in such manner as the Scheme Adjudicator shall prescribe.
- 18.7. In exercising his powers under paragraph 18, the Scheme Adjudicator:
- (a) may, after consultation with the Scheme Administrators and the Scheme Creditor concerned, set and extend such time limits (and/or vary any time periods) set out in paragraph 18 which he may consider reasonable and fair in all circumstances; and

- (b) shall, subject to paragraph 19, be entitled to prescribe and lay down such procedures or provisions as he, at his absolute discretion, deems appropriate for the purpose of reaching his determination.
- 18.8. If any person concerned fails to provide some or all of the further written explanations, documents, data or information as required in accordance with paragraph 18.6(a) or fails to appear before the Scheme Adjudicator in accordance with paragraph 18.6(b), the Scheme Adjudicator shall adjudicate upon the relevant Disputed Matter on the basis of the material then available to him.
- 18.9. In adjudicating upon any Disputed Matter, the Scheme Adjudicator shall act as an expert and not as an arbitrator.
- 18.10. In adjudicating upon any Disputed Matter, the Scheme Adjudicator shall be entitled to consult with such advisers, including, but not limited to, legal advisers, accountants, actuaries and insurance industry experts, as he may deem appropriate, including for the purpose of obtaining legal advice or legal opinion in connection with any Disputed Matters.
- 18.11. In determining any Disputed Matter in accordance with paragraph 18, the Scheme Adjudicator shall apply the principles, policies and assumptions comprised within the Estimation Guidelines in accordance with their terms and, for the avoidance of doubt, those principles, policies and assumptions shall not under any circumstances constitute Disputed Matters.
- 18.12. Subject to paragraph 8.1, the Scheme Adjudicator shall, within 160 days of the notice referred to in paragraph 17.27, issue to the Scheme Creditor concerned and to the Scheme Administrators a certificate stating his determination with respect to the Disputed Matters referred to him, including the amount of any relevant Gross Liabilities, Offset Amounts and/or Net Liabilities together with such explanation of, or reasons for, his determination which he, at his sole discretion, considers is appropriate.
- 18.13. The Scheme Adjudicator's determination in paragraph 18.12 in respect of any Disputed Matters referred to him (including the amount of any Gross Liabilities, Offset Amounts and/or Net Liabilities) shall, insofar as the law allows, be final and binding on the Companies, the Scheme Administrators and the relevant Scheme Creditor except in case of arithmetical error or irrationality. For the purposes of paragraphs 18.12 and 18.13 only, a determination made by the Scheme Adjudicator pursuant to paragraph 18.12 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination. If the Scheme Adjudicator's determination contains an arithmetical error or is irrational, the Scheme Administrators or the relevant Scheme Creditor may give a notice of referral of the matter to the Scheme Adjudicator. That notice must be received by the Scheme Adjudicator within 30 days of receipt by the Scheme Administrators or the relevant Scheme Creditor (as the case may be) of the Scheme Adjudicator's certificate. The Scheme Adjudicator shall then correct and re-issue the certificate within 15 days of his receipt of the notice of referral and in any event before the Final Adjudication Date. Neither the relevant Scheme Creditor nor the Scheme Administrators shall otherwise have any right to appeal or to require the Scheme Adjudicator to state a case, either in respect of the determination so given or in respect of the procedure by which the Scheme Adjudicator reached that determination or make any claim against the Scheme Adjudicator in respect of such determination or procedure, except insofar as required by English law.
- 18.14. Once the Scheme Adjudicator's certificate has been issued, the Scheme Administrators shall prepare a Net Statement under paragraph 20 for the purposes of confirming the amount of the Scheme Creditor's Net Liability in light of the Scheme Adjudicator's certificate. If the Disputed Matters to which the certificate refers include a Net Statement which the Scheme Administrators have already issued, the Scheme Administrators shall issue a new Net Statement in light of the certificate.
- 18.15. Any remuneration, costs, charges and expenses reasonably incurred by the Scheme Adjudicator in respect of a Disputed Matter (including the fees and expenses of any adviser or expert consulted by him pursuant to paragraph 18.10) shall be paid by the Companies out of the Scheme Assets as Priority Liabilities. However, the Scheme Adjudicator may, upon

issuing his certificate, determine at his absolute discretion that the relevant Scheme Creditor should reimburse the Companies in respect of some or all of those costs, charges and expenses. The factors that the Scheme Adjudicator may, in his absolute discretion, take into account when determining whether the relevant Scheme Creditor should reimburse the Companies in respect of such costs, charges and expenses shall include, but shall not be limited to, whether the referral of that Disputed Matter was, in the Scheme Adjudicator's opinion, vexatious, spurious or otherwise unreasonable.

- 18.16. If the Scheme Adjudicator directs that any such remuneration, costs, charges and expenses to be paid by the Companies should be reimbursed by a Scheme Creditor and the Scheme Creditor does not pay them in full within one month after being directed to do so, the Companies shall pay (if applicable) any unpaid balance thereof in full out of the Scheme Assets as Priority Liabilities. In that event, for the purposes of determining whether that Scheme Creditor is entitled to receive any payments pursuant to paragraph 21 from the Companies, the Scheme Creditor shall be treated as having received in respect of any payment of the then current Payment Percentage to which it is so entitled an amount equal to the unpaid balance so paid by the Companies and the amount, if any, which the Scheme Creditor is entitled to receive payment pursuant to paragraph 21 shall be reduced accordingly. Where the Scheme Creditor is not entitled to receive a payment pursuant to the Scheme, or is found to be a Net Debtor, or the amount of the Scheme Adjudicator's remuneration, costs, charges and expenses which it is directed to pay under paragraph 18.16 exceeds its entitlement to a payment under the Scheme, the amount concerned or such excess shall be treated as a debt due and owing by the Scheme Creditor or Net Debtor to the Companies and shall be paid by the Scheme Creditor or Net Debtor within 14 days of receipt by the Scheme Creditor or Net Debtor of a notice from the Companies setting out the amount so due (or, following a request by the relevant Scheme Creditor (acting reasonably), such longer period as the Scheme Administrators may agree (such agreement not to be unreasonably withheld)), failing which interest shall accrue on the balance at the rate of the Bank of England base rate plus 1% per annum (or if the Bank of England base rate is no longer published at such time, at the US Federal funds rate plus 1% per annum) for the period from the date of the Scheme Adjudicator's direction until the date of payment. The Scheme Adjudicator shall apply any funds and security advanced by a Scheme Creditor pursuant to paragraph 18.3 towards payment of his remuneration, costs, charges and expenses which the Scheme Adjudicator, at his absolute discretion, has determined are to be reimbursed by that Scheme Creditor under this paragraph 18.16.
- 18.17. In determining any Disputed Matter, the Scheme Adjudicator shall perform his duties reasonably under and in accordance with the terms of the Scheme and in accordance with applicable law.

19. Estimation Guidelines

- 19.1. Subject to paragraph 18, in order for:
- (a) the Scheme Administrators to seek agreement with Scheme Creditors under paragraph 17 in respect of:
 - (i) the information and amounts on any Claim Form and Supporting Information relating to Gross Liabilities supplied by the Scheme Creditor to the Companies in accordance with paragraph 14.2 and, if appropriate, paragraphs 14.7 and/or 14.8; and/or
 - (ii) any Offset Amounts;
 - (b) the Scheme Actuarial Adviser to provide any advice or assistance that it may be required to give to the Scheme Administrators under paragraph 17.20; and
 - (c) the Scheme Adjudicator to provide any certificate pursuant to paragraph 18.12,
- they shall each apply the principles, policies and assumptions comprised within the Estimation Guidelines.
- 19.2. As at the New Effective Date, all Scheme Creditors (other than Opt Out Qualifying ILU Policyholders and Potentially Protected Policyholders) shall be bound by the principles, policies and assumptions comprised within the Estimation Guidelines applied by the Scheme

Administrators, in consultation with the Scheme Actuarial Adviser, in calculating and agreeing the amounts of their Gross Liabilities and any Offset Amounts. Scheme Creditors may not in any circumstances dispute or challenge the principles, policies or assumptions comprised within the Estimation Guidelines used to establish such Gross Liabilities and Offset Amounts.

20. Notification of Scheme Creditors' Net Liabilities

- 20.1. The Scheme Administrators shall, as soon as reasonably practicable following the determination, whether by agreement or adjudication or otherwise, of the amounts of the Gross Liabilities, Offset Amounts and any discount for the time value of money applicable to Gross Liabilities in respect of a particular Scheme Creditor in accordance with paragraphs 14 to 19, and in any event on or before the Net Liabilities Notification Date, confirm that Scheme Creditor's Net Liabilities, setting out the calculation in the form of a Net Statement. The Net Statement shall contain particulars of that Scheme Creditor's:
- (a) Gross Liabilities, at the value agreed or determined in accordance with paragraphs 14 to 19, which amount shall be separated into those Gross Liabilities arising under:
 - (i) any Qualifying ILU Policies; and
 - (ii) any Insurance Contract(s) other than a Qualifying ILU Policy, held by that Scheme Creditor;
 - (b) discount for the time value of money (if any) applied to Notified Outstanding Liabilities and IBNR Liabilities, at the value agreed or determined in accordance with paragraphs 14 to 19;
 - (c) Offset Amounts, at the value agreed or determined in accordance with paragraphs 14 to 19;
 - (d) any deduction to be made to that Scheme Creditor's Gross Liabilities after once more taking account of the matters set out in clauses 6.3(a) and (b) of the Original Scheme;
 - (e) any Liability to one or both of the Companies under paragraph 18.16;
 - (f) Net Liabilities, being the amount, if any, resulting from the subtraction of the amounts referred to in sub-paragraphs (b), (c), (d) and (e) above from the amount referred to in sub-paragraph (a) above in respect of such Scheme Creditor; and
 - (g) any Qualifying ILU Policyholder Premium determined, where applicable, in accordance with paragraphs 21.4 to 21.8.
- 20.2. A Scheme Creditor may, by notice in writing to the Scheme Administrators, object to the amount calculated in accordance with paragraph 20.1(f), provided that such notice is received by the Scheme Administrators within 30 days of the Net Statement being received by that Scheme Creditor. The objection may be made only on the grounds of arithmetical error on the face of the Net Statement. If no objection has been received by the Scheme Administrators from the relevant Scheme Creditor within that 30 day period, the amount set out in accordance with paragraph 20.1(f) in the Net Statement shall be the Scheme Creditor's Net Liability.
- 20.3. If the Scheme Administrators agree with the objections of a Scheme Creditor received within the period referred to in paragraph 20.2, the relevant Net Statement shall be amended and sent to the Scheme Creditor concerned within 15 days of the receipt by the Scheme Administrators of the Scheme Creditor's objections. The provisions of paragraphs 20.2 and 20.3 shall apply, with any necessary changes, to the amended Net Statement as if it were the Net Statement first mentioned. No amendment to a Net Statement which accurately states or reflects an agreement reached under paragraph 18 or this paragraph 20.3 may thereafter be objected to by the Scheme Creditor.
- 20.4. If the Scheme Administrators do not agree with the objections of the Scheme Creditor received within the period allowed by paragraph 20.2, they shall notify the Scheme Creditor of their disagreement within 15 days of receipt by the Scheme Administrators of that Scheme Creditor's objections under paragraph 20.2. If, within 30 days of receipt of such notification, the Scheme Creditor informs the Scheme Administrators that it disputes the accuracy of the

Net Statement, the Scheme Administrators shall refer the matter to the Scheme Adjudicator and, subject to paragraph 8.1, the Scheme Adjudicator shall, within 15 days of the referral, issue a certificate stating his determination with respect to the amount of that Scheme Creditor's Net Liability as set out on that Scheme Creditor's Net Statement. If no objection has been received by the Scheme Administrators from the relevant Scheme Creditor within that 30 day period, the amount set out in accordance with paragraph 20.1(f) in the Net Statement shall be the Scheme Creditor's Net Liability.

- 20.5. The amount determined by the Scheme Adjudicator under paragraph 20.4 shall, except in case of arithmetical error or irrationality, and insofar as the law allows, be final and binding on the Companies, the Scheme Administrators and the relevant Scheme Creditor and shall be that Scheme Creditor's Net Liability. For the purposes of paragraph 20.5 only, a determination made by the Scheme Adjudicator pursuant to paragraph 20.4 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination. Neither the Companies, the Scheme Administrators nor the relevant Scheme Creditor shall otherwise have any right to appeal or to require the Scheme Adjudicator to state a case, either in respect of the determination so given or in respect of the procedure by which the Scheme Adjudicator reached that determination or make any claim against the Scheme Adjudicator in respect of such determination or procedure, except insofar as required by English law.

Section 5: Payments under the Amending Scheme

21. Payments to Scheme Creditors in respect of Net Liabilities

- 21.1. The provisions of paragraphs 21.1 to 21.11 shall not apply to (i) Opt Out Qualifying ILU Policyholders, (ii) Potentially Protected Policyholders, (iii) Pre-1969 L&O Policyholders whose Pre-1969 L&O Claims have reverted to run-off in accordance with paragraphs 42.2 and 42.3 and (iv) the claims of Qualifying ILU Policyholders and No Notice Individual Creditors which are submitted after the Bar Date and agreed or determined (as the case may be) pursuant to paragraph 43.1.
- 21.2. The Scheme Administrators shall, in consultation with the Scheme Actuarial Adviser, set a new Payment Percentage as soon as practicable after the Bar Date in the same manner as in the Original Scheme and having regard to the same matters as those set out in clauses 23.2 and 23.3 of the Original Scheme, save that the Scheme Administrators shall take into account all new information received in connection with the Amending Scheme, whether from Scheme Creditors or otherwise, in respect of Scheme Liabilities owed by the Companies to Scheme Creditors and Liabilities owed by Scheme Creditors to the Companies. Once determined, that Payment Percentage shall be the Payment Percentage that will apply to any payments to Scheme Creditors in respect of their Liabilities which are treated as if they have become Established Liabilities under paragraph 21.3 until such time as that Payment Percentage is or may be revised by the Scheme Administrators in accordance with the procedures set out in clauses 23.2 and 23.3 of the Original Scheme.
- 21.3. Subject to paragraph 21.2 and save as otherwise provided in the Amending Scheme, and, in relation to Qualifying ILU Policyholders, save as otherwise provided in the CPLA, the Net Liabilities (determined in accordance with paragraph 20) and any Commuted Liabilities (agreed in accordance with paragraph 9) of each Scheme Creditor shall be paid under the Amending Scheme as if they had become Established Liabilities under the Original Scheme (after taking account of the aggregate amount of the payments (if any) previously paid to that Scheme Creditor in respect of those Established Liabilities under the Original Scheme).
- 21.4. In addition to any payment in respect of Net Liabilities made under paragraph 21.3 to a Qualifying ILU Policyholder arising out of its Qualifying ILU Policies, the Companies shall, subject to the conditions set out in paragraphs 21.6 to 21.10 and provided that such Qualifying ILU Policyholder is not an Opt Out Qualifying ILU Policyholder, also pay to that Qualifying ILU Policyholder a Qualifying ILU Policyholder Premium. The Qualifying ILU Policyholder Premium shall be a sum equal to:
- (a) the time value of money discount agreed or determined in accordance with paragraphs 14 to 19 applied to the relevant Qualifying ILU Policyholder's Notified Outstanding Liabilities and IBNR Liabilities under those Qualifying ILU Policies; plus
 - (b) 10% of that Qualifying ILU Policyholder's Notified Outstanding Liabilities and IBNR Liabilities agreed or determined in accordance with paragraphs 14 to 19 and before the application of the time value of money discount referred to in paragraph 21.4(a).
- 21.5. Any payment of a Qualifying ILU Policyholder Premium by the Companies to a Qualifying ILU Policyholder pursuant to paragraph 21.4 shall be paid by the Companies out of such monies as are received by the Companies from NNOFIC. Any such monies received by the Companies from NNOFIC shall not be treated as having been drawn down under the Facility and shall not count towards the Facility Limit.
- 21.6. The Qualifying ILU Policyholder Premium will be reduced to the extent that the economic interest in the claim for Gross Liabilities (to which the payment of the Qualifying ILU Policyholder Premium relates) is held by or on behalf of a person who is not, or who has not at any time been, liable to pay any part of the underlying Liabilities which give rise to the claim for Gross Liabilities on that Qualifying ILU Policyholder's Claim Form.
- 21.7. The maximum value of a Qualifying ILU Policyholder's Gross Liabilities plus the corresponding component of the Qualifying ILU Policyholder Premium will be limited to the remaining available policy coverage (after the application of a discount for the time value of money) under the relevant Qualifying ILU Policy.

- 21.8. At the Scheme Administrators' absolute discretion, where a Scheme Creditor has claims in respect of Qualifying ILU Policies and other Scheme Liabilities, and where that Scheme Creditor is a Net Debtor, the Scheme Administrators may retain and apply any Qualifying ILU Policyholder Premium as payment in full or in part against that Scheme Creditor's Net Debts.
- 21.9. Subject to paragraph 21.10, any payment of a Qualifying ILU Policyholder Premium by the Companies to a Qualifying ILU Policyholder shall be conditional on that Qualifying ILU Policyholder warranting and representing to the Companies in writing (in a form satisfactory to the Scheme Administrators) that the claims which are the subject matter of that Qualifying ILU Policyholder's Claim Form have not been assigned pursuant to an Assignment to an Assignee.
- 21.10. Where any of a Qualifying ILU Policyholder's claims have been assigned pursuant to an Assignment to an Assignee and notice of that Assignment has been received by the Companies (in a form satisfactory to the Scheme Administrators) and the Companies have determined that a Qualifying ILU Policyholder Premium would otherwise be payable in respect of those claims pursuant to paragraph 21.4, the Companies shall, instead of making payment to the relevant Qualifying ILU Policyholder and subject to paragraphs 21.6 to 21.8 and paragraph 50, make payment of that Qualifying ILU Policyholder Premium instead to the relevant Assignee.
- 21.11. Potentially Protected Liabilities and Protected Liabilities shall not be included in any calculation of Gross Liabilities or any calculation of Net Liabilities for the relevant Scheme Creditor. All Established Liabilities which are Protected Liabilities as at the New Effective Date shall be paid in accordance with the terms of the Original Scheme. Without prejudice to this requirement, no payment shall be made by the Companies to any party other than the FSCS Scheme Manager in respect of Potentially Protected Liabilities or Protected Liabilities.
- 21.12. The Scheme Administrators may determine that any payment under the Scheme of less than £20 (or its equivalent in any currency from time to time) shall not be sent to a Scheme Creditor because of the costs involved in making or receiving such payment. The Companies shall pay those funds to one or more registered UK charities selected at the discretion of the Scheme Administrators.
- 21.13. As of the New Effective Date, NNOFIC shall have Established Liabilities in sums equal to the amounts of:
- (a) subject to clause 18.2 of the Original Scheme, the NNOFIC PSL;
 - (b) those Established Liabilities in respect of which monies were borrowed by each of the Companies pursuant to the Original CPLA; and
 - (c) those Established Liabilities in respect of which monies were borrowed by each of the Companies pursuant to the 1996 CPLA.
- 21.14. With effect from the New Effective Date, and without prejudice to paragraph 21.13:
- (a) clause 18.3 of the Original Scheme shall apply in relation to monies borrowed by a Company under the CPLA to enable that Company to discharge, pursuant to paragraph 21, a particular Net Liability to a Qualifying ILU Policyholder that is not an Opt Out Qualifying ILU Policyholder, as if references in clause 18.3 of the Original Scheme to "to discharge a particular Qualifying Established Liability in accordance with clause 17" were to "to make a payment in respect of a particular Net Liability in accordance with paragraph 21";
 - (b) subject to sub-paragraph (c), clause 18.4 of the Original Scheme shall continue to apply, save that:
 - (i) references in that clause to the Payment Percentage shall, in relation to any Payment Percentage that is set after the New Effective Date, be construed as references to the Payment Percentage from time to time; and
 - (ii) the Net Liabilities to Qualifying ILU Policyholders that are agreed or determined pursuant to and in accordance with the Amending Scheme shall be regarded as Qualifying Established Liabilities for the purposes of clause 18.4 of the Original

Scheme, in addition to any other Qualifying Established Liabilities to which clause 18.4 of the Original Scheme will already apply as at the New Effective Date,

and in particular, subject to sub-paragraph (c) but without limiting the generality of the foregoing, NNOFIC shall be entitled to receive payments under the Scheme in respect of each Qualifying Established Liability incurred before the New Effective Date to the extent that the Payment Percentage as first set after the New Effective Date exceeds the Payment Percentage in effect under the provisions of the Original Scheme immediately before the New Effective Date;

(c) clause 18.4 of the Original Scheme shall not apply in relation to monies borrowed by either Company under the CPLA to enable that Company to discharge a particular Qualifying Established Liability to an Opt Out Qualifying ILU Policyholder, and accordingly, while the relevant Company will incur an Established Liability to NNOFIC in respect of such monies borrowed, NNOFIC shall not be entitled to repayment of any such monies borrowed under clause 18.4 of the Original Scheme, except in respect of any monies paid to NNOFIC pursuant to paragraph 41.5; and

(d) clauses 18.3 and 18.4 of the Original Scheme shall continue to apply with respect to Qualifying Established Liabilities incurred before the New Effective Date and Agreed Liabilities that become Qualifying Established Liabilities on or after the New Effective Date.

22. Uncashed cheques

22.1. Any cheque in respect of any payment made prior to the New Effective Date, and any cheque in respect of a payment to be made on or after the New Effective Date, other than any cheque issued to a Scheme Creditor in respect of the final Payment Percentage:

(a) that is not presented by its payee within six months of the date of issue or is lost or returned to the Companies or the Scheme Administrators; and for which

(b) a replacement cheque is not requested by the relevant payee within six months of the date of issue,

will be cancelled by the Companies and the funds represented by such cheque will be available for distribution to all other Scheme Creditors and for return to NNOFIC to the extent that the funds represented by the cheque were provided by NNOFIC, whether under and subject to the terms of the CPLA or otherwise.

22.2. Where any cheque in respect of the final Payment Percentage is:

(a) not presented by its payee within six months of the date of issue or is lost or returned to the Companies or the Scheme Administrators; and

(b) a replacement cheque is not issued to the relevant payee pursuant to paragraph 22.1(b), the funds represented by that cheque shall be dealt with in accordance with paragraph 22.5.

22.3. Without prejudice to paragraphs 22.1 and 22.2, the Companies will retain the discretion to reissue any cheque to which paragraphs 22.1 and 22.2 relate at the written request of the Scheme Creditor to whom these cheques were issued at any time up until the earlier of (a) six years after the date of issue of the relevant cheque and (b) the date the final Payment Percentage is paid by the Companies.

22.4. Where the payee of any cheque requests that cheque to be reissued to him at any stage before the expiry of six months from the date of that cheque, or at the Companies' discretion under paragraph 22.3, the Companies will reissue the cheque in the same amount without interest and free of charge. This is subject to the payee complying with such conditions as to evidence and providing such indemnity for any loss or damage that the Companies may suffer (other than any fees, charges or expenses incurred in connection with the issue of any replacement cheque under paragraph 22.3) in connection with the reissue of the cheque as the Scheme Administrators may reasonably request.

22.5. Upon the expiry of six months after the date of issue of the last cheque to a Scheme Creditor in respect of the final Payment Percentage, the unclaimed funds represented by all cheques issued in respect of the final Payment Percentage, together with interest thereon (including

any accumulated interest) shall be held by the Companies. The Scheme Administrators will, at that stage, decide how such funds shall be dealt with, save that to the extent that the unclaimed funds represented by such cheques were funds originally provided by NNOFIC (whether under and subject to the terms of the CPLA or otherwise), those funds shall be returned to NNOFIC. The Companies may distribute such funds (other than funds provided by NNOFIC) by way of a further payment to Scheme Creditors or the Companies may, at the Scheme Administrators' discretion, in consultation with the Creditors' Committee, consider whether to pay those funds to one or more registered UK charities selected at the discretion of the Scheme Administrators.

- 22.6. Where a cheque to which paragraph 22 applies was paid by the Companies to (or on behalf of) a Protected Policyholder, any payment by the FSCS Scheme Manager to (or on behalf of) that Protected Policyholder in respect of the same Scheme Liability shall be deemed to have been made on the basis that the Protected Policyholder has received the relevant Payment Percentage (or other payment) in respect of that Scheme Liability from the Companies notwithstanding any other provision of paragraph 22.

23. Treatment of agents

The Companies and the Scheme Administrators shall, to the extent permitted by law and where appropriate in the circumstances, be entitled (but shall not be bound) to treat any underwriting agent (including, but not limited to, a manager of an underwriting pool, a managing general agent and/or a holder of a line-slip, broker's cover or binding authority) as a single Scheme Creditor of the Companies in respect of the calculation and payment of Scheme Liabilities owed to any or all of its principals and as a single debtor of the Companies in respect of the calculation and payment of Liabilities owed to the Companies by any or all of its principals. For the avoidance of doubt, the Companies and the Scheme Administrators shall not treat any underwriting agent as a single Scheme Creditor for any other purpose (including, without limitation, in connection with the service of any documents pursuant to paragraph 10). Payment to such creditor or agreement with such debtor shall bind the underlying Scheme Creditors in respect of that Scheme Liability as if payment had been made to each of them individually.

Section 6: The Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative

24. Qualification and appointment of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative

- 24.1. At any time, there shall be one Scheme Actuarial Adviser, one Scheme Adjudicator, one No Notice Adjudicator and one Individual Claimant Representative.
- 24.2. The first Scheme Actuarial Adviser shall be Mark Allen of PricewaterhouseCoopers LLP of 1 Embankment Place, London WC2N 6RH (or such other address of its registered office from time to time).
- 24.3. The first Scheme Adjudicator shall be Raji Bhagavatula of Milliman, Inc.
- 24.4. The first No Notice Adjudicator shall be Leo J. Jordan Sr.
- 24.5. The first Individual Claimant Representative shall be Charles E. Bates, Chairman of Bates White Economic Consulting.
- 24.6. Each of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative must, in the reasonable opinions of the Scheme Administrators, NNOFIC and the ILU, be duly and adequately qualified to discharge their respective functions under the Amending Scheme and no appointment of any person to any such office shall be valid unless each of the Scheme Administrators, NNOFIC and the ILU has certified by notice in writing to the Companies that in its reasonable opinion such person is so qualified and each of the Scheme Administrators, NNOFIC and the ILU has consented in writing to such appointment. The Scheme Actuarial Adviser must be a member of an actuarial body that is affiliated to the International Actuarial Association.

25. Resignation and removal of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative

- 25.1. The offices of Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator and Individual Claimant Representative shall be vacated if the person holding that office shall:
- (a) in the case of an individual, die;
 - (b) in the case of an individual, be convicted of an indictable offence (or an offence which, if committed in the United Kingdom, would amount to an indictable offence);
 - (c) in the case of an individual, resign his office at any time by giving not less than three months' notice in writing sent by Post to the Scheme Administrators (or such shorter period of notice as may be agreed by the Scheme Administrators);
 - (d) in the case of an individual, become unable to pay his debts within the meaning of the Insolvency Act or enter into any composition or arrangement with his creditors within the meaning of the Insolvency Act;
 - (e) in the case of an individual, be disqualified from acting as a director of a company under the CDDA or equivalent legislation in any other jurisdiction;
 - (f) in the case of an individual, become Mentally Disordered; or
 - (g) in the case of an individual, be removed for good cause by the Scheme Administrators.
- 25.2. A Scheme Actuarial Adviser, a Scheme Adjudicator, a No Notice Adjudicator or an Individual Claimant Representative may be removed by a resolution passed at a meeting of Scheme Creditors convened in accordance with clauses 47 to 52 of the Original Scheme, provided that the resolution for the removal of the Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator or Individual Claimant Representative (as the case may be) names a replacement who:

- (a) is qualified under paragraph 24.6 to act in that capacity and in respect of whom the Scheme Administrators, NNOFIC and the ILU have each given the certification referred to in paragraph 24.6;
 - (b) is not disqualified from so doing under paragraph 25.1; and
 - (c) has consented in writing to such appointment.
- 25.3. If there is a vacancy in the office of the Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator or Individual Claimant Representative (otherwise than by reason of his removal from office at a meeting of Scheme Creditors at which another individual or person is appointed in his place), the Scheme Administrators may, with the consent of the Creditors' Committee, NNOFIC and the ILU, fill that vacancy by appointing another individual or person with the relevant qualifications for that office (including, without limitation, the qualifications required to satisfy the Scheme Administrators, NNOFIC and the ILU for the purposes of paragraph 24.6).
- 25.4. Upon the appointment of a new Scheme Actuarial Adviser, Scheme Adjudicator or No Notice Adjudicator, the Scheme Administrators shall place a notice of his or its appointment on the Website and shall send such notice by Post to those Scheme Creditors who have previously made a Postal Service Request.
- 26. General powers, rights, duties and functions of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative**
- 26.1. The Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative shall have the powers, duties, functions and rights conferred upon them by the Amending Scheme.
- 26.2. The Scheme Actuarial Adviser, the Scheme Adjudicator and the No Notice Adjudicator shall have regard in the exercise of their powers under the Scheme to the interests of Scheme Creditors as a whole. Without prejudice to the generality of the foregoing, they shall:
- (a) apply the same criteria and exercise their powers and discretions and perform their obligations in the same manner under the Scheme in relation to Qualifying ILU Policyholders as they do in relation to Scheme Creditors other than Qualifying ILU Policyholders;
 - (b) exercise their powers and discretions and perform their obligations without regard to the existence of the Facility, save for the purposes of its application and/or quantification; and
 - (c) take account of the reasonable representations of each of NNOFIC and the ILU in relation to the exercise of their powers and discretions and the performance of their obligations in a way which is fair and equitable as between the interests of NNOFIC, the ILU, the Qualifying ILU Policyholders and the Scheme Creditors taken as a whole.
- 26.3. Subject to any directions which may be given by the Scheme Adjudicator in accordance with paragraphs 18.15 and 18.16 or by the No Notice Adjudicator under any costs agreement entered into pursuant to paragraph 43.3(a)(ii), the Companies shall pay:
- (a) all costs, charges and expenses reasonably incurred by the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative in the course of exercising and performing their respective powers, duties, functions and rights under the Scheme; and
 - (b) such remuneration to the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative for the exercise and performance of their powers, duties, functions and rights as may be agreed between the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative (as the case may be) and the Scheme Administrators.
- 26.4. If a Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator or Individual Claimant Representative is removed from office, subject to paragraphs 18.15 and 18.16, he shall be entitled to remuneration for the exercise and performance of his powers, duties,

functions and rights under the Scheme and to his costs, charges and expenses reasonably incurred in connection with the same to the date of his removal.

26.5. The Companies shall pay all such amounts referred to in paragraphs 26.3 and 26.4 in full out of the Scheme Assets as Priority Liabilities, provided that:

(a) the remuneration, costs, charges and expenses reasonably incurred by the No Notice Adjudicator in respect of Qualifying ILU Policyholders as referred to in paragraph 43.1(a) in the course of exercising and performing his powers, duties, functions and rights under the Scheme in respect of such Qualifying ILU Policyholders shall be paid out of the Post Bar Date Provision; and

(b) the remuneration, costs, charges and expenses reasonably incurred by the No Notice Adjudicator in respect of No Notice Individual Creditors as referred to in paragraph 43.1(b) in the course of exercising and performing his powers, duties, functions and rights under the Scheme in respect of such No Notice Individual Creditors (including Qualifying ILU Policyholders who are No Notice Individual Creditors) shall be paid out of the Post Bar Date Individual Provision.

27. Conflicts of interest

27.1. Subject to paragraph 27.2, if the Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator or Individual Claimant Representative becomes aware that he has a conflict of interest in relation to any matter referred to him under the Scheme, he shall immediately inform the Scheme Administrators of such conflict and the Scheme Administrators may, at their discretion, appoint an alternate with the relevant qualifications for the sole purpose of dealing with the relevant matter. Where the relevant conflicted matter relates to a Qualifying Liability, the appointment of any alternate must also be approved in writing by NNOFIC and the ILU. The original appointment of the Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator or Individual Claimant Representative (as the case may be) shall, subject to paragraphs 25.1 and 25.2, continue during the appointment of any alternate, and the original Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator or Individual Claimant Representative (as the case may be) shall continue to deal with all other matters referred to him under the Scheme unless a conflict shall arise in respect of any of those matters, in which case this paragraph shall also apply in respect of that conflict.

27.2. A Scheme Actuarial Adviser, Scheme Adjudicator or No Notice Adjudicator may continue to act in spite of a conflict of interest if the Scheme Creditor in relation to whom the conflict arises and the relevant Company agree in writing to permit the Scheme Actuarial Adviser, Scheme Adjudicator or No Notice Adjudicator (as the case may be) to act and if the Scheme Actuarial Adviser, Scheme Adjudicator or No Notice Adjudicator (as the case may be) is willing to act notwithstanding such conflict. Any such waiver of a conflict will only be made after the Scheme Actuarial Adviser, Scheme Adjudicator or No Notice Adjudicator and the relevant Scheme Creditor and Company have provided to each other sufficiently detailed disclosure of the details and nature of the conflict to enable each of them to take an informed decision on whether the conflict may be waived without prejudicing either the Scheme Creditor or the relevant Company and without embarrassing the Scheme Actuarial Adviser, Scheme Adjudicator or No Notice Adjudicator (as the case may be) professionally.

28. Specific powers, rights, duties and functions of the Scheme Actuarial Adviser

28.1. The Scheme Actuarial Adviser shall provide advice to the Scheme Administrators, if requested by the Scheme Administrators to do so, in relation to the consideration and agreement by the Scheme Administrators of Scheme Creditors' Gross Liabilities, Offset Amounts, Net Liabilities and the application of any discount for the time value of money applicable to Gross Liabilities in accordance with paragraph 17.16. In particular, the Scheme Actuarial Adviser shall, if requested to do so, provide advice to the Scheme Administrators concerning the application of the Estimation Guidelines to any Scheme Creditor's Gross Liabilities and Offset Amounts.

28.2. In addition to those matters set out in paragraph 28.1, the Scheme Actuarial Adviser shall assist the Scheme Administrators to:

- (a) calculate:
 - (i) the Estimated Protected Value in accordance with paragraph 34;
 - (ii) the Estimated Qualifying Value and the Estimated Opt Out Value in accordance with paragraph 38;
 - (iii) the Opt Out Proportion Figure in accordance with paragraph 39.1; and
 - (iv) the amounts of the Post Bar Date Provision, the Post Bar Date Individual Provision and the Opt Out Scheme Assets (including therein the provision made for the Opt Out Expenses) to be set aside from the Scheme Assets and retained within the Companies in accordance with paragraphs 40.1(a) to 40.1(c) respectively;
- (b) determine the first Payment Percentage set after the Bar Date and any subsequent Payment Percentage in accordance with paragraph 21.2; and
- (c) in respect of the Opt Out Qualifying ILU Policyholders, determine the first Opt Out Payment Percentage and any subsequent Opt Out Payment Percentage in accordance with paragraph 41.3.

29. Specific powers, rights, duties and functions of the Scheme Adjudicator

- 29.1. Without prejudice to the provisions of paragraph 18, the Scheme Adjudicator shall be responsible for the adjudication of any issues of fact, law, Liability and quantum directly or indirectly necessary to adjudicate on:
- (a) any Disputed Matters, including, but not limited to, disputes relating to:
 - (i) any matter which may affect the amount of Gross Liabilities or Net Liabilities of a Scheme Creditor; and
 - (ii) Net Statements pursuant to paragraph 20.4;
 - (b) the Estimated Qualifying Value and the Estimated Opt Out Value in accordance with paragraph 38;
 - (c) the Opt Out Proportion Figure pursuant to paragraphs 39.4 to 39.6;
 - (d) the amount of the Opt Out Scheme Assets (including therein the provision made for the Opt Out Expenses) to be set aside from the Scheme Assets and retained within the Companies pursuant to paragraphs 40.4 to 40.6;
 - (e) the amount of the Post Bar Date Provision pursuant to paragraphs 44.4 to 44.6; and
 - (f) the amount of the Post Bar Date Individual Provision pursuant to paragraphs 45.4 to 45.7,

but the Scheme Adjudicator shall not be responsible for, nor be entitled to undertake, the adjudication of any issues for the adjudication of which the No Notice Adjudicator is stated to be responsible under the terms of the Amending Scheme.

- 29.2. In relation to any dispute between the Scheme Administrators and any Scheme Creditor, the Scheme Adjudicator shall not be responsible for, nor be entitled to undertake, the adjudication of any issues of fact, law, Liability and quantum relating to the calculation of any Qualifying ILU Policyholder Premium, which shall be calculated in accordance with paragraph 21.4, other than in respect of any dispute relating to the extent by which any such Qualifying ILU Policyholder Premium is to be reduced pursuant to paragraph 21.6.

30. Specific powers, rights, duties and functions of the No Notice Adjudicator

The No Notice Adjudicator shall determine whether claims to which paragraph 43 applies may be submitted by Scheme Creditors after the Bar Date in accordance with that paragraph.

31. Specific powers, rights, duties and functions of the Individual Claimant Representative

The Individual Claimant Representative shall be responsible for representing the rights and interests of those individuals who may have a right to bring claims against the Companies after the Bar Date as No Notice Individual Creditors pursuant to paragraph 43.1(b) during the process of determining the Post Bar Date Individual Provision pursuant to paragraphs 45.1 to 45.7.

Section 7: Termination of the Scheme

32. Termination of the Scheme

- 32.1. The Scheme Administrators shall give written notice to the Companies at their registered office under clause 59 of the Original Scheme as soon as possible upon becoming aware that:
- (a) all the Companies' Priority Liabilities, Net Liabilities and Established Liabilities of the Opt Out Qualifying ILU Policyholders and, where the Pre-1969 L&O Claims revert to run-off in accordance with paragraph 42.3, Established Liabilities of the Pre-1969 L&O Policyholders, together with any Liability to make payments under clause 23.8 of the Original Scheme, have been paid in full (or deemed to have been satisfied in full) in accordance with the terms of the Scheme; or
 - (b) there are no further Scheme Assets to be distributed in accordance with the Scheme,
- which notice shall be served in any event within 14 days of the Scheme Administrators becoming aware of the relevant event.
- 32.2. The Scheme Administrators shall take steps to put the Companies into liquidation as soon as possible after service of notice in accordance with paragraph 32.1. The Scheme Administrators shall ensure that, so far as possible, any liquidator appointed to act in relation to the Companies agrees in writing before appointment to accept and be bound by the provisions of the Scheme as they have been implemented, insofar as they relate to the distribution of Scheme Assets to Scheme Creditors.
- 32.3. With the exception of the provisions in paragraphs 32.4 to 32.6 and 48, the Scheme shall terminate automatically with effect from the Companies being put into liquidation in accordance with paragraph 32.2 (the date of such termination being the "**Termination Date**"). As soon as reasonably practicable following such termination, the Scheme Administrators shall cause notices stating that the Scheme has terminated to be placed on the Website and in each of the newspapers and publications in which the Amending Scheme Meetings were advertised. A retention for the purposes of placing these announcements shall be taken from the Scheme Assets.
- 32.4. With effect from the Termination Date, any payment or payments (as the case may be) made by the Companies in respect of either or both of a Scheme Creditor's Net Liabilities or Established Liabilities (where such Scheme Creditor is an Opt Out Qualifying ILU Policyholder or, if the Pre-1969 L&O Claims revert to run-off in accordance with paragraph 42.3, a Pre-1969 L&O Policyholder) in accordance with the Scheme shall constitute a full and final settlement, compromise and satisfaction of all Scheme Liabilities to that Scheme Creditor and all actions, proceedings, demands, claims, costs and expenses in respect thereof and all Insurance Contracts with that Scheme Creditor shall be cancelled and all rights arising in respect thereof (including any rights of assignment) terminated, except to the extent that such a Scheme Liability is, and any Liabilities under such Insurance Contracts are, either a Protected Liability or a Potentially Protected Liability.
- 32.5. With effect from the Termination Date, the Companies shall be subrogated to all rights of each Scheme Creditor in respect of the subject matter of each Scheme Creditor's respective Scheme Liabilities. With effect from the Termination Date, each Scheme Creditor shall be deemed (to the extent that it is able to do so) to warrant and represent to the Companies that they have not, prior to the Termination Date, received any payment from the Companies or from any other person (save, in respect of Protected Policyholders, for any payment received from the FSCS Scheme Manager in accordance with the terms of the Scheme) as a result of which the payer has or may have any accrued rights against the Companies or against any other person who is liable or may become liable to the Companies in respect of that Scheme Liability and no contract or arrangement exists under which any such right could arise, nor do that Scheme Creditor's Scheme Liabilities have the benefit of any reinsurance. Each Scheme Creditor shall indemnify the Companies against all losses, damages, costs, claims, Liabilities, proceedings, demands and expenses (including legal fees) incurred by the Companies pursuant to a breach of any such warranty and representation given by that Scheme Creditor.

- 32.6. With effect from the Termination Date, any Scheme Liabilities (except Protected Liabilities and Potentially Protected Liabilities) shall be absolutely and unconditionally extinguished.
- 32.7. Subject to paragraph 32.3, the Scheme shall not terminate in the event that either or both of the Companies are ordered to be wound up by a court, including without limitation the Court, or a voluntary winding-up of either or both of the Companies is commenced under the Insolvency Act.

33. Consultation with the FSCS Scheme Manager in respect of termination of the Scheme

- 33.1. The Scheme Administrators shall give notice to the FSCS Scheme Manager as soon as possible after giving notice to the Companies under paragraph 32.1, which notice shall be served in any event within 14 days of the Scheme Administrators becoming aware of the relevant event.
- 33.2. The Scheme Administrators shall make available (and shall procure that their agents, including the Run-off Company, shall make available) to the FSCS Scheme Manager (at no cost to the FSCS Scheme Manager) the Companies' books and records and all other information in the possession or under the control of the Scheme Administrators or the Companies' agents (as the case may be) as are reasonably requested by the FSCS Scheme Manager but only insofar as those books and records and that information relates, in the opinion of the Scheme Administrators, to any Protected Liability or any Potentially Protected Liability.
- 33.3. The Scheme Administrators shall also provide such assistance as the FSCS Scheme Manager may reasonably require so that the FSCS Scheme Manager shall be able to carry out its functions or responsibilities under the Policyholders Protection Act or the FSCS Rules in relation to the verification of any Protected Liability or Potentially Protected Liability in the event of a liquidation of the Companies.
- 33.4. The Companies shall use all reasonable endeavours to procure that any agent (including, without limitation, the Run-off Company) appointed by them in connection with the run-off of their businesses will offer, on terms as to payment no less favourable than those obtained by the Companies, to the FSCS Scheme Manager such services as the FSCS Scheme Manager shall reasonably require in relation to the verification of any Protected Liability or Potentially Protected Liability under the Scheme in any liquidation of the Companies but only for any period whilst such agent is appointed by the Companies. Nothing in this paragraph shall require the Companies to appoint or continue to appoint any agent for a longer period than is required for the Scheme Administrators to perform their obligations under the Scheme.

Section 8: The Financial Services Compensation Scheme

34. Calculation and payment of the Estimated Protected Value

- 34.1. The provisions of paragraphs 34 to 36 shall apply to all Protected Policyholders and Potentially Protected Policyholders.
- 34.2. The Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, shall calculate the Estimated Protected Value within 360 days of the Bar Date in accordance with:
- (a) the principles, policies and assumptions comprised within the Estimation Guidelines; and
 - (b) the terms of the Original Scheme (including, but not limited to, those provisions of clause 6.3 of the Original Scheme).
- 34.3. The Scheme Administrators shall, after consulting with the FSCS Scheme Manager and the Scheme Actuarial Adviser, determine the relative weight to be given to any document, supporting information or other materials submitted by a Potentially Protected Policyholder relating to its policies and received by the Companies before the Bar Date for the purposes of the calculation of the Estimated Protected Value. The Scheme Administrators shall also take account of any other of the Companies' records known to the Scheme Administrators.
- 34.4. Within 360 days of the Bar Date, the Scheme Administrators shall notify the FSCS Scheme Manager in writing of the Estimated Protected Value. The Scheme Administrators shall also certify in writing to the FSCS Scheme Manager that such calculation has been performed in accordance with the Estimation Guidelines.
- 34.5. Following notification of the Estimated Protected Value, the Scheme Administrators shall, insofar as they are able to do so, provide the FSCS Scheme Manager with such supporting information as the FSCS Scheme Manager may request in relation to the calculation of the Estimated Protected Value. The Scheme Administrators shall deal promptly (and to the FSCS Scheme Manager's reasonable satisfaction) with any reasonable queries raised by the FSCS Scheme Manager as to the basis for, or application of, the Estimation Guidelines, whether generally or as to particular classes of business or claims.
- 34.6. If the Scheme Administrators have complied fully with their obligations under paragraphs 34.2 to 34.5 inclusive, the FSCS Scheme Manager shall not be entitled to request information or raise further queries after the expiry of 60 days following the receipt by the FSCS Scheme Manager of notice of the calculations made by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, of the Estimated Protected Value.
- 34.7. The FSCS Scheme Manager shall, during the period of 60 days from the date upon which all the FSCS Scheme Manager's queries have been properly answered and it has received all the information requested by it and which is capable of being provided to the FSCS Scheme Manager, be entitled to request that a recalculation of the Estimated Protected Value be carried out by the Scheme Administrators.
- 34.8. If such request is made, the Scheme Administrators shall, after consultation with the FSCS Scheme Manager or its actuary, with the assistance of the Scheme Actuarial Adviser, perform a recalculation of the Estimated Protected Value on the basis specified in paragraphs 34.2 to 34.5 inclusive and shall certify that the recalculation has been performed in accordance with the Estimation Guidelines. Any such recalculation of the Estimated Protected Value shall take into account any further information which has been provided to the FSCS Scheme Manager or which has otherwise become available to the FSCS Scheme Manager and the Scheme Administrators.
- 34.9. The Scheme Administrators shall notify the FSCS Scheme Manager of their recalculation of the Estimated Protected Value and the FSCS Scheme Manager shall not be entitled to request that a further recalculation is undertaken unless it is able to establish, to the reasonable satisfaction of the Scheme Administrators, that there has been an arithmetical error or irrationality in the recalculation. In the event of such arithmetical error or irrationality, the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, shall correct their recalculation and shall notify the corrected Estimated Protected Value to the FSCS Scheme Manager within 30 days of notification of the error.

- 34.10. The Companies shall pay to the FSCS Scheme Manager an amount equal to the then current Payment Percentage applied to:
- (a) the Estimated Protected Value; plus
 - (b) the aggregate value of those Protected Liabilities for which the FSCS Scheme Manager has not yet received payment of the Payment Percentage from the Companies,
- (together, the "**Aggregate Amount**").
- 34.11. Such payment shall be made as soon as reasonably practicable, but in any event within 60 days of receipt by the FSCS Scheme Manager of notification of the Estimated Protected Value, notwithstanding that the FSCS Scheme Manager may have requested any information or raised any queries within the period of 60 days referred to in paragraph 34.7. The Companies shall pay to the FSCS Scheme Manager further amounts calculated in accordance with clause 23.8 of the Original Scheme if the Payment Percentage is increased before the termination of the Scheme as if the references in that clause to an Established Liability were references to the Aggregate Amount.
- 34.12. If a recalculation is performed and such recalculation shows that further sums have become due to the FSCS Scheme Manager, the Companies shall pay such further sums to the FSCS Scheme Manager within 14 days of that recalculation. The making of the payments to the FSCS Scheme Manager in respect of the Estimated Protected Value in accordance with paragraphs 34.10 and 34.12 shall be in full and final settlement, compromise and satisfaction of all Potentially Protected Liabilities and all actions, proceedings, demands and claims (including those in respect of costs and expenses) against the Companies in respect thereof, whether under the Scheme or otherwise, and the FSCS Scheme Manager shall not be entitled to bring any claims in respect of Potentially Protected Liabilities whatsoever against either or both of the Companies.
- 34.13. Those Scheme Creditors to whom the Companies are or might be liable in respect of Potentially Protected Liabilities acknowledge that any payments which might, but for paragraph 34.12, be due to them either under the Original Scheme or under the Amending Scheme in respect of those Potentially Protected Liabilities, shall be included in the Estimated Protected Value. Furthermore, each Scheme Creditor acknowledges that securing payments in respect of the Estimated Protected Value constitutes a full and final discharge by the FSCS Scheme Manager of all its obligations (howsoever arising) to pursue recoveries against the Companies upon assignment of the rights of Scheme Creditors with Potentially Protected Liabilities. Accordingly, with effect from the Assignment Date, each Scheme Creditor with a Potentially Protected Liability hereby agrees that:
- (a) any right such a Scheme Creditor has against the Companies in respect of such a Potentially Protected Liability shall not be capable of reassignment; and
 - (b) those Scheme Creditors shall have no entitlement to any payment (including any payment of costs or expenses) from, or right, action, proceeding, claim or demand against, the Companies in respect of any such Potentially Protected Liabilities (irrespective of any assignment and whether or not such Potentially Protected Liabilities mature into present obligations of the Companies) and shall not seek or accept any assignment of claims in respect of such Potentially Protected Liabilities.

35. Payment of Protected Liabilities

- 35.1. Save as otherwise provided in the Amending Scheme, the provisions of paragraph 35 shall apply to any payment in respect of any Potentially Protected Liability that matures into a current Liability of the Companies and becomes a Protected Liability during the period between the New Effective Date and the Termination Date, and shall prevail to the extent inconsistent with the provisions of clause 26 of the Original Scheme.
- 35.2. In respect of any Potentially Protected Liability which matures into a current Liability of the Companies during the period between the New Effective Date and the Termination Date and becomes a Protected Liability, the FSCS Scheme Manager shall, subject to the provisions of paragraphs 34 to 36 of the Amending Scheme and to clauses 26.4 to 26.14 and 27 of the Original Scheme, pay to the Protected Policyholder concerned in respect of each such Protected Liability, an amount equal to:

- (a) the Protected Percentage of that Protected Liability, less
 - (b) the aggregate of:
 - (i) the amount of any payment made previously to the Protected Policyholder pursuant to clauses 26 to 28 of the Original Scheme in respect of any part of such Potentially Protected Liability which has matured into a Protected Liability before the New Effective Date; and
 - (ii) the amount of any payment made previously by the FSCS Scheme Manager and/or the Policyholders Protection Board pursuant to section 15 of the Policyholders Protection Act or any other provision of the Policyholders Protection Act or the FSCS Rules in relation to claims under the Transitional Order.
- 35.3. Payment in respect of such Protected Liability shall be made as soon as reasonably practicable (but may, at the discretion of the FSCS Scheme Manager, be made at any time after the Potentially Protected Liability has matured into a Protected Liability) following whichever is the later of:
- (a) the date on which the Companies notify the FSCS Scheme Manager that the relevant Potentially Protected Liability is a Protected Liability;
 - (b) the date on which the FSCS Scheme Manager agrees or it is otherwise determined (so as to bind the FSCS Scheme Manager) that the relevant Potentially Protected Liability is a Protected Liability and the FSCS Scheme Manager is satisfied that the Protected Liability has been properly established under the provisions of the Scheme and its value has been properly determined by the Companies or (where the Potentially Protected Liability is a Common Liability) that the lead Co-Insurer has properly approved the claim and that there are no circumstances which could result in the Companies forming a different view on the merits, Liability or quantum of the Potentially Protected Liability;
 - (c) the date upon which the FSCS Scheme Manager receives the first payment from the Companies in accordance with paragraph 34.10; and
 - (d) in any case where it appears to the FSCS Scheme Manager that the funds available to it fall short of what it requires to make the payment in question and to meet its responsibilities pursuant to the FSCS Rules and/or the Policyholders Protection Act or otherwise, the date on which it appears to the FSCS Scheme Manager that its funds are adequate for those purposes.
- 35.4. Save in relation to any claim made pursuant to the Transitional Order, the FSCS Scheme Manager shall have no obligation to make any payment to a Protected Policyholder otherwise than on the basis of the provisions of, and in accordance with and to the extent of, its duties and obligations under the Policyholders Protection Act or, before the Companies go into liquidation, in accordance with the duties and obligations the FSCS Scheme Manager would have had if the Companies had gone into liquidation on 20 November 1996, being the date of the Original Scheme.
- 35.5. The Companies shall, after the New Effective Date and until the date on which the final Payment Percentage is paid by the Companies, continue to handle in the ordinary course all claims made in respect of Liabilities which are or may be Potentially Protected Liabilities and the cost of such claims handling shall be borne by the Companies. The costs of handling such claims at any time after the date on which the final Payment Percentage is paid by the Companies shall be borne by the FSCS Scheme Manager. Claims that are Potentially Protected Liabilities need not be submitted using a Claim Form, can be submitted after the Bar Date and shall not be subject to the Estimation Guidelines or the adjudication procedure set out in paragraph 18. Potentially Protected Liabilities shall, if and to the extent appropriate, be agreed by the Companies and become Established Liabilities but no Protected Policyholder shall be entitled to receive any payment from the Companies in respect of any Scheme Liabilities which become Protected Liabilities after the New Effective Date.
- 35.6. For the purposes of paragraphs 35.2, 35.4, 35.5 and 36.2 (but only those four paragraphs) the terms "Protected Percentage" and "Protected Policyholder" shall be construed as if, in the definition of those terms in the Original Scheme, "Protected Liability" were to be construed in the manner referred to in paragraph 35.7.

- 35.7. For the purposes of paragraphs 35.1 to 35.3, 35.8, 35.10, 35.11, 36.1, 36.2 and 36.4, the expression "Protected Liability" shall be construed as if it included any Potentially Protected Liability which has matured into a Liability of the Companies to pay an agreed sum of money although details of the relevant Potentially Protected Liability were not included on the Claim Form submitted by the Scheme Creditor in accordance with paragraphs 14.2 and, if appropriate, 14.7 and/or that the relevant Potentially Protected Liability may not have become an Established Liability in accordance with the provisions of the Scheme.
- 35.8. Notwithstanding anything to the contrary in the Original Scheme or the Amending Scheme, the FSCS Scheme Manager shall be free of any Liability or obligation to make any payment to any Scheme Creditor howsoever or whatsoever in respect of any Potentially Protected Liability unless and until any such claim becomes a Protected Liability. Without limitation, in order to become a Protected Liability, such a Potentially Protected Liability must have matured in the ordinary course into an actual Liability of the Companies to pay an agreed sum of money under the terms of an Insurance Contract issued by the Companies. An estimate of a claim in respect of a Potentially Protected Liability, whether made by the Companies or by any liquidator appointed to the Companies before or after the Termination Date, shall not and does not (by reason of such estimation) constitute an actual Liability of the Companies under an Insurance Contract for the purposes of the Policyholders Protection Act or the FSCS Rules.
- 35.9. Without prejudice to any other rights or remedies which the FSCS Scheme Manager may have, any person receiving payment under paragraph 35 in respect of a Scheme Liability who has knowingly provided false, misleading or incomplete information to the FSCS Scheme Manager (or the Companies or the Scheme Administrators) in support of an application for that payment shall be bound on demand to repay to the FSCS Scheme Manager all such amounts as have been paid by the FSCS Scheme Manager in respect of that Scheme Liability together with interest at 5% per annum (or such higher rate of interest as may from time to time be prescribed pursuant to section 17 of the Judgments Act 1838, or such other rate as a court of competent jurisdiction shall specify for the purposes of this paragraph), calculated on a daily basis from the date of payment to the date of re-payment.
- 35.10. The FSCS Scheme Manager shall not have any obligation to make a payment to any Scheme Creditor in respect of any Protected Liability if it appears to the FSCS Scheme Manager that such a payment would result in a benefit being conferred on either a person who was a member of the Companies at the Petition Date or any person who had a responsibility for, or who may have profited from, the circumstances giving rise to the financial difficulties of the Companies, provided that there shall be disregarded for these purposes any benefit which might accrue to such persons mentioned who are policyholders of the Companies in their capacity as such.
- 35.11. Any obligation of the FSCS Scheme Manager to make a payment under paragraph 35.2 in respect of a Protected Liability shall, unless the FSCS Scheme Manager otherwise consents in any particular case, be conditional on the Protected Policyholder being entitled and able to assign, or having assigned, to the FSCS Scheme Manager all the rights and claims mentioned in paragraph 36 as originally arising and free from any lien, charge, prior assignments, equity, encumbrance or other third party right.
- 35.12. The FSCS Scheme Manager shall provide to the Companies such information relating to the date and amount of any payment which it makes to Protected Policyholders in respect of Protected Liabilities, as the Companies may from time to time reasonably request.
- 35.13. Without prejudice to clauses 26.4, 26.13(d) and 26.13(e) of the Original Scheme and to paragraph 35.14 if, when calculating the amount payable to a Scheme Creditor in respect of any Scheme Liability which is a Protected Liability, any amount of any trust fund or any other Security Interest in respect of, or referable to, that Scheme Liability is not taken into account and the Companies receive or become entitled to receive any sum in respect of, or referable to, that Scheme Liability (whether or not such sum forms part of a greater amount the balance of which is not referable to that Scheme Liability) from such trust fund or such other Security Interest, the Companies shall, as soon as is reasonably practicable after receipt, pay an amount equal to that sum to the FSCS Scheme Manager. Pending such payment the Companies shall hold the relevant amount (or, as the case may be, their entitlement to receive the same) on trust absolutely for the FSCS Scheme Manager.

35.14. The FSCS Scheme Manager, without prejudice to clause 26 of the Original Scheme, shall not have:

- (a) any greater obligation under the Scheme in respect of any Scheme Creditor or Liability by virtue of any amount of any trust fund or other Security Interest being taken into account in the calculation of the value of any Protected Liability, as the case may be, than it would have had if that amount had been treated under section 14(1) of the Policyholders Protection Act (taken together with section 14(7), if applicable) (or under any equivalent provision of the FSCS Rules) as reducing any sum which may be payable by the FSCS Scheme Manager in respect of the relevant Protected Liability if the Companies were companies in liquidation (as defined in the Policyholders Protection Act) and the beginning of the liquidation (as so defined) had been on the date of presentation of the Winding-up Petitions;
- (b) any greater obligation under the Scheme in respect of any Scheme Creditor or Scheme Liability by virtue of any such amount (as is described in sub-paragraph (a) above) not being taken into account, in the calculation of the value of any Protected Liability, as the case may be, than it would have had if that amount had been so taken into account; or
- (c) any obligation under the Scheme towards any person who has paid or is liable to pay such amount (as is described in sub-paragraph (a) above),

and any amount which the FSCS Scheme Manager would otherwise be obliged to pay under paragraph 35.2 shall be reduced accordingly, provided that the FSCS Scheme Manager may, in any case falling within paragraph 35.14(b), elect at its discretion to pay the whole or any part of any such reduction. Any such payment by the FSCS Scheme Manager shall be without prejudice to the rights of the FSCS Scheme Manager under any other provision of the Scheme including, in particular, paragraphs 35.11 and 35.13 (and for the purposes of paragraph 36.1 any such payment shall be treated as a payment pursuant to paragraphs 35.2 or 35.3 as the case may be) and may be made subject to such terms and conditions as the FSCS Scheme Manager thinks fit.

36. Assignment to the FSCS Scheme Manager

- 36.1. On the Assignment Date there shall be automatically assigned to the FSCS Scheme Manager absolutely by each Scheme Creditor, without any further act or document, all rights and claims whether present or future, actual or contingent, of each Scheme Creditor in respect of each Potentially Protected Liability (including under the relevant Insurance Contract) which the Scheme Creditor may have against the Companies which have not by then become Protected Liabilities, together with any rights and claims each Scheme Creditor may have against any other person, in respect of any event which may give rise to a Protected Liability or by reference to, or in connection with, the Insurance Contract relating to any such Protected Liability or Potentially Protected Liability.
- 36.2. The assignment contemplated by paragraph 36.1 shall be conditional upon the FSCS Scheme Manager making, in respect of any Potentially Protected Liability which matures into a Protected Liability after the Assignment Date, payment to or on behalf of the relevant Protected Policyholder, after the relevant Company has gone into liquidation, under the provisions of, and in accordance with, the powers and duties of the FSCS Scheme Manager under the Policyholders Protection Act (or the FSCS Rules). The assignment contemplated under paragraph 36.1 shall also be without prejudice and subject to the terms of the Policyholders Protection Act, including without limitation, sections 13(4) and 14 of the Policyholders Protection Act and to the provisions of the FSCS Rules in relation to claims under the Transitional Order.
- 36.3. The Amending Scheme shall be deemed to constitute for all purposes express notice in writing to the Companies of all assignments effected pursuant to its provisions, or (without prejudice to clause 57 of the Original Scheme) pursuant to the Original Scheme.
- 36.4. If any question arises as to the identification of a Protected Liability or a Potentially Protected Liability and accordingly whether the same is or is not the subject of an assignment to the FSCS Scheme Manager, a certificate by the FSCS Scheme Manager as to such identification shall, insofar as the law allows, be binding and conclusive on all persons for all purposes.

Section 9: Opt out

37. Opt out

- 37.1. A Qualifying ILU Policyholder shall, in respect of all Qualifying ILU Policies held by that Qualifying ILU Policyholder, be entitled to opt out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme and instead have its Scheme Liabilities under such Qualifying ILU Policies agreed or determined (as the case may be) in accordance with clause 6 of the Original Scheme and once so agreed or determined, paid pursuant to part C of the Original Scheme. A Qualifying ILU Policyholder wishing to opt out under paragraph 37.1 shall complete and return to the Companies an Opt Out Form either Electronically or by Post so as to be received by the Companies before the Bar Date and in accordance with the remainder of paragraph 37 and paragraph 49.
- 37.2. Any Qualifying ILU Policyholder who does not deliver an Opt Out Form to the Companies before the Bar Date in accordance with paragraph 37 shall be subject to, and shall be bound by, the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme and shall, subject to paragraph 43, not be entitled to send or submit any new or revised Claim Form to the Companies after the Bar Date.
- 37.3. Where any Qualifying ILU Policyholder returns an Opt Out Form to the Companies pursuant to paragraph 37.1, that Qualifying ILU Policyholder shall use its reasonable endeavours to submit to the Companies, Electronically or by Post, all supporting information relating to its Qualifying ILU Policies including, but not limited to:
- (a) details of each Qualifying ILU Policy held by that Qualifying ILU Policyholder;
 - (b) to the extent possible, details of any Liabilities owed to that Qualifying ILU Policyholder by either or both of the Companies under those Qualifying ILU Policies; and
 - (c) to the extent possible, documents and other information in support of those Liabilities referred to in paragraph 37.3(b),
- so as to be received by the Companies before the Bar Date provided always that the failure of a Qualifying ILU Policyholder to submit, whether in whole or in part, the supporting information required under paragraph 37.3 shall not invalidate that Qualifying ILU Policyholder's Opt Out Form.
- 37.4. A Qualifying ILU Policyholder shall be entitled to opt out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme only in respect of all Qualifying ILU Policies (but not some or part thereof) held in any capacity whatsoever by that Qualifying ILU Policyholder. A Qualifying ILU Policyholder shall not be entitled to opt out of such provisions in respect of any Insurance Contract (to which he is a party) other than a Qualifying ILU Policy.
- 37.5. A Qualifying ILU Policyholder shall be entitled to opt out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme in accordance with paragraph 37 regardless of whether that Qualifying ILU Policyholder has previously voted for or against the Amending Scheme at any one or more of the Amending Scheme Meetings.
- 37.6. The Companies shall, within 14 days of receipt of an Opt Out Form in respect of a Qualifying ILU Policyholder, confirm receipt to that Qualifying ILU Policyholder in writing in accordance with paragraph 49.
- 37.7. At any time before the Bar Date, any Qualifying ILU Policyholder which has already delivered an Opt Out Form to the Companies pursuant to paragraph 37.1 shall be entitled to change its decision to opt out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme by sending a written notification of that decision to the Companies and submitting a Claim Form either Electronically or by Post so as to be received by the Companies before the Bar Date in accordance with paragraph 49.
- 37.8. At any time before the Bar Date, any Qualifying ILU Policyholder which has already delivered a Claim Form to the Companies pursuant to paragraph 14 shall be entitled to change its decision to be bound by the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme by completing and returning to the Companies

an Opt Out Form either Electronically or by Post so as to be received by the Companies before the Bar Date in accordance with paragraphs 37 and 49.

38. Calculation of Estimated Qualifying Value and Estimated Opt Out Value

The Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, calculate the Estimated Qualifying Value and the Estimated Opt Out Value within 90 days of the Bar Date in accordance with:

- (a) the principles, policies and assumptions comprised within the Estimation Guidelines and Appendix 4 of the Amending Scheme; and
- (b) the terms of the Original Scheme (including, but not limited to, those provisions of clause 6.3 of the Original Scheme).

39. Review of Opt Out Proportion Figure

39.1. Following the calculation of the Estimated Qualifying Value and the Estimated Opt Out Value pursuant to paragraph 38 and, in any event within 90 days of the Bar Date, the Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, calculate the Opt Out Proportion Figure.

39.2. Within 90 days of the Bar Date, the Scheme Administrators shall send a written statement to NNOFIC and the ILU, notifying them of the Opt Out Proportion Figure and inviting them to agree such Opt Out Proportion Figure within 30 days of the date of that statement. The statement shall set out details of the valuation methodology used and rationale for the calculation of the Opt Out Proportion Figure. The Scheme Administrators shall send together with such statement any other supporting information and background calculations as NNOFIC or the ILU may reasonably request.

39.3. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), NNOFIC and the ILU each either:

- (a) gives notice to the Scheme Administrators that they agree with that statement; or
- (b) does not give any notice to the Scheme Administrators under paragraph 39.4,

the amount of the Opt Out Proportion Figure set out in the statement (as sent to NNOFIC and the ILU under paragraph 39.2) shall thereupon be deemed to have been agreed between, and become binding on, the Companies, the Scheme Administrators, NNOFIC and the ILU.

39.4. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), either NNOFIC or the ILU gives notice to the Scheme Administrators that it does not agree with the amount of the Opt Out Proportion Figure set out in that statement, then, within 10 days of receipt by the Scheme Administrators of that notice from NNOFIC or the ILU (as the case may be), a further notice shall be sent by the Scheme Administrators to the Scheme Adjudicator stating that the amount of the Opt Out Proportion Figure is being referred to the Scheme Adjudicator for adjudication in accordance with paragraph 39.5.

39.5. Subject to paragraph 8.1, the Scheme Adjudicator shall, within 30 days of the notice sent to the Scheme Adjudicator referred to in paragraph 39.4, issue to the Scheme Administrators, NNOFIC and the ILU a certificate stating his determination with respect to the amount of the Opt Out Proportion Figure referred to him, together with such explanation of, or reasons for, his determination which he, at his sole discretion, considers is appropriate.

39.6. The Scheme Adjudicator's determination in respect of the Opt Out Proportion Figure referred to him under paragraph 39.4 shall, insofar as the law allows, be final and binding on the Companies, the Scheme Administrators, NNOFIC and the ILU except in case of arithmetical error or irrationality. For the purposes of paragraphs 39.5 and 39.6 only, a determination made by the Scheme Adjudicator pursuant to paragraph 39.5 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination. If the Scheme Adjudicator's

determination contains an arithmetical error or is irrational, the Scheme Administrators, NNOFIC or the ILU may refer the matter to the Scheme Adjudicator within 15 days of the receipt of the certificate and the Scheme Adjudicator shall correct and re-issue the certificate within 15 days of the referral. Neither NNOFIC, the ILU nor the Scheme Administrators shall otherwise have any right to appeal or to require the Scheme Adjudicator to state a case, either in respect of the determination so given or in respect of the procedure by which the Scheme Adjudicator reached that determination or to make any claim against the Scheme Adjudicator in respect of such determination or procedure, except insofar as permitted by English law.

- 39.7. In the event that the Opt Out Proportion Figure (as calculated under paragraph 39.1 and determined, whether by agreement or adjudication, under paragraphs 39.2 to 39.6), is 30% or less, then the Companies shall proceed to implement the Amending Scheme in accordance with its terms.
- 39.8. In the event that the Opt Out Proportion Figure (as calculated under paragraph 39.1 and determined, whether by agreement or adjudication, under paragraphs 39.2 to 39.6), is greater than 30%, the Amending Scheme shall cease to have effect (subject to the provisions of paragraph 39.10) and the Scheme Administrators shall manage and control the business and affairs of the Companies in accordance with the provisions of the Original Scheme as if unamended by the Amending Scheme (except for the amendments made by the following paragraphs of the Amending Scheme: 1 (*Definitions*), 2 (*Interpretation*), 47 (*Blocked Monies*), 49 (*Notices and electronic communications*), 50 (*Payments in respect of Assignments*), 51 (*Costs of the Amending Scheme*), 52 (*Rights of third parties*), 53 (*Indemnity*) and 54 (*Governing law and jurisdiction*), together with the definitions in Appendix 1 of the words and expressions that are referred to in those paragraphs of the Amending Scheme).
- 39.9. In the event that the Original Scheme again becomes effective in accordance with and subject to the terms of paragraph 39.8, the Companies shall, as soon as reasonably practicable thereafter, send written notice thereof to all Scheme Creditors of whom they are aware and place advertisements thereof in the same publications in which the Amending Scheme was advertised and in such other publications as the Scheme Administrators may reasonably consider necessary. The notices and advertisements shall state that the Amending Scheme has ceased to have effect (subject to the provisions of paragraphs 39.8 and 39.10) and that the provisions of the Original Scheme shall, subject to paragraphs 39.8 and 39.10, continue to apply in their unamended form in respect of any Scheme Liabilities of the Scheme Creditors.
- 39.10. Should the Original Scheme become effective in accordance with paragraph 39.8:
- (a) the Companies shall pay all Priority Liabilities relating to the proposal and implementation of the Amending Scheme in full out of the Scheme Assets in accordance with clause 6 of the Original Scheme, to the extent that they have not previously been settled;
 - (b) Established Liabilities, Agreed Liabilities and Commuted Liabilities shall remain binding on the Companies and the Scheme Creditors. Any other Scheme Liabilities which have been agreed or determined to be Gross Liabilities or Net Liabilities shall cease to be binding upon the Companies and the Scheme Creditors; and
 - (c) any calculation of Net Debts made in accordance with the Amending Scheme which is outstanding immediately before the Amending Scheme ceased to have effect shall no longer be binding upon the Companies and the Scheme Creditors.

40. Application of the Scheme Assets in respect of Opt Out Qualifying ILU Policyholders

- 40.1. In the event that the Amending Scheme is implemented in accordance with its terms pursuant to paragraph 39.7, the Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, within 360 days of the Bar Date, calculate the following amounts to be set aside and retained in the Companies:
- (a) the amount of the Post Bar Date Provision in accordance with paragraph 44.1;

- (b) the amount of the Post Bar Date Individual Provision in accordance with paragraph 45.1; and
 - (c) an amount in respect of any claims of the Opt Out Qualifying ILU Policyholders arising under the Scheme. The Opt Out Scheme Assets retained by the Companies shall be an amount (calculated in each case as a Best Estimate) equal to the aggregate of:
 - (i) the figure obtained by multiplying (a) the total aggregate value of the Net Liabilities of the Opt Out Qualifying ILU Policyholders in respect of their Qualifying ILU Policies as at the Valuation Date (as estimated by the Scheme Administrators in accordance with Appendix 4 with the assistance of the Scheme Actuarial Adviser) (the "**Opt Out Scheme Liabilities**") by (b) the Payment Percentage; and
 - (ii) such amount as the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, consider reasonable to enable the Companies to meet any present unpaid and anticipated future costs and expenses (discounted for the time value of money) incurred or to be incurred by the Companies in connection with the administration and handling of the claims of, and any payments to, Opt Out Qualifying ILU Policyholders under the Scheme, including but not limited to the fees, costs and expenses of the Scheme Administrators and the Scheme Adjudicator in respect of Opt Out Qualifying ILU Policyholders in discharge of their rights, obligations, duties and functions in relation thereto (the "**Opt Out Expenses**").
- 40.2. Within 360 days of the Bar Date, the Scheme Administrators shall send a written statement to NNOFIC and the ILU, notifying them of the amount of the Opt Out Scheme Assets (including, as a separate item, the provision made for Opt Out Expenses pursuant to paragraph 40.1(c)(ii)) and inviting each of them to agree those amounts (including the provision made for Opt Out Expenses) within 30 days of the date of that statement. The statement shall set out details of the valuation methodology used and rationale for the calculation of the Opt Out Scheme Assets (including the provision made for the Opt Out Expenses). The Scheme Administrators shall send together with such statement any other supporting information and background calculations as NNOFIC or the ILU may reasonably request.
- 40.3. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), NNOFIC and the ILU each either:
- (a) gives notice to the Scheme Administrators that they agree with that statement; or
 - (b) does not give any such notice to the Scheme Administrators,
- the amount of the Opt Out Scheme Assets (including the provision made for the Opt Out Expenses) set out in the statement (as sent to NNOFIC and the ILU under paragraph 40.2) shall thereupon be deemed to have been agreed between, and become binding on, the Companies, the Scheme Administrators, NNOFIC and the ILU and such amount shall be set aside from the Scheme Assets and retained within the Companies.
- 40.4. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), either NNOFIC or the ILU gives notice to the Scheme Administrators that it does not agree with either or both of the amounts determined in accordance with paragraphs 40.1(c)(i) and 40.1(c)(ii) set out in that statement, then, within 10 days of receipt by the Scheme Administrators of that notice from NNOFIC or the ILU (as the case may be), a further notice shall be sent by the Scheme Administrators to the Scheme Adjudicator stating that either or both of the amounts determined in accordance with paragraphs 40.1(c)(i) and 40.1(c)(ii) is being referred to the Scheme Adjudicator for adjudication in accordance with paragraph 40.5.
- 40.5. Subject to paragraph 8.1, the Scheme Adjudicator shall, within 30 days of the notice referred to in paragraph 40.4, issue to the Scheme Administrators, NNOFIC and the ILU a certificate stating his determination with respect to either or both of the amounts determined in accordance with paragraphs 40.1(c)(i) and 40.1(c)(ii) referred to him, together with such explanation of, or reasons for, his determination which he, at his sole discretion, considers is appropriate.

- 40.6. The Scheme Adjudicator's determination in respect of either or both of the amounts determined in accordance with paragraphs 40.1(c)(i) and 40.1(c)(ii) referred to him under paragraph 40.4 shall, insofar as the law allows, be final and binding on the Companies, the Scheme Administrators, NNOFIC and the ILU except in case of arithmetical error or irrationality and such amount shall be set aside from the Scheme Assets and retained within the Companies. For the purposes of paragraphs 40.5 and 40.6 only, a determination made by the Scheme Adjudicator pursuant to paragraph 40.5 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination. If the Scheme Adjudicator's determination contains an arithmetical error or is irrational, the Scheme Administrators, NNOFIC or the ILU may refer the matter to the Scheme Adjudicator within 15 days of the receipt of the certificate and the Scheme Adjudicator will correct and re-issue the certificate within 15 days of the referral. Neither NNOFIC, the ILU nor the Scheme Administrators shall otherwise have any right to appeal or to require the Scheme Adjudicator to state a case, either in respect of the determination so given or in respect of the procedure by which the Scheme Adjudicator reached that determination or make any claim against the Scheme Adjudicator in respect of such determination or procedure, except insofar as permitted by English law.
- 40.7. The Scheme Administrators shall ensure that the Opt Out Scheme Assets are managed and governed in accordance with the terms of the Original Scheme and shall provide to either or both of NNOFIC or the ILU (as the case may be) a monthly report (or a report at such other intervals as NNOFIC, the ILU and the Scheme Administrators may agree from time to time) relating to the management and governance of the Opt Out Scheme Assets in such detail as either or both of NNOFIC or the ILU reasonably request.
- 40.8. In the event that, at any time after the amount of the Opt Out Scheme Liabilities has been determined pursuant to paragraph 40.1(c)(i), the Payment Percentage is increased in accordance with paragraph 21.2, the Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, within 90 days following each such increase, calculate and set aside an additional amount of Opt Out Scheme Assets to be retained in the Companies equal to the aggregate of:
- (a) the figure obtained by multiplying the amount of the Opt Out Scheme Liabilities by the amount that the Payment Percentage (as so increased) is higher than the amount of the Payment Percentage immediately before such increase; and
 - (b) any additional amounts that would from time to time have been paid to NNOFIC as Compensatory Payments arising from such increase in the Payment Percentage in accordance with clause 23.8 of the Original Scheme in respect of those Opt Out Qualifying ILU Policyholders to whom payments had been made in relation to their Qualifying Established Liabilities under the Scheme.

41. Payment to Opt Out Qualifying ILU Policyholders

- 41.1. Subject to the terms of the Scheme and save as otherwise provided in the CPLA, any Opt Out Qualifying ILU Policyholder shall, in respect of a Qualifying Established Liability in its favour, be paid only out of the Opt Out Scheme Assets by the relevant Company in accordance with clauses 17 and 23 of the Original Scheme as if the references in those clauses to a Payment Percentage, Scheme Liabilities and Scheme Assets were references to the Opt Out Payment Percentage, Scheme Liabilities of the Opt Out Qualifying ILU Policyholders and Opt Out Scheme Assets respectively, with the result that such Opt Out Qualifying ILU Policyholder shall be paid:
- (a) the Opt Out Payment Percentage multiplied by the amount of that Qualifying Established Liability; and
 - (b) such monies as are borrowed (and received) by the relevant Company from NNOFIC in accordance with the terms of the CPLA in respect of that Qualifying Established Liability.
- 41.2. An Opt Out Qualifying ILU Policyholder shall not, in respect of any Qualifying Established Liability in its favour, be entitled to receive payment of a Qualifying ILU Policyholder Premium under paragraph 21.4.

- 41.3. The Scheme Administrators shall, in consultation with the Scheme Actuarial Adviser, set an initial Opt Out Payment Percentage as soon as reasonably practicable following the determination of the amount of the Opt Out Scheme Assets to be retained in the Companies pursuant to paragraphs 40.1 to 40.6. When determining this Opt Out Payment Percentage, the Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, have regard to the same matters as those set out in clauses 23.2 and 23.3 of the Original Scheme and shall review the Opt Out Scheme Assets (excluding monies advanced to the Companies pursuant to the CPLA) and the Scheme Liabilities of the Opt Out Qualifying ILU Policyholders and shall ensure that such amount of the Opt Out Scheme Assets is retained within the Companies as the Scheme Administrators consider prudent in respect of meeting those Scheme Liabilities of the Opt Out Qualifying ILU Policyholders and the Opt Out Expenses. Once determined, that Opt Out Payment Percentage shall be the Opt Out Payment Percentage that will apply to any payments to Opt Out Qualifying ILU Policyholders in respect of their Liabilities which become Established Liabilities in accordance with clause 6 of the Original Scheme until such time as that Opt Out Payment Percentage is or may be revised by the Scheme Administrators in accordance with the procedures, and with regard to those matters, set out in clauses 23.2 and 23.3 of the Original Scheme and paragraph 41.1.
- 41.4. In the event that the amount of the Opt Out Scheme Assets retained by the Companies pursuant to paragraph 40.1(c) is insufficient to pay in full the amount of the Opt Out Expenses, NNOFIC shall advance such monies to the Companies to enable such Opt Out Expenses to be paid in full. Any such monies received by the Companies from NNOFIC shall not be treated as having been drawn down under the Facility and shall not count against the Facility Limit.
- 41.5. In the event that:
- (a) the Scheme Administrators are holding any Opt Out Scheme Assets (including any amount set aside to meet Opt Out Expenses); and
 - (b) all the Opt Out Qualifying ILU Policyholders' Established Liabilities and all Opt Out Expenses have been paid in full (or deemed to have been satisfied in full) in accordance with the terms of the Scheme,
- then any surplus Opt Out Scheme Assets shall be paid by the Companies to NNOFIC.
- 41.6. The Companies and the Scheme Administrators shall not make any payments out of the Opt Out Scheme Assets other than for the purposes of paying:
- (a) Opt Out Qualifying ILU Policyholders in respect of their Qualifying Established Liabilities pursuant to paragraph 41, which may only be paid out of amounts set aside for that purpose under paragraph 40.1(c)(i);
 - (b) the Opt Out Expenses, which may only be paid out of amounts set aside for that purpose under paragraph 40.1(c)(ii); or
 - (c) NNOFIC pursuant to paragraph 41.5.

Section 10: Pre-1969 L&O Policyholders

42. Pre-1969 L&O Policyholders

- 42.1. The Gross Liability of each Pre-1969 L&O Policyholder shall be determined in accordance with paragraphs 14 to 19. Following the determination of the Gross Liabilities of the Pre-1969 L&O Policyholders, the Scheme Administrators shall, with such assistance of the Scheme Actuarial Adviser as they deem necessary, calculate the amounts payable by TSBHSBHC and Lloyds Bank pursuant to the Lloyds Bank Agreement in respect of the Gross Liabilities of the Pre-1969 L&O Policyholders and as soon as reasonably practicable thereafter send a written statement to TSBHSBHC and Lloyds Bank notifying them of the amount payable.
- 42.2. If within 90 days (or such longer period as the Scheme Administrators in consultation with the Creditors' Committee may agree) of the date of that statement either TSBHSBHC or Lloyds Bank does not pay (or agree to pay) to either or both of the Companies the amount specified in the statement or such other amount as may be proposed by the Scheme Administrators (and agreed by the Creditors' Committee) in full, then the Scheme Administrators shall determine, at their absolute discretion and in consultation with the Creditors' Committee, whether the claims of the Pre-1969 L&O Policyholders (other than those in respect of Established Liabilities and Agreed Liabilities) arising out of any Insurance Contracts submitted to the Companies in accordance with paragraph 14 (each, a "**Pre-1969 L&O Claim**" and together referred to as the "**Pre-1969 L&O Claims**") are to revert to run-off and be agreed or determined (as the case may be) and paid in accordance with the terms of the Original Scheme.
- 42.3. Where the Scheme Administrators determine, pursuant to paragraph 42.2, that the Pre-1969 L&O Claims are to revert to run-off, then:
- (a) the Pre-1969 L&O Claims shall revert to run-off and be agreed and ascertained in the ordinary course in accordance with the provisions of the Original Scheme and determined as Established Liabilities in accordance with clause 6 of the Original Scheme and once so agreed and determined, paid pursuant to part C of the Original Scheme; and
 - (b) the Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, set the Payment Percentage payable to all Scheme Creditors (other than Opt Out Qualifying ILU Policyholders and Potentially Protected Policyholders), on a prudent basis, in accordance with clauses 23.2 and 23.3 of the Original Scheme, taking into account:
 - (i) the expected value of the Pre-1969 L&O Claims as agreed in accordance with the terms of the Original Scheme;
 - (ii) the expected costs and expenses incurred or to be incurred by the Scheme Administrators in respect of the Pre-1969 L&O Claims; and
 - (iii) the amounts payable by TSBHSBHC and Lloyds Bank to the Companies pursuant to the Lloyds Bank Agreement, to the extent that such amounts remain to be paid.
- 42.4. If at any time following the reversion to run-off of the Pre-1969 L&O Claims pursuant to paragraph 42.3, the Scheme Administrators conclude, with the assistance of the Scheme Actuarial Adviser, from the information available to them that the then existing Payment Percentage can be increased, as a result of the prudent allowances made under paragraph 42.3(b) being deemed to be more than sufficient in respect of the Pre-1969 L&O Claims, the Scheme Administrators shall revise the Payment Percentage in accordance with the provisions of paragraph 21.2.
- 42.5. Where the Scheme Administrators determine, pursuant to paragraph 42.2, that the Pre-1969 L&O Claims are not to revert to run-off, then:
- (a) all claims of the Pre-1969 L&O Policyholders (including the Pre-1969 L&O Claims) shall be agreed or determined (as the case may be) and paid in accordance with the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme;
 - (b) the Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, when setting the Payment Percentage in accordance with paragraph 21.2, take into

account that TSBHSBHC and Lloyds Bank have not paid the full amount specified in the written statement (sent by the Scheme Administrators pursuant to paragraph 42.1) to the Companies under the Lloyds Bank Agreement; and

- (c) the Payment Percentage set pursuant to paragraph 42.5(b) will thereafter be reviewed by the Scheme Administrators at any time including, but not limited to, as a result of any further amounts received by the Companies from TSBHSBHC and Lloyds Bank in respect of the Gross Liabilities of the Pre-1969 L&O Policyholders.

Section 11: The Bar Date

43. The Bar Date

43.1. Subject to paragraphs 43.4 and 45, notwithstanding the provisions of paragraph 14, where a Scheme Creditor who is:

(a) a Qualifying ILU Policyholder who:

(i) is not an individual;

(ii) has not submitted a Claim Form before the Bar Date; and

(iii) can demonstrate to the satisfaction of the No Notice Adjudicator that the reason that it failed to submit a Claim Form before the Bar Date was that it neither knew, nor could reasonably be expected to have known, about the Amending Scheme and the requirement to submit a Claim Form before the Bar Date; or

(b) an individual who has not submitted a Claim Form before the Bar Date and can demonstrate to the satisfaction of the No Notice Adjudicator that he acquired rights against either or both of the Companies by operation of the law governing his rights, including statutory or decisional law, or under a provision in an Insurance Contract and the reason he failed to submit a Claim Form before the Bar Date was that:

(i) he neither knew about, nor could reasonably be expected to have known about, the Amending Scheme before the Bar Date; or

(ii) no claim had arisen in his favour in connection with the relevant Insurance Contract before the Bar Date; or

(iii) before the Bar Date, he neither knew, nor could reasonably be expected to have known, that he had suffered significant injury,

provided, however, that with respect to an individual who seeks to proceed under any of paragraphs 43.1(b)(i), 43.1(b)(ii) or 43.1(b)(iii) above, such individual's claim against either or both of the Companies shall remain subject to all the requirements and limitations of all applicable law, including statutory and decisional law, governing his claim and the provisions of the Insurance Contract under which he claims, including, in both respects, limitations in respect of the passage of time, with the exceptions that:

(i) applicable law shall not include the legal consequences of:

(a) the Permanent Injunction Order dated 6 March 1997 issued by the United States Bankruptcy Court for the Southern District of New York, pursuant to former section 304 of the US Bankruptcy Code, enjoining actions against the Companies and their assets in the United States of America and granting recognition of the Original Scheme; or

(b) any injunction against such claims issued by a United States Bankruptcy Court under Chapter 15 of the US Bankruptcy Code in connection with the recognition of the Original Scheme or the Amending Scheme; and additionally

(ii) a claim shall not be deemed barred by applicable law solely because the insured entity in respect of whose Insurance Contract the claim against the Companies arises is subject to the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme,

(an individual falling within paragraph 43.1(b) being a "**No Notice Individual Creditor**"),

the No Notice Adjudicator shall, subject to paragraph 43.3, allow such Scheme Creditor to submit a claim against the Companies after the Bar Date for that claim to be agreed or determined (as the case may be) in accordance with the terms of the Amending Scheme, provided that any such claim must be received by the Scheme Administrators by 31 December 2035 or, if earlier, the date on which the Scheme Administrators give notice to the Companies pursuant to paragraph 32.1. The decision of the No Notice Adjudicator shall, insofar as the law allows, be final and binding on the Companies, the Scheme Administrators and the relevant Scheme Creditor except in case of arithmetical error or irrationality. For the

purposes of paragraph 43.1 only, a determination made by the No Notice Adjudicator pursuant to paragraph 43.1 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the No Notice Adjudicator, would have made that same determination.

- 43.2. Any Scheme Creditor who is entitled to and wishes to submit a claim to be assessed by the No Notice Adjudicator under paragraph 43.1 must send a written notice to the Companies at their registered office setting out details of that claim. The Scheme Administrators shall, within 30 days of receipt of that notice, send a copy of that notice to the No Notice Adjudicator.
- 43.3. In addition to those requirements set out in paragraph 43.1, the No Notice Adjudicator shall not allow any claim submitted by a Scheme Creditor under paragraph 43.2 to be agreed or determined (as the case may be) in accordance with the terms of the Amending Scheme unless:
- (a) where the Scheme Creditor is a Qualifying ILU Policyholder:
 - (i) that Qualifying ILU Policyholder has delivered to the No Notice Adjudicator one or more policy documents in its name written by either or both of the Companies and signed and issued by the ILU which clearly demonstrate, to the satisfaction of the No Notice Adjudicator, that Qualifying ILU Policyholder's status as a Qualifying ILU Policyholder; and
 - (ii) that Qualifying ILU Policyholder has entered into an agreement with the No Notice Adjudicator in the form set out in Appendix 5 (*Costs agreement*) or in a form substantially similar thereto; and
 - (b) in all cases to which paragraph 43.1 applies, the Scheme Creditor has submitted all such other evidence as the No Notice Adjudicator may from time to time require in order to establish whether (or the extent to which) that Scheme Creditor is entitled to make a claim against the Companies or either of them under the Scheme.
- 43.4. Any claim made pursuant to paragraph 43.1 shall be subject to the provisions of paragraphs 34 to 36 where such claim is or may be made in respect of a Potentially Protected Liability.

44. Qualifying ILU Policyholder claims after the Bar Date

- 44.1. The amount of the Post Bar Date Provision (set aside and retained in the Companies pursuant to paragraph 40.1(a) to pay the Payment Percentage in respect of any Net Liabilities of Qualifying ILU Policyholders to which paragraph 44.7 applies) shall be calculated by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, by:
- (a) multiplying the 2007 Provision Figure by a factor based on the change in estimated reserve amounts for Qualifying ILU Policyholders for relevant claim types between 31 December 2007 and the Valuation Date (after any adjustments made by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, to take account of any new information in respect of those IBNR Liabilities received by the Scheme Administrators between the Valuation Date and the Bar Date);
 - (b) discounting the amount resulting from the calculation referred to in paragraph 44.1(a) for the time value of money by applying a Risk Free Rate to an appropriate pattern of future claims payments, as at the Bar Date, equivalent to the discounting calculations in paragraph 17.16; and
 - (c) adding such amount as the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, consider reasonable to enable the Companies to meet any present unpaid or future costs and expenses (discounted for the time value of money) incurred or to be incurred by the Companies in respect of Qualifying ILU Policyholders as referred to in paragraph 43.1(a), including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator in discharging their respective rights, obligations, duties and functions in relation thereto (together the "**Post Bar Date Expenses**").

- 44.2. Within 360 days of the Bar Date, the Scheme Administrators shall send a written statement to NNOFIC and the ILU (together with such supporting information and background calculations as NNOFIC and the ILU may reasonably request), notifying them of: (i) the amount produced by the calculation referred to in paragraph 44.1(a); (ii) the amount of the discount to be applied to the Post Bar Date Provision in accordance with paragraph 44.1(b); and (iii) the amount proposed to be set aside to cover the Post Bar Date Expenses in accordance with paragraph 44.1(c), and inviting NNOFIC and the ILU to agree these amounts within 30 days of the date of that statement.
- 44.3. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), NNOFIC and the ILU each either:
- (a) gives notice to the Scheme Administrators that they agree with that statement; or
 - (b) does not give any such notice to the Scheme Administrators,
- the amounts set out in the statement (as sent to NNOFIC and the ILU under paragraph 44.2) shall thereupon be deemed to have been agreed between, and become binding on, the Companies, the Scheme Administrators, NNOFIC and the ILU.
- 44.4. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), either NNOFIC or the ILU gives notice to the Scheme Administrators that it does not agree with any one or more of the amounts set out in that statement, then, within 10 days of receipt by the Scheme Administrators of that notice from NNOFIC or the ILU (as the case may be), a further notice shall be sent by the Scheme Administrators to the Scheme Adjudicator stating that any one or more of the amounts set out in that statement is or are being referred to the Scheme Adjudicator for adjudication in accordance with paragraph 44.5.
- 44.5. Subject to paragraph 8.1, the Scheme Adjudicator shall, within 30 days of the notice referred to in paragraph 44.4, issue to the Scheme Administrators, NNOFIC and the ILU a certificate stating his determination with respect to the amount or amounts referred to him, together with such explanation of, or reasons for, his determination which he, at his sole discretion, considers is appropriate.
- 44.6. The Scheme Adjudicator's determination in respect of any amount referred to him under paragraph 44.4 shall, insofar as the law allows, be final and binding on the Companies, the Scheme Administrators, NNOFIC and the ILU except in the case of arithmetical error or irrationality. For the purposes of paragraphs 44.5 and 44.6 only, a determination made by the Scheme Adjudicator pursuant to paragraph 44.5 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination. If the Scheme Adjudicator's determination contains an arithmetical error or is irrational, the Scheme Administrators, NNOFIC or the ILU may refer the matter to the Scheme Adjudicator within 15 days of the receipt of the certificate. The Scheme Adjudicator shall correct and re-issue the certificate within 15 days of the referral. None of NNOFIC, the ILU or the Scheme Administrators shall otherwise have any right to appeal or to require the Scheme Adjudicator to state a case, either in respect of the determination so given or in respect of the procedure by which the Scheme Adjudicator reached that determination or make any claim against the Scheme Adjudicator in respect of such determination or procedure, except insofar as permitted by English law.
- 44.7. To the extent that any claim submitted by a Qualifying ILU Policyholder under paragraph 43.2 (to which paragraph 43.1(a) applies) is agreed or determined (as the case may be) under the Amending Scheme to be a Net Liability due from the Companies to that Qualifying ILU Policyholder, payment of that Net Liability shall be made by the Companies to that Qualifying ILU Policyholder in accordance with paragraph 21.3, provided that the amount payable by the Companies by way of Payment Percentage in respect of such Net Liability shall be paid solely out of the Post Bar Date Provision.
- 44.8. In the event that the amount of the Post Bar Date Provision retained by the Companies pursuant to paragraph 40.1(a) is insufficient to pay in full the amounts payable by the Companies by way of Payment Percentage in respect of any Net Liabilities referred to in paragraph 44.7, NNOFIC shall advance such additional monies to the Companies under and

subject to the terms of the CPLA to enable such Net Liabilities to be paid in full. Any such monies received by the Companies from NNOFIC in respect of such Net Liabilities shall be treated as having been drawn down under the Facility and shall count against the Facility Limit. In the event that the amount retained to meet Post Bar Date Expenses is insufficient to pay in full the Post Bar Date Expenses payable by the Companies, NNOFIC shall advance such additional monies to the Companies as are required to enable such Post Bar Date Expenses to be paid in full. Any such monies received by the Companies from NNOFIC in respect of such Post Bar Date Expenses shall not be treated as having been drawn down under the Facility and shall not count against the Facility Limit.

- 44.9. In the event that:
- (a) the Scheme Administrators are holding any amount of the Post Bar Date Provision (including any amount set aside for Post Bar Date Expenses); and
 - (b) all claims of the Qualifying ILU Policyholders (to which paragraph 43.1(a) applies) submitted under paragraph 43.2 (to the extent that such claims are agreed or determined (as the case may be) to be Net Liabilities due from the Companies to those Qualifying ILU Policyholders) and Post Bar Date Expenses as referred to in paragraph 44.1(c) have been paid in full (or deemed to have been satisfied in full) in accordance with the terms of the Scheme,

then any surplus amount of the Post Bar Date Provision, including any amount set aside to meet Post Bar Date Expenses, shall be paid by the Companies to NNOFIC.

- 44.10. The Companies and the Scheme Administrators shall not make any payments out of the Post Bar Date Provision other than for the purposes of paying:
- (a) Qualifying ILU Policyholders of the type referred to in paragraph 43.1(a) in accordance with paragraph 44.7, which may only be paid out of amounts set aside for that purpose under paragraphs 44.1(a) and 44.1(b);
 - (b) the Post Bar Date Expenses, which may only be paid out of amounts set aside for that purpose under paragraph 44.1(c); or
 - (c) NNOFIC pursuant to paragraph 44.9.

45. Claims from individuals after the Bar Date

- 45.1. The amount of the Post Bar Date Individual Provision set aside and retained in the Companies pursuant to paragraph 40.1(b) shall be calculated by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, on the basis that it should be a fair and equitable estimate (taking into account the interests of both No Notice Individual Creditors and all other Scheme Creditors) of the amount that the Companies will require to pay the Payment Percentage in respect of any Net Liabilities of No Notice Individual Creditors to which paragraph 45.8 applies, together with the costs of the Companies in dealing with such claims (including the relevant costs of the No Notice Adjudicator).
- 45.2. Within 360 days of the Bar Date, the Scheme Administrators shall send a written statement to each of NNOFIC and the Individual Claimant Representative (together with such supporting information and background calculations as either or both of NNOFIC and the Individual Claimant Representative may reasonably request), notifying them of the amount proposed for the Post Bar Date Individual Provision in accordance with paragraph 45.1 and inviting NNOFIC and the Individual Claimant Representative to agree this amount within 30 days of the date of that statement.
- 45.3. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the Individual Claimant Representative may agree), each of NNOFIC and the Individual Claimant Representative either:
- (a) gives notice to the Scheme Administrators that it agrees with that statement; or
 - (b) does not give any such notice at all to the Scheme Administrators,
- the amount set out in the statement (as sent to NNOFIC and the Individual Claimant Representative under paragraph 45.2) shall thereupon be deemed to have been agreed

between, and become binding on, the Companies, the Scheme Administrators, NNOFIC and the Individual Claimant Representative.

- 45.4. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the Individual Claimant Representative may agree), either NNOFIC or the Individual Claimant Representative gives notice to the Scheme Administrators that it does not agree with the amount set out in that statement, then, within 10 days of receipt by the Scheme Administrators of that notice, a further notice shall be sent by the Scheme Administrators to the Scheme Adjudicator stating that the amount of the Post Bar Date Individual Provision is being referred to the Scheme Adjudicator for adjudication in accordance with paragraph 45.5.
- 45.5. Subject to paragraph 8.1, the Scheme Adjudicator shall, within 30 days of the notice sent to the Scheme Adjudicator referred to in paragraph 45.4, issue to the Scheme Administrators, NNOFIC and the Individual Claimant Representative a certificate stating his determination with respect to the amount of the Post Bar Date Individual Provision, taking into account the requirements of paragraph 45.1, together with such explanation of, or reasons for, his determination which he, at his sole discretion (but taking into account the matters set out in paragraph 45.6), considers is appropriate.
- 45.6. In coming to his determination, the Scheme Adjudicator shall consult with the Scheme Administrators, NNOFIC and the Individual Claimant Representative as to what would represent a fair and equitable estimate of the amount of the Post Bar Date Individual Provision referred to in paragraph 45.1. Each of the Scheme Administrators, NNOFIC and the Individual Claimant Representative shall, in the discretion of the Scheme Adjudicator (acting reasonably), be given a full and fair opportunity to present their respective positions regarding the amount of the Post Bar Date Individual Provision to the Scheme Adjudicator before the Scheme Adjudicator determines the amount of the Post Bar Date Individual Provision pursuant to paragraph 45.5.
- 45.7. The Scheme Adjudicator's determination in respect of the amount of the Post Bar Date Individual Provision referred to him under paragraph 45.4 shall, insofar as the law allows, be final and binding on the Companies, the Scheme Administrators, NNOFIC and the Individual Claimant Representative except in the case of arithmetical error or irrationality. For the purposes of paragraphs 45.5 and 45.7 only, a determination made by the Scheme Adjudicator pursuant to paragraph 45.5 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination. If the Scheme Adjudicator's determination contains an arithmetical error or is irrational, the Scheme Administrators, NNOFIC or the Individual Claimant Representative may refer the matter to the Scheme Adjudicator within 15 days of the receipt of the certificate. The Scheme Adjudicator shall correct and re-issue the certificate within 15 days of the referral. None of NNOFIC, the Individual Claimant Representative or the Scheme Administrators shall otherwise have any right to appeal to require the Scheme Adjudicator to state a case, either in respect of the determination so given or in respect of the procedure by which the Scheme Adjudicator reached that determination or make any claim against the Scheme Adjudicator in respect of such determination or procedure, except insofar as permitted by English law.
- 45.8. To the extent that any claim submitted by a No Notice Individual Creditor under paragraph 43.2 (to which paragraph 43.1(b) applies) is agreed or determined (as the case may be) under the Amending Scheme to be a Net Liability due from the Companies to that No Notice Individual Creditor, payment of that Net Liability shall be made by the Companies to that No Notice Individual Creditor in accordance with paragraph 21.3, provided that the amount payable by the Companies by way of Payment Percentage in respect of such Net Liability shall be paid solely out of the Post Bar Date Individual Provision.
- 45.9. In the event that the amount of the Post Bar Date Individual Provision retained by the Companies pursuant to paragraph 40.1(b) is insufficient to pay in full the amounts payable by the Companies by way of Payment Percentage in respect of any Net Liabilities referred to in paragraph 45.8 and the costs of the Companies in dealing with such claims (including the relevant costs of the No Notice Adjudicator), the Companies shall, subject to paragraph 45.10, have no further obligation to make any payment to a No Notice Individual Creditor in

respect of its Net Liabilities and NNOFIC shall be under no further obligation to make any payment to the Companies in respect of the Post Bar Date Individual Provision.

45.10. Notwithstanding paragraph 45.9, in the event that the Scheme Administrators consider, in their sole discretion, that the amount of the Post Bar Date Individual Provision retained by the Companies pursuant to paragraph 40.1(b) is, or is likely to be, insufficient to pay in full the amounts payable by the Companies by way of Payment Percentage in respect of any Net Liabilities referred to in paragraph 45.8 and the costs of the Companies in dealing with such claims (including the relevant costs of the No Notice Adjudicator), the Scheme Administrators may at any time increase the amount of the Post Bar Date Individual Provision by such amount as they consider necessary to ensure that all such amounts can be paid in full.

45.11. In the event that:

(a) the Scheme Administrators are holding any amount of the Post Bar Date Individual Provision; and

(b) all claims of the individuals (to which paragraph 43.1(b) applies) (to the extent that such claims are or will be agreed or determined (as the case may be) to be Net Liabilities due from the Companies to those individuals) have been paid at the Payment Percentage and all costs and expenses of the Companies (including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator) incurred in connection with the claims of such individuals have been paid in full (or deemed to have been satisfied in full) in accordance with the terms of the Scheme,

then any surplus amount of the Post Bar Date Individual Provision shall be made available by the Companies for distribution to all Scheme Creditors with Net Liabilities (as determined under the Amending Scheme) or Established Liabilities (as determined under the Original Scheme) (as the case may be).

45.12. The Companies and the Scheme Administrators shall not make any payments out of the Post Bar Date Individual Provision other than for the purposes of paying the following (which shall only be paid out of the Post Bar Date Individual Provision):

(a) No Notice Individual Creditors of the type referred to in paragraph 43.1(b) in accordance with paragraph 45.8;

(b) the costs and expenses of the Companies (including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator) incurred in connection with the claims of such No Notice Individual Creditors; or

(c) Scheme Creditors pursuant to paragraph 45.11.

Section 12: Miscellaneous provisions

46. Scheme Creditors' duty to provide assistance

- 46.1. During the Scheme Period, each Scheme Creditor shall co-operate with, and provide such assistance and information as, the Companies, the Scheme Administrators, the Scheme Actuarial Adviser, the Scheme Adjudicator and/or the No Notice Adjudicator may reasonably request in connection with the Original Scheme and/or the Amending Scheme in accordance with their functions thereunder, including, but not limited to:
- (a) the production of information relevant to the processing of Liabilities;
 - (b) the release of (the balance of) funds held as collateral in respect of any Security Interest(s) held by that Scheme Creditor once the relevant Scheme Liability has been met; and
 - (c) the recovery of any Scheme Assets or the enforcement of obligations owed to the Companies.
- 46.2. Paragraph 46.1 shall not apply to the FSCS Scheme Manager in its capacity as a Scheme Creditor.
- 46.3. In addition to the duties set out in paragraph 46.1, each Scheme Creditor shall provide such assistance and information as the FSCS Scheme Manager may require in connection with any Protected Liability or Potentially Protected Liability.
- 46.4. Each Scheme Creditor is deemed to acknowledge that, if all its Scheme Liabilities are satisfied as a result of the realisation of any Security Interest, it shall continue to be obliged to provide assistance to the Companies, the Scheme Administrators and/or the FSCS Scheme Manager in accordance with paragraph 46.
- 46.5. Without prejudice to the generality of paragraphs 46.1 to 46.4, where a Scheme Creditor has the benefit of any Security Interest (as referred to in clause 13 of the Original Scheme), the Scheme Creditor shall release, discharge or cancel that Security Interest after drawing down any amount properly due, before or at the same time as the Payment Percentage of its Net Liability or Commuted Liability or Opt Out Payment Percentage of its Qualifying Established Liability (as the case may be) under the Scheme is paid to him.

47. Blocked Monies

- 47.1. Where the Companies are prevented by any law or regulation imposing international sanctions or prohibitions promulgated by the United Kingdom, or any other jurisdiction to which the Companies are subject, from making a payment to a Scheme Creditor under the Scheme or otherwise complying with any term of the Scheme, or, where funds are provided by NNOFIC under the Scheme, NNOFIC is prevented by any such law or regulation to which it is directly or indirectly subject from making such a payment, the requirements of such law or regulation shall override the terms of the Scheme and compliance with such law or regulation will constitute full discharge of such Scheme Creditor's Scheme Liabilities under the Scheme.
- 47.2. Any Blocked Monies shall be applied by the Companies in accordance with the requirements of such law or regulation or the instructions of the relevant authority. The Companies shall be under no obligation to make any application to the relevant authority for a waiver of such law or regulation in any particular case.
- 47.3. In the event that the applicable law or regulation does not contain provisions as to how to deal with Blocked Monies, the Companies shall, prior to the Termination Date, hold them in an account with a United Kingdom clearing bank until such time, prior to the Termination Date, as the Companies are instructed by the relevant authority as to how to deal with the Blocked Monies or it becomes lawful or not contrary to regulation (on the basis set out in paragraph 47.2) to pay the Blocked Monies to the relevant Scheme Creditor (and, in the case where such law or regulation was directly or indirectly applicable to NNOFIC, NNOFIC and the ILU has consented in writing to such payment). Any interest earned on such account shall follow principal. In the event that no such instruction is received prior to the Termination Date, the Blocked Monies shall be paid by the Companies to one or more

registered UK charities (selected at the discretion of the Scheme Administrators) as soon as reasonably practicable following the Termination Date and the relevant Scheme Creditor shall cease to have any entitlement to them. The Scheme Liabilities in respect of which such Blocked Monies would otherwise have been payable shall be deemed to be cancelled and the relevant Scheme Creditor shall have no rights in respect of it or them.

48. Releases

- 48.1. With effect from the Termination Date, insofar as the law allows and subject to the terms of the Scheme, the Relevant Parties shall be released absolutely and unconditionally from any claims by any Scheme Creditor howsoever relating to the Relevant Parties in respect of any loss or Liability (whether present, future, prospective or contingent) relating to, or arising out of, any act done or omitted to be done in the course of, or in connection with, the proper preparation, implementation, administration and operation of the Original Scheme, the Amending Scheme, the Scheme and the liquidation of the Companies or the exercise by any such person of any power, discretion, right, duty or obligation conferred upon it or him thereunder howsoever or wheresoever caused and whether or not any such claims are attributable to their default, other than for fraud or dishonesty. Relevant Parties shall include any third party (including its fellow members, partners and employees) retained to assist or advise in relation to the matters referred to in this paragraph 48.1 to the extent of such advice or assistance.
- 48.2. Paragraph 48.1 shall survive any termination of the Scheme pursuant to paragraph 32.

49. Notices and electronic communications

- 49.1. Any reference in the Scheme to the Scheme Administrators or the Scheme Adjudicator sending or giving a document shall, unless the contrary is stated and subject to paragraph 49.3, be construed as including the Scheme Administrators or the Scheme Adjudicator (as the case may be) sending such document or information Electronically or, in the case of the Scheme Administrators only, making the same available for accessing on, or downloading from, the Website.
- 49.2. Any reference in the Scheme to a Scheme Creditor or the Scheme Adjudicator sending or giving a document to the Scheme Administrators shall, unless the contrary is stated and subject to paragraph 49.3, be construed as including the Scheme Creditor or the Scheme Adjudicator sending such document or information Electronically on the Website or to the email address provided by the Scheme Administrators, and references in the Scheme to Post and "address" shall be construed accordingly.
- 49.3. If a Scheme Creditor (other than NNOFIC) does not want to communicate or receive communications Electronically, that Scheme Creditor must either sign and return to the Run-off Company the pre-addressed Postal Service Request form enclosed with the notice given under paragraph 10.3, or telephone or otherwise contact the Run-off Company to provide them with the information that would otherwise be required on the Postal Service Request form. The Run-off Company shall write to that Scheme Creditor, confirming that it has received the Postal Service Request form and that the Scheme Creditor will receive subsequent communications, including a Claim Form, by Post. Thereafter, no communications will be sent Electronically to that Scheme Creditor unless and until it gives notice (Electronically or by Post to the Run-off Company) withdrawing such Postal Service Request. The Run-off Company shall notify the Scheme Adjudicator of any request by a Scheme Creditor to receive communications by Post as soon as reasonably practicable following receipt of that Scheme Creditor's Postal Service Request form.
- 49.4. Notwithstanding any provision in the Original Scheme, and save as otherwise provided in the Amending Scheme and subject to paragraph 49.3, notices may be given either:
- (a) Electronically;
 - (b) by Post; or
 - (c) by fax.
- 49.5. Notices to the current Scheme Administrators shall be sent:
- (a) Electronically to oic.run-offlimited@uk.pwc.com;

(b) by Post to PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, United Kingdom; or

(c) by fax to fax number +44 (0) 207 212 7500,

(marked for the attention of Dan Yoram Schwarzmann or Paul Anthony Brereton Evans), or to such other email address, postal address or fax number as the Scheme Administrators may notify to Scheme Creditors from time to time for the purposes of paragraph 49.5. All notices sent to any other Scheme Administrator shall be sent to that Scheme Administrator's address at the date of the notice.

- 49.6. Notices to Scheme Creditors shall be sent (marked, where applicable, for the attention of either the finance director, the chief financial officer or other officer of similar standing of that Scheme Creditor) to such addresses, fax numbers or email addresses as may be shown in the Companies' records or databases or to any other address, fax number or email address being the last known address, fax number or email address of the Scheme Creditor which the Scheme Administrators may reasonably believe is appropriate, or if no address, fax number or email address for the Scheme Creditor is known to the Scheme Administrators, to the last known address, fax number or email address of any broker or agent through which the relevant Insurance Contract was effected, unless a Scheme Creditor notifies in writing to the Scheme Administrators a different address, fax number or email address to which any notices to that Scheme Creditor are to be sent.
- 49.7. A notice delivered by hand, Electronically or by fax pursuant to paragraph 49.6 shall be deemed to have been received by that Scheme Creditor at the time and date of delivery to such address, fax number or email address to which that notice was sent. In relation to communications sent Electronically, "address" includes any number or address used for the purpose of such communications.
- 49.8. Subject to paragraph 49.10 and save as otherwise provided in the Amending Scheme, any notice given by Post shall be deemed to have been duly given and any notice posted as aforesaid shall be deemed to have been received on the 7th or, in the case of airmail, 14th day following the date upon which it is posted.
- 49.9. Subject to paragraph 49.10, proof that:
- (a) an envelope containing a notice was properly addressed, prepaid and given to the recognised courier service or otherwise properly placed in the care of the relevant postal service for delivery; or
 - (b) a notice sent Electronically was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators; or
 - (c) a fax transmission report showing that the fax was successfully delivered to the proper fax number was generated,
- shall be conclusive evidence that such notice was given.
- 49.10. In respect of any communications, whether sent Electronically, by Post or by fax, from any Scheme Creditor to the Scheme Administrators, the Scheme Adjudicator or the Companies, the deemed time of receipt by the Scheme Administrators, the Scheme Adjudicator or the Companies shall be the actual time of receipt. References in the Amending Scheme to the Companies or either of them having received any document or information shall include the Scheme Administrators having received such document or information in their capacity as Scheme Administrators.
- 49.11. Any dispute in relation to whether any information, amount, forms, statements, documentation, notices or other communication are to be deemed to have been served and received within the relevant periods of time set down by the Amending Scheme shall be referred to the Scheme Adjudicator in accordance with paragraph 18.
- 49.12. Where it appears to the Scheme Administrators that those acting on behalf of a Scheme Creditor in the ordinary course (including, but not limited to, professional advisers, managing general agents, the managers of underwriting pools, the holders of line slips or binding authorities or similar representative bodies) ("**Representatives**") are authorised to represent that Scheme Creditor, the Scheme Administrators may, in the course of implementing the Scheme, elect to communicate with those Representatives instead of with

that Scheme Creditor. If the Scheme Administrators do so elect, communications between the Scheme Administrators and the Representatives shall be deemed to be communications between the Scheme Administrators and the relevant Scheme Creditor until such time as the Scheme Creditor or its Representatives give notice to the Scheme Administrators, or it otherwise becomes reasonably apparent to the Scheme Administrators, that the Representatives' authority to represent that Scheme Creditor has expired or terminated.

- 49.13. Neither the Companies nor the Scheme Administrators shall be liable for any loss or damage arising from the opening or use by a Scheme Creditor of any email or attachments received from the Companies or the Scheme Administrators. Notwithstanding the other provisions of paragraph 49, any email received by the Scheme Administrators from a Scheme Creditor which is found to contain any virus, harmful components or other disruptive program or device preventing the reading or opening of such email or any attachments to that email by the Scheme Administrators shall be deemed not to have been received. The Scheme Administrators shall, however, as soon as reasonably practicable after becoming aware of any damaging email received from a Scheme Creditor notify the relevant Scheme Creditor (in accordance with paragraph 49) of the existence of any email sent by it which is found to contain a virus for the purpose of enabling it to be re-sent without such virus. In such circumstances, the Scheme Creditor shall, promptly, and, in any event, within such time period as the Scheme Administrators may reasonably specify, re-send the email without such virus, and any time period within which any information contained in the email was required to be provided to any person under the Amending Scheme shall be extended accordingly.

50. Payment in respect of Assignments

Without prejudice to paragraph 36, where an Assignment has taken place:

- (a) any Liability of the Companies to the relevant Assignee in respect of a claim that was assigned pursuant to such Assignment shall be extinguished to the extent that either of the Companies have, in accordance with the terms of the Scheme, already made any payment in respect of the same claim to the relevant Assignor; and
- (b) any Liability of the Companies to the relevant Assignor in respect of a claim that was assigned pursuant to such Assignment shall be extinguished to the extent that either of the Companies have, in accordance with the terms of the Scheme, already made any payment in respect of the same claim to the relevant Assignee.

51. Costs of the Amending Scheme

All costs, charges, expenses and disbursements incurred by the Companies and the Scheme Administrators in connection with the negotiation, preparation and implementation of the Amending Scheme, including the costs of holding the Amending Scheme Meetings and the costs of obtaining the sanction of the Court, shall be discharged by the Companies as costs of the Scheme and shall accordingly constitute Priority Liabilities.

52. Rights of third parties

The Contracts (Rights of Third Parties) Act 1999 shall not apply in respect of the Amending Scheme.

53. Indemnity

- 53.1. No Scheme Creditor other than NNOFIC or the ILU in relation to the implementation of the CPLA or the exercise, carrying out or performance of their functions in relation thereto shall be entitled to challenge the validity of any act done or any failure to share in good faith and with reasonable care by the Scheme Administrators, the Directors, the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator, the Individual Claimant Representative or by any of their employees or agents or any Committee Member (or any Nominated Representative, FSCS Representative, Alternate or FSCS Alternate) in accordance with and to implement the provisions of the Scheme and/or the CPLA or the exercise, carrying out or performance or the purported exercise, carrying out or performance by any such person in good faith and with reasonable care of any function, power, right, duty, authority or discretion (as the case may be) conferred on him for the purpose of the Scheme, if exercised, carried out or performed or purported to be exercised, carried out or performed in accordance with and to implement the Scheme.

53.2. Subject to the Companies Act and save as provided for in paragraph 53.1, no person mentioned in paragraph 53.1 shall be liable for any loss unless such loss is attributable to his own negligence, wilful default, breach of duty, breach of trust, fraud or dishonesty.

53.3. Subject to the Companies Act, the Companies shall indemnify the persons mentioned in paragraph 53.1 against any Liability incurred by them in defending any proceedings, whether civil or criminal, in which judgment is given in their favour or which are discontinued before judgment is given or in which they are acquitted. The Companies shall also indemnify such persons in connection with any application in which relief is granted to them by the Court from any Liability for negligence, wilful default, breach of duty or breach of trust including without prejudice to the generality of the foregoing, the matters referred to in paragraph 53.2.

54. Governing law and jurisdiction

54.1. The Scheme shall be governed by and construed in accordance with English law and all the parties to it 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 Amending Explanatory Statement (dated 8 October 2014 and its appendices explaining the effect of the Scheme pursuant to section 897 of the Companies Act) or any provision of the Scheme (including without limitation this paragraph), 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 all the parties to the Scheme irrevocably submit to the exclusive jurisdiction of the Court. In relation to an Insurance Contract, nothing in paragraph 54.1 shall affect or alter or be taken to have affected or altered the proper law of the Insurance Contract or the jurisdiction of any court of competent jurisdiction selected by the parties to settle any dispute or hear and determine any suit, action or proceeding arising out of such Insurance Contract.

54.2. Any dispute in relation to the construction or interpretation of this paragraph 54 shall be referred to the Court which shall also have exclusive jurisdiction in relation to these matters.

Dated 8 October 2014

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Appendix 1 – Definitions

In the Amending Scheme, unless the context otherwise requires, the following expressions shall have the following meanings:

"Account Balance"	a General Account Balance or a Qualifying Account Balance;
"Aggregate Amount"	has the meaning given to it in paragraph 34.10;
"Agreed Liability"	any Scheme Liability where the Companies agree that the Liability of the Companies for, and the quantum of, a claim or part of a claim of a Scheme Creditor has been determined in the normal course of business or agreed by the Companies and the relevant Scheme Creditor before the New Effective Date, according to the Companies' records or such other evidence as the Scheme Administrators may reasonably accept, but which has not become an Established Liability before the New Effective Date;
"Alternate"	has the meaning given to it clause 39.2 of the Original Scheme;
"Amending Explanatory Statement"	the statement dated 8 October 2014 explaining the effect of the Amending Scheme made available to Scheme Creditors as required by section 897 of the Companies Act;
"Amending Scheme"	this scheme of arrangement proposed between the Companies and their Scheme Creditors as set out in this document or as may from time to time be modified in accordance with paragraph 5;
"Amending Scheme Meetings"	the meetings of Scheme Creditors convened by each of the Companies with the leave of the Court to consider and, if thought fit, to approve the Amending Scheme;
"APH"	collectively, asbestos, environmental pollution and/or other health hazards;
"Assigned Balance"	has the meaning given to it in paragraph 17.9;
"Assigned General Balance"	has the meaning given to it in paragraph 17.5;
"Assigned Qualifying Balance"	has the meaning given to it in paragraph 17.7;
"Assignee"	a Scheme Creditor of either or both of the Companies who is an assignee pursuant to one or more Assignments;
"Assignment"	a legal or equitable assignment of all or any part of the benefit of, or rights and benefits under, an Insurance Contract (including, but not limited to, the benefit of any past, present or future claims under or in respect of such Insurance Contract);
"Assignment Date"	the Business Day immediately preceding the day on which the Termination Date falls;
"Assignor"	an assignor pursuant to one or more Assignments;
"Bar Date"	midnight (English time) on the day falling 240 days after (and not including) the New Effective Date, or if that is not a Business Day, then the next Business Day following;
"Best Estimate"	an estimate that is intended to represent the mean of the distribution of possible outcomes;
"Blocked Monies"	any monies payable to a Scheme Creditor under the Scheme, the payment of which is prohibited by an applicable law or regulation referred to in paragraph 47.1;

"Business Day"	any day (other than a Saturday, Sunday or UK public holiday) on which banks in the City of London are generally open for business;
"CDDA"	the Company Directors Disqualification Act 1986;
"Chapter 15 Order"	an order issued by the United States Bankruptcy Court that enforces the Amending Scheme in the United States of America;
"Claim Form"	the personalised claim form made available on the Website by the Scheme Administrators for each Scheme Creditor known by the Companies in accordance with paragraph 13.1, or otherwise made available in accordance with the Amending Scheme, which shall be in the form set out in draft in section H of the Amending Explanatory Statement or in a form substantially similar thereto;
"Claim Form Guidance Notes"	those guidance notes which accompany the Claim Form when it is made available on the Website by the Scheme Administrators for each known Scheme Creditor in accordance with paragraph 13.1, or otherwise made available in accordance with the Amending Scheme. The Claim Form Guidance Notes shall be in the form set out in draft in section H of the Amending Explanatory Statement or in a form substantially similar thereto;
"Co-Insurer"	any insurer, reinsurer or retrocessionaire (apart from either or both of the Companies);
"Committee Member"	has the meaning given to it in clause 36.2 of the Original Scheme;
"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 or policy (whether of insurance, reinsurance, retrocession or otherwise) made between a Scheme Creditor, a Company and one or more Co-Insurers (whether by way of a single contract or policy or by way of a number of contracts or policies on, in the opinion of the Scheme Administrators, substantially identical terms, made variously between the Scheme Creditor, a Company and one or more Co-Insurers), such that the relevant Company's and the Co-Insurers' rights and Liabilities under the said contract or policy relate to the same layer of cover (where the contract or policy in question is of insurance, reinsurance or retrocession and where the risk giving rise to the Liability is insured in layers) and are, in the opinion of the Scheme Administrators, substantially identical, whether they are joint, several or differing in quantum;
"Commutated Liability"	a Scheme Liability discharged by payment of consideration or by any other agreement in accordance with paragraph 9.1;
"Companies"	L&O and Orion, L&O or Orion individually being referred to as "the", or "a", "Company" or "the relevant Company";
"Companies Act"	the Companies Act 2006;
"Compensatory Payment"	has the meaning given to it in clause 23.8 of the Original Scheme;
"Court"	the High Court of Justice of England and Wales;
"CPLA"	the agreement dated 20 November 1996, as amended on or around the date of this Amending Scheme, between (1) NNOFIC, (2) Orion, (3) L&O and (4) the ILU, pursuant to which NNOFIC has agreed to make funds available to each of the Companies on trust for the sole purpose of enabling each of the Companies to make payment to Qualifying ILU Policyholders during the period of the Scheme in accordance with the terms of that agreement and the terms of the Scheme;

"Creditors' Committee"	the committee of creditors established pursuant to clause 36 of the Original Scheme;
"Direct Insurance"	the cover provided by an insurer to a non-insurer policyholder, as opposed to any Reinsurance cover provided to cover insurance risks written by another insurer;
"Directors"	the directors of either or both of the Companies from time to time;
"Disputed Matter"	any dispute to which paragraph 17.27 applies;
"Due"	immediately payable, subject to the provisions of the Original Scheme;
"Effective Date"	7 March 1997, being the date upon which the Original Scheme came into effect;
"1845"	Nationale-Nederlanden Internationale Schadeverzekering SE, a Societas Europaea registered in England and Wales under company number SE000072;
"Electronically"	the mode of transmission of any communication sent or received by email or by using the facilities offered through the Website;
"Established Liability"	a Scheme Liability becoming established as from time to time determined in accordance with clause 6.3 of the Original Scheme or arising out of sums advanced by NNOFIC, falling within clauses 18.1 or 18.3 of the Original Scheme;
"Estimated Opt Out Value"	the total aggregate value of the Net Liabilities of the Opt Out Qualifying ILU Policyholders in respect of their Qualifying ILU Policies as at the Valuation Date as calculated in accordance with paragraph 38 (after any adjustments made by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, to take account of any new information in respect of those Net Liabilities received by the Scheme Administrators between the Valuation Date and the Bar Date);
"Estimated Protected Value"	the total aggregate estimated value of the Potentially Protected Liabilities of the Companies as at the Valuation Date as calculated in accordance with paragraph 34 (after any adjustments made by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, to take account of any new information in respect of those Potentially Protected Liabilities received by the Scheme Administrators between the Valuation Date and the Bar Date);
"Estimated Qualifying Value"	the total aggregate value of the Net Liabilities of all Qualifying ILU Policyholders (including Opt Out Qualifying ILU Policyholders) in respect of their Qualifying ILU Policies as at the Valuation Date as calculated in accordance with paragraph 38 (after any adjustments made by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, to take account of any new information in respect of those Net Liabilities received by the Scheme Administrators between the Valuation Date and the Bar Date);
"Estimation Guidelines"	the guidelines for use in valuing claims set out at Appendix 2;
"Facility"	the loan facility available to the Companies under and subject to the terms of the CPLA;
"Facility Limit"	US\$450,000,000;

"Facultative Reinsurance"	a method of reinsurance under which an insurer (ceding insurer) obtains reinsurance for each risk individually where: (a) there is no obligation on the ceding insurer to cede any particular risk; (b) it is the ceding insurer's choice as to how much it will cede and how much it will retain for itself on each risk; and (c) the prospective reinsurer is under no obligation to write any particular risk i.e. it can decline any risk and fix its share of any risk as agreed with the ceding insurer for that risk;
"Facultative Retrocession"	a method of reinsurance under which a reinsurer (the retrocedant) obtains reinsurances (retrocessions) for each risk individually where: (a) there is no obligation on the retrocedant to retrocede any particular risk; (b) it is the retrocedant's choice as to how much it will retrocede and how much it will retain for itself on each risk; and (c) the prospective reinsurer providing such retrocession (the retrocessionaire) is under no obligation to write any particular risk i.e. that reinsurer can decline any risk and fix its share of any risk as agreed with the retrocedant for that risk;
"Final Adjudication Date"	the first Business Day falling 650 days after the Bar Date;
"First Company"	has the meaning given to it in paragraphs 17.5, 17.7 and 17.9 respectively;
"FSCS Alternate"	a person appointed by the chairman for the time being of the FSCS Scheme Manager (as the current statutory successor to the Policyholders Protection Board) or the FSCS Representative to represent the FSCS Scheme Manager at meetings of the Creditors' Committee pursuant to clause 39.4 of the Original Scheme;
"FSCS Representative"	a person appointed by the FSCS Scheme Manager (as the current statutory successor to the Policyholders Protection Board) to represent it at meetings of the Creditors' Committee pursuant to clause 39.3 of the Original Scheme;
"FSCS Rules"	the rules of the FSCS Scheme Manager as amended and in force on the New Effective Date, made pursuant to section 213 of FSMA (but incorporating also any amendment made after that date which has effect in relation to a company in liquidation on or before that date);
"FSCS Scheme Manager"	Financial Services Compensation Scheme Limited (company number 03943048), established pursuant to Part XV of FSMA (being the current statutory successor to the Policyholders Protection Board) and to include any statutory successor of it;
"FSMA"	the Financial Services and Markets Act 2000;
"General Account"	an account of mutual Scheme Liabilities (excluding Qualifying Liabilities) and mutual Offset Amounts (excluding Offset Amounts under or in relation to Qualifying Protection) existing at the Petition Date taken between a Company and a Scheme Creditor;
"General Account Balance"	a balance (after the application of paragraphs 17.4 and 17.5) on a General Account in favour of a Scheme Creditor;

"Gross Liabilities"	<p>in respect of a Scheme Creditor, the sum of the following Liabilities:</p> <p>(a) Established Liabilities (as at the New Effective Date);</p> <p>(b) Agreed Liabilities;</p> <p>(c) Notified Outstanding Liabilities; and</p> <p>(d) IBNR Liabilities,</p> <p>but before taking account of:</p> <p>(e) any Offset Amounts to be deducted in accordance with paragraphs 17.3 to 17.12;</p> <p>(f) any discount for the time value of money to be applied in accordance with paragraph 17.16; and</p> <p>(g) any deduction to be made after once more taking account of the matters set out in clauses 6.3(a) and (b) of the Original Scheme;</p>
"IBNR Liability"	<p>an incurred but not reported claim arising under or in respect of an Insurance Contract for the amount payable by one or both of the Companies in respect of a loss which has been incurred but has not been reported to or discovered by a Scheme Creditor plus the amount payable in respect of a general excess over Notified Outstanding Liabilities, to the extent that the current estimates of claims included as Notified Outstanding Liabilities may prove to be inadequate;</p>
"ILU"	<p>the Institute of London Underwriters, a company limited by guarantee, incorporated in England and Wales under the Companies Act 1867 with registered number 19900C;</p>
"ILU Policy"	<p>a contract of insurance, reinsurance or retrocession evidenced by a policy signed and issued by the ILU;</p>
"Individual Claimant Representative"	<p>Charles E. Bates or such other person as may be appointed as a successor to him in accordance with the provisions of the Scheme;</p>
"Insolvency Act"	<p>the Insolvency Act 1986;</p>
"Insurance Contract"	<p>any contract or policy of insurance, reinsurance or retrocession of any kind whatsoever entered into by or on behalf of either or both of the Companies;</p>
"Liability"	<p>any obligation or liability whether present, future, prospective or contingent, whether or not for a fixed or unliquidated amount, whether or not involving the payment of money, which arises at common law, in equity or by statute in England and Wales or in any other jurisdiction or in any other manner whatsoever; and for the avoidance of doubt where any obligation or liability, present, future, prospective or contingent, whether or not for a fixed or unliquidated amount, whether or not involving the payment of money, is void or, being voidable, has or shall have been duly avoided, no obligation or liability shall arise in respect of such obligation or liability;</p>
"Lloyds Bank"	<p>Lloyds Bank plc (incorporated in England and Wales under the Companies Act 1862 with registered number 002065);</p>
"Lloyds Bank Agreement"	<p>the agreement dated 12 October 2010 between TSBHSBHC, Lloyds Bank, Orion and L&O;</p>
"L&O"	<p>The London and Overseas Insurance Company Limited (formerly known as The London and Overseas Insurance Company plc) (incorporated in England and Wales under the Companies Acts 1862 to 1890 with registered number 38706);</p>

"L&O Trust Deed"	the deed between (1) Orion, (2) L&O and (3) the Trustee, dated on the Record Date;
"Mentally Disordered"	in relation to a Nominated Representative or an Alternate (as defined in clauses 39.1 and 39.2 of the Original Scheme respectively), a Committee Member, the Scheme Administrators, a Scheme Actuarial Adviser, a Scheme Adjudicator, a No Notice Adjudicator or an Individual Claimant Representative, where he is a patient within the meaning of part X of the Mental Health Act 1983 or section 125(1) of the Mental Health (Scotland) Act 1984 or an order has been made by a court having jurisdiction in matters concerning mental disorder for his detention or the appointment of a receiver or other person to exercise power over his affairs or circumstances equivalent to any of the foregoing existing in relation to him under applicable law in any other jurisdiction;
"Nat-Ned"	NN Group N.V., a company incorporated in the Netherlands that was formed from a merger involving ING Verzekeringen N.V., formerly known as Internationale Nederlanden Verzekeringen N.V.;
"Net Debt"	any amount shown as due to a Company from a Scheme Creditor following the determination of that Company's Net Liabilities to that Scheme Creditor;
"Net Debtor"	any person who owes one or both of the Companies a Net Debt;
"Net Liabilities"	in respect of a Scheme Creditor, the value attributed to the Gross Liabilities (discounted for the time value of money in accordance with paragraph 17.16) in favour of that Scheme Creditor determined in accordance with the Amending Scheme, after subtracting any Offset Amounts and any deduction to be made after once more taking account of the matters set out in clauses 6.3(a) and (b) of the Original Scheme;
"Net Liabilities Notification Date"	the first Business Day falling 770 days after the Bar Date;
"Net Statement"	a statement produced by the Scheme Administrators in accordance with paragraph 20 setting out a Scheme Creditor's Net Liabilities and, where applicable, Qualifying ILU Policyholder Premium;
"New Court Orders"	the orders of the Court under section 899 of the Companies Act sanctioning the Amending Scheme in respect of each of the Companies;
"New Effective Date"	the date on which an office copy of the New Court Orders is delivered to the Registrar of Companies in England and Wales for registration in accordance with section 899(4) of the Companies Act;
"1996 CPLA"	the Agreement dated 20 November 1996 between (1) NNOFIC, (2) Orion, (3) L&O and (4) the ILU, pursuant to which NNOFIC lent funds to each of the Companies on trust for the sole purpose of enabling each of the Companies to make payment to Qualifying ILU Policyholders in accordance with its terms and which will be superseded by the CPLA;
"NNOFIC"	Nationale-Nederlanden Overseas Finance and Investment Company (incorporated in England and Wales under the Companies Act 1985 with registered number 2634701);
"NNOFIC PSL"	the Companies' Liabilities to NNOFIC as at the Record Date, excluding the Companies' Liabilities then or thereafter to repay amounts borrowed under the Original CPLA, the 1996 CPLA or the CPLA;

"NNUK"	Nationale-Nederlanden (UK General) Limited (a private limited company that was previously incorporated in England and Wales under the Companies Act 1985 with registered number 2514365 and which was dissolved on 5 July 2012);
"Nominated Representative"	has the meaning given to it in clause 39.1 of the Original Scheme;
"No Notice Adjudicator"	Leo J. Jordan Sr or such other person as may be appointed as a successor to him in accordance with the provisions of the Scheme;
"No Notice Individual Creditor"	has the meaning given to it in paragraph 43.1(b);
"Non-APH"	not related to asbestos, environmental pollution and/or other health hazards;
"Notified Outstanding Liability"	a claim arising under or in respect of an Insurance Contract for the amount payable by one or both of the Companies in respect of a loss which has been reported to or discovered by the Scheme Creditor and notified to one or both of the Companies but has not become an Agreed Liability or an Established Liability;
"Notified Scheme Liability"	any Scheme Liability in respect of a Scheme Creditor which has been notified by that Scheme Creditor to the Companies on a Claim Form so as to be received by the Companies before the Bar Date in accordance with paragraph 14.2 and, if appropriate, paragraph 14.7;
"Offset Amount"	in respect of a Scheme Creditor, any Liability of that Scheme Creditor to one or both of the Companies which, as at the Valuation Date (after any adjustments made by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, to take account of any new information in respect of that Liability received by the Scheme Administrators between the Valuation Date and the Bar Date), is Due or may fall Due in the future, including, but not limited to, any amount estimated by the Scheme Administrators to be Due or which may fall Due from that Scheme Creditor to one or both of the Companies where that Scheme Creditor is either or both an Opt Out Qualifying ILU Policyholder or a Pre-1969 L&O Policyholder, all after applying a discount for the time value of money in accordance with paragraph 17.16;
"Opt Out Expenses"	has the meaning given to it in paragraph 40.1(c)(ii);
"Opt Out Form"	the opt out form on the Website entitled "Opting Out";
"Opt Out Payment Percentage"	the percentage of every Qualifying Established Liability that the Scheme Administrators determine, from time to time, should be paid under the Scheme out of the Opt Out Scheme Assets to Opt Out Qualifying ILU Policyholders;
"Opt Out Proportion Figure"	the figure obtained by dividing the Estimated Opt Out Value (plus the Post Bar Date Provision (excluding the amount set aside for Post Bar Date Expenses)) by the Estimated Qualifying Value expressed as a percentage;
"Opt Out Qualifying ILU Policyholder"	any Qualifying ILU Policyholder who has opted out of the crystallisation and payment provisions contained in paragraphs 14 to 21 of the Amending Scheme, by returning an Opt Out Form to the Companies before the Bar Date in accordance with paragraph 37;
"Opt Out Scheme Assets"	the amount calculated pursuant to paragraph 40.1(c) as increased from time to time under paragraph 40.8;
"Opt Out Scheme Liabilities"	has the meaning given to in paragraph 40.1(c)(i);

"Original CPLA"	the agreement dated 30 June 1995 between (1) NNOFIC, (2) Orion, (3) L&O and (4) the ILU pursuant to which NNOFIC lent funds to each of the Companies on trust for the sole purpose of enabling each of the Companies to make payments to Qualifying ILU Policyholders in accordance with its terms and which terminated on the Effective Date;
"Original Scheme"	the schemes of arrangement between the Companies and their Scheme Creditors dated 20 November 1996, which became effective on 7 March 1997, in the form unamended by the Amending Scheme;
"Orion"	OIC Run-Off Limited (formerly known as The Orion Insurance Company plc) (incorporated in England and Wales under the Companies Act 1929 with registered number 256100);
"Orion Trust Deed"	the deed between (1) NNUK, (2) Orion and (3) the Trustee, dated on the Record Date, which was acceded to by NNOFIC in place of NNUK pursuant to a deed of adherence dated 25 July 2011;
"Payment Percentage"	subject to clause 18.2 of the Original Scheme, the percentage of every Established Liability (under the Original Scheme) or Net Liability (under the Amending Scheme) that the Scheme Administrators determine, from time to time, should be paid to Scheme Creditors (other than Opt Out Qualifying ILU Policyholders and Potentially Protected Policyholders);
"Petition Date"	20 October 1994, being the date of presentation of the Winding-up Petitions;
"Policyholders Protection Act"	the Policyholders Protection Act 1975 of the United Kingdom as amended and in force at 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;
"Post"	pre-paid first class or air mail post, or hand delivery (including by a generally recognised commercial courier service);
"Post Bar Date Expenses"	has the meaning given to it in paragraph 44.1(c);
"Post Bar Date Individual Provision"	the provision made from the Scheme Assets to meet the Payment Percentage in respect of any Net Liabilities of individuals to which paragraph 45.8 applies and the costs and expenses of the Companies (including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator) incurred in connection with the claims of such individuals;
"Post Bar Date Provision"	the provision made from the Scheme Assets to meet the Payment Percentage in respect of any Net Liabilities of Qualifying ILU Policyholders (other than Opt Out Qualifying ILU Policyholders) to which paragraph 44.7 applies and the amount set aside for Post Bar Date Expenses;
"Postal Service Request"	a telephone or written communication from a Scheme Creditor made in accordance with paragraph 49.3 requesting that all communications, documents, notices and forms sent from either or both of the Companies, the Scheme Administrators and the Scheme Adjudicator be sent to the relevant Scheme Creditor by Post, and not Electronically;

"Potentially Protected Liability"	a Liability of either Company in respect of a claim which, as at the New Effective Date, is a claim in respect of an Agreed Liability, a Notified Outstanding Liability or an IBNR Liability that, when matured, would be eligible for protection under the Policyholders Protection Act or under the FSCS Rules if the Company were an insurance undertaking in default and the Policyholders Protection Act or the FSCS Rules applied to that default;
"Potentially Protected Policyholder"	a Scheme Creditor of either of the Companies in respect of a Potentially Protected Liability but excluding any Qualifying ILU Policyholder;
"Pre-1969 L&O Claim"	has the meaning given to it in paragraph 42.2;
"Pre-1969 L&O Policyholder"	a Scheme Creditor under an Insurance Contract entered into by L&O with an inception date before 20 March 1969 and whose claims in respect of that Insurance Contract are subject to the Lloyds Bank Agreement;
"Priority Liabilities"	<p>any Liability of either or both of the Companies if and to the extent that it is a Liability of either or both of the Companies referred to in:</p> <p>(a) clause 58 of the Original Scheme; or</p> <p>(b) paragraph 51 including, but not limited to:</p> <p>(i) subject to paragraph 41.6(b), all Opt Out Expenses (<i>paragraph 40.1(c)(ii)</i>);</p> <p>(ii) subject to paragraph 44.10(b), the Post Bar Date Expenses;</p> <p>(iii) subject to paragraph 45.12, the expenses referred to in paragraph 45.12(b); and</p> <p>(iv) subject to paragraph 26.5, all remuneration, costs, charges and expenses reasonably incurred by the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative in the course of exercising their respective powers, duties, functions and rights under the Scheme (<i>paragraphs 18.15, 18.16, 26.3 and 26.4</i>);</p>
"Proceedings"	<p>any action or other legal proceeding in any jurisdiction whatsoever:</p> <p>(a) including:</p> <p>(i) arbitration (in so far as the same is provided for under the terms of a contract or policy giving rise to a Scheme Liability); and</p> <p>(ii) any judicial action or proceeding; but</p> <p>(b) excluding:</p> <p>(i) arbitration (in so far as the same is not provided for under the terms of a contract or policy giving rise to a Scheme Liability); and</p> <p>(ii) any other dispute resolution procedure which does not involve submission to the courts;</p>
"Protected Liability"	<p>any Established Liability of a Company in respect of which (and to the extent to which):</p> <p>(a) the FSCS Scheme Manager would owe a duty under sections 6 to 8 of the Policyholders Protection Act if that 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 Liability in</p>

accordance with the Scheme (and for the avoidance of doubt but without limitation, where such a duty would only be owed under the Policyholders Protection 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 the Policyholders Protection Act, or a Liability of some other description, only an Established Liability which is also such a Liability shall be capable of qualifying as a Protected Liability); or

- (b) the FSCS Scheme Manager would be required to make payment under article 10 of the Transitional Order and those parts of the FSCS Rules giving effect to article 10 of the Transitional Order;

"Protected Percentage"	in relation to a Protected Liability, the maximum percentage of such Protected Liability which the FSCS Scheme Manager would have a duty to pay under sections 6 to 8 of the Policyholders Protection Act or under those parts of the FSCS Rules which implement article 10 of the Transitional Order were the relevant Company "a company in liquidation" for the purposes of the Policyholders Protection Act;
"Protected Policyholder"	in relation to a Protected Liability, any Scheme Creditor to whom a Company owes that Protected Liability and who, in addition, is eligible for protection under section 16(9) of the Policyholders Protection Act or the FSCS Rules (but who is not a Qualifying ILU Policyholder);
"PRPs"	has the meaning given to it in section 3.2 of Appendix 2 (<i>Estimation Guidelines</i>);
"Qualifying Account"	an account of mutual Qualifying Liabilities and mutual Offset Amounts under or in relation to Qualifying Protection existing at the Petition Date taken between a Company and a Scheme Creditor;
"Qualifying Account Balance"	a balance (after the application of paragraphs 17.6 and 17.7) on a Qualifying Account in favour of a Qualifying ILU Policyholder;
"Qualifying Established Liability"	a Qualifying Liability or Qualifying Account Balance being established as from time to time determined in accordance with clause 6.3 of the Original Scheme;
"Qualifying ILU Policy"	an ILU Policy entered into by either or both of the Companies: (a) in the case of L&O, with an inception date on or after 20 March 1969; and (b) in the case of Orion, with an inception date on or after 28 August 1970;
"Qualifying ILU Policyholder"	a Scheme Creditor under a Qualifying ILU Policy;
"Qualifying ILU Policyholder Premium"	an amount calculated and payable to Qualifying ILU Policyholders (who are not Opt Out Qualifying ILU Policyholders) in accordance with paragraphs 21.4 to 21.10;
"Qualifying Liability"	a Scheme Liability to a Qualifying ILU Policyholder under or in relation to a Qualifying ILU Policy;
"Qualifying Protection"	a contract of insurance, reinsurance or retrocession, to which either or both of the Companies are party and: (a) in the case of L&O, with an inception date on or after 20 March 1969; and (b) in the case of Orion, with an inception date on or after 28 August 1970,

under which a Liability to either or both of the Companies arises or has arisen in relation to any Liability of either or both of the Companies under an ILU Policy;

"Record Date"	20 November 1996, being the date of the Original Scheme;
"Reinsurance"	Facultative Reinsurance, Treaty Reinsurance and Retrocession, save that any references in sections 4 and 5 of Appendix 2 (<i>Estimation Guidelines</i>) to "Reinsurance" shall not include Facultative Reinsurance of Direct Insurance;
"Relevant Parties"	the Companies, the Creditors' Committee, the Scheme Administrators, any existing or former liquidators or provisional liquidators of the Companies, any Scheme Actuarial Adviser, any Scheme Adjudicator, any No Notice Adjudicator, any Individual Claimant Representative, any members of the Creditors' Committee, the FSCS Scheme Manager, the Trustee, NNOFIC, Nat-Ned, 1845 and the ILU and (as applicable) any of their firms, fellow members, agents, representatives, delegates, partners, officers or employees and any person who may be held liable in law for the actions or omissions of any such persons, in each case in their capacity as such;
"Representatives"	has the meaning given to it in paragraph 49.12;
"Retrocession"	Treaty Retrocession and Facultative Retrocession;
"Risk Free Rate"	the yield, as at the Valuation Date, on US Treasury bonds (or, in the case where the underlying Liabilities owed to a Scheme Creditor are predominantly payable in a currency other than US Dollars, equivalent government securities of the country in whose currency the Liabilities are payable) of a term that is appropriate taking account of the nature of the Scheme Liabilities;
"Run-off Company"	the person or persons who may be appointed to undertake all or part of the run-off operations of the Companies' business in accordance with the provisions of the Scheme;
"Scheme"	the Original Scheme, as amended by the Amending Scheme;
"Scheme Actuarial Adviser"	Mark Allen of PricewaterhouseCoopers LLP or such other person as may be appointed as a successor to the Scheme Actuarial Adviser in accordance with the provisions of the Scheme;
"Scheme Adjudicator"	Raji Bhagavatula of Milliman, Inc or such other person as may be appointed as a successor to the Scheme Adjudicator in accordance with the provisions of the Scheme;
"Scheme Administrators"	those persons whose names are set out in paragraph 3.4 or such other person or persons as may be appointed as Scheme Administrators in accordance with the provisions of the Scheme;
"Scheme Assets"	the assets of each of the Companies, including without limitation monies borrowed by each of the Companies pursuant to the CPLA and subject to its terms;
"Scheme Creditor"	(a) a creditor, other than NNOFIC, of either or both of the Companies in respect of a Scheme Liability; or (b) NNOFIC, except in: (i) paragraphs 8, 9.3, 10 to 16.4 (inclusive), 17 to 21.12 (inclusive), 22, 28 to 30 (inclusive), 32.4, 32.5, 35, 36, 43, 44, 45, 46 and 48; (ii) the definitions of "Agreed Liability", "Assignee", "Claim Form", and "Claim Form Guidance Notes" in Appendix 1; (iii) Appendix 2; and (iv) Appendix 3;

"Scheme Liability"	<p>(a) any Liability of either Company (other than a Liability to NNOFIC under the NNOFIC PSL, the Original CPLA, the 1996 CPLA or the CPLA) in existence on the Record Date (including any costs payable by either of the Companies in Proceedings current as at the Petition Date) or arising out of any act, omission, contract, policy, transaction or arrangement effected on or before that date;</p> <p>(b) except in: (i) paragraphs 6, 10, 11, 16, 17, 21 to 23 (inclusive) 32, 35, 36 and 46; (ii) the definition of "Agreed Liability" in Appendix 1; (iii) Appendix 2; and (iv) Appendix 3:</p> <p>(i) the NNOFIC PSL to which the provisions of clause 18.2 of the Original Scheme shall apply; and</p> <p>(ii) any Liability of each of the Companies to NNOFIC arising under the Original CPLA, the 1996 CPLA and the CPLA; and</p> <p>(c) an Account Balance,</p> <p>in each case not being a Priority Liability;</p>
"Scheme Period"	the period from the Effective Date to the Termination Date;
"Second Company"	has the meaning given to it in paragraphs 17.5, 17.7 and 17.9 respectively;
"Security Interest"	any effective mortgage, letter of credit, charge, lien, assignment by way of security, bond or other security interest over any property of either or both of the Companies;
"Successor"	has the meaning given to it in paragraph 3.3;
"Supporting Information"	<p>all such information and documentation required to be submitted with a Claim Form by a Scheme Creditor to the Scheme Administrators pursuant to paragraph 14.4 and, if appropriate, paragraph 14.8 including, but not limited to:</p> <p>(a) details of each Insurance Contract pursuant to which the claims submitted on that Claim Form by that Scheme Creditor arise; and</p> <p>(b) the information listed in Appendix 3 of the Amending Scheme (<i>Supporting Evidence</i>),</p> <p>all in accordance with the instructions contained in the Estimation Guidelines and Appendix 3 (<i>Supporting Evidence</i>);</p>
"Termination Date"	has the meaning given to it in paragraph 32.3;
"Transitional Order"	the Financial Services and Markets Act 2000 (Transitional Provisions Repeals and Savings) (Financial Services Compensation Scheme) Order 2001 (2001 No 2967);
"Treaty Reinsurance"	<p>a method of reinsurance which is automatic and is an arrangement between one insurer (the ceding insurer) and one or a number of other insurers (the reinsurers) who agree to accept, automatically, any reinsurances falling within the terms of the treaty, where:</p> <p>(a) the treaty sets out the various terms and conditions that are to govern the acceptance of cessions by the reinsurer; and</p> <p>(b) the treaty is legally binding on both parties and both parties undertake obligations to each other that go beyond the mere ceding of individual risks or policies under the treaty;</p>
"Treaty Retrocession"	a method of reinsurance which is automatic and is an arrangement between one reinsurer (the retrocedant) and one or a number of other reinsurers (the retrocessionaires) who agree to accept,

automatically, any retrocessions (cessions) falling within the terms of the treaty, where:

- (a) the treaty sets out the various terms and conditions that are to govern the acceptance of cessions by the retrocessionaire; and
- (b) the treaty is legally binding on both parties and both parties undertake obligations to each other that go beyond the mere ceding of individual risks or policies under the treaty;

"TSBHSBHC"	TSB Hill Samuel Bank Holding Company Limited (formerly known as Hill Samuel Group Limited) (company number 162308);
"Trustee"	Serjeants' Inn Nominees Limited (incorporated in England and Wales under the Companies Act 1948 with registered number 74683) or such other person or persons as may be appointed in accordance with the provisions of the L&O Trust Deed and the Orion Trust Deed;
"2007 Provision Figure"	US\$750,000;
"US Dollars or US\$"	United States Dollars or other lawful currency for the time being of the United States of America;
"Valuation Date"	31 December 2013;
"Voting Form"	the voting and proxy form to be used by Scheme Creditors for the purpose of voting on the Amending Scheme;
"Website"	the Companies' website at www.oicrun-offltd.com , or such other uniform resource locator as may be notified to Scheme Creditors by the Scheme Administrators; and
"Winding-up Petitions"	the petitions to wind up Orion numbered 006797 of 1994 and L&O numbered 006798 of 1994, both presented to the Court on the Petition Date.

Appendix 2 - Estimation Guidelines

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1. Introduction

This Appendix sets out the Estimation Guidelines in detail. The Estimation Guidelines are intended to make the process which the Scheme Administrators will follow in valuing Liabilities in the Amending Scheme as transparent as possible to Scheme Creditors. The Estimation Guidelines describe the approach that the Scheme Administrators would expect Scheme Creditors to follow in valuing Notified Outstanding Liabilities and IBNR Liabilities. Under the terms of the Amending Scheme, the Estimation Guidelines will be applied by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, in seeking to reach agreement with Scheme Creditors in respect of any Notified Outstanding Liability, any IBNR Liability and any Offset Amounts. If the Scheme Administrators are unable to reach agreement with a Scheme Creditor as to any of these amounts, they will be referred to the Scheme Adjudicator for determination by him in accordance with the provisions of the Amending Scheme.

Scheme Creditors are advised to read this Appendix in its entirety. Each section of the Appendix must be read in its entirety. Reading individual parts of sections in isolation could be misleading.

The Estimation Guidelines are designed to be of assistance to Scheme Creditors in developing their estimates of Notified Outstanding Liabilities and IBNR Liabilities by setting out estimation techniques that are generally accepted within the insurance market. Scheme Creditors are not, however, precluded from using other projection techniques where they consider these techniques to be appropriate, provided that such techniques are well supported and that they use assumptions that can reasonably be justified by the Scheme Creditor. If the Scheme Administrators consider that such techniques are well supported and justified, then these may be adopted in valuing Notified Outstanding Liabilities and IBNR Liabilities of that Scheme Creditor.

It should be noted, in this context, that the Scheme Administrators do not consider the valuation of "All Sums" claims on a "Pure All Sums" basis, that takes no account of contributions to and from other insurers from within the relevant triggered period, to be either appropriate or robust. An approach of this type would be inconsistent with the manner in which "All Sums" claims are actually settled and the manner in which such claims are valued in stand alone commutations outside schemes of arrangement. The Scheme Administrators will only agree to settle such claims (or give weight to "All Sums" claims in a settlement) where such claims are calculated on a basis that is net of contributions to and from other insurers from within the relevant triggered period.

In all cases Scheme Creditors should value their Notified Outstanding Liabilities and IBNR Liabilities as Best Estimates. In order for the Scheme Creditor to complete its Claim Form, the Scheme Creditor should initially estimate its Notified Outstanding Liabilities and IBNR Liabilities as at the Valuation Date and then adjust these estimates to allow for:

- any losses that have been notified to or discovered by the Scheme Creditor between the Valuation Date and the Bar Date;
- any Agreed Liabilities and/or Established Liabilities of that Scheme Creditor arising between the Valuation Date and the New Effective Date; and

- any new information received by the Scheme Creditor between the Valuation Date and the Bar Date in respect of its Notified Outstanding Liabilities and/or IBNR Liabilities.

The values of Notified Outstanding Liabilities and IBNR Liabilities after these adjustments should be the final values that are included on that Scheme Creditor's Claim Form.

The Scheme Administrators will not, unless legally obliged to do so, be bound by, or obliged to follow, any settlement made between a Scheme Creditor and another insurer or reinsurer (including, without limitation, any Co-Insurer in relation to a Common Liability) if they believe that settlement to be unreasonable or inappropriate.

The supporting evidence that Scheme Creditors should provide in support of their estimates of Notified Outstanding Liabilities and IBNR Liabilities is set out in Appendix 3 (*Supporting Evidence*). The Estimation Guidelines and the Supporting Evidence document differ according to Insurance Contract type and claim loss type:

- Scheme Creditors whose Insurance Contract with one or both of the Companies is:
 - Direct Insurance; or
 - Facultative Reinsurance of Direct Insurance
 should refer initially to sections 2 and 3 of this Appendix.
- Scheme Creditors whose Insurance Contract with one or both of the Companies is:
 - Treaty Reinsurance;
 - Treaty Retrocession; or
 - Facultative Retrocession
 should refer initially to sections 4 and 5 of this Appendix.
- For each loss type the methodology differs according to whether the claim is related to asbestos, environmental pollution and other health hazards (collectively labelled as "APH"), or is not related to asbestos, environmental pollution and other health hazards ("Non-APH").

In some instances, this Appendix makes reference to certain traditionally used actuarial methodologies. For further information on the use of these methodologies and the circumstances in which they can be used, reference can be made to <http://www.casact.org/admissions/syllabus/Exam5.pdf>, which sets out the purposes, common definitions, basic principles and explores common techniques in relation to loss reserving methodologies.

If, at any stage of the process, a Scheme Creditor has any queries relating to the application or potential application of the Estimation Guidelines to its claim, it should contact the Scheme Administrators for further guidance. Scheme Creditors may also wish to consult appropriate professional advisers in determining their claim against the Companies.

2. Direct Insurance/Facultative Reinsurance of Direct Insurance Non-APH claims

This section describes the Estimation Guidelines that the Scheme Administrators will expect Scheme Creditors to follow where those Scheme Creditors have Non-APH claims arising under an Insurance Contract with either or both of the Companies that is Direct Insurance or Facultative Reinsurance of Direct Insurance.

This section relates to a Scheme Liability arising under a Direct Insurance contract. If a Scheme Creditor has Facultative Reinsurance of any Direct Insurance contract, the points raised in this section will need to be considered in relation to the claim being made by the underlying insured to the Scheme Creditor. Consideration will then need to be given to the resulting claim from the Scheme Creditor against the Companies.

2.1. Projection techniques

For each class of business, type of loss and year during the period that the Companies have provided coverage, a "frequency and severity" method should be adopted. This involves

estimating the total number of claims to be received by the Scheme Creditor and estimating the costs that apply to each open claim and to each future claim so that those costs can be set against the policy profile of the Scheme Creditor in order to derive the Companies' share of the costs.

For each class of business, type of loss and year during the period that the Companies have provided coverage, the process may involve the following steps:

- Estimate the ultimate number of claims that will be filed against the Scheme Creditor in each year, by considering the historical development of claims filed for the particular class of business and type of loss (both for that year and for other years);
- Select indemnity costs for each open and future claim from each year, allowing for future inflation, by considering the known information on open claims and the historical development in indemnity costs by notification year for the particular class of business and type of loss (both for that year and for other years);
- Select expense costs (normally defence costs) for each open and future claim from each year, allowing for future inflation, by considering the known information on open claims and the historical development in expense costs by notification year for the particular class of business and type of loss (both for that year and for other years); and
- Apply the indemnity and expense costs selected at an individual claim level for both open and future claims for a particular year to the policy profile that is relevant to that year, and thus to each underlying claim, in order to derive the Companies' share of those costs. This process should give due recognition to any relevant policy terms such as whether expenses are paid within or in addition to limits, both for the Companies' policies and for any lower level policies.

The results of the frequency and severity method set out above can be enhanced by considering likely distributions of claims received by the Scheme Creditor in order to understand better how these claims will result in recoveries from the Companies.

This process can be enhanced further by the adoption of simulation modelling techniques in which statistical distributions can be applied to some or all of the key assumptions, such as the indemnity and expense costs and/or the number of ultimate claims to be reported to the Scheme Creditor. These distributions can then be sampled many thousands of times for each open and future claim in order to derive a distribution of the Scheme Creditor's total claim against the Companies.

2.2. Alternative approaches where historical information may not be available

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

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

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

3. Direct Insurance/Facultative Reinsurance of Direct Insurance APH claims

This section describes the Estimation Guidelines that the Scheme Administrators will expect Scheme Creditors to follow where those Scheme Creditors have APH claims arising under an Insurance Contract with either or both of the Companies that is Direct Insurance or is Facultative Reinsurance of Direct Insurance.

This section relates to a Scheme Liability arising under a Direct Insurance contract. If a Scheme Creditor has Facultative Reinsurance of any Direct Insurance contract, the points raised in this section will need to be considered in relation to the claim being made by the underlying insured to the Scheme Creditor. Consideration will then need to be given to the resulting claim from the Scheme Creditor against the Companies.

3.1. Asbestos claims

An "average cost per claim method" should be adopted. This involves building up an estimate of the total number of claims to be received by the Scheme Creditor and applying to that an average claim cost to determine the total inwards liability in respect of that Scheme Creditor. This amount can then be allocated across the appropriate period and applied to the policy profile of the Scheme Creditor to derive the Companies' share of that cost.

If this approach is adopted, the following steps should be followed (note that further guidance for some of these points is given later):

- Estimate the ultimate number of claims to be filed against the Scheme Creditor;
- Select average indemnity and expense costs per claim allowing for future inflation;
- Multiply the ultimate number of claims by the selected average indemnity cost per claim to derive an estimate of the total indemnity cost, and by the selected average expense cost per claim to derive an estimate of the total expense cost;
- Identify the period over which these costs are to be allocated by reference to the appropriate trigger; and
- Allocate the indemnity and expense costs across this period and apply the results to the policy profile of the Scheme Creditor to derive the Companies' share of those costs.

Within the above approach, separate consideration should be given to the type of claim (i.e. products bodily injury, products property damage, premises, other types of non-products etc) and the US State or country in which the claim originates. For bodily injury claims, separate consideration should be given to the disease type (e.g. mesothelioma, lung cancer, other cancer, asbestosis, other non-malignant etc).

If the claim includes an allowance for asbestos claims in policy sections or policies other than those relating to products coverage, a separate analysis should be included for these claims. This analysis should be similar to the approach outlined above and should include assumptions on the numbers and amounts of occurrences and the basis of aggregation.

Claim numbers

The estimates of claim numbers should take account of the historical claims development together with any available independent studies of the incidence of asbestos-related diseases and should reflect the prevailing legal environment in the relevant country and/or jurisdiction.

Expenses

Scheme Creditors should indicate whether expenses are included within the limits or are payable in addition to the limits for each policy.

Trigger of coverage

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

The selection of the triggered period should also take the following into consideration:

- The treatment of any periods of self insurance;
- The period during which the Scheme Creditor manufactured, installed or distributed asbestos-containing products;
- Exclusion clauses within the Scheme Creditor's policies, where appropriate;

- Settlements and other major agreements between the Scheme Creditor and its insurers;
- Legal judgments in any coverage disputes between the Scheme Creditor and its insurers; and
- The latest approaches adopted by the US courts (or courts in other countries, if appropriate).

Allocation of costs to the triggered period

In most circumstances, the Companies would expect the costs to be spread over the entire period covered by the triggered policies with reference to the Scheme Creditor's asbestos exposure over time. The Companies will expect the Scheme Creditor to provide exposure information in support of its approach.

The Scheme Creditor is required to share in the allocation of costs by bearing the loss allocated to periods of self insurance or non-insurance, unless the Scheme Creditor can identify a court decision that demonstrates that it is not required to bear these loss allocations.

In circumstances where consideration may be given to settlement on an "All Sums" basis, the Companies will assign an appropriate weight (which may be 100%) to an "All Sums" calculation. This weight will be based on past court decisions in respect of the Scheme Creditor and/or on other court decisions that are likely to be directly relevant to the Scheme Creditor. Where non-zero weight is given to an "All Sums" calculation, that calculation should be conducted on a basis that is net of contributions to and from other insurers from within the relevant triggered period.

Where appropriate and insofar as is practicable and possible, the basis of settlement shall include an assignment to the Scheme Creditor of any and all rights that the Companies may have against other insurers from within the relevant triggered period now and/or in the future.

The Companies will consider other methods of allocating costs to the triggered period provided that they are shown to be robust and that they use assumptions that can reasonably be justified by the Scheme Creditor.

Some of the issues highlighted above for the selection of the triggered period will also be relevant here and should be considered within the allocation approach.

3.2. Environmental pollution claims

In order to determine the inwards liability of a Scheme Creditor in respect of each polluted site, an exposure-based approach should be used. The Scheme Creditor should identify all sites to which it has exposure for which Liability potential has already been notified and sites for which it believes that it will be notified of Liability potential in the future. The steps below should be used to determine the Scheme Creditor's share of the clean-up costs at each site and then to estimate the extent to which these costs can be recovered under the Scheme Creditor's insurance policies with the Companies:

- Estimate the cost of cleaning up a polluted site;
- Apportion those clean-up costs between the Scheme Creditor and other potentially responsible parties ("**PRPs**");
- Estimate corresponding expenses;
- Identify the period over which these clean-up costs and expenses are to be allocated with reference to the appropriate trigger;
- Allocate the clean-up costs and expenses over this period and apply the results to the Scheme Creditor's policy profile to derive the Companies' share of those costs; and
- Assess any legal coverage issues involved in determining the validity of any claim of the Scheme Creditor against the Companies in respect of those sites.

Clean-up costs

The Scheme Creditor should estimate the undiscounted clean-up cost for each site. The Scheme Creditor should provide independent supporting evidence when claiming future clean-up costs. Past costs may be supported by internal evidence held or obtained by the Scheme Creditor. Where the information provided by the Scheme Creditor differs significantly from other sources available to the Companies, then the Scheme Administrators may request additional information from the Scheme Creditor.

Expenses

Scheme Creditors should indicate whether expenses are included in the limits or in addition to the limits for each policy. Where expenses are included in the clean-up cost amounts, this should be indicated by the Scheme Creditor. Each Scheme Creditor should provide details of how its expenses have been determined, allowing for the number of PRPs involved at the site (if appropriate).

PRP share

The total clean-up costs for each site should be allocated to PRPs using participation percentages or volumetric shares where possible. Where neither of these methods is available, the share of unallocated costs on a site should be estimated with reference to the most appropriate available information.

Governing law

The ultimate loss to the Companies for a site will depend, to some extent, on the assumptions adopted by the courts in any litigation in the relevant jurisdiction. These assumptions vary from state to state and from country to country. Settlements of US pollution claims and US court judgments relating to pollution claims generally use site location as the key factor in determining the appropriate governing law, although there are some exceptions to this (see below). The governing law in relation to any dispute in respect of a pollution claim arising out of an Insurance Contract will therefore be the law of the state where the particular site is located and the Companies will apply that law by reference to the principles set out below. The exceptions to this are where:

- The Scheme Creditor has agreed a settlement with the London Market; or
- The Scheme Creditor can identify a court decision that means that any claim will be subject to a different governing law.

Trigger of coverage

The most common approach adopted by the US courts to determine the period over which the losses should be allocated is the continuous trigger, whereby all insurance policies are triggered between the date of first exposure to the risk up to the date of its manifestation. Other triggers (e.g. exposure, manifestation or injury in-fact) have occasionally been selected and applied by the courts and may be used if there is strong justification to do so.

Allocation of costs to triggered policies

The default method of allocation should be the Pro Rata allocation. Under this allocation basis, the costs are spread evenly over the entire period covered by the triggered policies.

The Scheme Creditor is required to share in the allocation by bearing the loss allocated to periods of self insurance or non-insurance, unless otherwise provided for by applicable law.

In circumstances where consideration may be given to settlement on an "All Sums" basis, the Companies will assign an appropriate weight (which may be 100%) to an "All Sums" calculation. This weight will be based on past court decisions in respect of the Scheme Creditor and/or on other court decisions that are likely to be directly relevant to the Scheme Creditor. Where non-zero weight is given to an "All Sums" calculation, that calculation should be conducted on a basis that is net of contributions to and from other insurers from within the relevant triggered period.

Where appropriate and insofar as is practicable and possible, the basis of settlement shall include an assignment to the Scheme Creditor of any and all rights that the Companies may have against other insurers from within the relevant triggered period now and/or in the future.

The Companies will consider other methods of allocating costs to the triggered period provided that they are shown to be robust and that they use assumptions that can reasonably be justified by the Scheme Creditor.

Coverage issues

Insurers may not in all cases be liable to pay the clean-up costs and expense costs. Each policy covering the Scheme Creditor may have a number of clauses that insurers and reinsurers may argue preclude Liability. The key issues to consider are:

- Whether the policy contains any "absolute", "sudden and accidental" and/or "owned property" exclusion clauses;
- Whether clean-up costs are considered as damages; and
- The "expected or intended" argument.

The effect of any of the above issues on individual sites will be assessed by considering past court decisions in order to determine the likelihood of various outcomes by state (or country) and policy year. The owned property sites should be indicated by the Scheme Creditor.

Future sites

If the Scheme Creditor considers that it will potentially be exposed to as yet unidentified sites, then it should consider making an allowance for these sites using an "average cost per claim method". The Scheme Creditor should estimate the number of such sites, with reference to the past emergence of unidentified sites, and apply an average cost per site. This average cost per site will need to have regard to the characteristics that the unidentified sites are likely to exhibit.

3.3. Other health hazards

For each health hazard, an "average cost per claim method" should be adopted. This involves building up an estimate of the total number of claims to be received by the Scheme Creditor and applying to that an average claim cost to determine the total inwards liability of that Scheme Creditor. This can then be allocated across the appropriate period and applied to the policy profile of the Scheme Creditor to derive the Companies' share of that cost.

This process involves the following steps (note that further guidance for some of these points is given below):

- Estimate the ultimate number of claims that will be filed against the Scheme Creditor for the loss type under consideration;
- Select average indemnity and expense costs per claim allowing for future inflation;
- Multiply the ultimate number of claims by the selected average indemnity cost per claim to derive an estimate of the total indemnity cost, and by the selected average expense cost per claim to derive an estimate of the total expense cost;
- Allocate the indemnity and expense costs across the triggered period relevant to the Scheme Creditor; and
- Apply the results of the above allocation to the policy profile of the Scheme Creditor to derive the Companies' share of the costs.

Claim numbers

The estimates of claim numbers should take account of the historical claims development together with any independent studies of the incidence of the relevant loss type.

Expenses

Scheme Creditors should indicate whether expenses are included within the limits or are payable in addition to the limits for each policy.

Trigger of coverage

The most common approach adopted by the US courts to determine the period over which the losses should be allocated is the continuous trigger, whereby all policies available over the period from the date of first exposure up to the date when the disease became clinically evident are triggered. Other triggers (e.g. exposure, manifestation or injury in-fact) have

occasionally been selected and applied by the courts and may be used if there is strong justification to do so.

The selection of the triggered period should also take the following into consideration:

- Settlements and other major agreements between the Scheme Creditor and its insurers;
- Legal judgments in any coverage disputes between the Scheme Creditor and its insurers; and
- The latest approaches adopted by the courts.

Allocation of costs to the triggered period

In most circumstances, the Companies would expect the costs to be spread over the entire period covered by the triggered policies with reference to the Scheme Creditor's exposure to the health hazard over time. The Companies will expect the Scheme Creditor to provide exposure information in support of its approach.

The Scheme Creditor is required to share in the allocation of costs by bearing the loss allocated to periods of self insurance or non-insurance, unless the Scheme Creditor can identify a court decision that demonstrates that it is not required to bear these loss allocations.

In circumstances where consideration may be given to settlement on an "All Sums" basis, the Companies will assign an appropriate weight (which may be 100%) to an "All Sums" calculation. This weight will be based on past court decisions in respect of the Scheme Creditor and/or on other court decisions that are likely to be directly relevant to the Scheme Creditor. Where non-zero weight is given to an "All Sums" calculation, that calculation should be conducted on a basis that is net of contributions to and from other insurers from within the relevant triggered period.

Where appropriate and insofar as is practicable and possible, the basis of settlement shall include an assignment to the Scheme Creditor of any and all rights that the Companies may have against other insurers from within the relevant triggered period now and/or in the future.

The Companies will consider other methods of allocating costs to the triggered period provided that they are shown to be robust and that they use assumptions that can reasonably be justified by the Scheme Creditor.

Some of the issues highlighted above for the selection of the triggered period will also be relevant here and should be considered within the allocation approach.

3.4. Alternative approaches where historical information may not be available

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

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

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

4. Reinsurance Non-APH claims

This section describes the Estimation Guidelines that the Scheme Administrators will expect Scheme Creditors to follow where those Scheme Creditors have Non-APH claims arising under an Insurance Contract with either or both of the Companies that is Treaty Reinsurance

or is Treaty Retrocession or is Facultative Retrocession (but not Facultative Reinsurance of Direct Insurance).

4.1. Overview

If possible, the Scheme Creditor should initially estimate the ultimate claims cost from its inwards claims. This ultimate claims cost should then be applied to the Scheme Creditor's outwards reinsurance programme to calculate the resulting claim of the Scheme Creditor against the Companies.

When estimating the ultimate claims cost from its inwards claims, the Scheme Creditor should first extract catastrophes or other single large distorting losses from the inwards data and analyse these costs separately. Scheme Creditors should refer to section 4.2 for further detail.

The Scheme Creditor should then estimate the ultimate claims cost in respect of the residual losses for each class of business and year of account. Scheme Creditors should refer to sections 4.3 and 4.4 for further detail.

Once the Scheme Creditor has estimated its gross ultimate claims cost from its inwards claims in accordance with sections 4.2 to 4.4, the Scheme Creditor should allocate its gross IBNR Liability in respect of those costs in a manner that is appropriate for the Scheme Creditor's outwards reinsurance programme to derive the Companies' share of the costs. Scheme Creditors should refer to section 4.5 for further detail.

Where the Scheme Creditor's data or information is not sufficient to perform the techniques set out in sections 4.2 to 4.5, they should refer to sections 4.6 to 4.7.

4.2. Catastrophes or other single large distorting losses

The Scheme Creditor's inwards catastrophes and any other single large distorting losses should be analysed individually. These analyses should ideally be carried out on data that ensures that the results are appropriate to the Scheme Creditor's outwards reinsurance programme. If it becomes necessary to aggregate data across different business classes, it may be necessary to allocate resulting IBNR Liabilities to the business classes that are suitable for the Scheme Creditor's outwards reinsurance programme. For further guidance in this area, refer to section 4.5.

The ultimate claims costs for catastrophes and other single large distorting losses should be estimated using one or more of the projection approaches described below:

- Curve fitting historical paid or incurred claims development via use of an appropriate mathematical function, such as the Craighead curve, or, if such a curve cannot be fitted closely enough, a fit by eye can be used;
- Decay methods – for each loss, estimate a factor that represents a typical decline in incremental paid or incurred amounts over an appropriate period. The selected factor should then be applied to the latest paid or incurred increment over an appropriate period to project the applicable amounts of future paid or incurred claims. The projected future amounts can then be added to the cumulative paid or incurred position as at the Valuation Date to determine the gross ultimate claims cost for the loss in question;
- Exposure-based analysis – estimate the gross ultimate claims for the loss with reference to the Scheme Creditor's individual inwards exposures. The Scheme Creditor should determine which of its inwards policies are potentially exposed to the loss in question and estimate, on a policy-by-policy basis, the amount of coverage used; and
- Benchmarking – the Scheme Creditor may also adopt benchmarking techniques to produce a gross estimate of the ultimate cost of the loss in question. Further information is available in section 4.7. In applying the approaches set out in section 4.7, the Scheme Creditor will need to bear in mind that the benchmarks should be applied to gross data as at the Valuation Date, rather than the reinsurance data that is the basis for that section.

4.3. Residual losses on Direct Insurance, proportional or working layer excess of loss Reinsurance contracts

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

- Chain-ladder method, in which the past development of individual years of account is used to estimate future development for less mature years of account; or
- Empirical methodologies on individual years of account e.g. curve-fitting or survival ratio techniques. Curve-fitting techniques are as described in section 4.2. In the survival ratio technique, a typical paid or incurred increment is selected before a multiplier is applied in order to estimate the future claims cost.

The Scheme Creditor needs to ensure that any paid data that is used in these estimates is free of the distorting effects of structured settlements arising in the past. For example, with respect to past payments relating to lifetime medical claims, such payments would need to be capitalised and included within the data in the period of the initial payment.

For further information on these techniques, refer to the website listed in section 1.

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

4.4. Residual losses on medium to high level excess of loss Reinsurance contracts

The ultimate claims cost in respect of the residual losses impacting medium to high level excess of loss contracts (where losses are expected less frequently than would be the case with working layers) should be estimated for each class of business, underwriting year and layer using, for example, an "average cost per claim" method as follows:

- Estimate the ultimate number of claims that will be received by the Scheme Creditor;
- Select average indemnity and expense costs per claim allowing for future inflation; and
- Multiply the ultimate number of claims by the selected average indemnity cost per claim to derive an estimate of the total indemnity cost, and by the selected average expense cost per claim to derive an estimate of the total expense cost.

The results of the average cost per claim method set out above can be enhanced by considering likely distributions of claims received by the Scheme Creditor in order to understand better how those claims will result in recoveries from the Companies.

This process can be enhanced further by the adoption of simulation modelling techniques in which statistical distributions can be applied to some or all of the key assumptions, such as the cost of each claim and/or the number of claims to be reported to the Scheme Creditor in the future. These distributions can then be sampled many thousands of times in order to derive a distribution for the aggregate ultimate claims falling within the terms of the Reinsurance contract between that Scheme Creditor and the relevant Company.

4.5. Application to reinsurance programme

The estimated ultimate claims costs deriving from inwards claims, as estimated in sections 4.2, 4.3 and 4.4, should then be applied to the Scheme Creditor's outwards reinsurance programme to derive the Companies' share of the costs.

The results of the estimations described in sections 4.2, 4.3 and 4.4 should ideally already be in a format that is suitable for direct application to the Scheme Creditor's outwards reinsurance programme. If aggregation of data is required in order to estimate the inwards claims, then it will be necessary for the Scheme Creditor to allocate the resulting IBNR Liabilities back to the business categories that are suitable for the Scheme Creditor's outwards reinsurance programme. This allocation can be achieved with reference to one or more of the following, depending on the quality and nature of the data available:

- Cumulative paid or incurred claims aggregated for each business category;
- Total case estimates for each business category; and
- A suitable exposure measure such as the total gross premiums or cover originally available or cover remaining for each business category.

Once this allocation has been carried out, the resulting estimates of gross ultimate claims costs can be applied to the Scheme Creditor's outwards reinsurance programme to derive estimates of the potential recoveries from the Companies. This application will need to take

account of relevant features of the reinsurance coverage, such as the limit and excess points for excess of loss contracts and the proportion ceded for proportional contracts.

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

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

4.6. Projections using outwards reinsurance data

Where the Scheme Creditor is unable to carry out the techniques outlined in sections 4.2 to 4.5 on part or all of the accounts reinsured by the Companies, the Scheme Creditor may be able to apply any of the projection techniques in sections 4.2 to 4.4 directly to its outwards ceded experience (with no requirement to follow the process described in section 4.5 since this approach will estimate the Scheme Creditor's reinsurance recoveries directly).

The experience that forms the basis for projection within section 4.6 will be in respect of the cessions under the cover that is the subject of the submission. Details of this experience should be provided by the Scheme Creditor, along with the benchmarks applied by the Scheme Creditor, for which detail is given in section 4.7.

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

4.7. Benchmarking techniques

Where the Scheme Creditor's data or information is insufficient to perform the techniques set out in sections 4.1 to 4.5 or in section 4.6, the Scheme Creditor should use benchmarking techniques. This would also be expected as support for a submission based on outwards ceded experience, as set out in section 4.6.

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

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

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

- Type of loss (e.g. liability or property damage);
- Type of business (e.g. proportional or non-proportional); and

- Class of business.

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

5. Reinsurance APH claims

This section describes the Estimation Guidelines that the Scheme Administrators will expect Scheme Creditors to follow where those Scheme Creditors have APH claims arising under an Insurance Contract with either or both of the Companies that is Reinsurance (but not Facultative Reinsurance of Direct Insurance) or is Retrocession.

The preferred approach for estimating the ultimate Scheme Liability for such Reinsurance or Retrocession contracts is to project the ultimate claims costs to the Scheme Creditor for the underlying policies and to apply those costs to the Reinsurance contracts. Possible methodologies that the Scheme Creditor may adopt are detailed in sections 5.1 and 5.2.

The approach in section 5.1 requires detailed information regarding the Scheme Creditor's underlying liabilities which may not be held by some Scheme Creditors. In addition, this approach may not be suitable for certain types of Reinsurance, in particular Retrocession, owing to their complex nature. In such cases, the methodology in section 5.2 is likely to be more appropriate. If neither of these methods can be carried out with the data available, the benchmark approach detailed in section 5.3 should be used and the requested supporting evidence provided.

5.1. Estimation of underlying liabilities: Exposure-based model

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

An exposure-based model should be used by the Scheme Creditor to estimate the ultimate claims costs from its direct insureds. These ultimate claims costs should then be applied to the Scheme Creditor's outwards reinsurance programme to calculate the ultimate amount of recoveries from the Companies. For guidance on estimating the ultimate claims costs from the direct insureds, the Scheme Creditor should refer to section 3 (*Direct Insurance or Facultative Reinsurance of Direct Insurance APH claims*).

For underlying insureds where the Scheme Creditor's data or information is insufficient to support the estimation of ultimate claims costs from the direct insureds that is described in section 3, an analysis can be carried out using a model which classifies the underlying insureds into categories or tiers, according to the Scheme Creditor's view of each underlying insured's ultimate claims costs. Erosion percentages should then be applied to each inwards policy layer to estimate the proportion of the layer that will be eroded. These percentages should be specific to each category and reflect the layer at which exposures are expected to attach.

Under both the individual and category based approaches above, the Scheme Creditor should provide details of whether claims have been allocated to the products or non-products section of a policy. The erosion percentages or categorisation used should reflect the Scheme Creditor's views on the appropriate method of aggregation which should be considered separately for products and non-products claims. For example, this information would be particularly relevant for asbestos non-products claims, such as premises claims, and for pollution site clean-up cost claims emerging from individual direct insureds.

Where the Scheme Creditor has insufficient data available to use any of the exposure-based approaches described above, other methods, for example those outlined in sections 5.2 or 5.3, may be used. In those circumstances, clear details of the methodology and assumptions should be provided and evidence should be supplied as to why the approach taken is appropriate.

5.2. Estimation of underlying liabilities: Other approaches

If it is not possible for a Scheme Creditor to adopt the approach outlined in section 5.1, for example under Retrocession contracts or Reinsurance of direct insurers with more limited information, it may be possible for the Scheme Creditor to estimate its inwards liabilities using other methods and apply these costs to the Reinsurance contracts.

These methods may involve the Scheme Creditor estimating its inwards liabilities at an aggregate level, split by claim-type, as per the following examples:

- Underlying insured analysis - An analysis of the emerging claims experience (both numbers and amounts at the level of data available) from each underlying insured, for all cedants of the Scheme Creditor combined; or
- Cedant analysis - An analysis of the emerging claims experience (both numbers and amounts at the level of data available) from each individual cedant of the Scheme Creditor; or
- Categorised cedant analysis – An assignment of the cedants to a number of relevant categories (e.g. London market, US primary reinsurer etc) and application of selected erosion percentages for each category.

Where appropriate the analyses should be supplemented by a consideration of the likely allowance for future claims to emerge from cedants or underlying insureds from whom the Scheme Creditor has not yet received a claim.

Once the Scheme Creditor has estimated its ultimate inwards liabilities, these claims costs should then be applied to the Scheme Creditor's outwards reinsurance programme to calculate the ultimate recoveries from the Companies. The Scheme Creditor should consider an appropriate aggregation of its inwards liabilities before allocating these claims to its reinsurance programme.

Throughout this analysis, the Scheme Creditor should consider the extent to which its Notified Outstanding Liabilities and IBNR Liabilities may be impacted by limited reinstatement provisions that may be present in both its underlying policies and Reinsurance contracts.

The approach used by the Scheme Creditor to estimate its inwards liabilities need not be limited to the methods described above. Clear details of the methodology and assumptions used should be provided and evidence should, however, be supplied as to why the approach taken is appropriate.

5.3. Benchmarking

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

Benchmarks should be applied to positions as at the Valuation Date in respect of paid, outstanding and incurred recoveries between the Scheme Creditor and the Companies. Benchmarks could be based on an analysis of the Scheme Creditor's exposures and could include:

- Ratios of IBNR Liabilities to Notified Outstanding Liabilities;
- Ratios of ultimate claims to incurred claims;
- Ratios of ultimate claims to paid claims; and
- Paid and incurred survival ratios.

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

Consideration should be given to the subdivisions of the Scheme Creditor's account which are used in the benchmarking process. Benchmarks should only be applied at a level where it has been possible to establish benchmarks from external data that is credible in size and that is broadly consistent with the subdivision of data used by the Scheme Creditor.

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

- Type of loss (e.g. liability or property damage);
- Type of business (e.g. proportional or non-proportional);
- Age of business;
- Class of business;
- Underlying insured; and
- Cedant or type of cedant.

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

6. **Unanticipated latent claims**

A Scheme Creditor may have reason to believe that it faces exposure to liability to a type of latent claim that has not yet been notified to the world's leading insurance markets which is covered under the policies issued by the Companies to that Scheme Creditor. This may be a result of insufficient scientific and/or causal evidence or for other reasons, including the possibility that this claim type is currently completely unknown. Subject to the conditions set out later in this section, a Scheme Creditor may submit a claim for this exposure.

Such exposure is expected to vary according to several factors, including:

- Class of business and year of inception and termination;
- Type of policy and other coverage aspects;
- Nature of the underlying insured's business, including the industry in which it operates and, consequently, the likely nature of any potential claim; and
- Territory including the applicable law.

The Companies' exposure to such types of latent claim would be expected to diminish over time until it eventually reduces to an immaterial level. It is noted that around 22 years will already have passed since the Companies ceased issuing new policies in 1992, and substantially more years will have passed in relation to policies issued many years prior to 1992.

The Scheme Creditor must supply information to demonstrate that it faces exposure to such types of latent claim. This information will have regard to the above factors and will need to draw on company and/or industry data to show a non-zero likelihood that unanticipated claim types may emerge in the future that will impact the Companies' policies with that Scheme Creditor.

The Scheme Creditor must also provide an estimate of the ultimate cost of the exposure together with appropriate supporting evidence. In view of the diverse nature of the underlying claims, the Companies will accept any reasonable approach, provided that it is appropriately supported and takes into account the factors listed above.

Appendix 3 – Supporting Evidence

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1. Introduction
2. Techniques not covered in Appendix 2 (*Estimation Guidelines*)
3. Direct Insurance/Facultative Reinsurance of Direct Insurance Non-APH claims
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1. Introduction

This Appendix sets out the level of supporting evidence that should be supplied by a Scheme Creditor in support of the different approaches used for estimating Notified Outstanding Liabilities and IBNR Liabilities for different Insurance Contract types and claim loss types as described in Appendix 2 (*Estimation Guidelines*).

2. Techniques not covered in Appendix 2 (*Estimation Guidelines*)

Where the Scheme Creditor adopts projection techniques other than those set out in Appendix 2 (*Estimation Guidelines*), full supporting evidence should be provided, including full descriptions of the techniques adopted and the assumptions made, including supporting data to justify each of the assumptions made.

3. Direct Insurance/Facultative Reinsurance of Direct Insurance Non-APH claims

This section describes the supporting evidence that should be submitted by Scheme Creditors with Non-APH claims arising under an Insurance Contract with either or both of the Companies that is Direct Insurance or Facultative Reinsurance of Direct Insurance.

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

3.1. Projection techniques

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance Non-APH claims following the approach set out in section 2.1 of Appendix 2 should provide supporting evidence with the Claim Form that should include for each class of business and type of loss:

- Policy details as required by the Claim Form;
- The underlying data used and the methodology and assumptions applied to estimate the ultimate number of claims in each year over the period that the Companies have provided coverage;
- The underlying data used and the methodology and assumptions applied to estimate the indemnity and expense costs for open and future claims;
- The historical development of claims filed against each year over the period that the Companies have provided coverage;
- The historical development in indemnity and expense costs by notification year for each year over the period that the Companies have provided coverage; and
- The value of Scheme Liabilities being claimed by the Scheme Creditor against the Companies.

3.2. Alternative approaches where historical information may not be available

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance Non-APH claims following the approach set out in section 2.2 of Appendix 2 should provide supporting evidence with the Claim Form that should include full details of the approach taken and justification of the assumptions made.

4. Direct Insurance/Facultative Reinsurance of Direct Insurance APH claims

This section describes the supporting evidence that should be submitted by Scheme Creditors with APH claims arising under an Insurance Contract with either or both of the Companies that is Direct Insurance or Facultative Reinsurance of Direct Insurance.

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

4.1. Asbestos claims

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance asbestos claims following the approach set out in section 3.1 of Appendix 2 should provide supporting evidence with the Claim Form that should include:

Agreements or settlements with any insurer

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

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

Claims estimation data

The Scheme Creditor should provide details of the asbestos product(s) involved, the years that the product(s) were manufactured and distributed by the Scheme Creditor, and the source of the asbestos claims (e.g. employees, third parties etc).

A claimant database should also be provided. The database should include the following information for each individual claimant who has filed a claim against the Scheme Creditor:

- Claimant name;
- Date when the claim was filed against the Scheme Creditor;
- Type of claim (i.e. products bodily injury, products property damage, premises, other types of non-products etc);
- If the claim is a non-products claim, the site and US State (or country) where that site is located from where the claim arose;
- Claim status (i.e. whether the claim is still open, or whether it has been closed);
- If the claim has been closed, a flag to show whether the claim was settled or dismissed, the date when such settlement or dismissal took place and the total indemnity amount of any settlement;
- For open claims, the dates and amounts of all indemnity amounts paid;
- Total defence costs paid to date in respect of each claim (both for the closed (settled and dismissed) and open claims);
- Disease type (e.g. mesothelioma, lung cancer, other cancer, asbestosis, other non-malignant etc);
- US State or other jurisdiction in which the claim was filed;

- Law firm representing the claimant;
- Doctor supporting the claim and the screening facility;
- If the claim record relates to a class action or multi-plaintiff lawsuit, the number of underlying individual claimants (although ideally, the Companies would like full data in respect of each individual claimant underlying a particular class action); and
- Date of first and last exposure to asbestos for the claimant.

From this database, it should be possible to determine the following summary information for each claim type and disease type:

- Number of claims filed, settled and dismissed by year and by state or country (as applicable) for as many years as possible including the number of claims against the Scheme Creditor remaining open as at the Valuation Date; and
- Indemnity and expense costs for claims closed by the Scheme Creditor by year, by state and by disease type for as many years as possible.

Policy data

The Scheme Creditor should provide policy data as follows:

- A complete coverage chart showing erosion to date, in both an electronic format and as a colour coded chart as appropriate;
- A list of the policies written by the Companies where asbestos claims have been allocated including information on policy limits, aggregate limits and excess points;
- Evidence of prior settlement where blocks of coverage are excluded from allocation;
- Evidence of policies being "costs in addition" or "costs inclusive" where the Scheme Creditor is making such an assertion;
- Evidence of entitlement under the policies where the Scheme Creditor is not the named insured; and
- Details of any exclusion clauses, where appropriate.

Basis of estimation

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

- A description of the Scheme Creditor's basis of estimation of the ultimate asbestos claims cost, including the techniques used for projecting future numbers of claims filed and for projecting average claims costs and details of any assumptions used;
- Evidence of court or other rulings to substantiate the basis of estimation;
- Details of the methodology and assumptions used to allocate the ultimate claims cost to the Scheme Creditor's policies with the Companies; and
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies.

4.2. Environmental pollution claims

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance pollution claims following the approach set out in section 3.2 of Appendix 2 should provide supporting evidence with the Claim Form that should include:

Agreements or settlements with any insurer

Scheme Creditors should provide a copy of, or excerpt from, any settlement agreement with any insurer specifying the date of the settlement, the amount of the settlement, the allocation to policy years, the sites involved and the split of the settlement between indemnity and expense costs. The Companies will sign a confidentiality agreement if necessary.

Numbers of sites exposed

The Scheme Creditor should provide the Environmental Protection Agency (EPA) site ID for each site where the Scheme Creditor is submitting a claim against the Companies for liability

arising under the Comprehensive Environmental Response, Compensation and Liability Act 1980 (CERCLA). Appropriate identifiers should also be provided for third party, Resource Conservation and Recovery Act 1976 (RCRA), Natural Resource Damage (NRD) or other sites as applicable.

Claims estimation data

For each of the sites, the following information will be required:

- Site name;
- US state or country (as applicable) in which the site is located;
- Estimated undiscounted cost of cleaning up the site including operation and maintenance costs, either:
 - for the whole site with volumetric share or participation percentage or estimated share as documented by site engineers; or
 - for the Scheme Creditor's share of the site clean-up costs only;
- Evidence as to how the costs have been estimated and by whom will need to be provided;
- Start date of involvement at site;
- End date of involvement at site;
- Notification date or discovery date for involvement;
- Costs spent to date for clean-up or investigation of the site by the Scheme Creditor;
- Legal costs spent to date by the Scheme Creditor;
- Whether the site is owned property;
- Latest and pertinent previous records of decision; and
- Legal assumptions made regarding the trigger and allocation to policies including, if the Scheme Creditor has calculated the settlement on an "All Sums" basis, the "All Sums" year selected.

Policy data

The Scheme Creditor should provide policy data as follows:

- A complete coverage chart showing erosion to date, in both an electronic format and as a colour coded chart as appropriate;
- A list of the policies written by the Companies where pollution claims have been allocated including information on policy limits, aggregate limits and excess points;
- Evidence of prior settlement where blocks of coverage are excluded from allocation;
- Evidence of policies being "costs in addition" or "costs inclusive" where the Scheme Creditor is making such an assertion;
- Evidence of entitlement under the policies where the Scheme Creditor is not the named insured;
- Details of any exclusion clauses, where appropriate; and
- Where the Scheme Creditor has assumed aggregate limits on lower layer policies, the Scheme Creditor should provide evidence of the existence of these lower layer aggregate limits.

Basis of estimation

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

- A description of the Scheme Creditor's basis of estimation of the ultimate pollution claims cost;
- Evidence of court or other rulings to substantiate the basis of estimation;

- Details of the methodology and assumptions used to allocate the ultimate claims cost to the Scheme Creditor's policies with the Companies including, if the Scheme Creditor has calculated the settlement on an "All Sums" basis, the "All Sums" year selected; and
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies.

4.3. Other health hazards claims

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance health hazard claims following the approach set out in section 3.3 of Appendix 2 (such as those occurring under US product liability insurances) should provide supporting evidence with the Claim Form that should include:

Agreements or settlements with any insurer

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

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

Claims estimation data

The Scheme Creditor should provide details of:

- Any products involved, including the years the products were manufactured and distributed by the Scheme Creditor;
- All claims information should be split by type of claim (e.g. products bodily injury, products property damage, types of non-products claims etc);
- Number of claims filed against the Scheme Creditor by year, by state and by disease type (i.e. malignant, non-malignant) for as many years as possible;
- Number of claims closed by the Scheme Creditor by year, by state and by disease type for as many years as possible;
- Indemnity and expense costs for claims closed by the Scheme Creditor by year, by state and by disease type for as many years as possible;
- Analysis of closed claims split into those settled at cost and those settled for zero cost;
- Number and amounts of claims against the Scheme Creditor remaining open as at the Valuation Date by year, by state and by disease type; and
- If appropriate, a claimant database to include claim status, claimant name, doctor, screening facility, law firm, filing date, US state or country (as applicable), disease type, date of first exposure and date of last exposure.

Policy data

The Scheme Creditor should provide policy data as follows:

- A complete coverage chart showing erosion to date, in both an electronic format and as a colour coded chart as appropriate;
- A list of the policies written by the Companies where other health hazards claims have been allocated including information on policy limits, aggregate limits and excess points;
- Evidence of prior settlement where blocks of coverage are excluded from allocation;
- Evidence of policies being "costs in addition" or "costs inclusive" where the Scheme Creditor is making such an assertion;
- Evidence of entitlement under the policies where the Scheme Creditor is not the named insured; and
- Details of any exclusion clauses, where appropriate.

Basis of estimation

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

- The technique and basis used for projecting average claims costs;
- The technique and basis used for projecting future numbers of claims filed;
- Evidence of court or other rulings to substantiate the basis of estimation;
- Details of the methodology and assumptions used to allocate the ultimate claims cost to the Scheme Creditor's policies with the Companies; and
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies.

4.4. Alternative approaches where historical information may not be available

Scheme Creditors with Direct Insurance/Facultative Reinsurance of Direct Insurance APH claims following the approach set out in section 3.4 of Appendix 2 should provide supporting evidence with the Claim Form that should include full details of the approach taken and justification of any assumptions made.

5. Reinsurance Non-APH claims

5.1. Overview

This section describes the supporting evidence that should be submitted by Scheme Creditors with Non-APH claims arising under an Insurance Contract with either or both of the Companies that is Treaty Reinsurance, Treaty Retrocession or Facultative Retrocession (but not Facultative Reinsurance of Direct Insurance).

5.2. Catastrophes or other single large distorting losses

A Scheme Creditor's inwards catastrophes and any other single large distorting losses should be analysed individually following the approach set out in section 4.2 of Appendix 2.

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

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

5.3. Residual losses on proportional or low level excess of loss contracts

Scheme Creditors with gross losses impacting proportional or low level excess of loss contracts following the approach set out in section 4.3 of Appendix 2 should provide supporting evidence with the Claim Form that should include:

- The underlying data used to estimate the ultimate claims costs for the inwards claims to the Scheme Creditor;

- The methodology and assumptions applied to estimate the total ultimate claims costs for the inwards claims to the Scheme Creditor;
- Where chain-ladder methodologies have been used, details of individual factors to ultimate together with reasons for the selection of a methodology based on paid claims and/or incurred claims;
- Where a survival ratio technique has been used, reasons why a paid increment method has been selected over an incurred increment method (or vice versa) and reasons why the period selected is representative of a typical decay and is therefore suitable for the projection to ultimate. In the selection of the ratio, the Scheme Creditor should refer to the contents of section 5.7 on benchmarking;
- The historical development of paid and incurred losses to the policies, at the level at which the projection is being performed which should therefore exclude any losses considered in section 5.2; and
- If applicable, details of how the paid data has been adjusted for the presence of structured settlements.

5.4. Residual losses on medium to high level excess of loss contracts

Scheme Creditors with gross losses impacting medium to high level excess of loss claims following the approach set out in section 4.4 of Appendix 2 should provide supporting evidence with the Claim Form that should include:

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

To the extent that the average cost per claim method has been enhanced by considering likely distributions of claims received by the Scheme Creditor, explanations should be provided to support the selection of the various distributions. Where these differing claims distributions have been relied upon in the submission, via the application of probabilities attaching to the different distributions or otherwise, sufficient detail should be supplied to understand both how the analyses have been relied upon and any assumptions that have been made.

If any of the assumptions are to be modelled on a simulation basis, a detailed description should be supplied that shows clearly which assumptions are being modelled in this way, and which are being modelled deterministically, together with detail as to how all the assumptions fit together (including any allowance for the correlation of different model inputs, if applicable) to produce the resulting distribution of aggregate ultimate claims falling to the Reinsurance contract of the Companies. Where an assumption is modelled on a simulation basis, detail should be supplied to support the selection of the mathematical function and parameters used. This detail should include supporting underlying data and analysis relating to the fit of the assumption to the data. The detail of the resulting distribution should be supplied in order to understand the variability of the result around a Best Estimate.

5.5. Application to reinsurance programme

The results of sections 5.2, 5.3 and 5.4 should then be applied to the Scheme Creditor's outwards reinsurance programme to derive the Companies' share of the costs following the approach set out in section 4.5 of Appendix 2. Scheme Creditors should provide supporting evidence with the Claim Form that should include:

- Outwards policy details as required by the Claim Form, including details of policies that inure to the benefit of the Companies' policies;
- Details of how the estimates of the ultimate costs for the inwards claims are converted into claims on the outwards Reinsurance contracts;

- Where aggregation was used to estimate ultimate inwards claims, the methodology and assumptions used to allocate aggregate IBNR Liabilities back to the business categories suitable for the Scheme Creditor's outwards reinsurance programme;
- If recoveries due on the Companies' coverage have been derived with reference to adjustments made to ratios applying for the total outwards reinsurance programme, details of the ratios used together with reasoning to support the adjustments, which should include commentary on how the Companies' coverage fits into the Scheme Creditor's outwards reinsurance programme; and
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies.

5.6. Projections using outwards reinsurance data

Scheme Creditors following the approach set out in section 4.6 of Appendix 2 should provide supporting evidence with the Claim Form that should include:

- Outwards policy details as required by the Claim Form, including details of policies that inure to the benefit of the Companies' policies;
- The underlying outwards ceded paid and incurred experience used to estimate the value of the Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor;
- The methodology and assumptions applied to estimate the value of the Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor, together with detail to understand how potential short-comings of this approach have been overcome, such as the exhaustion of coverage available;
- The value of the Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies; and
- Supporting evidence for benchmarking techniques for which detail is given in section 5.7.

5.7. Benchmarking

Scheme Creditors following the approach set out in section 4.7 of Appendix 2 should provide supporting evidence with the Claim Form that should include:

- Outwards policy details as required by the Claim Form, including details of policies that inure to the benefit of the Companies' policies;
- Type of claim;
- Details of the benchmarks and how they have been applied;
- Evidence to justify why the benchmarks used apply to the Scheme Creditor; and
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies.

6. Reinsurance APH claims

This section describes the supporting evidence that should be submitted by Scheme Creditors with APH claims arising under an Insurance Contract with either or both of the Companies that is Reinsurance (but not Facultative Reinsurance of Direct Insurance) or is Retrocession.

6.1. Estimation of underlying liabilities: Exposure-based model

Scheme Creditors with Reinsurance claims following the approaches set out in section 5.1 of Appendix 2 should provide supporting evidence with the Claim Form that should include a list of underlying insureds to which the Scheme Creditor is exposed and a means of referencing the Scheme Creditor's exposure to those insureds. For each underlying insured the Scheme Creditor should provide the following information in respect of the claims by the underlying insured against the Scheme Creditor:

- Name of insured and insured code;
- Start and end dates of cover;

- Policy limits (including details of the aggregate and/or per occurrence combined single limits and, if applicable, separate bodily injury and property damage single limits);
- Excess points (to be supplied as a numerical and/or a text field. In many instances this field may only include a general description that the policy was in excess of primary or underlying coverage);
- The Scheme Creditor's share of each policy (supplied through London order, insurer signed line, global 100% amount, London 100% amount);
- Any information about primary layers and self-insured retentions;
- Paid and outstanding amounts on these underlying policies, including corresponding attorney report date;
- An estimate of the ultimate inwards claims costs to the Scheme Creditor in respect of each underlying policy;
- Latest copies of any relevant attorney reports;
- Where relevant, detailed evidence of the Scheme Creditor's assumptions of the percentage of each policy layer that will be eroded by category and by layer at which exposures attach;
- Where relevant (e.g. environmental pollution claims), site names and site locations for each underlying insured claim;
- Where relevant (e.g. environmental pollution claims), an estimate of the underlying insured's site clean-up costs and the source of those estimates; and
- Where the estimate of future recoveries is material, more detail should be provided based on the evidence required for Direct Insurance claims as set out in section 4.

The supporting evidence to be provided with the Claim Form should also include the following information in respect of the claims by the Scheme Creditor against the Companies:

- Listing of the relevant Reinsurance contracts of the Scheme Creditor with the Companies, including start and end dates of cover, shares, limits and deductibles;
- Details of how the estimates of the ultimate claims costs for the underlying insureds are converted into claims on the Reinsurance contracts;
- Details of any court or other rulings being relied on;
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies; and
- Where claims have been aggregated for the purposes of making reinsurance recoveries, the basis of, and justification for, the method of aggregation should be explained. (Please note that the Companies do not expect environmental pollution claims from individual sites to be aggregated for the purpose of making reinsurance recoveries.)

6.2. Estimation of underlying liabilities: Other approaches

Scheme Creditors with Reinsurance claims that have followed the underlying insured approach set out in section 5.2 of Appendix 2 should provide supporting evidence with the Claim Form that should include the following, split by claim type in respect of the claims by underlying insureds against the Scheme Creditor:

- A list of underlying insureds (and cedants in the case of retrocession) in respect of which the Scheme Creditor has received claims;
- Details of the emerging claims experience, both numbers and amounts, appropriate to the analysis performed;
- The estimated ultimate inwards claims cost to the Scheme Creditor in respect of each underlying insured. If possible, this information should be provided split by underwriting year and, where appropriate, by environmental site;

- Full descriptions of the techniques adopted and the assumptions made, including supporting data to justify each assumption made, in determining these estimated ultimate claims costs; and
- Details of any other components of the inwards liabilities to the Scheme Creditor (e.g. estimated claims from new underlying insureds) that will ultimately form part of the Notified Outstanding Liabilities and IBNR Liabilities. Each such component should be supported by a full description of the techniques adopted and the assumptions made, including supporting data where possible to justify each assumption made.

Scheme Creditors that have followed the individual cedant analysis approach described in section 5.2 of Appendix 2 should also provide the details set out above in respect of all cedants that have submitted claims against the Scheme Creditor, also split by claim type.

If the Scheme Creditor adopts projection techniques other than those set out in section 5.2 of Appendix 2 in order to determine its inwards liabilities, full supporting evidence should be provided, including full descriptions of the techniques adopted and the assumptions made, including supporting data to justify each of the assumptions made.

The supporting evidence to be provided with the Claim Form should also include (in respect of the claims by the Scheme Creditor against the Companies):

- Listing of the relevant Reinsurance contracts of the Scheme Creditor, including start and end dates of cover, shares, limits and deductibles;
- Details of how the estimates of the ultimate claims costs for the underlying insureds are converted into claims on the Reinsurance contracts;
- Details of any court or other rulings being relied on;
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies; and
- Where claims have been aggregated for the purposes of making reinsurance recoveries, the basis of, and justification for, the method of aggregation should be explained. (Please note that the Companies do not expect environmental pollution claims from individual sites to be aggregated for the purpose of making reinsurance recoveries.)

6.3. Benchmarking

Scheme Creditors with Reinsurance APH claims following the approach set out in section 5.3 of Appendix 2 should provide supporting evidence with the Claim Form that should include:

- Type of claim;
- Names and geographical locations of underlying insureds and/or cedants;
- Details of the benchmarks and how they have been applied;
- Evidence to justify why the benchmarks used apply to the Scheme Creditor;
- Listing of the relevant Reinsurance contracts of the Scheme Creditor, including start and end dates of cover, shares, limits and deductibles;
- The value of Notified Outstanding Liabilities and IBNR Liabilities being claimed by the Scheme Creditor from the Companies; and
- Where claims have been aggregated for the purposes of making reinsurance recoveries, the basis of and justification for the method of aggregation should be explained.

7. Unanticipated latent claims

Scheme Creditors submitting a claim in respect of unanticipated latent claims, following the approach set out in section 6 of Appendix 2, should provide supporting evidence with the Claim Form that should include:

- Policy details as required by the Claim Form, including details of policies that inure to the benefit of the Companies' policies;

- Information to demonstrate a non-zero likelihood that unanticipated claim types may emerge in the future that will impact the Companies' policies, drawing on company and industry data;
- The value of IBNR Liabilities being claimed by the Scheme Creditor from the Companies; and
- The methodology and assumptions used to estimate the total value of IBNR Liabilities being claimed by the Scheme Creditor from the Companies.

Appendix 4 – Calculation of Estimated Qualifying Value and Estimated Opt Out Value

1. The Scheme Administrators' calculation of the Estimated Qualifying Value and the Estimated Opt Out Value will be conducted with the assistance of the Scheme Actuarial Adviser within 90 days of the Bar Date. These calculations will be used to calculate the Opt Out Proportion Figure. The Opt Out Proportion Figure is the criterion which the Companies will use to determine whether they will proceed to implement the Amending Scheme in accordance with its terms pursuant to paragraph 39.7 of the Amending Scheme.
2. The calculation of the Estimated Qualifying Value and the Estimated Opt Out Value will be based on the reserves in the Companies' statutory accounts as at the Valuation Date, including both Notified Outstanding Liabilities and IBNR Liabilities. The Estimated Qualifying Value will be calculated by identifying the components of those reserves that relate to Qualifying ILU Policyholders. The Estimated Opt Out Value will then be calculated by identifying the parts of the Estimated Qualifying Value that are in respect of Opt Out Qualifying ILU Policyholders, based on the allocations of those reserves to individual Qualifying ILU Policyholders and the decisions of each Scheme Creditor as to whether or not to submit a claim before the Bar Date, as set out in more detail below.
3. The calculations of the Estimated Qualifying Value and the Estimated Opt Out Value will be adjusted to take account of relevant Supporting Information submitted by a Scheme Creditor between the Valuation Date and the Bar Date in the circumstances and to the extent set out in section 11.
4. The calculation of the Estimated Qualifying Value will be made net of any Offset Amounts owed by those Qualifying ILU Policyholders to either or both of the Companies. The calculation of the Estimated Opt Out Value will be made net of any Offset Amounts owed by those Opt Out Qualifying ILU Policyholders to either or both of the Companies.
5. The Estimated Qualifying Value and the Estimated Opt Out Value will include amounts that have been agreed by the Companies but, as at the date of the calculation of the Estimated Qualifying Value and the Estimated Opt Out Value, have not been paid to the Qualifying ILU Policyholders. Any such amounts are, however, likely to be small following the deduction of any Offset Amounts, since the principal reason why amounts are agreed but are not yet paid to Qualifying ILU Policyholders is because of the expectation that set-off may apply in respect of those Qualifying ILU Policyholders.
6. Neither the Estimated Qualifying Value nor the Estimated Opt Out Value will be recalculated following the determination of Scheme Creditors' Net Liabilities in accordance with paragraphs 17 to 20 of the Amending Scheme. The process of agreeing and determining Scheme Creditors' Net Liabilities in the Amending Scheme will continue after the 90 day period prescribed in paragraph 39.1 of the Amending Scheme for the calculation of the Estimated Qualifying Value and the Estimated Opt Out Value has expired. The decision as to whether the Companies will proceed to implement the Amending Scheme in full will not therefore be revisited on the basis of the actual levels of Scheme Creditors' claims agreed in the Amending Scheme.

Reserve Components

7. The reserves identified in the Companies' statutory accounts as at the Valuation Date will cover:
 - (a) Notified Outstanding Liabilities;
 - (b) IBNR Liabilities in relation to:
 - (i) any inadequacies or redundancies in those Notified Outstanding Liabilities of Scheme Creditors in respect of which reserves are held by the Companies as at the Valuation Date (often referred to as "IBNER") (other than those referred to in sections 7(c) and 7(d)); and
 - (ii) any future claim notifications against those Scheme Creditors (other than those referred to under sections 7(c), 7(d) and 7(e));
 - (c) Specific IBNR Liabilities in relation to the emergence of currently unknown policies for known Scheme Creditors with direct asbestos claims;
 - (d) Specific IBNR Liabilities in relation to:

- (i) potential future one-off jumps in the quantum of underlying asbestos liabilities borne by Scheme Creditors with direct asbestos claims; and
 - (ii) the emergence of direct asbestos claims and direct pollution claims from Scheme Creditors not previously identified by the Companies as Scheme Creditors with direct asbestos claims and direct pollution claims respectively; and
- (e) Specific IBNR Liabilities in relation to unanticipated latent claim types for all Scheme Creditors.
8. The calculation of the Estimated Qualifying Value and the Estimated Opt Out Value, as well as the calculation of the Opt Out Proportion Figure, will all utilise reserves that will be discounted for the time value of money in accordance with paragraph 17.16 of the Amending Scheme. The Notified Outstanding Liabilities and IBNR Liabilities noted in section 7 will therefore be discounted for the time value of money before the calculation outlined in the following sections is performed.

Allocation of reserves for Notified Outstanding Liabilities and IBNR Liabilities from sections 7(a) and 7(b)

9. The reserves for Notified Outstanding Liabilities in section 7(a) and the IBNR Liabilities in section 7(b) will be allocated down to a policy level on the basis of the reserve exercises conducted as at the Valuation Date.

Allocation of reserves for IBNR Liabilities from section 7(c)

10. The reserves for IBNR Liabilities in section 7(c) will be allocated between Scheme Creditors by pro-rating across the direct asbestos reserves in section 9 at a policy level.

Initial estimate of the Opt Out Proportion Figure

11. The amount of the reserves identified pursuant to sections 9 and 10 may be adjusted if additional Supporting Information is received by the Companies from any Scheme Creditor before the Bar Date that clearly invalidates the reserves previously identified by the Companies. Any adjustments will not necessarily follow the overall claim amounts submitted by any Scheme Creditor, as those submissions may be inconsistent with the requirements of the Estimation Guidelines.
12. The amount of the reserves identified pursuant to sections 9 and 10, after any adjustment in accordance with section 11, will be aggregated for all Qualifying ILU Policyholders.
13. Given that the amount of the reserves identified pursuant to section 12 will have been built up at a policy and Scheme Creditor level, it will then be possible to split these reserves between:
- (a) those Qualifying ILU Policyholders who do not opt out of the Amending Scheme and who submit claims in the Amending Scheme before the Bar Date;
 - (b) those Qualifying ILU Policyholders who do not opt out of the Amending Scheme and who do not submit claims in the Amending Scheme before the Bar Date; and
 - (c) Opt Out Qualifying ILU Policyholders.
14. Each Qualifying ILU Policyholder will, under the terms of the Amending Scheme, come under one of the three categories listed in section 13.
15. An initial estimate of the Estimated Qualifying Value, excluding any contribution from the IBNR Liabilities in sections 7(d) and 7(e), will then be calculated by:
- (a) adding the amount of the claims of Qualifying ILU Policyholders which have been agreed but have not yet been paid to the aggregated reserves for all Qualifying ILU Policyholders (determined pursuant to section 12); and
 - (b) then adjusting that amount to take account of any Offset Amounts owed by the Qualifying ILU Policyholders to either or both of the Companies.
16. An initial estimate of the Estimated Opt Out Value, excluding any contribution from the IBNR Liabilities in sections 7(d) and 7(e), will be calculated by:
- (a) adding the amount of the claims of Opt Out Qualifying ILU Policyholders which have been agreed but have not yet been paid to the aggregated reserves for Opt Out Qualifying ILU Policyholders (determined pursuant to sections 13 and 14); and
 - (b) then adjusting that amount to take account of any Offset Amounts owed by the Opt Out Qualifying ILU Policyholders to either or both of the Companies.

17. An initial estimate of the Opt Out Proportion Figure will then be calculated by dividing the initial Estimated Opt Out Value (determined pursuant to section 16) by the initial Estimated Qualifying Value (determined pursuant to section 15).

Allocation of reserves for IBNR Liabilities from section 7(d)

18. The reserves for IBNR Liabilities in section 7(d)(i) will be allocated to all Qualifying ILU Policyholders based on the proportion of the direct asbestos reserves for all Qualifying ILU Policyholders to the direct asbestos reserves for all Scheme Creditors. These reserves will be calculated in accordance with the processes described in sections 9 to 12.
19. For direct asbestos claims and direct pollution claims separately, the reserves for IBNR Liabilities in section 7(d)(ii) will be allocated to all Qualifying ILU Policyholders based on the proportions of the direct asbestos and direct pollution reserves for all Qualifying ILU Policyholders to the direct asbestos and direct pollution reserves for all Scheme Creditors. These reserves will be calculated in accordance with the processes described in sections 9 to 12.
20. The proportion of the reserves determined pursuant to sections 18 and 19 that will be allocated to Opt Out Qualifying ILU Policyholders will be an amount equal to:

"4% + 110% of the initial estimate of the Opt Out Proportion Figure (determined pursuant to section 17)"

unless the initial estimate of the Opt Out Proportion Figure (determined pursuant to section 17) is zero in which case the proportion of the reserves allocated to Opt Out Qualifying ILU Policyholders will also be zero. This proportion will be applied to the reserves determined pursuant to sections 18 and 19 in order to identify the amount of the reserves attributable to Opt Out Qualifying ILU Policyholders.

Allocation of reserves for IBNR Liabilities from section 7(e)

21. The reserve for Qualifying ILU Policyholder IBNR Liabilities in section 7(e) has been set at US\$11.953 million (based on a Valuation Date of 31 December 2013).
22. The proportion of the reserves determined pursuant to section 21 that will be allocated to Opt Out Qualifying ILU Policyholders will be an amount equal to:

"7.5% + 118.75% of the initial estimate of the Opt Out Proportion Figure (determined pursuant to section 17)"

unless the initial estimate of the Opt Out Proportion Figure (determined pursuant to section 17) is zero in which case the proportion of the reserves allocated to Opt Out Qualifying ILU Policyholders will also be zero. This proportion will be applied to the reserves determined pursuant to section 21 in order to identify the amount of the reserves attributable to Opt Out Qualifying ILU Policyholders.

Calculation of the final Estimated Qualifying Value, Estimated Opt Out Value and Opt Out Proportion Figure

23. The final Estimated Qualifying Value will be calculated by adding the amount of the initial estimate of the Estimated Qualifying Value (determined pursuant to section 15) to the amounts of reserves determined in sections 18, 19 and 21.
24. The final Estimated Opt Out Value will be calculated by adding the amount of the initial estimate of the Estimated Opt Out Value (determined pursuant to section 16) to the amounts of reserves determined in sections 20 and 22).
25. The final Opt Out Proportion Figure will then be calculated by dividing the final Estimated Opt Out Value (determined pursuant to section 24) plus the Post Bar Date Provision (excluding the amount set aside for the Post Bar Date Expenses) by the final Estimated Qualifying Value (determined pursuant to section 23).

Appendix 5 – Costs agreement

FORM OF NO NOTICE ADJUDICATOR'S COSTS AGREEMENT

THIS AGREEMENT is made on the _____ day of _____ 20____

BETWEEN:

- (1) Leo J. Jordan Sr as the No Notice Adjudicator under the Amending Scheme (as defined herein) (the "**No Notice Adjudicator**"); and
- (2) [[***QUALIFYING ILU POLICYHOLDER***] incorporated and registered in [***EG, ENGLAND AND WALES***] with company number [***NUMBER***] whose registered office is at [***REGISTERED OFFICE ADDRESS***]] (the "**Qualifying ILU Policyholder**").

WHEREAS:

- (a) Under paragraph 43.3(a)(ii) of the Amending Scheme, the No Notice Adjudicator shall not allow any claim (to which paragraph 43.1(a) applies) to be submitted by a Qualifying ILU Policyholder after the Bar Date to be agreed or determined (as the case may be) under the Amending Scheme unless, amongst other things, that Qualifying ILU Policyholder has entered into an agreement with the No Notice Adjudicator in respect of the No Notice Adjudicator's costs in reviewing that claim.
- (b) The Qualifying ILU Policyholder wishes to submit a claim to the Scheme Administrators pursuant to paragraph 43.2 of the Amending Scheme.
- (c) The Qualifying ILU Policyholder and the No Notice Adjudicator wish to enter into this Agreement on the terms and conditions set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. **Definitions:** In this Agreement the following expressions shall have the following meanings:

"Amending Scheme" means the amending scheme of arrangement pursuant to Part 26 of the Companies Act 2006 between OIC Run-Off Limited (formerly Ralli Brothers Insurance Company Limited and The Orion Insurance Company plc) and The London and Overseas Insurance Company Limited (formerly Hull Underwriters' Association Limited and The London and Overseas Insurance Company plc) and their respective Scheme Creditors (as defined in the Amending Scheme) which became effective on [***INSERT DATE***];

"Costs" means the No Notice Adjudicator's reasonable remuneration, charges, costs and expenses incurred or likely to be incurred by the No Notice Adjudicator in assessing the eligibility of the Qualifying ILU Policyholder's claim in accordance with paragraph 43.1 of the Amending Scheme; and

"No Notice Adjudicator Account" means the bank account held with [***NAME OF BANK***] at [***NAME OF BRANCH***] with account number [***ACCOUNT NUMBER***] and sort code [***SORT CODE***].

- 1.2. **Incorporation of defined terms:** Unless otherwise provided or unless the context otherwise requires, all words and expressions defined in the Amending Scheme shall have the same respective meanings in this Agreement.

2. SECURITY FOR COSTS

The Qualifying ILU Policyholder hereby irrevocably agrees that the Qualifying ILU Policyholder will on demand in writing made on the Qualifying ILU Policyholder (such demand to comply with the provisions of clause 4 below) pay to the No Notice Adjudicator amounts equal to the amount of the Costs which are stated in such demands to be payable by the Qualifying ILU Policyholder into the No Notice Adjudicator Account within 10 days of the date of each respective demand and such funds will be applied by the No Notice Adjudicator in respect of his Costs in accordance with clause 4 below.

3. FORM OF DEMAND

3.1. Each demand under this Agreement shall be made on the Qualifying ILU Policyholder at [***INSERT ADDRESS***] [marked for the attention of [***DEPARTMENT / OFFICER***]] and shall:

- (a) be signed by the No Notice Adjudicator; and
- (b) be accompanied by a document signed by the No Notice Adjudicator stating the amount of the Costs which the Qualifying ILU Policyholder is to pay to the No Notice Adjudicator Account in accordance with clause 2 above, together with such supporting information as the No Notice Adjudicator considers, in his sole discretion, reasonable to enable the Qualifying ILU Policyholder to understand the basis on which those Costs have been calculated.

4. APPLICATION OF FUNDS RECEIVED FROM THE QUALIFYING ILU POLICYHOLDER

4.1. Subject to clause 4.2 and 4.3, the No Notice Adjudicator shall apply any funds advanced by a Qualifying ILU Policyholder pursuant to clause 2 towards payment of his Costs.

4.2. In the event that, following his assessment of the eligibility of the Qualifying ILU Policyholder's claim pursuant to paragraph 43.1 of the Amending Scheme, the No Notice Adjudicator is holding any monies in the No Notice Adjudicator Account (which were advanced to the No Notice Adjudicator Account by the Qualifying ILU Policyholder pursuant to clause 2 above), then such monies shall be paid by the No Notice Adjudicator to the Qualifying ILU Policyholder.

4.3. In the event that the No Notice Adjudicator allows the Qualifying ILU Policyholder to submit its claim after the Bar Date pursuant to paragraph 43.2 of the Amending Scheme, the Companies shall reimburse the Qualifying ILU Policyholder for any monies paid by that Qualifying ILU Policyholder into the No Notice Adjudicator Account pursuant to clause 2 which were applied by the No Notice Adjudicator in satisfaction of his Costs pursuant to clause 4.1.

5. MISCELLANEOUS

5.1. The Qualifying ILU Policyholder's Liability hereunder shall not be discharged or impaired in any way by reason of any compounding, indulgence or relief or any other act or matter whatsoever which (but for this provision) might have discharged or impaired the Qualifying ILU Policyholder's Liability hereunder.

5.2. All payments to be made hereunder by the Qualifying ILU Policyholder shall be made to the No Notice Adjudicator without set-off or counterclaim.

5.3. This Agreement shall be governed by and construed in accordance with English law and the Qualifying ILU Policyholder hereby irrevocably submits to the jurisdiction of the English courts.

In witness whereof, the parties hereto have executed this Agreement on the day and year first above written.

The Qualifying ILU Policyholder

Signed by [NAME OF AUTHORISED SIGNATORY] for and on behalf of [NAME OF QUALIFYING ILU POLICYHOLDER]

The No Notice Adjudicator

Signed by Leo J. Jordan Sr as No Notice Adjudicator under the Amending Scheme

Appendix 6 - Deed of adherence

From: *[Insert name of Successor]* (incorporated in [•] with registered number [•] and with its registered office at [•])

To: OIC Run-Off Limited (a limited company acting by its Scheme Administrators and incorporated in England and Wales with registered number 256100 and with its registered office at 10-18 Union Street, London SE1 1SZ)

The London and Overseas Insurance Company Limited (a limited company acting by its Scheme Administrators with registered number 38706 and with its registered office at 10-18 Union Street, London SE1 1SZ)

Serjeants' Inn Nominees Limited (a limited company incorporated in England and Wales with registered number 74683 and with its registered office at 21 Holborn Viaduct, London EC1A 2DY)

CC: *[Insert name of predecessor]* (incorporated in [•] with registered number [•] and with its registered office at [•])

[Insert date]

Scheme and Orion Trust Deed: Deed of Adherence

We refer to (i) the scheme of arrangement dated 20 November 1996 between inter alia Orion, L&O and their Scheme Creditors (as amended by an amending scheme of arrangement (the "**Amending Scheme**") between the same parties dated [insert date]) (the "**Scheme**") and (ii) the trust deed dated 20 November 1996 between NNUK, Orion and the Trustee (which was acceded to by NNOFIC in place of NNUK pursuant to a deed of adherence dated 25 July 2011) (the "**Orion Trust Deed**"). Terms defined in the Scheme shall have the same meanings when used in this letter, unless given a different meaning in this letter.

[Set out background to proposed succession]. Under paragraph 3.3 of the Amending Scheme, NNOFIC is required to procure that any successor to NNOFIC agrees to be bound by the terms of the Scheme and the Orion Trust Deed.

We confirm that, as from the date of execution of this letter, we shall adhere to, and be bound by, the terms of the Orion Trust Deed and the Scheme and shall observe, perform and comply with all obligations which such documents may impose on NNOFIC, in each case as if we had become a party to the Orion Trust Deed and the Scheme with effect from the Effective Date in place of NNOFIC.

This letter shall be governed by and construed in accordance with English law.

This letter has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by)
Director

[insert name of Successor])
)

)
)
Director