

**PART II  
THE SCHEME**

**SCHEME OF ARRANGEMENT**  
pursuant to section 425 of the  
Companies Act 1985 of England and Wales

between

**THE ORION INSURANCE COMPANY PLC**  
**THE LONDON AND OVERSEAS INSURANCE COMPANY PLC**  
(both in provisional liquidation)

and their

**SCHEME CREDITORS**  
(as defined in the Scheme)

Lovell White Durrant  
65 Holborn Viaduct  
London EC1A 2DY  
Tel: 0171-236 0066  
Ref: B3/JBB/RGNS



## CONTENTS

	<b>PAGE</b>
<b>A: PRELIMINARY</b>	<b>79</b>
1. Definitions	79
2. Interpretation	89
3. Details of the Companies	89
4. The purposes of the Scheme	90
5. Participation in the Scheme	91
<b>B: THE SCHEME</b>	<b>91</b>
6. Application of the Scheme: Computation of Established Liabilities	91
7. Condition Precedent and Effective Date	92
8. Modification of the Scheme	92
9. The Memoranda and Articles of Association of the Companies	93
10. Stay of Proceedings	93
11. Enforcement of Scheme Liabilities	97
12. Effect of acts prohibited by clause 11 and Scheme Creditors receiving benefits after the Effective Date	97
13. Letters of Credit and Security	99
14. Mutual Liabilities and Set-Off	99
15. Current Policies	102
<b>C: PAYMENTS UNDER THE SCHEME</b>	<b>102</b>
16. Payment of Preferential Debts	102
17. Payment of Qualifying ILU Policyholders	103
18. The Companies and NNOFIC	103
19. Determination of Scheme Liabilities	104
20. Payments under the Scheme	104
21. Policyholders', Qualifying ILU Policyholders' and Dual Scheme Creditors' rights against the Companies during the Scheme	104
22. Claims by either Company against the other during the Scheme	105
23. Computation of the Payment Percentage and payments to Scheme Creditors	105
24. Mechanics of payments to Scheme Creditors	107
25. Interest	109
<b>D: THE POLICYHOLDERS PROTECTION BOARD</b>	<b>110</b>
26. The Policyholders Protection Board	110
27. Information to be provided to the Policyholders Protection Board	118
28. The Policyholders Protection Board's rights against the Companies in respect of any assignment to them of the rights of a Protected Policyholder	119
<b>E: CARRYING ON OF INSURANCE BUSINESS AND COMMUTATION OF LIABILITIES</b>	<b>119</b>
29. Restrictions on the Companies and the Directors	119
<b>F: THE SCHEME ADMINISTRATORS</b>	<b>121</b>
30. Qualifications of the Scheme Administrators	121
31. Resignation and removal of the Scheme Administrators	122

32.	<b>General powers and discretions of the Scheme Administrators</b>	123
33.	<b>Specific powers of the Scheme Administrators</b>	123
34.	<b>Duties of the Scheme Administrators</b>	125
35.	<b>Costs, charges and expenses of the Scheme Administrators</b>	125
<b>G:</b>	<b>THE CREDITORS' COMMITTEE</b>	126
36.	<b>Constitution of the Creditors' Committee</b>	126
37.	<b>Membership of the Creditors' Committee</b>	126
38.	<b>Ceasing to be a Committee Member</b>	127
39.	<b>Appointment of Nominated Representatives and Alternates</b>	128
40.	<b>Powers of Nominated Representatives and Alternates</b>	128
41.	<b>Revocation and termination of appointment of Nominated Representatives and Alternates</b>	128
42.	<b>Proceedings of the Creditors' Committee</b>	129
43.	<b>Validation</b>	130
44.	<b>Expenses</b>	130
45.	<b>Functions of the Creditors' Committee</b>	131
46.	<b>Duties of Committee Members</b>	131
<b>H:</b>	<b>THE SCHEME CREDITORS</b>	132
47.	<b>Meetings of Scheme Creditors</b>	132
48.	<b>Notice of Scheme Creditors' meetings</b>	133
49.	<b>Voting at Scheme Creditors' meetings</b>	133
50.	<b>Quorum required for Scheme Creditors' meetings</b>	134
51.	<b>Chairman of Scheme Creditors' meetings</b>	134
52.	<b>Powers of the Scheme Creditors in general meeting</b>	134
<b>I:</b>	<b>DURATION OF THE SCHEME</b>	135
53.	<b>Termination of the Scheme</b>	135
54.	<b>Special Meetings</b>	135
55.	<b>Notice of termination of the Scheme</b>	136
<b>J:</b>	<b>MISCELLANEOUS</b>	136
56.	<b>Indemnity</b>	136
57.	<b>Assignability</b>	136
58.	<b>Costs of the Scheme</b>	136
59.	<b>Notices</b>	137
60.	<b>Governing law and jurisdiction</b>	137
<b>SCHEDULE I:</b>		138
	<b>Draft Special Resolution</b>	138
<b>SCHEDULE II:</b>		142
	<b>Procedure for the appointment of the initial Creditors' Committee</b>	142

## **A: PRELIMINARY**

### **1. Definitions**

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

"Account Balance"	a General Account Balance or a Qualifying Account Balance;
"Act"	the Companies Act 1985;
"Blocked Funds"	the funds of either or both of the Companies which the Provisional Liquidators have been unable to secure because such funds have been blocked by local regulatory authorities or other parties claiming to be interested in the distribution of the funds;
"Cash Assets"	that part of the Scheme Assets (excluding any investments in subsidiaries and monies borrowed from NNOFIC under the provisions of the CPLA) being the aggregate at any time of:  (a) any cash deposits of either or both of the Companies (excluding any cash deposits subject to any security or trust including without limitation any Security Interest or any cash deposits which form part of the Blocked Funds); and  (b) shares or securities convertible into shares, debt securities issued or guaranteed by or on behalf of governments or international organisations or warrants or options to subscribe for any of the foregoing; and  (c) other assets of a similar nature which may be readily realised for cash.
"Claims Submission Period"	the period of six months commencing on the Operative Date;
"Co-Insurer"	any insurer, reinsurer or retrocessionaire (apart from either or both of the Companies);
"Commencement Date"	the date on which the Initial Payment Percentage is set by the Scheme Administrators in accordance with clause 23;
"Committee Member"	has the meaning given to it in clause 36.2;
"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;

"Companies"	L&O and Orion, L&O or Orion individually being referred to as "the", or "a", "Company" or "the relevant Company";
"Court"	the High Court of Justice of England and Wales;
"Court Orders"	the orders of the Court sanctioning the Scheme in respect of each of the Companies, if it is approved at the Scheme Meetings;
"CPLA"	the Agreement dated 20 November 1996, 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 its terms and the terms of the Scheme;
"Creditors' Committee"	the committee established pursuant to clause 36;
"Creditors' Resolution"	a resolution passed by a majority in number representing 75% in value of the Scheme Creditors in each class who, being entitled to do so, vote in person or by proxy at a meeting of Scheme Creditors;
"Current Policy"	an Insurance Contract in respect of which the period of cover (excluding any period of extended discovery or extended claims reporting) has not expired on the Effective Date;
"Default Judgment"	any order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is obtained or entered by virtue only of a Co-Insurer having omitted to take a procedural step or steps in relation to Proceedings brought by a Scheme Creditor, including any such order, judgment, decision or award which has been obtained by virtue of the Co-Insurer having failed;

	(a) to acknowledge the commencement and/or service of the process whereby the Scheme Creditor commenced such Proceedings; or
	(b) to serve a defence, answer or other response to the Scheme Creditor's claim; or
	(c) to comply with any order or direction of the court or other tribunal which was interlocutory, procedural or intermediate in nature and/or with any procedural rules of such court or other tribunal;
"Directors"	the directors of either or both of the Companies from time to time;
"Due"	immediately payable, subject to the provisions of the Scheme;
"Dual Scheme Creditor"	a Scheme Creditor, excluding all Policyholders and all Qualifying ILU Policyholders, in respect of a Dual Scheme Liability;
"Dual Scheme Liability"	a Scheme Liability (including without limitation to Policyholders and Qualifying ILU Policyholders) in respect of which both of the Companies are liable, whether as principal, guarantor, surety or otherwise and in any such case whether jointly, severally or jointly and severally;
"Effective Date"	the date on which, the Scheme having been approved in accordance with clause 7.1, office copies of the Court Orders shall have been delivered to the Registrar of Companies in England for registration in accordance with clause 7.2;
"1845"	Nationale-Nederlanden Internationale Schadeverzekering NV, a company incorporated in the Netherlands;
"Established Liability"	a Scheme Liability or Account Balance becoming established as from time to time determined in accordance with clause 6.3 or arising out of sums advanced by NNOFIC, falling within clauses 18.1 or 18.3;
"Final Settlement"	a binding agreement, evidenced in writing, which of itself determines the obligations of a Co-Insurer under the contract or policy in question (either as to liability or as to quantum);
"General Account"	an account of mutual Scheme Liabilities and Liabilities (excluding mutual Qualifying Liabilities and mutual Qualifying Assets) existing at the Petition Date taken between a Company and a Scheme Creditor;
"General Account Balance"	a balance (after the application from time to time of clause 14.1) on a General Account in favour of a Scheme Creditor;
"Guarantees"	the L&O Guarantee and/or the Orion Guarantee;

"ILU"	the Institute of London Underwriters, a company limited by guarantee, incorporated in England and Wales under the Companies Act 1867 with registered number 19900C;
"ILU Policy"	a contract of insurance, reinsurance or retrocession between either or both of the Companies and a person who is a Qualifying ILU Policyholder evidenced by a policy signed and issued by the ILU;
"Initial Payment Percentage"	the first Payment Percentage which is set by the Scheme Administrators in accordance with clause 23;
"Insolvency Act"	the Insolvency Act 1986;
"Insurance Contract"	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;
"Judgment Rate"	the rate of interest for the time being prescribed by section 17 of the Judgments Act 1838;
"L&O"	The London and Overseas Insurance Company PLC (incorporated in England and Wales under the Companies Acts 1862 to 1890 with registered number 38706);
"L&O Guarantee"	an Agreement and Deed of Trust dated 24 August 1977 between (1) Orion (as trustee for policyholders of Orion as defined therein) and (2) L&O (as guarantor);
"L&O Trust Deed"	the deed between (1) Orion, (2) L&O and (3) the Trustee, dated on the Record Date;
"Letter of Credit"	any effective letter of credit issued to or for the benefit of a Scheme Creditor in respect of a Scheme Liability;
"Liability"	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, 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;
"Memoranda and Articles of Association"	the Memoranda and Articles of Association from time to time of the Companies;
"Mentally Disordered"	in relation to a Committee Member as defined in clause 36.2, the Scheme Administrators or a Nominated Representative or an Alternate as defined in clauses 39.1 and 39.2 respectively,



	where he is a patient within the meaning of Part VII of the Mental Health Act 1983 or section 125(1) of the Mental Health (Scotland) Act 1984 or an order is 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;
"Nat-Ned"	ING Verzekeringen NV, a company incorporated in the Netherlands formerly known as Internationale Nederlanden Verzekeringen NV;
"NNUK"	Nationale-Nederlanden (UK General) Limited (incorporated in England and Wales under the Act with registered number 2514365);
"NNOFIC"	Nationale-Nederlanden Overseas Finance and Investment Company Unlimited (incorporated in England and Wales under the Act with registered number 2634701);
"NNOFIC Loan Agreement"	the Agreement dated 31 January 1994 between (1) Nat-Ned, (2) Orion and (3) L&O pursuant to which Nat-Ned procured that NNOFIC lent money to each of the Companies on trust solely for the purpose of enabling each of the Companies to pay claims against them;
"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 or the CPLA;
"North Star"	North Star Management Services Limited (incorporated in England and Wales under the Act with registered number 2956477);
"Operative Date"	the date on which the Special Resolution is passed in accordance with the terms of the Scheme;
"Original CPLA"	the Agreement dated 30 June 1995 between (1) NNOFIC, (2) Orion, (3) L&O and (4) the ILU pursuant to which NNOFIC has 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 shall terminate on the Effective Date;
"Orion"	The Orion Insurance Company PLC (incorporated in England and Wales under the Companies Act 1929 with registered number 256100);
"Orion Guarantee"	an Agreement and Deed of Trust dated 1 June 1971 between (1) Orion (as guarantor) and (2) L&O (as trustee for policyholders of L&O as defined therein);
"Orion Trust Deed"	the deed between (1) NNUK, (2) Orion and (3) the Trustee, dated on the Record Date;

"Payment Percentage"	subject to clause 18.2, the percentage of every Established Liability that the Scheme Administrators determine, from time to time, should be paid under the Scheme to Scheme Creditors;
"Petition Date"	20 October 1994, being the date of presentation of the Winding-up Petitions;
"Policyholder"	a Scheme Creditor under an Insurance Contract (other than under a Qualifying ILU Policy);
"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;
"PPB Secretary"	the Secretary for the time being of the Policyholders Protection Board;
"Preferential Debt"	any Liability of either or both of the Companies which would have been preferential under section 386 of the Insolvency Act if either or both of the Companies were being wound up and the relevant date under section 387 of the Insolvency Act was the date on which the Provisional Liquidators were appointed;
"Priority Liability"	any Liability of either or both of the Companies if and to the extent that it is: <ul style="list-style-type: none"> <li>(i) a Liability of either or both of the Companies referred to in clause 58 (Costs of the Scheme); or</li> <li>(ii) a Preferential Debt;</li> </ul>
"Proceedings"	any action or other legal proceeding in any jurisdiction whatsoever: <ul style="list-style-type: none"> <li>(a) including: <ul style="list-style-type: none"> <li>(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</li> <li>(ii) any judicial action or proceeding; but</li> </ul> </li> <li>(b) excluding: <ul style="list-style-type: none"> <li>(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</li> </ul> </li> </ul>

- (ii) any other dispute resolution procedure which does not involve submission to the courts;

"Protected Liability"	any Established Liability of a Company in respect of which (and to the extent to which) the Policyholders Protection Board would owe a duty under sections 6 to 8 of the Policyholders Protection Act if 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 accordance with the Scheme (and, for the avoidance of doubt but without limitation, where such a duty would be owed under that Act in respect of a liability towards a "private policyholder" or under the terms of a "United Kingdom policy" as those expressions are respectively defined in that Act, or a liability of some other description, only an Established Liability which is also such a liability shall be capable of qualifying as a Protected Liability);
"Protected Percentage"	in relation to a Protected Liability, that percentage of such Protected Liability which the Policyholders Protection Board would have a duty to pay under sections 6 to 8 of the Policyholders Protection Act;
"Protected Policyholder"	in relation to a Protected Liability, any Scheme Creditor towards whom a Company owes that Protected Liability and who, in addition, is eligible for protection under section 16(9) of the Policyholders Protection Act but excluding any Qualifying ILU Policyholder;
"Provisional Liquidators"	Paul Anthony Brereton Evans and Richard Claude Boys-Stones, partners in the United Kingdom firm of Price Waterhouse, No 1 London Bridge, London SE1 9QL appointed on 21 October 1994 as joint provisional liquidators of the Companies;
"Qualifying Asset"	a Liability to a Company of a Qualifying ILU Policyholder under or in relation to Qualifying Protection;
"Qualifying Account"	an account of mutual Qualifying Liabilities and mutual Qualifying Assets existing at the Petition Date taken between a Company and a Scheme Creditor;
"Qualifying Account Balance"	a balance (after the application from time to time of clause 14.3) on a Qualifying Account in favour of a Qualifying ILU Policyholder;
"Qualifying Established Liability"	a Qualifying Liability or Qualifying Account Balance becoming established as from time to time determined in accordance with clause 6.3.

"Qualifying ILU Policy"	a contract of insurance, reinsurance or retrocession entered into by either or both of the Companies evidenced by a policy signed and issued by the ILU:  (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 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 Scheme;
"Review Date"	31 December of each calendar year commencing on 31 December 1997 or such other date as the Scheme Administrators in consultation with the Creditors' Committee may decide but so that no Review Date shall fall more than 15 months after the previous Review Date;
"Run-off Agreement"	any agreement between the Companies and the Run-off Company under which the Run-off Company agrees to undertake the run-off operations of the Companies;
"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"	this scheme of arrangement in its present form or as modified in accordance with clause 8;
"Scheme Administrators"	those persons whose names are set out in clause 5.2 or such other person or persons as may be appointed in accordance with the provisions of the Scheme;

"Scheme Assets"	the assets of each the Companies, including without limitation monies borrowed by each of the Companies pursuant to the CPLA and subject to its terms;
"Scheme Creditor"	a creditor of either or both of the Companies in respect of a Scheme Liability;
"Scheme Liability"	<p>(a) any Liability of either Company 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) the NNOFIC PSL to which the provisions of clause 18.2 shall apply and any Liability of each of the Companies to NNOFIC arising under the Original CPLA and the CPLA; and</p> <p>(c) an Account Balance;</p> <p>in each case not being a Priority Liability;</p>
"Scheme Meetings"	the meetings of Scheme Creditors convened by each of the Companies with leave of the Court to consider and, if thought fit, to approve the Scheme;
"Scheme Period"	the period from the Effective Date to the Termination Date;
"Security Interest"	any effective mortgage, charge, lien, assignment by way of security, bond or other security interest over any property of either or both of the Companies;
"Special Meetings"	meetings of each class of Scheme Creditor convened by the Scheme Administrators to consider and if thought fit, to pass a Special Resolution;
"Special Resolution"	a resolution in substantially the form set out in Schedule I to the Scheme but with such amendments and modifications as the Scheme Administrators and the Creditors' Committee shall consider appropriate in the light of the circumstances prevailing at the time when the Special Meetings are convened, passed by a majority in number representing 75% in value of each class of Scheme Creditors who, being entitled to do so, vote in person or by proxy at a Special Meeting;
"Statute Barred Liability"	a Liability of either or both of the Companies which is time barred by reference to the relevant limitation period(s) contained in the Limitation Act 1980 or the Foreign Limitation Periods Act 1984, if applicable or any other limitation period to which that obligation or liability may be subject;
"Sterling"	pounds sterling or other lawful currency for the time being of the United Kingdom;

"Substantive Judgment"	<p>in relation to a Common Liability, an order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is:</p> <p>(a) final and conclusive in relation to the merits of a Scheme Creditor's rights against a Co-Insurer under the contract or policy in question, in that the court or other tribunal has established certain facts as proved or as not in dispute, identified the relevant principles of law applicable to such facts and reached its decision by applying those principles to such facts, such that the Co-Insurer's obligations under the contract or policy in question (either as to liability or as to quantum) have been determined;</p> <p>(b) not subject to any pending appeal, re-argument, re-hearing, reconsideration or other similar request and in relation to which the period within which an appeal or request for such other relief could be lodged has expired; and</p> <p>(c) not a Default Judgment;</p>
"Termination Date"	the date on which the Scheme ceases to have effect in accordance with clause 53;
"Trading Day"	a day (other than a Saturday or Sunday) on which the clearing banks in London are open for foreign currency business in relation to the relevant currency to be converted into US Dollars;
"Trust Deeds"	the L&O Trust Deed and the Orion Trust Deed;
"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;
"Trust Fund"	the trust fund held in respect of Orion by Bankers Trust Company, New York, New York subject to a trust agreement dated 13 December 1989;
"US Dollars"	United States Dollars or other lawful currency for the time being of the United States of America;
"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 20 October 1994.

## 2. Interpretation

- 2.1 Clause and part headings and the table of contents are for ease of reference only and shall not affect the interpretation of the Scheme.
- 2.2 In the Scheme, unless inconsistent with the context or expressly otherwise specified:
- (a) references to Parts, clauses and/or Schedules are references to Parts, clauses and/or Schedules of the Scheme;
  - (b) references to (or to any specified provision of) the Scheme shall be construed as references to the Scheme (or that provision) as in force for the time being and as amended in accordance with its terms;
  - (c) the singular includes the plural, the masculine all genders and vice versa;
  - (d) except in relation to the definitions of "Protected Liability" and "Protected Policyholder", references to a person shall be construed as including references to an individual, firms, company, corporation, unincorporated body of persons or any State or any agency thereof; and
  - (e) references to any statute or statutory provision include the same as re-enacted or consolidated.

## 3. Details of the Companies

### 3.1 Orion

Orion was incorporated in England and Wales on 30 April 1931 under the Companies Act 1929 with company number 256100 as a private company limited by shares under the name of Ralli Brothers Insurance Company Limited. On 16 January 1940 its name was changed to The Orion Insurance Company Limited.

- 3.2 On 19 December 1981, its name was changed again to The Orion Insurance Company PLC and Orion was re-registered as a public limited company on 22 December 1981.
- 3.3 The registered office of Orion is at 35 St Thomas Street, London SE1 9SN.
- 3.4 The authorised nominal capital of Orion is £100 million divided into 200 million ordinary shares of 50p each. The amount of issued share capital paid up or credited as paid up is £55 million. The registered holders of the 110,000,000 issued shares in the capital of Orion (all of which are beneficially owned by NNUK) are as follows:

<b>Name of Registered Holder</b>	<b>Number of shares held</b>
NNUK	109,999,998
Nutraco Nominees Limited	2

- 3.5 Orion's ultimate holding company is ING Groep NV a company incorporated in the Netherlands.
- 3.6 Pursuant to the Orion Trust Deed 10.1% of the shares in Orion owned by NNUK will be transferred to the Trustee on the Effective Date. The Trustee holds such shares on trust for

NNUK absolutely subject to their voting rights being exercised in accordance with the wishes of the Scheme Administrators of Orion.

### 3.7 L&O

L&O was incorporated in England and Wales on 25 April 1893 under the Companies Acts 1862 to 1890 with company number 38706 as a private company limited by shares under the name of Hull Underwriters' Association Limited. On 25 July 1956, its name was changed to The London and Overseas Insurance Company Limited.

3.8 On 9 December 1981 L&O's name was changed again to The London and Overseas Insurance Company PLC and L&O was re-registered as a public limited company on 23 December 1981.

3.9 The registered office of L&O is at 35 St Thomas Street, London SE1 9SN.

3.10 The authorised nominal share capital of L&O is £25 million divided into 100,000,000 ordinary shares of 25p each. The amount of issued share capital paid up or credited as paid up is £7 million. The registered holders of the 28,000,000 issued shares in the capital of L&O (all of which are beneficially owned by Orion) are as follows:

Name of Registered Holder	Number of shares held
Orion	27,999,997
NNUK	3

3.11 L&O's ultimate holding company is ING Groep NV a company incorporated in the Netherlands.

3.12 Pursuant to the L&O Trust Deed 10.1% of the shares in L&O owned by Orion will be transferred to the Trustee on the Effective Date. The Trustee holds such shares on trust for Orion absolutely subject to their voting rights being exercised in accordance with the wishes of the Scheme Administrators of L&O.

## 4. The purposes of the Scheme

4.1 The purposes of the Scheme are to enable each Company:

- (a) to pay its Priority Liabilities in full; and
- (b) to pay its Scheme Creditors the same percentage of its Established Liabilities as is paid by the other Company to its Scheme Creditors in respect of its Established Liabilities; and

to provide in consequence for the Cash Assets of each Company to be made available as necessary to the other so as to permit it to pay such percentage, whilst retaining sufficient Scheme Assets (excluding monies borrowed by either of the Companies pursuant to the CPLA) to permit the Companies to make the same percentage payment in due course and in the same manner to Scheme Creditors in respect of whom Scheme Liabilities subsequently become Established Liabilities;

4.2 to pay to Qualifying ILU Policyholders monies borrowed by either of the Companies pursuant to the CPLA in respect of their Qualifying Established Liabilities.



## 5. Participation in the Scheme

### **The Trustee, NNUK, NNOFIC and the Policyholders Protection Board**

- 5.1 The Trustee, NNUK, NNOFIC, the Policyholders Protection Board and the Companies (in their capacity as trustees (and as Scheme Creditors of each other) under the Guarantees) have agreed to be bound by the Scheme and, subject to clause 8, to execute or do, or procure to be executed or done, all documents, acts or things as may be necessary or as the Court may consider desirable to be executed or done by them or on their behalf for the purpose of giving effect to the Scheme. NNUK and Orion will not, in the case respectively of Orion and L&O, pass a resolution for the voluntary winding up of either or both of the Companies or present a petition for the compulsory winding up of either or both of the Companies without the consent of the Scheme Administrators and further agree that upon any sale, transfer, charging or other disposition of their shares in Orion or L&O respectively or of any interest in those shares, NNUK and Orion respectively will procure that the purchaser, transferee, chargee or other party to the disposition also agrees to be bound by the terms of both the Scheme (as shareholder) and the Trust Deeds.

### **The Scheme Administrators**

- 5.2 The first Scheme Administrators shall be Paul Anthony Brereton Evans and Colin Graham Bird, partners in the United Kingdom firm of Price Waterhouse, No 1 London Bridge, London SE1 9QL, each of whom has given and has not withdrawn his consent to act as Scheme Administrator from the Effective Date.

### **The Creditors' Committee**

- 5.3 The Creditors' Committee shall be constituted in the manner set out in Part G and Schedule II.

## **B: THE SCHEME**

### **6. Application of the Scheme: Computation of Established Liabilities**

- 6.1 The ownership of the Scheme Assets, including for the avoidance of doubt the Companies' rights under any contracts of insurance, reinsurance or retrocession, shall not be affected by the provisions of the Scheme. The Scheme Assets shall be applied in accordance with the provisions of the Scheme for the purposes set out in clause 4 and either of the Companies shall transfer any of its Cash Assets to the other to the extent that such other Company would, but for such transfer, have insufficient Cash Assets to pay the Payment Percentage in respect of its Established Liabilities or to pay any Priority Liability.
- 6.2 The Scheme shall apply to all Scheme Liabilities and all Scheme Creditors shall receive the Payment Percentage in relation to any Established Liabilities established in their favour under the provisions of the Scheme. All Priority Liabilities of either or both of the Companies, if any, shall be payable in full on their due dates for payment.
- 6.3 Subject to clauses 10, 11 and 12, an Account Balance, a Scheme Liability or such part of an Account Balance or a Scheme Liability which is not a Statute Barred Liability shall become an Established Liability of the relevant Company to a Scheme Creditor when there has been established (whether (i) by agreement on behalf of the relevant Company or (ii) by Proceedings which are not subject to any appeal, re-argument, re-hearing, reconsideration or other similar

request and in relation to which the period within which an appeal or request for such other relief could be lodged has expired) in relation thereto an obligation or liability of the relevant Company which is Due, being an obligation or liability to pay a fixed sum of money after account has been taken of:

- (a) (whether (i) by agreement on behalf of the relevant Company or (ii) by Proceedings which are not subject to any appeal, re-argument, re-hearing, reconsideration or other similar request) the value of any Letter of Credit or Security Interest held by such Scheme Creditor or on his behalf or any effective trust (other than in respect of the Trust Fund) or interest in the Blocked Funds relating to that Account Balance, Scheme Liability or such part thereof as the case may be ("Blocked Funds Interest") of which he is, whether directly or indirectly, a beneficiary if such Letter of Credit or Security Interest, trust or Blocked Funds Interest was in existence at the Effective Date or is a replacement of such Letter of Credit, Security Interest, trust or Blocked Funds Interest which he is entitled (or claims to be entitled) whether directly or indirectly to enforce in accordance with clause 13.1(a);
- (b) any recoveries already made by that Scheme Creditor in respect of (and which reduce) such Account Balance, Scheme Liability (or such part thereof, as the case may be) whether from the relevant Company or any third party other than, for the avoidance of doubt, the Policyholders Protection Board; and
- (c) the application from time to time of clause 14;

in respect of such Account Balance, Scheme Liability (or such part thereof as the case may be).

6.4 For the purpose of the Scheme, the amount of an Established Liability shall be the amount at which it was from time to time determined in accordance with clause 6.3, notwithstanding any payment which has been made (or is treated as having been made) in respect of that Established Liability.

## **7. Condition Precedent and Effective Date**

- 7.1 The Scheme shall only become effective if it is approved at all the Scheme Meetings in relation to each Company by the majorities of Scheme Creditors prescribed by section 425(2) of the Act.
- 7.2 Subject to clause 7.1, the Scheme shall become effective as soon as the Winding-up Petitions have been dismissed (it having been proved previously in proceedings on the Winding-up Petitions that the Companies are unable to pay their debts) and office copies of the Court Orders have been delivered to the Registrar of Companies for registration in respect of each of the Companies as required by section 425(3) of the Act.

## **8. Modification of the Scheme**

- 8.1 Subject to clauses 8.2 and 8.3, the Companies may consent on behalf of all those concerned to any modification of or addition to the Scheme or any terms or conditions which the Court may think fit to approve or impose at any hearing of the Court to sanction the Scheme in accordance with section 425 of the Act.
- 8.2 Any modification of or addition to the Scheme or any of its terms and conditions which, in the opinion of the Policyholders Protection Board, would or might directly or indirectly adversely

affect the interests of the Policyholders Protection Board in the Scheme shall not take effect unless approved by the Policyholders Protection Board.

- 8.3 Any modification of or addition to the Scheme or any of its terms and conditions which, in the opinion of NNOFIC and/or the ILU as the case may be would or might directly or indirectly adversely affect the interests of NNOFIC and/or the ILU as the case may be solely in relation to the CPLA shall not take effect unless approved by NNOFIC and/or the ILU as the case may be.

9. **The Memoranda and Articles of Association of the Companies**

During the Scheme Period, where there is a conflict between the Scheme and the Memoranda and Articles of Association, the Scheme shall take precedence.

10. **Stay of Proceedings**

- 10.1 Without prejudice to clauses 10.2 and 10.3, no Scheme Creditor shall institute or continue any Proceedings or other judicial, quasi-judicial, administrative or regulatory process whatsoever against a Company or its property to establish the existence or amount of a Scheme Liability unless the Scheme Creditor shall first have given to the relevant Company notice of such Scheme Liability in accordance with clause 59, which notice shall include:

- (a) fully particularised details of how and when the claim arose, (including without limitation and to the extent possible, fully particularised details of the methodology and rationale for its allocation to the relevant coverage), of the contract (whether of insurance, reinsurance, retrocession or otherwise) pursuant to which the claim arose (where applicable), and of the quantum of the claim (if reasonably calculable); and
- (b) legible copies of all contracts, orders, judgments, decisions and awards which are relevant to the claim, and of all other items required to be provided to the Company pursuant to the terms of the contract between the Company and the Scheme Creditor, together with such other supporting information and documentation as the Scheme Administrators shall reasonably require.

- 10.2 Subject to clauses 10.1 and 10.8, no Scheme Creditor shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to clause 10.2), institute or continue any Proceedings or other judicial, quasi-judicial, administrative or regulatory process whatsoever against a Company or its property to establish the existence or amount of a Scheme Liability in relation to which there is a Common Liability until the later of:

- (A) the expiration of a period of six months after having given notice of its claim in the manner prescribed in clause 10.1; and
- (B) the expiration of a period of six months after notice by the Scheme Creditor to the relevant Company in accordance with clause 10.1 of the occurrence of any one or more of the following events:
  - (a) a Substantive Judgment having been obtained in any Proceedings between the Scheme Creditor (or its predecessor in title) and a majority in value of the Co-Insurers in relation to the Common Liability giving rise to such Scheme Liability; or

- (b) such Scheme Creditor (or its predecessor in title) having entered into a Final Settlement with a majority in value of the Co-Insurers in relation to the Common Liability giving rise to such Scheme Liability;

(in the case of each of clauses 10.2(B)(a) and (b), a 'majority in value' being calculated by comparing the aggregate total of all Co-Insurers' proportionate shares in relation to the relevant contract (but leaving out of account those Co-Insurers against whom Proceedings have been stayed or restrained or have resulted in a Default Judgment in the manner described in clause 10.2(B)(c)) with the aggregate of the proportionate shares of the Co-Insurers in respect of whom such Scheme Creditor (or its predecessor in title) has obtained a Substantive Judgment or with whom such Scheme Creditor (or its predecessor in title) has entered into the Final Settlement in question); or

- (c) all Proceedings between such Scheme Creditor (or its predecessor in title) and all Co-Insurers in relation to the same Common Liability giving rise to such Scheme Liability having:

- (i) been stayed or restrained by operation of law (other than by virtue of an agreement between such Scheme Creditor (or its predecessor in title) and all Co-Insurers or any of them); and/or

- (ii) resulted in such Scheme Creditor (or its predecessor in title) entering or obtaining a Default Judgment;

as against all such Co-Insurers.

Upon the expiration of the later of the two six month periods referred to in clause 10.2, a Scheme Creditor shall be entitled to institute or continue Proceedings against the relevant Company or its property in relation to the Scheme Liability in question, save that the Scheme Creditor shall not be entitled to institute or continue such Proceedings to establish the amount of its Scheme Liability unless:

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

10.3 Subject to clauses 10.1 and 10.8, no Scheme Creditor, in relation to whose Scheme Liability there is no Common Liability shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to clause 10.3), institute or continue any Proceedings or other judicial, quasi-judicial, administrative or regulatory process whatsoever against a Company or its property to establish the existence or amount of such Scheme Liability until the expiration of a period of six months after having given notice of its claim in the manner prescribed in clause 10.1.

10.4 For the purposes of clause 10.2 and subject to the Scheme Administrators' discretion conferred by clause 10.5, notice shall take effect only upon delivery by the Scheme Creditor concerned to the relevant Company of:

- (a) in the case of notice of an event under clause 10.2(B)(a) either:
- (i) a legible copy of the Substantive Judgment, certified by the issuing court or other tribunal; or
  - (ii) a legible copy of the Substantive Judgment, certified as accurate by such Scheme Creditor (or its predecessor in title); or
  - (iii) a legible copy of the transcript of the Substantive Judgment, either certified by the court or other tribunal which issued the judgment or certified as accurate by such Scheme Creditor (or its predecessor in title); or
  - (iv) a written certification from such Scheme Creditor's lawyer or attorney (or the lawyer or attorney of its predecessor in title) as to the fact of the Substantive Judgment and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators;
- (b) in the case of notice of an event under clause 10.2(B)(b), a copy of the Final Settlement, signed by or on behalf of all the parties thereto, certified as accurate by such Scheme Creditor (or its predecessor in title), or, where no such document exists or is accessible to the relevant Company, such other documentary evidence as is available, certified as accurate by such Scheme Creditor (or its predecessor in title), of the Final Settlement and its terms, together with legible copies of any orders, judgments, decisions or awards made by a court or other tribunal in proceedings between such Scheme Creditor (or its predecessor in title) and the relevant Co-Insurers relating to the claim in question; and
- (c) in the case of notice of an event under clause 10.2(B)(c) either:
- (i) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified by the issuing court or other tribunal; or
  - (ii) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified as accurate by such Scheme Creditor (or its predecessor in title); or
  - (iii) (where applicable) a legible copy of the transcript of the relevant order, judgment, decision or award, either certified by the issuing court or other tribunal or certified as accurate by such Scheme Creditor (or its predecessor in title); or
  - (iv) a written certification from such Scheme Creditor's lawyer or attorney (or the lawyer or attorney of its predecessor in title) as to the fact of the stay, restraint or Default Judgment in question and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators.

The items set out in paragraphs (i) to (iv) of paragraphs (a) and (c) above are in order of priority, so that (subject to the Scheme Administrators' discretion conferred by clause 10.5) the delivery to a Company by the Scheme Creditor of one of these items will suffice for the purposes of clause 10.4 only if none of the preceding items is available.

- 10.5 Notwithstanding the provisions of clause 10.4, the Scheme Administrators shall have absolute discretion to acknowledge that any of the events referred to in clause 10.2(B) has occurred, even if none of the items referred to in clause 10.4 has been delivered to them, if they consider

it reasonable to do so. In such a case, the second of the six month periods referred to in clause 10.2 shall be deemed to commence as at the date when the Scheme Administrators give such an acknowledgment in writing to the Scheme Creditor concerned, which acknowledgment, to be binding, must refer expressly to clause 10.5.

- 10.6 Subject to clause 10.5, where a Substantive Judgment has been obtained as is referred to in clause 10.2(B)(a) or a Final Settlement has been entered into as is referred to in clause 10.2(B)(b) and following receipt of the documents and information referred to in clauses 10.1 and 10.4 the relevant Company shall make all reasonable efforts to reach agreement with the Scheme Creditor concerned as to such Scheme Creditor's Scheme Liability on the basis of the Substantive Judgment or Final Settlement provided that, in so doing, the Scheme Administrators will take into account:
- (a) the similarity of the interests of the relevant Company and Co-Insurer(s) party to the Substantive Judgment or Final Settlement;
  - (b) any material difference in the defences relied on by or claims made by the Co-Insurer(s) in the relevant Proceedings and the defences or claims which would or might be available to the relevant Company in relation to the Scheme Liability; and
  - (c) the best interests of the Scheme Creditors as a whole.
- 10.7 If and to the extent that a Scheme Creditor obtains against a Company or its property in relation to a Scheme Liability an order, judgment, decision or award of a court or other tribunal in contravention of clauses 10.1, 10.2 or 10.3, such order, judgment, decision or award shall not give rise to an Established Liability in respect of such Scheme Liability and shall be disregarded when determining the liability of the relevant Company in respect of such Scheme Liability.
- 10.8 Nothing in the Scheme shall preclude a Company from either:
- (a) commencing or continuing any Proceedings against a Scheme Creditor; or
  - (b) seeking to be joined into any subsisting Proceedings between a Scheme Creditor and a Co-Insurer as an additional party thereto.

Where a Company commences, continues or is joined into Proceedings against a Scheme Creditor as aforesaid and without prejudice to clause 14 and the Scheme Creditor's right to argue that the Proceedings in question have been commenced or are continuing in an inappropriate forum, nothing in the Scheme shall preclude the Scheme Creditor from asserting and prosecuting against the relevant Company or its property in those Proceedings (whether by way of claim or counterclaim) a Scheme Liability so long as:

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

For the purposes of clause 10.8, a Company shall not be deemed to be continuing any Proceedings which commenced prior to the Effective Date and in which the relevant Company is not actively prosecuting its claims.

- 10.9 Subject to clauses 10.1 and 10.2, in the event that a Scheme Creditor resolves a claim against a Co-Insurer with a Common Liability (in circumstances such that clauses 10.2(B)(a) or 10.2(B)(b) or 10.2(B)(c) apply and a Company decides to litigate, relitigate or cause litigation or relitigation of the claim with the Scheme Creditor rather than agree to the claim becoming a Scheme Liability on the basis of its resolution against a Co-Insurer with a Common Liability) then should the Scheme Creditor prevail against the Company, the Company will, subject to clause 10.10, pay as a cost of the Scheme under clause 58 100% of all reasonable fees and costs incurred by the Scheme Creditor in connection with the litigation or relitigation of that claim, where applicable taxed or otherwise determined pursuant to clause 10.10.
- 10.10 In the event of a dispute over the reasonableness of such fees and costs, the court in which litigation or relitigation took place shall retain (insofar as it may have such jurisdiction) jurisdiction to determine the amount of those fees and costs. A Scheme Creditor shall be deemed to have prevailed if it obtains a judgment or settlement that is substantially commensurate to or more favourable than the judgment (monetary or declaratory) against Co-Insurers with a Common Liability ("previous judgment") or any lower or less favourable settlement offer made by the Scheme Creditor in writing prior to the commencement of relitigation ("previous settlement offer"). For the purposes of clauses 10.9 and 10.10, a judgment or settlement offer will be deemed to be more favourable than a previous judgment or settlement offer if its amount, aggregating both principal and interest (if any) up to the Effective Date, is greater than that of the previous judgment or settlement offer, aggregating both principal and interest (if any) up to the Effective Date.
- 10.11 In relation to an Insurance Contract, nothing in the Scheme 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.

## **11. Enforcement of Scheme Liabilities**

Subject to their rights under clauses 10, 13 and 14, no Scheme Creditor shall be entitled to take any step or proceedings against either or both of the Companies or their property (whether by way of demand, legal proceedings, execution of judgment, arbitration proceedings or otherwise howsoever) in any jurisdiction whatsoever for the purpose of obtaining or securing payment of any Scheme Liability or any part thereof. Nothing in clause 11 shall prevent any Scheme Creditor from taking any step or proceedings against either or both of the Companies to obtain a payment which either or both of the Companies have failed to make in accordance with their obligations under the provisions of the Scheme.

## **12. Effect of acts prohibited by clause 11 and Scheme Creditors receiving benefits after the Effective Date**

- 12.1 Subject to clause 13.1 if after the Effective Date any Scheme Creditor:
- (a) takes any such action as is prohibited by clause 11; or
  - (b) receives any money, property or other benefit or exercises any right in respect of the Scheme Assets in any jurisdiction (except the Blocked Funds and monies borrowed (and received) by either of the Companies under the provisions of the CPLA for the purpose of paying Qualifying Established Liabilities owed to that Scheme Creditor) otherwise than *pari passu* with all Scheme Creditors;

either or both of the Companies as the case may be shall, without prejudice to any other rights which they may have, treat the Scheme Creditor (in any such case) as having received, in respect of his Scheme Liability, an advance payment under clause 23 equal to the amount or gross value of any money, property, benefit or advantage obtained by him to the disadvantage of the Scheme Creditors as a whole as the result of such action; and the extent, if any, to which such Scheme Creditor would otherwise be entitled to any payment under the Scheme shall be reduced accordingly, provided that clause 12.1(b) shall not apply to or in relation to the Policyholders Protection Board.

- 12.2 For the purpose of clause 12.1, the gross value of any such money, property, benefit or advantage shall be determined by the Scheme Administrators and (without limitation) may include such amount as the Scheme Administrators may consider to be appropriate by way of interest or costs, charges or expenses incurred by either or both of the Companies arising in relation thereto.
- 12.3 Subject to clause 13.1(a), in the event that either or both of the Companies have not refused to renew or replace an existing Letter of Credit and a Scheme Creditor has drawn on such Letter of Credit before, on or after the Effective Date, and the Scheme Administrators are unable to reconcile or match all or part of the amounts so drawn ("the unreconciled drawing") with Scheme Liabilities against which the amount drawn may be legitimately applied in accordance with the terms of the trust agreement or other agreement governing the purposes for which drawings from the Letter of Credit out of which the drawing has been made may be applied, or the Scheme Creditor has failed to provide the Scheme Administrators with the information referred to in clause 12.4 on a timely basis then, without prejudice to any other rights which either or both of the Companies may have, including without limitation the right to demand repayment of the unreconciled drawing, such Scheme Creditor shall be deemed to have received a payment under the Scheme equal in value to the unreconciled drawing plus interest from the date of the unreconciled drawing and all costs incurred by either or both of the Companies in investigating the unreconciled drawing, and the extent, if any, to which such Scheme Creditor is entitled to any payment under the Scheme shall be reduced accordingly, subject to the following:
- (a) in the event that, as a result of receiving the information referred to in clause 12.4 or otherwise, the Scheme Administrators are able to reconcile or match the drawings against Scheme Liabilities to which those drawings were legitimately applied, all or part, as applicable, of any payments deemed to have been made pursuant to clause 12.3 shall be disregarded, except to the extent that interest is due on all or part of the drawings because the claims to which they have been applied were not due for payment at the time that the drawings were made;
  - (b) in the event that a judgment is obtained in favour of either or both of the Companies in proceedings brought in relation to unreconciled drawings, the amount of any payments deemed to have been made pursuant to clause 12.3 shall be reduced to the extent that any pecuniary award made by a tribunal or court of competent jurisdiction in relation to the drawings, interest or costs is satisfied by the Scheme Creditor.
- 12.4 Without prejudice to his obligations to provide the Scheme Administrators with such information as they may from time to time request in relation to a Scheme Liability, a Scheme Creditor to whom clause 12.3 applies shall provide the Scheme Administrators with such information as they shall request to enable them to reconcile or match amounts drawn by the Scheme Creditor (including, but not limited to, copies of trust agreements (and their schedules) governing the use of the Letters of Credit against which unreconciled drawings have been made)



together with a full account of the Scheme Liabilities against which the Scheme Creditor has purported to apply that unreconciled drawing.

### **13. Letters of Credit and Security**

#### **13.1 Nothing in the Scheme shall affect the right of any person properly entitled:**

(a) subject to clause 13.2, to enforce, in accordance with its terms and with the terms of any other documentation relating to it (or the transaction or arrangement in connection with which it was given), any Letter of Credit or Security Interest held by him or any effective trust (other than in respect of the Trust Fund) of which he is a beneficiary if such Letter of Credit, Security Interest or trust was in existence at the Effective Date or is a replacement of such Letter of Credit, Security Interest or trust in accordance with clause 29.5; or

(b) subject to clause 26, to claim payment out of the Blocked Funds.

#### **13.2 Where a Security Interest or trust has been or is created or a Letter of Credit has been or is provided after the Petition Date otherwise than to replace (on the same terms and conditions) a Security Interest, trust or Letter of Credit in existence on the Petition Date, such Security Interest, trust or Letter of Credit shall, to the extent that it secures a Scheme Liability, only secure the existing Payment Percentage of such Scheme Liability at the time the Security Interest, trust or Letter of Credit was or is created or provided or, if created or provided before the Commencement Date, the Initial Payment Percentage or, if created or provided at a time during which payment has been suspended under clause 23.6, any revised Payment Percentage set at the end of the period of such suspension.**

#### **13.3 Nothing in the Scheme shall affect the right of either or both of the Companies against any person in respect of any wrongful drawdown or enforcement of any Letter of Credit, Security Interest or trust issued or created in respect of either or both of the Companies.**

### **14. Mutual Liabilities and Set-Off**

14.1 (a) Where a Scheme Creditor has any Liability to a Company (other than a Qualifying Asset), the Scheme Administrators shall take a General Account for each of the Companies in respect of that Scheme Creditor. On each such General Account, sums Due from one party shall be set off against sums Due from the other and a balance obtained. Each such balance shall from time to time be revised as further Liabilities falling within the relevant General Account become Due from the parties to each other.

(b) After any application of clause 14.1(a), if a balance is Due from a Scheme Creditor to a Company ("the First Company") on the Scheme Creditors's General Account with the First Company and a General Account Balance is Due 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 Due to that Scheme Creditor or, if less, the entire amount of the balance Due from that Scheme Creditor on its General Account 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.

- 14.2 In determining whether a General Account Balance shall become or remain an Established Liability in accordance with clause 6.3 or whether any balance on a General Account in favour of either Company shall be paid to the relevant Company, the Scheme Administrators shall from time to time make and have regard to reasonable estimates of any future, contingent or unliquidated Scheme Liabilities (excluding Qualifying Liabilities) of either or both of the Companies to that Scheme Creditor and any future, contingent or unliquidated Liabilities (excluding Qualifying Assets) of that Scheme Creditor to either or both of the Companies and, if appropriate, the Scheme Administrators' reasonable estimate of any amounts that may be transferred under clauses 14.7 and 14.9 in respect of that Scheme Creditor. The Scheme Administrators may revise estimates previously made whenever they think fit by reference to any change of circumstances or to information available or becoming available to them and determine that all or any part of such a balance shall become an Established Liability or, as the case may be, shall be paid to the relevant Company.
- 14.3 (a) Where a Scheme Creditor is a Qualifying ILU Policyholder with any Liability (including without limitation a Qualifying Asset) to a Company, the Scheme Administrators shall take a Qualifying Account for each of the Companies in respect of that Qualifying ILU Policyholder. On each such Qualifying Account, sums Due from one party shall be set off against sums Due from the other and a balance obtained. Each such balance shall from time to time be revised as further Liabilities falling within the relevant Qualifying Account become Due from the parties to each other.
- (b) After any application of clause 14.3(a), if a balance is Due from a Scheme Creditor who is a Qualifying ILU Policyholder to a Company ("the First Company") on the Qualifying ILU Policyholder's Qualifying Account with the First Company and a Qualifying Account Balance is Due to that Qualifying ILU Policyholder 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 Qualifying ILU Policyholder's Qualifying Account with the First Company as the Second Company requires to discharge the Qualifying Account Balance Due to that Qualifying ILU Policyholder or, if less, the entire amount of the balance Due from that Qualifying ILU Policyholder on its Qualifying Account with the First Company ("the Assigned Balance"). The Second Company shall apply the Assigned Balance in discharge, in whole or in part, of such Qualifying Account Balance.
- 14.4 In determining whether a Qualifying Account Balance shall become a Qualifying Established Liability in accordance with clause 6.3 or whether a balance on a Qualifying Account in favour of either Company shall be paid to the relevant Company, the Scheme Administrators shall from time to time make and have regard to reasonable estimates of any future, contingent or unliquidated Qualifying Liabilities of either or both of the Companies to that Qualifying ILU Policyholder and any future, contingent or unliquidated Qualifying Assets of that Qualifying ILU Policyholder to either or both of the Companies and, if appropriate, the Scheme Administrators' reasonable estimate of any amounts that may be transferred under clauses 14.7 and 14.9 in respect of that Qualifying ILU Policyholder. The Scheme Administrators may revise estimates previously made whenever they think fit by reference to any change of circumstances or to information available or becoming available to them and determine that all or any part of such a balance shall become a Qualifying Established Liability or as the case may be, shall be paid to the relevant Company.
- 14.5 Subject to the application of clauses 14.1 and 14.3, where the Scheme Administrators determine, having had regard to clauses 14.2 and 14.4, that no further Qualifying Liabilities would or are likely to fall due from either of the Companies to a Scheme Creditor on either of that Scheme Creditor's Qualifying Accounts and that either there never will be a General

Account Balance in respect of that Scheme Creditor, or if there ever is such a General Account Balance, it is not likely to remain, any Qualifying Assets comprised in any balance Due or becoming Due thereafter to a Company ("a Balance Due") on that Scheme Creditor's Qualifying Account with that Company shall be paid to the relevant Company.

- 14.6 Where the whole or any part of a Balance Due as referred to in clause 14.5 is paid to the relevant Company by the relevant Scheme Creditor and either Company has previously made (and received) a borrowing from NNOFIC in respect of a Qualifying Established Liability to that Scheme Creditor, the relevant Company shall pay to NNOFIC in repayment of such borrowing and in reduction of any Established Liability to NNOFIC which has resulted therefrom a sum equal to the difference between the amount of the Balance Due and the amount which results from applying the Payment Percentage at that time to the Balance Due.

PROVIDED ALWAYS THAT NNOFIC shall not in any circumstances be entitled to be paid by the relevant Company more than the aggregate of the monies borrowed by each of the Companies in relation to Qualifying Established Liabilities to that Scheme Creditor less any payments made in respect of Established Liabilities to NNOFIC in respect of such borrowings.

- 14.7 Subject to the prior application of clause 14.3, where the Scheme Administrators determine, having had regard to clause 14.4, that no further Qualifying Liabilities would or are likely to fall due from either of the Companies to a Scheme Creditor, any balance Due or becoming Due thereafter to either Company on that Scheme Creditor's Qualifying Account with either Company shall, subject to the prior application of clause 14.10(a), to the extent of any General Account Balance Due from either Company to that Scheme Creditor, be transferred into that Scheme Creditor's General Account with the relevant Company and set off under clause 14.1(a) in discharge, in whole or in part, of such General Account Balance. Clauses 14.5 and 14.6 shall apply to any part of a balance on a Qualifying Account remaining after such transfer.

- 14.8 Where any amount is transferred under clause 14.7 ("the Transferred Amount") the Company into whose General Account such amount is transferred shall pay to NNOFIC in repayment of such borrowing as either Company has previously made (and received) from NNOFIC in respect of Qualifying Established Liabilities to that Scheme Creditor and in reduction of any Established Liability to NNOFIC which has resulted therefrom such sum as results from applying the Payment Percentage at the time of the transfer to the Transferred Amount and such further sums as arise from applying any increased Payment Percentage to a sum equal to the Transferred Amount on an increase to the Payment Percentage being made in accordance with the provisions of the Scheme.

PROVIDED ALWAYS THAT NNOFIC shall not in any circumstances be entitled to be paid by the relevant Company more than the aggregate of the monies borrowed (and received) by each of the Companies from NNOFIC in relation to Qualifying Established Liabilities to the Scheme Creditor in respect of whom the Transferred Amount was transferred less any payments made in respect of Established Liabilities to NNOFIC in respect of such borrowings.

- 14.9 Subject to the prior application of clause 14.1, where the Scheme Administrators determine, having had regard to clause 14.2, that no further Scheme Liabilities (other than Qualifying Liabilities) would or are likely to fall due from either of the Companies to a Scheme Creditor, any balance Due or becoming Due thereafter from that Scheme Creditor to either Company on that Scheme Creditor's General Account with either Company shall, subject to the prior application of clause 14.10(b), to the extent of any Qualifying Account Balance Due from either Company to that Scheme Creditor, if the Scheme Administrators so determine, be transferred into that Scheme Creditor's Qualifying Account with the relevant Company and set off under clause 14.3(a) in discharge, in whole or in part, of such Qualifying Account Balance.

- 14.10 (a) If a balance is Due from a Scheme Creditor to a Company ("the First Company") on the Scheme Creditor's Qualifying Account with the First Company and a General Account Balance is Due 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 General Account Balance Due to that Scheme Creditor or, if less, the entire amount of the balance Due from that Scheme Creditor on its Qualifying Account with the First Company.
- (b) If a balance is Due from a Scheme Creditor to a Company ("the First Company") on the Scheme Creditor's General Account with the First Company and a Qualifying Account Balance is Due 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 Qualifying Account Balance Due to that Scheme Creditor or, if less, the entire amount of the balance Due from that Scheme Creditor on its General Account with the First Company.
- 14.11 Where a Scheme Liability has been or is assigned to a person after such person had notice of the existence of the Winding-up Petitions or either or them or if earlier of the 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 Established Liabilities, if any, of either of the Companies to the assignor and the assignee shall be determined as regards any set-off under clause 14 as if the assignment had not occurred.
- 14.12 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.
- 14.13 Clauses 14.1(b), 14.3(b) and 14.10 respectively 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. For the avoidance of doubt, as between the relevant Company and the Policyholders Protection Board the amount of any Protected Liability shall, following any assignment to the Policyholders Protection Board pursuant to clause 26 or otherwise, not be altered by the subsequent application from time to time of clause 14 or clause 23.5(b).

15. **Current Policies**

Notwithstanding the other provisions of the Scheme, any Scheme Liability in relation to that part of the policy period of a Current Policy between the Effective Date and the end of such policy period shall be calculated as if a winding-up order had been made against the Companies on the Effective Date and for the avoidance of doubt any Established Liability in respect of such a Scheme Liability shall not give rise to a Protected Liability.

## **C: PAYMENTS UNDER THE SCHEME**

### **16. Payment of Preferential Debts**

As soon as practicable after the Effective Date, the Companies shall pay all their Preferential Debts and in priority to their Established Liabilities but nothing in this clause shall oblige the Companies to pay any Preferential Debt at any time before the date on which such Preferential Debt would, apart from the Scheme, otherwise have become Due.

### **17. Payment of Qualifying ILU Policyholders**

Subject to the terms of the Scheme and subject also to the terms of the CPLA, a Qualifying ILU Policyholder shall, in respect of a Qualifying Established Liability in its favour, be paid by the relevant Company:

- (a) the Payment Percentage at the date NNOFIC is notified 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.

### **18. The Companies and NNOFIC**

18.1 As of the Effective Date, NNOFIC shall have Established Liabilities in sums equal to the amounts of:

- (a) subject to clause 18.2, the NNOFIC PSL; and
- (b) monies borrowed by each of the Companies pursuant to the Original CPLA.

18.2 The NNOFIC PSL shall be subordinated to the prior payment in full of all other Liabilities of each of the Companies and interest payable thereon pursuant to clauses 23.8(c) and 25.2 other than any Liability the payment of which is subordinated or postponed to the payment in full of any Liability, which is not itself subordinated or postponed in any way, other than so as to rank equally with any other Priority Liability or unsubordinated Liability, of either of the Companies, ("Unsubordinated Liabilities"). For the Scheme Period, the Unsubordinated Liabilities are all Priority Liabilities and Established Liabilities. Accordingly neither of the Companies shall make any payment - in whole or in part - to NNOFIC of any of the Established Liabilities referred to in Clause 18.1(a) until all Unsubordinated Liabilities have been paid in full. The NNOFIC PSL shall without prejudice to its ranking in relation to any other subordinated or postponed Liabilities of either of the Companies, rank pari passu in all respects with any obligations of either of the Companies against the other, which arise in their capacity as guarantors pursuant to the Guarantees, after all unsecured Liabilities of the Companies have been paid in full.

18.3 Subject to clause 18.4, the Companies hereby agree and acknowledge that where monies are borrowed by a Company under the CPLA to enable that Company to discharge a particular Qualifying Established Liability in accordance with clause 17 ("the relevant Qualifying Established Liability"), the relevant Company shall incur to NNOFIC an Established Liability equal to the amount of the relevant Qualifying Established Liability. The relevant Qualifying Established Liability, once incurred, shall remain unchanged save in respect of any borrowing repaid to NNOFIC under the provisions of the CPLA or clause 14.

- 18.4 In respect of any Established Liability incurred by either of the Companies to NNOFIC pursuant to clause 18.3, NNOFIC shall be deemed to have received the amount payable by the relevant Company by way of Payment Percentage under the Scheme as at the date ("the Notification Date") that the relevant Qualifying Established Liability was notified to NNOFIC. NNOFIC shall accordingly only be entitled to receive payments under the Scheme in respect of the relevant Qualifying Established Liability to the extent that the Payment Percentage is increased after the Notification Date and NNOFIC shall not in any circumstances be entitled to be paid by the relevant Company more than the monies borrowed (and received) by that Company pursuant to the CPLA in relation to such Qualifying Established Liability.
- 18.5 In the event of any inconsistency between the provisions of the CPLA and the Scheme, the provisions of the CPLA shall prevail and clause 10 shall have no application to NNOFIC's or the ILU's rights in respect of any breach by either of the Companies of its obligations to NNOFIC or the ILU under the CPLA.

**19. Determination of Scheme Liabilities**

From the Effective Date, the existence and amount of Scheme Liabilities shall, subject to the terms of the Scheme, including without limitation clause 10, continue to be agreed and ascertained in the normal course of business.

**20. Payments under the Scheme**

- 20.1 Neither of the Companies shall make any payments to Scheme Creditors or, for the avoidance of doubt, to Nat-Ned, NNUK or NNOFIC in respect of Scheme Liabilities including without limitation Established Liabilities otherwise than in accordance with the Scheme.
- 20.2 No payments other than payments to Qualifying ILU Policyholders in accordance with clause 17 and the CPLA shall be made to Scheme Creditors before the Commencement Date.

**21. Policyholders, Qualifying ILU Policyholders' and Dual Scheme Creditors' rights against the Companies during the Scheme**

- 21.1 For the period of the Scheme, Policyholders, Qualifying ILU Policyholders and Dual Scheme Creditors shall only be entitled to an Established Liability against, and thus only entitled to receive the Payment Percentage from:
- (a) in the case of Policyholders and Qualifying ILU Policyholders, the Company which is the insurer, reinsurer or retrocessionaire under the terms of the relevant Insurance Contract or Qualifying ILU Policy PROVIDED ALWAYS THAT without derogation from clause 21.1(a) nothing in clause 21.1(a) precludes receipt of the Payment Percentage from both of the Companies to the extent that both Companies are insurers, reinsurers or retrocessionaires under the terms of the relevant Insurance Contract or Qualifying ILU Policy; and
  - (b) in the case of Dual Scheme Creditors, the Company which is agreed by the Scheme Administrators and the relevant Dual Scheme Creditor or failing such agreement, whichever Company the Scheme Administrators decide.
- 21.2 For the period of the Scheme, Policyholders, Qualifying ILU Policyholders and Dual Scheme Creditors shall neither take any step nor procure the taking of any step by either of the Companies (and the Companies shall not take any step on any of their behalves), including

without limitation Proceedings, to enforce any and all rights they may have, including without limitation under or in respect of a Scheme Liability, against:

- (a) in the case of Policyholders and Qualifying ILU Policyholders, the Company which is the guarantor of that Scheme Liability under the Guarantees; and
- (b) in the case of Dual Scheme Creditors, the Company which is agreed by the Scheme Administrators and the relevant Dual Scheme Creditor or failing such agreement, whichever Company the Scheme Administrators decide.

**22. Claims by either Company against the other during the Scheme**

Unless the Scheme Administrators consider it to be in the interests of Scheme Creditors as a whole, neither Company shall, for the period of the Scheme, be entitled to take any steps, including without limitation Proceedings, to enforce any Liability of the other to it. To the extent that, notwithstanding clause 22, either Company receives a payment of (or on account of) the other's Liability to it, the amount of such payment shall constitute part of the Scheme Assets and be dealt with in accordance with the provisions of the Scheme, including without limitation clause 6.1.

**23. Computation of the Payment Percentage and payments to Scheme Creditors**

23.1 The Initial Payment Percentage shall be set by the Scheme Administrators as soon as practicable after the Effective Date, having regard to the matters set out in clauses 23.2 and 23.3.

23.2 As soon as practicable after each Review Date, the Scheme Administrators shall review the Scheme Assets (excluding monies advanced to the Companies pursuant to the CPLA) and the Scheme Liabilities and:

- (a) after providing for the retention by the Companies of such funds as the Scheme Administrators consider prudent for the purpose of enabling each of the Companies to meet the Liabilities referred to in clause 23.3 as and when they fall due;
- (b) after making such provision as the Scheme Administrators consider prudent in respect of Scheme Liabilities having, insofar as they deem necessary, taken actuarial advice; and
- (c) after consultation with the Creditors' Committee;

the Scheme Administrators shall set the Payment Percentage. Unless and until the Scheme Administrators revise the Payment Percentage pursuant to clauses 23.2 or 23.4, the Initial Payment Percentage or the then current Payment Percentage (as the case may be) shall continue to apply.

23.3 To the extent that the Scheme Administrators consider prudent, in determining the Payment Percentage, provision shall be made for Liabilities which may arise in each of the Companies in respect of any Priority Liabilities.

23.4 If at any time the Scheme Administrators conclude from the information available to them that the then existing Payment Percentage is at a level which is not in the best interests of the Scheme Creditors as a whole, the Scheme Administrators shall revise the Payment Percentage in accordance with the procedure set out in clauses 23.2 and 23.3.

- 23.5 (a) If the revised Payment Percentage is lower than any previously existing Payment Percentage neither Company may reclaim from Scheme Creditors to whom payments have been made under clauses 23.7 or 23.8 the difference between the revised Payment Percentage and such previously existing Payment Percentage. The Scheme Administrators shall, however, take into account sums received by Scheme Creditors on the basis of such previously existing Payment Percentage when deciding what, if any, additional amount Scheme Creditors should receive on the basis of the revised Payment Percentage.
- (b) Where in relation to a Scheme Creditor any new Established Liability is lower than a previously existing Established Liability, or an Established Liability as previously determined under the provisions of the Scheme is reduced, the Scheme Administrators and, in the case of a Protected Liability, the Policyholders Protection Board may reclaim from the relevant Scheme Creditor in respect of whose Established Liability payments have been made under clause 23 (or clause 26 as the case may be) the difference between the amount paid by the relevant Company or the Policyholders Protection Board as the case may be and that which would have been so paid had that Established Liability previously been determined at the lower amount.
- 23.6 The Scheme Administrators may at any time suspend for such period (not exceeding six months) as they consider necessary payments to Scheme Creditors under clauses 23.7 and 23.8 until such time as they decide whether or not to revise the Payment Percentage in accordance with clause 23.4.
- 23.7 In respect of each Established Liability, the relevant Company shall, subject to clauses 12.1, 12.3, 14, 20.2 and 23.6, as soon as reasonably practicable, but in any event within 90 days after the Commencement Date or, if later, 90 days after the date on which it becomes an Established Liability, pay to the Scheme Creditor concerned an amount equal to the then current Payment Percentage of such Established Liability.
- 23.8 If the Payment Percentage is increased under clauses 23.2 or 23.4, there shall, as soon as reasonably practicable but in any event within 90 days following each such increase, be paid to the Scheme Creditor concerned:
- (a) an amount ("the increased amount") equal to the difference between:
- (i) the Payment Percentage (as increased) of his Established Liability; and
- (ii) the amount of such Established Liability which has previously been discharged by the relevant Company or treated as having been discharged under clause 12; provided that:
- (aa) any previous Compensatory Payment in accordance with clause 23.8(b) shall not be taken into account for this purpose; and
- (bb) no such payment shall be made in any case unless and until the Payment Percentage (as increased) of such Established Liability exceeds the amount of such Established Liability which has been or is so treated as having been discharged under clause 12;
- (b) a "Compensatory Payment", calculated by reference to a notional rate of interest applied to a notional principal amount equivalent to the increased amount paid pursuant to clause 23.8(a) and in accordance with clause 23.9.



PROVIDED ALWAYS THAT neither Company shall be liable to make any payment to a Scheme Creditor under clauses 23.8(a) or 23.8(b) in respect of any Established Liability, to the extent that such payment would, when aggregated with all payments previously made to that Scheme Creditor under clause 23 in respect of that Established Liability and all amounts which the Scheme Creditor shall be treated under clause 12 as having received, exceed such Established Liability; and

(c) if and to the extent that, by virtue of the proviso to clauses 23.8(a) and (b), a Scheme Creditor does not receive a payment to which he would otherwise be entitled or receives a smaller amount than the amount to which he would otherwise be entitled, such Scheme Creditor shall receive interest on the amount of such Established Liability on such basis and at such rate and for such period as shall be determined from time to time by the Scheme Administrators.

23.9 Compensatory Payments shall be made under clause 23.8(b) in respect of the period from the date on which a payment under clause 23.7 is made until the date of payment of the increased amount, and shall be calculated on a daily basis and on the basis of a 365-day year and at a rate to be determined from time to time by the Scheme Administrators.

23.10 The date upon which a payment is made shall be ascertained as follows:

- (a) in the case of a payment by cheque, the date on which the cheque in question is posted to the relevant Scheme Creditor or person authorised to receive payment on his behalf (as the case may be); or
- (b) in the case of funds transferred by telegraphic transfer, the date on which the funds are so transferred; or
- (c) in the case of a payment made in accordance with clause 24.4(c), such date as the Scheme Administrators (or the Policyholders Protection Board as the case may be) shall reasonably determine.

#### 24. **Mechanics of payments to Scheme Creditors**

24.1 Each payment by a Company shall be made in the currency of its relevant Established Liability, or the currency mutually agreed by that Company and the Scheme Creditor to whom that Established Liability was incurred or, if that currency has at the date of payment ceased to be legal tender, in an equivalent amount of the replacement currency (rounded, if applicable, up or down as the Scheme Administrators deem appropriate to the nearest whole unit in the replacement currency). The term "replacement currency" includes, with effect from the date on which it replaces as legal tender the original currency of any Scheme Liability, the single currency adopted by participating Member States in furtherance of economic and monetary union under Article 109 of the Treaty on European Union. The conversion rate to be applied in determining the amount of any payment in a replacement currency shall be that prescribed by law for converting the relevant original currency into that replacement currency or, if no such rate is prescribed by law, such conversion rate as may be determined by the Scheme Administrators.

24.2 The Scheme Administrators shall pay such sums to a Qualifying ILU Policyholder as are referred to in clause 17(b) in accordance with clause 24 (other than clause 24.6).

24.3 Where there are Liabilities from and to a Company in different currencies (including without limitation a replacement currency as referred to in clause 24.1) which are subject to set-off

under clause 14, each Liability shall be converted into US Dollars or such other currency as the Scheme Administrators may determine at whichever of the following rates is applicable:

- (a) where a rate is specified in the Insurance Contract or any other agreement between the relevant Company and the relevant Scheme Creditor, the rate of exchange so specified; or
- (b) where no rate is specified, the rate of exchange available in the London Foreign Exchange Market for the purchase of the currency in question, calculated by reference to the mid-market rate as published in the Financial Times at the date of the determination of the set-off or, if that is not a business day in London, on the preceding business day or, if no such rate is published, such rate as may be determined by the Scheme Administrators; or
- (c) where that currency has ceased to be legal tender and been replaced by another currency, the rate prescribed by law for converting the relevant original currency into that replacement currency or, if no such rate is prescribed by law, such rate as may be determined by the Scheme Administrators.

24.4 All payments may be made, in the absolute discretion of the Scheme Administrators (or the Policyholders Protection Board in the case of payments made by it):

- (a) by cheque in favour of the Scheme Creditor or as he may direct and sent through the post at the risk of the Scheme Creditor to the last known address of the Scheme Creditor or to such other address as the Scheme Creditor may from time to time notify in writing to the Companies (or as the case may be the Policyholders Protection Board) provided that, if no address for the Scheme Creditor is known, such payments may be sent through the post at the risk of the Scheme Creditor to the last known address of the insurance broker through whom the relevant contract or policy was effected or to such other address as such broker may from time to time notify to either or both of the Companies in writing; or
- (b) at the option of either or both of the Companies (or as the case may be that of the Policyholders Protection Board) (but only if requested by the Scheme Creditor) and at the expense of the Scheme Creditor (which expense may be deducted from the amount of the relevant payment) by telegraphic transfer to such bank account as the Scheme Creditor may from time to time notify to either or both of the Companies (or as the case may be the Policyholders Protection Board); or
- (c) in such other manner as the Scheme Administrators may from time to time determine (or in respect of payments by the Policyholders Protection Board as may be determined from time to time by the Policyholders Protection Board in its absolute discretion) and in respect of the payment of amounts referred to in clause 17(b) in such other manner as the Scheme Administrators, NNOFIC and the ILU may from time to time agree;

and the Scheme Administrators or as the case may be the Policyholders Protection Board may in connection with the making of any payment under the Scheme require the Scheme Creditor or broker to execute such forms of discharge, receipts or other documents as they may from time to time determine.

24.5 Any payment made under the Scheme to a Scheme Creditor or broker which is uncashed or otherwise unclaimed after the date on which the payment was posted to the Scheme Creditor or broker (as the case may be) or otherwise made pursuant to clause 24.4(c) shall upon the

expiration of six years from the posting of the cheque as referred to in clause 24.5 or the making of the payment in such other manner as the Scheme Administrators determine pursuant to clause 24.4(c) be deemed by the relevant Company never to have been made and the relevant Scheme Creditor's right to such payment shall be extinguished.

24.6 The Scheme Administrators may determine that any payment under the Scheme (when aggregated with any amount to be paid to the Scheme Creditor under Part D) of less than a certain amount (not being greater than £50 or its equivalent in any other currency from time to time or such greater amount as the Scheme Administrators may reasonably determine from time to time (the "de minimis amount")) shall not be sent to a Scheme Creditor because of the cost involved in making or receiving such a payment. Any de minimis amount so withheld shall be paid to that Scheme Creditor upon the earlier of:

- (a) demand by that Scheme Creditor; or
- (b) such time as the aggregate of sums Due to the relevant Scheme Creditor under the Scheme exceeds the de minimis amount; or
- (c) termination of the Scheme.

24.7 Without prejudice to clause 24.4 and subject to clause 26.12 payment by a Company (or the Policyholders Protection Board, as the case may be) in respect of an Established Liability or a Protected Liability:

- (a) to a Scheme Creditor or a Protected Policyholder; or
- (b) where two or more persons comprise a Scheme Creditor or a Protected Policyholder to any one such person; or
- (c) without prejudice to clause 26.14, to any person who is authorised to act on behalf of the Scheme Creditor or Protected Policyholder (whether actually or ostensibly); or
- (d) otherwise pursuant to clause 24.4;

shall, for all purposes and to the extent of such payment, constitute a valid discharge of the relevant Company (or the Policyholders Protection Board, as the case may be) in respect of a particular Established Liability or Protected Liability. For the foregoing purposes, payment of any cheque by the bank on which it is drawn shall be satisfaction of the obligation to pay the amount in which it was drawn; and receipt by the receiving bank of the amount of such telegraphic transfer as referred to in clause 24.4(b) shall be satisfaction of the obligation to pay the amount transferred.

## 25. Interest

25.1 Any interest which is payable and which has accrued up to and including the Effective Date shall be added to the principal amount of the relevant Scheme Liability. Except as provided in clauses 23.8(c) and 25.2, neither Company shall be liable in respect of any interest in relation to a Scheme Liability to the extent that such interest arises in respect of any period after the Effective Date pursuant to any contract, policy, judgment or otherwise.

25.2 Notwithstanding clause 25.1, if all of the Companies' Priority Liabilities and Established Liabilities after the Effective Date shall have been paid in full (including interest payable in accordance with clause 23.8(c) but excluding such interest as is referred to in clause 25.1) the

relevant Company shall pay additional interest on each of its Established Liabilities in accordance with clause 25.2. The amount of such interest shall be an amount equal to 15 per cent per annum, or if higher the Judgment Rate, on the unpaid amount of each Established Liability from time to time (such interest to be calculated on a daily basis from the later of the Effective Date and the date on which such Liability became an Established Liability up to the date of payment of such additional interest), provided that the amount of such additional interest shall not exceed the remaining Scheme Assets (excluding monies advanced to the Companies pursuant to the CPLA) after adequate provision has been made for all other Liabilities including without limitation Priority Liabilities of the Companies (otherwise than in respect of share capital) in existence at the time of payment of such additional interest. To the extent that any such additional interest payable in respect of each Established Liability under clause 25.2 exceeds the remaining Scheme Assets (excluding monies advanced to the Companies pursuant to the CPLA), it shall be reduced and paid rateably between each of the Companies' Established Liabilities.

## **D: THE POLICYHOLDERS PROTECTION BOARD**

### **26. The Policyholders Protection Board**

26.1 Subject to the following provisions of clause 26, the Policyholders Protection Board shall pay to each Protected Policyholder in respect of each Protected Liability owed to him an amount equal to:

- (a) the Protected Percentage of that Protected Liability, less
- (b) the aggregate of:
  - (i) whichever is the greater of:
    - (aa) the Payment Percentage of that Protected Liability already paid (or treated as having been paid) by the Company concerned; and
    - (bb) the Payment Percentage of that Protected Liability in force at the time when the Policyholders Protection Board makes its payment;
  - (ii) the amount of any Compensatory Payment already paid or payable at that time in respect of that Protected Liability under clause 23.8(b);
  - (iii) the amount of any interest already paid or payable at that time in respect of that Protected Liability under clauses 23.8(c) and 25.1 (save to the extent that it arises under the terms of the relevant contract or policy); and
  - (iv) the amount of any payment previously made by the Policyholders Protection Board pursuant to section 15 or any other provision of the Policyholders Protection Act or pursuant to clause 26.15 in respect of that Protected Liability.

26.2 Any obligation of the Policyholders Protection Board to make a payment under clause 26.1 in respect of a Protected Liability shall:

- (a) if the Payment Percentage is in excess of zero, and save during any period when payments in relation to the Companies have been suspended under clause 23.6 (other than where the Protected Liability in question is one in respect of which the period for

payment by the relevant Company under clauses 23.7 or 23.8 shall have expired on or prior to the date on which payments are suspended without payment having been made by that Company) be conditional on payment by that Company of all amounts payable in respect of that Protected Liability under clauses 23.7 and 23.8 before the time when the payment by the Policyholders Protection Board falls, or would but for clause 26.2 fall to be made; and

- (b) unless the Policyholders Protection Board otherwise consents in any case, be conditional on the Protected Policyholder being entitled and able to assign to the Policyholders Protection Board all the rights and claims mentioned in clause 26.5 as originally arising and free from any lien, charge, prior assignment, equity, encumbrance or other third party right.

26.3 Payment under clause 26.1 in respect of a Protected Liability shall be made as soon as reasonably practicable following the later of:

- (a) the date on which the relevant Company notifies the Policyholders Protection Board that the Liability is an Established Liability;
- (b) the date on which the Policyholders Protection Board agrees or it is otherwise determined (so as to bind the Policyholders Protection Board) that the Established Liability is a Protected Liability;
- (c) if there is a Payment Percentage in excess of zero, the date of payment by the relevant Company of all amounts payable in respect of the Protected Liability under clauses 23.7 or 23.8;
- (d) if there is no Payment Percentage or if the Payment Percentage is zero, the date which is sixty days after the later of clauses 26.3(a) and (b); and
- (e) in any case where it appears to the Policyholders Protection Board that the funds available to it fall short of what it requires to make the payment in question and to meet its responsibilities under or pursuant to the Policyholders Protection Act (as in force at any time) or otherwise, the date on which it appears to the Policyholders Protection Board that its funds are adequate for those purposes;

and if at any time payments have been suspended under clause 23.6, such payment under clause 26.1 in respect of a Protected Liability (other than a Protected Liability in respect of which the period for payment under clauses 23.7 or 23.8 shall have expired on or prior to the date on which payments are suspended without payment having been made by the relevant Company) shall be made as soon as reasonably practicable following whichever is the later of the dates referred to in clause 26.3(a), (b), (d) or (e) in relation to the Liability in question.

26.4 Any obligation of the Policyholders Protection Board to a Protected Policyholder under clause 26 in respect of a Protected Liability shall be subject to the same conditions, limitations, qualifications and other provisions (*mutatis mutandis*) contained or referred to in, or capable of being imposed under, sections 9, 13(1) to (3) and 14 of the Policyholders Protection Act (and for the avoidance of doubt, so that for the purpose of section 13(3) in its application to the Scheme the Policyholders Protection Board shall be entitled to have regard both to its obligations under the Scheme and to its responsibilities otherwise than under the Scheme) as the duty which the Policyholders Protection Board would have had under sections 6 to 8 of that Act to secure the making of a payment to any policyholder or any other person in respect of that

Protected Liability if the relevant Company were a company in liquidation (as defined in the Policyholders Protection Act).

- 26.5 Immediately on any payment being made by the Policyholders Protection Board to a Protected Policyholder pursuant to clause 26.1 or clause 26.15 in respect of a Protected Liability, there shall automatically be assigned to the Policyholders Protection Board absolutely, without any further act or document:
- (a) all rights of the Protected Policyholder in respect of that Protected Liability (including in respect of the debt or claim constituted by or arising out of or relating to that Protected Liability) under or in respect of the contract or policy relating to that Protected Liability and the Scheme;
  - (b) any rights and claims the Protected Policyholder may have in respect of payments made by him by way of premiums under the contract or policy relating to that Protected Liability; and
  - (c) any rights and claims such Protected Policyholder may have against any other persons in respect of any event giving rise to that Protected Liability (other than another insurer which has insured the Protected Policyholder in respect of the same event but without prejudice to the application of clause 26.5 in relation to any other Protected Liability of either Company to which this event has also given rise), or by reference to or in connection with the contract or policy relating to that Protected Liability;

whether, in any such case, those rights or claims arise under or in respect of the contract or policy relating to that Protected Liability, under or in respect of the Scheme, by virtue of any trust or enactment (primary or subordinate) or otherwise howsoever, including without limitation and, subject to clause 21.2, by virtue of the Guarantees and whatever the nature of those rights or claims. If any question arises as to the identification of any Protected Liability, and accordingly as to whether that Protected Liability is or is not the subject of an assignment to the Policyholders Protection Board under clause 26.5, a certificate by the Policyholders Protection Board that it has made a payment in respect of that Liability shall be binding and conclusive on all persons for all purposes. Without prejudice to the provisions of clause 26.9, the Policyholders Protection Board shall provide to the relevant Company such information relating to the date and amount of payments it makes to Protected Policyholders in respect of Protected Liabilities of that Company as that Company may from time to time reasonably request.

- 26.6 Following an assignment pursuant to clause 26.5 and without prejudice to the generality of its terms, the Policyholders Protection Board shall have a right to payment by the relevant Company, in accordance with the terms of the Scheme, of all sums subsequently due or payable in respect of the Protected Liability to which the assignment relates or in respect of any other rights and claims so assigned, whether those sums are due and payable under the Scheme or under or in respect of the contract or policy to which the Protected Liability relates, and accordingly the receipt of the Policyholders Protection Board shall constitute a valid discharge of the relevant Company in respect of such sums; and such Company shall not remain under or incur any Liability with respect to any Protected Policyholder by reason of having paid any sums to the Policyholders Protection Board.
- 26.7 Without prejudice to clause 26.5, a Protected Policyholder to whom a payment is made pursuant to clause 26.1 shall do such acts and things and execute such deeds and documents, and in particular such forms of assignment, transfer or assurance, as the Policyholders Protection Board may from time to time request to vest in it fully and effectively all rights and claims of

that Protected Policyholder against the relevant Company or other persons under or in respect of the Protected Liability to which such payment relates, or to perfect or evidence the vesting in it of the same. Each Protected Policyholder hereby irrevocably and unconditionally appoints the chairman of the Policyholders Protection Board for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such acts and things and execute such deeds and documents as may be required to give effect to clause 26.7, if such Protected Policyholder fails to comply promptly with his obligations hereunder. Without prejudice to clause 26.5, if and to the extent that any interest in any such right or claim of a Protected Policyholder as falls to be assigned to the Policyholders Protection Board under that clause upon any payment being made does not for any reason immediately vest fully and effectively in the Policyholders Protection Board, the same shall be held by the Protected Policyholder on trust absolutely for the Policyholders Protection Board until it does so vest (whether pursuant to that clause or the preceding provisions of this clause or otherwise).

- 26.8 Without prejudice to clause 26.5, any obligation of the Policyholders Protection Board to make a payment to a Protected Policyholder under clause 26.1 in respect of a Protected Liability shall, if the Policyholders Protection Board so elects, be conditional on there first being assigned to it in such form as it may request, all such rights and claims as are mentioned in clauses 26.5(a) to 26.5(c) (but as if the references there to Protected Policyholder or to Protected Liability were references to the Protected Policyholder or Protected Liability in respect of whom or which the election is made) or such of those rights and claims as the Policyholders Protection Board may determine. Where any obligation is so conditional, clause 26.3 shall apply as if after clause 26.3(e) there were added the words "and (f) the date when the condition imposed under clause 26.8 is satisfied"; and the word "and" were deleted from the end of clause 26.3(d); and the reference to the later of the dates referred to in clauses 26.3(a), (b), (d) or (e) were deleted and replaced by a reference to the later of the dates referred to in clauses 26.3(a), (b), (d), (e) or (f).
- 26.9 Clause 26.5 shall be deemed to constitute for all purposes express notice in writing to the Companies of all assignments effected pursuant to its provisions and relating to Liabilities of either or both of the Companies.
- 26.10 The Policyholders Protection Board shall not be liable in respect of any interest in relation to a Scheme Liability to the extent that it is payable in respect of any period after the Effective Date.
- 26.11 References in clause 26 to the Policyholders Protection Board paying or making payment of any sum include references to the Policyholders Protection Board securing the payment of that sum; and references to the securing of payment in sections 9, 13 and 14 of the Policyholders Protection Act, as they apply by virtue of clause 26.4 to the obligations of the Policyholders Protection Board under clause 26, shall be construed accordingly.
- 26.12 A payment by the Policyholders Protection Board under the Scheme shall not operate to reduce or discharge any Liability of a Company or any part of such Liability.
- 26.13 The following provisions apply to any sum payable by the Policyholders Protection Board in a currency other than Sterling:
- (a) any sum payable in respect of any Protected Liability by the Policyholders Protection Board under clause 26.1 in a currency other than Sterling (the "Non-Sterling Amount") shall not exceed its Capped Sterling Equivalent;
  - (b) for the purpose of clause 26.13(a), the "Capped Sterling Equivalent" in relation to any Non-Sterling Amount means the amount in the currency in which such Non-Sterling

Amount is denominated, determined as follows: convert the equivalent of the Non-Sterling Amount in Sterling at the Specified Exchange Rate into the currency in which the Non-Sterling Amount is denominated at the exchange rate prevailing on the business day ("the Relevant Date") falling immediately prior to the date of payment under clause 26.1 in respect of the relevant Protected Liability;

- (c) for the purpose of clause 26.13:
  - (i) the Specified Exchange Rate shall be that rate which is 12.5% below the exchange rate into Sterling for the currency in which the Non-Sterling Amount is denominated prevailing on the Effective Date;
  - (ii) the exchange rate prevailing on the Effective Date shall be taken, in relation to any currency, as the average daily exchange rate over the period three months prior to the Effective Date taken from the rates published on each Trading Day during that period in The Financial Times or, if on any such Trading Day no such rate is published in The Financial Times in respect of that currency, as the mid-market rate of that currency on such date quoted by Barclays Bank PLC, or if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and the Policyholders Protection Board; and
  - (iii) the exchange rate prevailing on the Relevant Date shall be taken, in relation to any currency, as the exchange rate for that date published in The Financial Times or, if no such rate is published in The Financial Times for that date in respect of that currency, as the mid-market rate for that currency on the Relevant Date quoted by Barclays Bank PLC, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and the Policyholders Protection Board.
- (d) Subject to clause 26.13(e), nothing in the Scheme shall impose any greater obligation on the Policyholders Protection Board in respect of any Scheme Creditor or Liability of a Company than the Policyholders Protection Board would have had (and neither such Scheme Creditor nor such Company shall have any different or greater relief or remedy against the Policyholders Protection Board than he or it would have had) if such Company had been a company in liquidation (as defined in the Policyholders Protection Act), the beginning of the liquidation (as so defined) had been the Record Date, and the payment to be made by the Policyholders Protection Board in respect of each Protected Liability had been reduced by the amounts referred to in clause 26.1(b); and no right of, or condition imposed by, the Policyholders Protection Board under the Scheme in relation to any Scheme Creditor shall be limited or restricted by virtue of any obligation of the Policyholders Protection Board to that Scheme Creditor under the Scheme being less than the obligation which the Policyholders Protection Board would have had to him if such Company had been a company in liquidation (as so defined).
- (e) For the purposes of clause 26.13(d) it shall be assumed:
  - (i) that the currency of payment by the Policyholders Protection Board in respect of any Liability (and where that currency is not Sterling its rate of exchange) would be the same on a liquidation of a Company as under the Scheme (including for these purposes the exchange rate limit set out in clause 26.13(a) to 26.13(c)); and



- (ii) that the amount of any liability of such Company in liquidation would, in the case of an Established Liability, be the amount of that Established Liability.

26.14 Where, in relation to any policy or contract, the Policyholders Protection Board would be required or entitled under the Policyholders Protection Act to make a payment to any person other than, or instead of, the Protected Policyholder, if a Company was in liquidation, the Policyholders Protection Board may similarly perform any obligation to make a payment under the Scheme in relation to that policy or contract and references to a Protected Policyholder shall be construed accordingly.

26.15 At any time prior to its payment obligation in relation to a Protected Policyholder under clause 26.1 having arisen, the Policyholders Protection Board may elect to make a payment to or on behalf of a Protected Policyholder in respect of a Protected Liability on such terms (including terms requiring repayment and terms as to assignment of rights in respect of the Protected Liability) and on such conditions as the Policyholders Protection Board thinks fit.

26.16 The Policyholders Protection Board shall not have an obligation to make a payment in respect of an Established Liability:

- (a) to any subsidiary or parent of a Company; or
- (b) if it appears to the Policyholders Protection Board that such a payment would result in a benefit being conferred on either:
  - (i) any person who was a member of a Company at the Petition Date; or
  - (ii) any person who had responsibility for or who may have profited from the circumstances giving rise to the financial difficulties of either or both of the Companies;

provided that there shall be disregarded for the purposes of paragraphs (i) and (ii) above any benefit which might accrue to such persons therein mentioned who are policyholders of a Company in their capacity as such.

26.17 For the avoidance of doubt (and without prejudice to clause 6.3), rights and claims to which clause 26.5 applies include all rights and claims which a Protected Policyholder may have in respect of a Protected Liability to any payment out of or interest in or otherwise by virtue of, any trust fund or other security (including without limitation the Blocked Funds).

26.18 Without prejudice to any other rights and remedies which the Policyholders Protection Board may have, any person receiving a payment under clause 26.1 or 26.15 in respect of a Liability who has knowingly provided false, misleading or incomplete information to the Policyholders Protection Board in support of an application for that payment shall be bound on demand to repay to the Policyholders Protection Board all such amounts as have been paid by the Policyholders Protection Board in respect of that Liability, together with interest at 15 per cent per annum (or, if higher, the Judgment Rate) (or such other rate as a court of competent jurisdiction may specify for the purpose of clause 26.18) calculated on a daily basis from the date of payment to the date of repayment.

26.19 For the avoidance of doubt, the Policyholders Protection Board, without prejudice to clauses 26.4, 26.13(d) and 26.13(e), 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 (including without limitation the Blocked Funds) (or any other amount falling to be taken into account under clause 6.3) being taken into account in the calculation of any Established Liability than it would have had if that amount (as well as the amounts referred to in clause 26.1(b)) had been treated under section 14(1) of the Policyholders Protection Act (taken together with section 14(7), if applicable) as reducing any sum which would have been payable by it in respect of the Liability concerned if the relevant Company had been a company in liquidation (as defined in that Act) and the beginning of the liquidation (as so defined) had been on the Record Date (but making the assumption in clause 26.13(e)(i));
- (b) any greater obligation under the Scheme in respect of any Scheme Creditor or Liability by virtue of any such amount (as is described in clause 26.19(a) above) not being taken into account, in the calculation of any Established Liability, 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 clause 26.19(a)),

and any amount which the Policyholders Protection Board would otherwise be obliged to pay under clause 26.1 shall be reduced accordingly; provided that the Policyholders Protection Board may in any case falling within clause 26.19(b) above elect at its discretion to pay the whole or any part of any such reduction. Any such payment by it shall be without prejudice to its rights under any other provision of this Scheme including, in particular, clauses 26.5, 26.16 and 26.20 (and for the purposes of clause 26.5 any such payment shall be treated as a payment pursuant to clause 26.1) and may be made subject to such terms and conditions as the Policyholders Protection Board thinks fit.

26.20 Without prejudice to clauses 26.4, 26.13(d), 26.13(e) and 26.19:

- (a) 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 (including without limitation the Blocked Funds) in respect of or referable to that Liability is not taken into account; and
- (b) either Company receives or becomes entitled to receive any sum in respect of or referable to that Liability (whether or not such sum forms part of a greater amount the balance of which is not referable to that Liability) from such trust fund or such other security,

that Company shall, as soon as is reasonably practicable after receipt, pay the sum to the Policyholders Protection Board; and pending such payment shall hold that sum (or as the case may be, its entitlement to receive the same) on trust absolutely for the Policyholders Protection Board.

26.21 For the avoidance of doubt:

- (a) references in clauses 26.19 and 26.20 to any amount which falls to be taken into account in the calculation of any Established Liability include references to any such amount whether paid or payable; and
- (b) nothing in the Scheme shall require the Policyholders Protection Board to make any payment to a Protected Policyholder if he does not wish to claim it.

- 26.22 If 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, the Policyholders Protection Board may elect to terminate the provision of assistance by it under the terms of the Scheme in relation to the relevant Company and its Policyholders.
- 26.23 If the Policyholders Protection Board so elects in relation to a Company:
- (a) with effect from the date of an election pursuant to clause 26.22, the obligations of the Policyholders Protection Board under or in relation to the Scheme, including (but without limitation) clause 26, shall cease in relation to that Company and its Policyholders;
  - (b) nothing in the Scheme shall prevent any Established Liability of that Company from being or becoming a liability of that Company in liquidation ("a Statutory Liability") for the purposes of any duty which the Policyholders Protection Board may owe under sections 6 to 8 of the Policyholders Protection Act (as then in force), provided that any amount paid or becoming payable under the Scheme in respect of such a Statutory Liability before the Policyholders Protection Board makes a payment in respect of it pursuant to any such duty shall, for the purposes of section 14 of the Policyholders Protection Act, be treated as a payment to the Policyholder concerned which is referable to that Statutory Liability and as reducing any sum payable by the Policyholders Protection Board under the Policyholders Protection Act by reference to such Statutory Liability;
  - (c) following any assignment by a Policyholder to the Policyholders Protection Board required by the Policyholders Protection Board as a condition of making a payment pursuant to any such duty as is referred to in clause 26.23(b), being an assignment of or including rights in respect of an Established Liability, clauses 26.6 and 28 shall continue to apply as if the references to Protected Liability and Protected Policyholder were references to that Established Liability and that Policyholder respectively and as if, in the case of clause 26.6, the reference to an assignment pursuant to clause 26.5 were a reference to the assignment so required by the Policyholders Protection Board;
  - (d) for the avoidance of doubt, clause 27 shall continue to apply after any election under clause 26.22 as before, but as if references to any Protected Policyholder or Protected Liability were references to any Policyholder or Liability to whom or in respect of which the Policyholders Protection Board owes any such duty as is referred to in clause 26.23(b); and
  - (e) an election by the Policyholders Protection Board under clause 26.22 shall be without prejudice to any rights of the Policyholders Protection Board (including without limitation rights under clause 26.5) accrued under or in respect of the Scheme prior to the date of election.
- 26.24 If the Scheme is terminated in respect of either Company, then:
- (a) for the purposes of any duty which the Policyholders Protection Board may owe under sections 6 to 8 of the Policyholders Protection Act (as then in force) in respect of any liability of the Company in liquidation ("a Statutory Liability") towards a Policyholder or other person comprising or arising out of a Scheme Liability, the amount of any Statutory Liability shall be the amount for which that person actually proves in the

liquidation increased by the aggregate amount ("the Scheme Amount") of payments, converted into Sterling at the rate of exchange prevailing in the winding-up, received by him in respect of the Scheme Liability under clause 23.7 or 23.8, or treated as having been so received whether under clause 12.1 or otherwise; and

- (b) for the purposes of section 14 of the Policyholders Protection Act, such person shall be treated as having received by way of dividend in the liquidation an amount equal to the Scheme Amount, and such amount shall be treated for those purposes as a payment referable to the Statutory Liability towards that person and as reducing any sum payable by the Policyholders Protection Board under that Act by reference to such Statutory Liability.

**27. Information to be provided to the Policyholders Protection Board**

- 27.1 Each of the Companies shall promptly provide the Policyholders Protection Board with all such information in its possession or under its control or that of its agents (as the case may be) as the Policyholders Protection Board may from time to time request:
- (a) in order to establish whether (or the extent to which):
    - (i) any Established Liability is a Protected Liability; or
    - (ii) a Scheme Creditor is a Protected Policyholder; or
  - (b) otherwise for the purpose of enabling or assisting the Policyholders Protection Board to perform its obligations or exercise its rights under the Scheme or to carry out its functions or responsibilities under the Policyholders Protection Act as from time to time in force.
- 27.2 The obligation set out in clause 27.1 shall not extend to any information which either or both of the Companies (or any agents of either or both of the Companies) are under a legal duty not to disclose.
- 27.3 During the Scheme Period, neither Company shall, without the prior written consent of the Policyholders Protection Board, enter into any agreement or incur any obligation which precludes or restricts disclosure to the Policyholders Protection Board of any such information as is reasonably capable of being the subject of a request under clause 27.1. The Companies and the Scheme Administrators (as the case may be) shall, so far as they are able, authorise and instruct any third party with such information as is referred to in clause 27.1 to disclose it to the Policyholders Protection Board.
- 27.4 Subject to receiving reasonable notice in any case, each Company shall, for the purpose referred to in clause 27.1 permit (and authorise and instruct its agents to permit) any person authorised by the Policyholders Protection Board to have access to, and to be provided with copies of, all or any of the books and records of such Company and, insofar as they relate to such Company, of such agents, during normal business hours. Such obligation shall not extend to any such information which such Company or any such agent are under a legal duty not to disclose. The Policyholders Protection Board shall pay the reasonable costs of providing such copies.
- 27.5 Without prejudice to clauses 27.1 and 27.3, the relevant Company shall as soon as reasonably practicable after payment of any amount to a Scheme Creditor under clause 23.7 or 23.8 give notice of such payment to the Policyholders Protection Board to the extent required by the Policyholders Protection Board in order to fulfil its obligations under the Scheme.

27.6 The Companies shall use all reasonable endeavours to procure that any agent (including without limitation the Run-off Company) appointed by either or both of them to administer the run-off of the existing insurance business of either or both of the Companies will offer to the Policyholders Protection Board such services as it shall reasonably require in order to enable it to perform its obligations under the Scheme on terms as to payment no less favourable than those obtained by either or both of the Companies.

**28. The Policyholders Protection Board's rights against the Companies in respect of any assignment to them of the rights of a Protected Policyholder**

For the avoidance of doubt and without prejudice to clause 26, the Companies agree with the Policyholders Protection Board that any assignment by any Protected Policyholder of all or any rights whatsoever of that Protected Policyholder against either or both of the Companies including without limitation an automatic assignment under clause 26.5, shall be valid and binding on the relevant Company and the Policyholders Protection Board may take actions and proceedings in the name of such Protected Policyholder and exercise all his rights against the relevant Company, including without limitation his rights, prior to such assignment, against the relevant Company as principal debtor or (subject to clause 21) as guarantor.

**E: CARRYING ON OF INSURANCE BUSINESS  
AND COMMUTATION OF LIABILITIES**

**29. Restrictions on the Companies and the Directors**

29.1 The Directors shall not, without the approval of the Scheme Administrators, exercise any powers under the Scheme or in the management and control of the Companies' affairs generally.

29.2 During the Scheme Period the Companies shall not:

- (a) carry on any business except in connection with and for the purpose of the carrying out of the Scheme; or
- (b) enter into any further contract in the nature of an Insurance Contract or renew, replace or extend any Insurance Contract or vary the same in a manner which would increase the total amount of any Liability under such Insurance Contract except:
  - (i) contracts or policies of insurance protecting the Companies or their Directors, officers, employees or agents against usual business risks; and
  - (ii) contracts or policies of reinsurance in relation to Scheme Liabilities;
- (c) subject to clause 29.5, create or cause or permit to be created, any trust of or in relation to any Scheme Asset (including, without limitation, any cash deposit) or appropriate or set aside any Scheme Asset to meet any Liability (otherwise than in accordance with the terms of the Scheme and the CPLA);

but notwithstanding the provisions of clause 29.3(d), the Companies shall have power to invest all or any of their assets in such manner as the Scheme Administrators consider prudent from time to time, with full power from time to time to vary or transpose any such investments into others of any nature hereby authorised.

- 29.3 During the Scheme Period, neither Company shall, without the approval of the Scheme Administrators (and in the case of clause 29.3(k) and, in relation to a Protected Liability, clauses 29.3(i) and (p) without the approval of the Policyholders Protection Board) (and in the case of clauses 29.3(i), (n) or (p) to the extent that such clauses apply in relation to a Qualifying Liability) without the approval of NNOFIC and the ILU:
- (a) declare, pay or make any dividend or other distribution (whether in cash or otherwise) to its members or any of them; or
  - (b) create or issue any shares in itself or grant any right to the allotment of shares in itself for cash or otherwise; or
  - (c) request the Trustee and, in the case of Orion, NNUK and in the case of L&O, Orion to pass any resolution or present any petition for the winding up of itself or (insofar as it may subsequently become legally permissible to do so) for the making of an administration order in relation to it under the Insolvency Act; or
  - (d) invest all or any of the Scheme Assets or vary or transpose any such investments; or
  - (e) sell any Scheme Asset or purchase or lease any new asset; or
  - (f) enter into any lease of any premises; or
  - (g) enter into a service contract or consultancy agreement with any person, engage or vary the employment of such person, dismiss such person or enter into an agreement with an independent contractor, engage or vary the services to be provided by the independent contractor, or terminate the agreement with such independent contractor under which such services are provided; or
  - (h) settle or compromise any Scheme Liability; or
  - (i) agree to the novation of any Scheme Liability; or
  - (j) initiate, conduct or defend, or take any step preliminary to the institution or defence of, any legal proceedings (including any arbitration); or
  - (k) appoint a Run-off Company or conclude a Run-off Agreement in relation to it; or
  - (l) appoint any person as its auditor other than its existing auditor, dismiss any person as its auditor, or appoint or dismiss any person as its professional adviser; or
  - (m) change its accounting reference date; or
  - (n) enter into contractual arrangements with:
    - (i) any Scheme Creditor under which all or part of its total Scheme Liabilities to the relevant Scheme Creditor:
      - (aa) is discharged in full in consideration for a payment by either or both of the Companies; or
      - (bb) becomes, subject to the terms of the Scheme, an Established Liability otherwise than by agreement of claims in the normal course and such

approval shall not be given unless such arrangements include terms to the effect that no other claims may be made in respect of such Liability or that part of such Liability; or

(ii) any of its insurers, reinsurers or retrocessionaires for the discharge of any such person's Liabilities to it under any contract or policy in consideration of a payment to it.

- (o) request the Trustee and, in the case of Orion, NNUK and in the case of L&O, Orion, to pass any resolution to alter its Memorandum or Articles of Association; or
- (p) make or cause or permit to be made a payment in respect of a Scheme Liability under or in relation to an Insurance Contract, any part of which the Directors have reasonable cause to believe is void or capable of being avoided at its instance.

29.4 Without prejudice to clause 29.3 no such arrangement as is referred to in clause 29.3(n) shall be entered into unless:

- (a) the Scheme Administrators are satisfied that any such arrangement is in the best interests of the Scheme Creditors as a whole and that it will not adversely affect or prejudice the Companies' rights under or in relation to any contract or policy of insurance, reinsurance, retrocession or other agreement, where relevant; and
- (b) in the case of clause 29.3(n)(i) only, the Policyholders Protection Board has consented in writing to the arrangement (except in circumstances in which the Scheme Creditor has confirmed, in a legally binding form satisfactory to the Policyholders Protection Board, that he is not a Protected Policyholder or that he waives any rights which he might have had against the Policyholders Protection Board) and agrees to the discharge of the Liability).

29.5 Either or both of the Companies may, if the Scheme Administrators consider that to do so would be in the best interests of the Scheme Creditors as a whole, arrange for the issue or creation of new Letters of Credit, trusts, or Security Interests over Scheme Assets (excluding funds advanced to either of the Companies pursuant to the CPLA):

- (a) in order to replace existing Letters of Credit, trusts or Security Interests; or
- (b) in order to secure Liabilities incurred after the Effective Date; or
- (c) (subject to clause 13.3) to provide security for such other purposes as the Scheme Administrators consider to be in the best interests of the Scheme Creditors as a whole;

but not otherwise.

## **F: THE SCHEME ADMINISTRATORS**

### **30. Qualifications of the Scheme Administrators**

30.1 There shall be appointed Scheme Administrators having the powers, rights and duties conferred upon them by the Scheme. In carrying out their functions under the Scheme, the Scheme Administrators shall act bona fide in the interests of the Scheme Creditors as a whole and shall

use their powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

30.2 The Scheme Administrators shall be individuals qualified to act as insolvency practitioners within the meaning of section 390 of the Insolvency Act. Where more than one person has been appointed as Scheme Administrator, each must be qualified to act as an insolvency practitioner and they shall be entitled to act jointly and severally.

**31. Resignation and removal of the Scheme Administrators**

31.1 A Scheme Administrator shall vacate office only if he:

- (a) dies; or
- (b) resigns his office by giving not less than three months' notice in writing to the other Scheme Administrators, the Companies and the Creditors' Committee; or
- (c) is convicted of an indictable offence (other than offences in relation to road traffic); or
- (d) ceases to be a person qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act; or
- (e) is removed under clause 31.4(a).

31.2 Immediately after, and in any event within 30 days after:

- (a) the vacation of office by any Scheme Administrator pursuant to clause 31.1; or
- (b) the failure of the Scheme Creditors to appoint a new Scheme Administrator under clause 31.4(b),

the Creditors' Committee shall be entitled (with the consent of all the remaining Scheme Administrators, if any) to appoint a person to be a Scheme Administrator provided that such person is qualified to act as such in accordance with clause 30.2.

31.3 The Creditors' Committee may at any time (with the consent of all the remaining Scheme Administrators if any) appoint as an additional Scheme Administrator any person qualified so to act in accordance with clause 30.2.

31.4 The Scheme Creditors shall be entitled:

- (a) to remove a Scheme Administrator by a Creditors' Resolution in accordance with the procedure set out in clause 31.5; and
- (b) upon removal of a Scheme Administrator by a Creditors' Resolution to appoint in his place at the same meeting any person (or persons) qualified to act as a Scheme Administrator in accordance with clause 30.2 provided that the name of the person to be so appointed is stated in the notice convening the meeting of Scheme Creditors at which such Creditors' Resolution is to be proposed and the proposed appointee shall have given and not withdrawn his consent to act as Scheme Administrator.

31.5 A Scheme Administrator shall not be removed from office unless:



- (a) at any meeting of the Scheme Creditors convened in accordance with clause 47 and held to review his appointment, the Scheme Administrator is given an opportunity to be heard; and
- (b) notwithstanding any representations made by or on behalf of the Scheme Administrator, whether himself or through any representative or agent including without limitation Counsel, the Scheme Creditors pass a Creditors' Resolution that such Scheme Administrator be removed from office.

## **32. General powers and discretions of the Scheme Administrators**

- 32.1 The Scheme Administrators shall have general powers of management and control over the business and affairs of the Companies for the purpose of implementing the Scheme and the CPLA unless inconsistent with any specific provision of the Scheme. The Scheme Administrators shall also have the powers specifically conferred on them by the Scheme. In exercising their powers and carrying out their duties under the Scheme, the Scheme Administrators shall act only as agents for and on behalf of the Companies.
- 32.2 The performance of any act, the making of any determination or any other matter, including without limitation any of the provisions of clause 33, which is, whether expressly or impliedly, at the discretion or in the opinion of the Scheme Administrators, shall be at their reasonable discretion and the provisions of clause 56.1 shall apply thereto.

## **33. Specific powers of the Scheme Administrators**

The Scheme Administrators shall be entitled, without prejudice to the generality of the foregoing:

- 33.1 to attend meetings of the Directors and to have full access at all times to all information as they shall from time to time require in relation to the business, affairs and property of either or both of the Companies or the operation of the Scheme and to all books, papers, documents and other information contained or represented in any format whatsoever in the possession, custody or under the control of either or both of the Companies; and any such information and documents may subject, where applicable, to appropriate undertakings of confidentiality be disclosed by the Scheme Administrators to the Creditors' Committee;
- 33.2 to convene, at such intervals as they think fit, meetings of the Directors for the purpose of obtaining information concerning the affairs of either or both of the Companies;
- 33.3 to employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in relation to the business, affairs and property of either or both of the Companies;
- 33.4 to delegate to any person qualified to act as an insolvency practitioner as mentioned in clause 30.2 and approved for the time being by the Creditors' Committee for the purposes of this clause, all or any of the functions, powers, rights, duties, authorities and discretions conferred upon the Scheme Administrators under the Scheme and from time to time to revoke any such delegation, provided that the Scheme Administrators shall be personally responsible for any act or omission of any such delegate to the same extent as if they had expressly authorised it;
- 33.5 to the extent that the Court has jurisdiction, to apply to the Court for directions in relation to any particular matter arising in the course of the Scheme; but no such application shall be made for directions concerning the interpretation or construction of the Policyholders Protection Act

- (as in force at any time) whether as such or as it applies to the obligations of the Policyholders Protection Board under, or otherwise incorporated into, the Scheme (and no consent shall be given by the Scheme Administrators to any such application by either or both of the Companies) unless the Policyholders Protection Board in its absolute discretion consents;
- 33.6 to be paid and reimbursed in accordance with clause 35 for the carrying out of their duties and the exercise of their functions, powers, rights, duties, authorities and discretions under the Scheme and for all expenses properly incurred by them in connection therewith;
- 33.7 (a) subject to the approval of the Policyholders Protection Board, to appoint a Run-off Company on terms and conditions which they consider are in the best interests of the Scheme Creditors as a whole;
- (b) to issue instructions or directions to the Run-off Company or (subject to the agreement of the Run-off Company and prior consultation with the Policyholders Protection Board) to vary the terms of the Run-off Agreement;
- (c) to terminate the Run-off Agreement in accordance with its terms; and
- (d) to pay the Run-off Company in accordance with the Run-off Agreement;
- and generally to supervise the Run-off Company in accordance with the terms of the Run-off Agreement;
- 33.8 either to attend themselves or appoint a delegate to attend any meeting of the Creditors' Committee, including any meeting at which information provided under clause 34.3 is submitted or considered for the purpose of giving such explanations and information as the Creditors' Committee may require;
- 33.9 to agree claims and process reinsurance recoveries as part of the run-offs of either or both of the Companies' businesses;
- 33.10 to take possession of, collect and get in all the property and assets (of whatever nature) to which either or both of the Companies are or appear to be entitled and to do all such things as may be necessary for the realisation of any such property or assets;
- 33.11 to do all things which may be necessary or expedient for the protection of the Scheme Assets or of any other assets that appear to belong to either or both of the Companies;
- 33.12 to bring, defend or intervene in any proceedings or other judicial, quasi-judicial, administrative or regulatory process in the name and on behalf of either or both of the Companies or otherwise;
- 33.13 to do all acts and execute in the name and on behalf of either or both of the Companies any deed, receipt or other document and to use either or both of the Companies' seals;
- 33.14 to borrow (and grant security therefor over the Scheme Assets) and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge in respect of amounts received by either or both of the Companies;
- 33.15 to give directions to the boards and, to the extent so empowered by the Trust Deeds, the shareholders of either or both of the Companies in relation to the exercise by them of their rights and powers in connection with the affairs of either or both of the Companies;

33.16 by notice in writing to:

- (a) direct the Trustee and in the case of Orion, NNUK and in the case of L&O, Orion to appoint any person who is willing to act as a Director; and
- (b) direct the Trustee and in the case of Orion, NNUK and in the case of L&O, Orion to remove any person as Director;

and the Trustee, NNUK and Orion shall act in accordance with any such direction and any direction given pursuant to clause 33.16 shall be deemed to have effect two days after the time it is posted by the Scheme Administrators addressed in the case of the Trustee to the Trustee at the latter's last known address or at the last address notified by the Trustee in writing to the Scheme Administrators;

33.17 to implement and operate the CPLA and to enter into such further agreements (in such terms as they think fit) with Nat Ned, 1845, NNOFIC and the ILU and any other party for the purposes of making payment of claims arising in any jurisdiction to Qualifying ILU Policyholders.

#### **34. Duties of the Scheme Administrators**

34.1 The Scheme Administrators shall, following each Review Date, prepare a report on the affairs of the Companies and the operation of the Scheme during the period since the previous Review Date or, in the case of the first report, the Effective Date. Such report shall contain such information and particulars concerning the last calculation of the Payment Percentage, the value of Established Liabilities, the estimated value of Scheme Liabilities and other Liabilities of the Companies, the payments made to Scheme Creditors, the investments held by or on behalf of the Companies as at the last Review Date, the conduct of the Companies' businesses and affairs and such information as to the operation of the Scheme as the Creditors' Committee may reasonably require.

34.2 The Scheme Administrators shall send copies of every report prepared under clause 34.1 to the Creditors' Committee. The Scheme Administrators are not under a duty to provide a copy of any such report to any other Scheme Creditor unless that Scheme Creditor has specifically requested the Scheme Administrators in writing to do so.

34.3 The Scheme Administrators shall give the Creditors' Committee all such information concerning the affairs of either or both of the Companies or the operation of the Scheme as the Creditors' Committee shall from time to time pursuant to clause 45.3 reasonably resolve to seek from the Scheme Administrators.

34.4 In carrying out their functions and exercising their powers under the Scheme, the Scheme Administrators shall consult with and take account of any views expressed by the Creditors' Committee on any matter material to the Scheme.

#### **35. Costs, charges and expenses of the Scheme Administrators**

35.1 The Companies shall pay all reasonable costs, charges and expenses of the Scheme Administrators and their firm in the course of exercising or performing their functions, powers, rights, duties, authorities and discretions under the Scheme including but not limited to:

- (a) the fees of the Scheme Administrators and their staff by reference to the time properly given by them and their staff (as Scheme Administrators) in implementing the Scheme and the CPLA;
  - (b) the costs incurred by the Scheme Administrators in employing agents and professional advisers to assist them in implementing the Scheme; and
  - (c) the costs of convening a Special Meeting and, if passed, implementing a Special Resolution.
- 35.2 For the avoidance of doubt, all liabilities, costs, fees, expenses and deductions due to the Run-off Company pursuant to the Run-off Agreement shall be deemed to be costs for the purpose of clause 35.

## **G: THE CREDITORS' COMMITTEE**

### **36. Constitution of the Creditors' Committee**

36.1 There shall be a single Creditors' Committee for the purposes mentioned in the Scheme.

36.2 The Creditors' Committee shall consist of:

- (a) not less than three nor more than nine persons unless the Scheme Administrators in consultation with the Creditors' Committee decide otherwise; and
- (b) the Policyholders Protection Board,

(referred to henceforth in the Scheme as "Committee Members").

36.3 The following shall be eligible for appointment as Committee Members:

- (a) any Scheme Creditor or authorised representative of any one or more Scheme Creditors (whether an individual, a body corporate or a partnership); and
- (b) any other person with the written consent of the Scheme Administrators.

### **37. Membership of the Creditors' Committee**

37.1 The initial Creditors' Committee shall consist of:

- (a) those persons elected as members of the initial Creditors' Committee in accordance with the procedure set out in Schedule II; and
- (b) the Policyholders Protection Board.

37.2 The Creditors' Committee may resolve at any time, by a majority of two-thirds of the Committee Members present at a meeting of the Creditors' Committee, to appoint any person (subject to the value of that person's Scheme Liability or the Scheme Liability of the person for whom he is authorised to act under clause 36.3 being in excess of US\$100,000 or the equivalent in another currency on the date of such appointment) who is eligible to be so appointed to be a Committee Member, whether to fill a vacancy or as an additional Committee Member, but so that the total number of Committee Members shall not exceed the maximum number specified

in clause 36.2. In appointing additional members, the Creditors' Committee shall endeavour to ensure that the composition of the Creditors' Committee is such that it represents a proper balance of the interests of the Scheme Creditors as a whole.

- 37.3 The Scheme Creditors may, by Creditors' Resolution, remove any Committee Member (other than the Policyholders Protection Board) from office and without prejudice to the Creditors' Committee's powers under clause 37.2, may by Creditors' Resolution appoint any person who is eligible to be appointed under clause 36.3 to be a Committee Member either to fill a vacancy or in addition to the existing Committee Members, but so that the total number of Committee Members shall not exceed the maximum number specified in clause 36.2.
- 37.4 No person shall be appointed as a Committee Member at any meeting of Scheme Creditors unless the value of that person's Scheme Liability or the Scheme Liability of the person for whom he is authorised to act under clause 36.3 is in excess of US\$100,000 (or the equivalent in another currency) on the date of his recommendation pursuant to clause 37.4(a) or his proposal pursuant to clause 37.4(b) and:
- (a) he is recommended by the Creditors' Committee; or
  - (b) not less than seven and not more than 28 clear days before the date appointed for the meeting, a notice executed by a Scheme Creditor qualified to vote at the meeting has been given to all members of the Creditors' Committee of the intention to propose that person for appointment together with a written notice signed by that person of his willingness to be appointed.

### **38. Ceasing to be a Committee Member**

- 38.1 The office of a Committee Member (other than the Policyholders Protection Board) shall be vacated if that Committee Member:
- (a) resigns by notice in writing addressed to the Chairman of the Creditors' Committee ("the Chairman"); or
  - (b) is removed from office by a Creditors' Resolution; or
  - (c) is convicted of an indictable offence (other than offences in relation to road traffic); or
  - (d) subject to clause 36.3(b) ceases to be (or is found never to have been) a Scheme Creditor or an authorised representative of a Scheme Creditor; or
  - (e) fails to attend three consecutive meetings of the Creditors' Committee, unless the Creditors' Committee (excluding that Committee Member) resolves by a majority of two-thirds of the Committee Members present at a meeting of the Creditors' Committee that he should continue as a Committee Member; or
- 38.2 in the case of an individual:
- (a) dies; or
  - (b) becomes bankrupt under the law of any jurisdiction to which he is subject; or
  - (c) becomes Mentally Disordered; or

- (d) becomes disqualified from acting as a director under the law of any jurisdiction to which he is subject; or
- 38.3 in the case of a body corporate or partnership, is dissolved; or
- 38.4 (in the case of a person appointed with the consent of the Scheme Administrators under clause 36.3(b)) has his written consent under clause 36.3(b) revoked by the Scheme Administrators.
- 38.5 The Policyholders Protection Board may resign by notice in writing to the Chairman and signed by the chairman for the time being of the Policyholders Protection Board. Such notice shall be deemed to have been received by the Chairman on the delivery by hand at the address of the Companies' registered office or if sent by post addressed to the Chairman at the address of the Companies' registered office 48 hours after such notice was posted.
- 39. Appointment of Nominated Representatives and Alternates**
- 39.1 Each Committee Member (other than the Policyholders Protection Board) which is a body corporate or a partnership may, by notice in writing to the Chairman, appoint a senior executive or other senior employee as its representative ("Nominated Representative") to represent that Committee Member at any meeting of the Creditors' Committee.
- 39.2 Any Committee Member who is an individual may, by notice in writing to the Chairman, appoint a senior executive or other senior employee as an alternate ("Alternate") to attend and vote in his place at any meeting of the Creditors' Committee.
- 39.3 The Policyholders Protection Board shall be entitled to appoint one person ("the PPB Representative") to represent it at meetings of the Creditors' Committee. The Policyholders Protection Board may from time to time remove the PPB Representative and appoint another person in his place by written notice to the Chairman signed by the chairman for the time being of the Policyholders Protection Board.
- 39.4 The chairman for the time being of the Policyholders Protection Board or the PPB Representative shall be entitled to appoint any person as an alternate ("the PPB Alternate") to attend and vote at any meeting of the Creditors' Committee in place of the PPB Representative.
- 40. Powers of Nominated Representatives and Alternates**
- Any Nominated Representative or Alternate shall have the same powers and shall be subject to the same duties and limitations as the Committee Member whom the Nominated Representative or Alternate represents. The PPB Alternate shall have the same powers and be subject to the same duties and limitations as the PPB Representative.
- 41. Revocation and termination of appointment of Nominated Representatives and Alternates**
- 41.1 Any person entitled to appoint a Nominated Representative or an Alternate may from time to time revoke that appointment and appoint another Nominated Representative or Alternate by notice in writing to the Chairman.
- 41.2 The appointment of a Nominated Representative or an Alternate (as the case may be) shall terminate automatically if:
- (a) his appointment is revoked by his appointor; or

- (b) the person whom that Nominated Representative or Alternate represents ceases to be a Committee Member; or
  - (c) the Nominated Representative or Alternate ceases to be a senior executive, senior employee or other senior officer of the Committee Member whom he represents; or
  - (d) the Nominated Representative or Alternate dies, becomes Mentally Disordered, bankrupt or is disqualified from acting as a director in each case under the law of any jurisdiction to which he is subject or is convicted of an indictable offence.
- 41.3 The appointment of the PPB Alternate may be revoked by the chairman for the time being of the Policyholders Protection Board or the PPB Representative by giving written notice of such revocation to the Chairman.
- 42. Proceedings of the Creditors' Committee**
- 42.1 Subject to the provisions of the Scheme, the Creditors' Committee may regulate its proceedings as it sees fit.
- 42.2 The Committee Members shall from time to time elect the Chairman who shall preside at their meetings and if a Scheme Administrator is present at any such meeting, he may be so elected. If no Chairman is elected or if at any meeting a chairman previously elected is not present within 15 minutes after the time appointed for holding the meeting, the Committee Members or their Nominated Representatives or Alternates present may choose one out of their number to be chairman of the meeting.
- 42.3 The Creditors' Committee shall meet at least once in each calendar year (commencing in 1997) for the purpose of receiving a report from the Scheme Administrators on the progress of the Scheme. The Creditors' Committee shall hold such further meetings as shall seem desirable for the purpose of performing its functions under the Scheme.
- 42.4 The Scheme Administrators may summon and any Committee Member may at any time request the Chairman to summon a meeting of the Creditors' Committee.
- 42.5 The Chairman shall call a meeting of the Creditors' Committee as soon as practicable after receiving a request to do so in accordance with clause 42.4.
- 42.6 Written notice of any Creditors' Committee meeting, setting out the time and place of the meeting (which shall be in London or New York or such other place as the Chairman may direct) and indicating the nature of business to be transacted at such meeting, shall be given to each Committee Member and to the Scheme Administrators.
- 42.7 Except with the consent of all Committee Members, no meeting of the Creditors' Committee may be called upon less than 14 clear days' notice and no business may be transacted at any meeting of the Creditors' Committee other than that set out in the notice of that meeting.
- 42.8 Subject to clause 42.13, the quorum necessary for the transaction of business shall be three Committee Members. If a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as the chairman of the meeting may reasonably determine and the Committee Members present at any such adjourned meeting shall constitute a quorum.

- 42.9 The Creditors' Committee may act notwithstanding any vacancy in its body but if and so long as the number of Committee Members is less than three, the continuing Committee Members may act for the purpose of convening a meeting of Scheme Creditors, filling the vacancy or vacancies in the number of Committee Members or filling any vacancy in the office of Chairman, but for no other purpose. If the number of Committee Members does fall below three, the continuing Committee Members shall so act for the purposes set out in clause 42.9 as soon as reasonably practicable.
- 42.10 Each Committee Member shall have one vote. Except as otherwise provided, matters arising at any meeting shall be decided by a majority of votes of the Committee Members attending at such meeting and entitled to vote and voting on such matter. A Committee Member shall not be entitled to vote or to form part of the quorum in relation to any matter in which he is in any way interested (other than a general interest arising by reason only of his status as a Scheme Creditor) and shall absent himself from the meeting for so long as such matter is discussed and voted upon and shall not receive any information relating thereto.
- 42.11 The Scheme Administrators shall be entitled to attend, and speak, and/or make written submissions, but not to vote, at all meetings of the Creditors' Committee, unless otherwise agreed by the Creditors' Committee.
- 42.12 A resolution in writing signed by all Committee Members for the time being shall be as valid and effective as if passed at a meeting of the Creditors' Committee duly convened and held.
- 42.13 A Committee Member and a Scheme Administrator may participate in a meeting of the Creditors' Committee by conference telephone or similar equipment if all persons participating in the meeting are at all material times able to hear and speak to each other. A person participating in this way shall be deemed to be present in person at the meeting and in the case of a Committee Member shall be counted in the quorum and entitled to vote. All business transacted in this way by the Creditors' Committee shall be deemed to be validly and effectively transacted at a meeting of the Creditors' Committee.
- 42.14 The Chairman shall cause proper minutes to be kept of all proceedings of the Creditors' Committee and such minutes shall at all reasonable times be open to inspection by any Committee Member or by the Scheme Administrators.

#### **43. Validation**

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

#### **44. Expenses**

The Companies shall pay all the reasonable costs of summoning meetings of the Creditors' Committee (irrespective of who requests the meeting) and the reasonable out of pocket expenses of the Committee Members and the Scheme Administrators in attending meetings of the Scheme Creditors and all the reasonable costs of sending out all notices to be given by the Creditors' Committee under the Scheme.



**45. Functions of the Creditors' Committee**

- 45.1 The Creditors' Committee shall be responsible for overseeing the implementation of the Scheme including, without limiting the generality of the foregoing, providing their views on any matter pertaining to the Scheme (or at the Scheme Administrators' request considering the appointment of additional members pursuant to clause 37.2), as and when requested to do so by the Scheme Administrators.
- 45.2 The Creditors' Committee shall, so far as it is able, ensure that there is a Scheme Administrator in office at all times throughout the Scheme Period.
- 45.3 The Creditors' Committee may from time to time resolve what information it is desirable to seek from the Scheme Administrators concerning the operation of the Scheme and other matters concerning the affairs of the Companies, and subject to clause 34.4, the Creditors Committee may request any one Committee Member to apply in writing to, and receive from, the Scheme Administrators all such information. Nothing in clause 34.3 or clause 45.3 shall require the Scheme Administrators to provide to the Creditors' Committee information the release of which they determine would be detrimental to the interests of the Companies and/or the Scheme Creditors as a whole, or any information which either or both of the Companies (or any of their agents) are under a legal duty not to disclose. If the Scheme Administrators refuse to provide information in accordance with clauses 34.3 and 45.3 they must give the Chairman of the Creditors Committee reasons for their decision.
- 45.4 Each member of the Creditors' Committee shall be entitled at any time to raise questions or to request a meeting with the Scheme Administrators in connection with the performance of his responsibilities as a Committee Member and, subject to their duties under the Scheme, the Scheme Administrators shall use reasonable endeavours, in so far as it is cost-effective for them to do so, to respond to such questions or to comply with any such request for a meeting.

**46. Duties of Committee Members**

- 46.1 Each member of the Creditors' Committee shall, in performing his functions as such, act bona fide in the interests of the Scheme Creditors as a whole.
- 46.2 Each Committee Member shall use his best endeavours to avoid conflicts of interest in performing his duties under the Scheme. It shall be the duty of each Committee Member who is in any way, whether directly or indirectly, interested in a contract, arrangement or proposed contract or arrangement with either or both of the Companies to declare (or procure that its Nominated Representative or his Alternate or, in the case of the Policyholders Protection Board, the PPB Representative or PPB Alternate shall declare) the nature of its or his interest at a meeting of the Creditors' Committee. For this purpose, a general notice given to the Creditors' Committee to the effect that a Committee Member is an associate (within the meaning of section 435 of the Insolvency Act) of a specified company or firm and is to be regarded as interested in any contract with that company or firm shall be deemed a sufficient declaration of interest in relation to any such contract or arrangement.
- 46.3 Each Committee Member shall (and shall procure that any Nominated Representative, its officers and employees or any Alternate shall) preserve the confidentiality of all information concerning either or both of the Companies and the operation of the Scheme and shall use such information only for the purpose of performing its or his responsibilities and functions under the Scheme unless it or he shall have obtained the prior written approval of the Scheme Administrators.

- 46.4 Notwithstanding clause 46.3, each Nominated Representative and Alternate shall be entitled to report to the Committee Member appointing him or an entity which is an associate of that Committee Member within the meaning of section 435 of the Insolvency Act on the proceedings of the Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of and relating to either or both of the Companies to those officers and employees of that Committee Member who need to know it in connection with the performance of its responsibilities as a Committee Member, provided that such information does not to his knowledge relate to any matter where such appointor has an interest in conflict with either or both of the Companies (other than a general conflict arising as the result of the status of the Committee Member as a Scheme Creditor).
- 46.5 Notwithstanding clause 46.3, the PPB Representative shall be entitled to report to the Policyholders Protection Board on the proceedings of the Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of and relating to either or both of the Companies to the members of the Policyholders Protection Board, the PPB Secretary and members of his staff and professional advisers and consultants to the Policyholders Protection Board and they or any of them shall be entitled to use the same for the purpose of fulfilling their functions under the Policyholders Protection Act (including their functions under the Scheme), provided that:
- (a) such information does not to his knowledge relate to any matter where the Policyholders Protection Board has an interest in conflict with either or both of the Companies (other than a general conflict, by reason of the Policyholders Protection Board's status as a Scheme Creditor);
  - (b) in relation to the PPB Secretary and members of his staff and professional advisers and consultants, such information is disclosed only to those persons who need to know it in connection with the performance of the Policyholders Protection Board's responsibilities as a Committee Member or its functions under the Policyholders Protection Act; and
  - (c) any such person as is mentioned in clause 46.5(b) shall preserve such confidentiality and use the said information only for the purpose for which it is communicated to him.
- 46.6 Subject to clause 27, the Policyholders Protection Board shall, and shall procure that the PPB Representative and any PPB Alternate shall, preserve the confidentiality of such information and use such information only for the purpose of performing their responsibilities and functions in relation to its obligations, duties and powers as a Committee Member and its functions under the Policyholders Protection Act.

## **H: THE SCHEME CREDITORS**

### **47. Meetings of Scheme Creditors**

- 47.1 Following the Effective Date the only classes of Scheme Creditors at meetings of the Scheme Creditors convened in accordance with clause 47 shall be those determined at the appropriate time by the Scheme Administrators with the agreement of the Creditors' Committee to have sufficient community of interest in the subject matter of those meetings to vote in the same class in respect thereof.
- 47.2 Subject to clause 47.1, the Scheme Administrators shall convene a meeting (or a class meeting) of the Scheme Creditors upon receipt at the Companies' registered office of a request in writing from 50 Scheme Creditors or Scheme Creditors owed Scheme Liabilities of not less than ten per

cent in value of all Scheme Liabilities that such a meeting be held. The Policyholders Protection Board shall, for the purpose of convening a meeting of the Scheme Creditors, be counted as a separate Scheme Creditor in relation to each Scheme Creditor in respect of which a Scheme Liability has been assigned to it. Any such written request must specify the purpose for which the meeting is required and it shall be the duty of the Scheme Administrators upon receipt of such a written request to give such notice of the meeting as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme.

47.3 For the purposes of clause 47.2, the value of Scheme Liabilities shall, where possible, be assessed in accordance with the amount agreed or settled with the Companies, or where not an Established Liability, the amount as estimated by the Scheme Creditor, subject to a final determination by the Scheme Administrators. All Scheme Liabilities denominated in currencies other than US Dollars shall, for the purposes of clause 47 only, be converted into US Dollars at the mid-market rate for the relevant currency published by the Financial Times on the last Trading Day for the relevant currency preceding the date of the request and, if not published on that day, then so published on the nearest preceding day or, if no such rate is published, such rate as may be determined by the Scheme Administrators.

47.4 The Scheme Administrators shall convene a meeting of the Scheme Creditors (or one class of them) as required by the Scheme and may also convene a meeting of the Scheme Creditors (or one class of them) whenever and for such purposes as the Scheme Administrators may think fit.

#### **48. Notice of Scheme Creditors' meetings**

48.1 At least 28 days' notice in writing of every meeting of Scheme Creditors, specifying the time and place of the meeting and the general nature of the business to be transacted at the meeting, shall be given to every Scheme Creditor at his last known address (if any) or such other address as he may have given to either or both of the Companies for the service of such notices upon him.

48.2 Every such notice may be sent by pre paid post and the accidental omission to send any such notice to, or the non-receipt of notice by, any Scheme Creditor entitled to receive the same, shall not invalidate the proceedings of any meeting.

48.3 The Scheme Administrators may also, to the extent they consider appropriate, cause to be published in a place or places or in such manner as they deem fit notices or advertisements of the proposed meeting of Scheme Creditors.

48.4 Proof that an envelope containing a notice was properly addressed, pre paid and posted shall be conclusive evidence that notice was given. A notice shall be deemed to be given at the expiration of 96 hours after the envelope containing the same was posted.

#### **49. Voting at Scheme Creditors' meetings**

49.1 Every Scheme Creditor present in person or by proxy shall have one vote for every US Dollar of his Scheme Liability which, if an Established Liability, will be the amount thereof or, where not an Established Liability, the amount estimated by the Scheme Creditor, subject to a final determination (for voting purposes only) by the chairman of the Scheme Creditors' meeting. In the case of Scheme Liabilities denominated in currencies other than US Dollars, such Scheme Liabilities will be converted into US Dollars at the mid-market rate for the relevant currency published by The Financial Times on the last Trading Day for the relevant currency preceding the date of the meeting and, if not published on that day, then so published on the nearest preceding day or, if no such rate is published, such rate as may reasonably be determined by

the Scheme Administrators. The Policyholders Protection Board shall, for voting purposes, be counted as a separate Scheme Creditor in relation to each Scheme Creditor in respect of which a Scheme Liability has been assigned to it.

49.2 Every Scheme Creditor entitled to vote shall have the right to appoint any person as his proxy to attend and vote instead of him. The instrument appointing a proxy may be in any form which the chairman of the meeting may approve and must be lodged at the place specified in the notice of the meeting for the lodging of proxies prior to or at the meeting at which it is to be used.

**50. Quorum required for Scheme Creditors' meetings**

50.1 No business shall be transacted at a meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Fifty Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall constitute a quorum. If a quorum is not present within half an hour of the time appointed for the meeting or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as the Chairman of the meeting may determine and the Scheme Creditors present at any such adjourned meeting shall constitute a quorum. All resolutions put to the vote at any meeting shall be decided on a poll.

50.2 The Policyholders Protection Board shall, for the purpose of calculating whether a quorum is present, be counted as a separate Scheme Creditor in relation to each separate Scheme Liability which has been assigned to it (provided that if more than one Scheme Liability has been so assigned by any Scheme Creditor, it shall only count as one person in respect of all such Scheme Creditors' Scheme Liabilities).

**51. Chairman of Scheme Creditors' meetings**

A Scheme Administrator shall be the chairman of all meetings of the Scheme Creditors except if a resolution is proposed directly concerning the Scheme Administrators, in which case and for that purpose the chairman of the Creditors' Committee shall preside. If there is a vacancy in the office of chairman or if the chairman is not present within 15 minutes after the time appointed for opening the meeting or indicates that he is unwilling to preside, the Scheme Creditors present in person or by proxy shall choose a Committee Member (or, as the case may be, its Nominated Representative or his Alternate) or, if no such person is present or if all such persons present decline to preside, the persons present shall choose one of themselves to be chairman of the meeting. If no person is willing to preside as chairman of the meeting, the meeting shall be adjourned for seven days and if no person is willing to preside as chairman of the adjourned meeting, the meeting shall be dissolved.

**52. Powers of the Scheme Creditors in general meeting**

The Scheme Creditors shall have power by a Creditors' Resolution:

52.1 to remove any Committee Member (other than the Policyholders Protection Board) from office and to appoint a person eligible to be so appointed to be a Committee Member pursuant to clause 36.3;

52.2 to remove a Scheme Administrator from office and appoint another in his place, in accordance with clause 31.4(b), being a person qualified to act in accordance with clause 30.2;

## I: DURATION OF THE SCHEME

### 53. Termination of the Scheme

#### 53.1 The Scheme shall terminate

- (A) on the date that the Scheme Administrators give notice under clause 59 to the Companies at their registered office that:
  - (a) all the Companies' Priority Liabilities and Established Liabilities, together with any liability to make payments under clause 23.8, have been discharged in full; or
  - (b) there are no further Scheme Assets to be distributed in accordance with the provisions of the Scheme; or
- (B) if over the period of 2 years from the Effective Date, the aggregate payment made by the Companies in respect of Established Liabilities is less than would have been made if the Payment Percentage had been set at the Effective Date and maintained for 2 years thereafter at a level of 5% (unless prior to the expiration of the said period the Scheme Administrators determine otherwise and the Creditors' Committee shall have passed a resolution, by a majority which includes the Policyholders Protection Board, resolving otherwise);

but subject to clauses 26.22 and 26.23, 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. No Scheme Creditor shall in any event initiate or take any steps to initiate a winding up of either or both of the Companies, whether in the Court or otherwise and whether or not under the Insolvency Act.

- 53.2 If the Scheme shall terminate otherwise than under clause 53.1(A)(a), any Liability of either of the Companies agreed by the Scheme Administrators, including without limitation Established Liabilities shall remain unaffected and the provisions of clauses 1, 2, 18.2, 24, 26.5, 26.6, 26.7, 26.17, 26.18, 26.24, 53.2, 56, 57, 58 and 60 shall continue to apply and the obligations of the Policyholders Protection Board under the Scheme shall cease.

### 54. Special Meetings

- 54.1 At any time, and subject as set out below, the Scheme Administrators may, with the agreement of the Creditors' Committee, convene Special Meetings of each class of the Scheme Creditors.
- 54.2 The Scheme Administrators shall give notice of Special Meetings in accordance with the provisions of clause 48.
- 54.3 Clauses 49, 50 and 51 relating to Scheme Creditors' meetings shall apply mutatis mutandis to any Special Meeting.
- 54.4 The provisions of a Special Resolution shall take effect forthwith upon its being duly passed in accordance with the provisions of the Scheme.

**55. Notice of termination of the Scheme**

As soon as practicable following the Termination Date, the Scheme Administrators shall cause notices stating that the Scheme has terminated to be placed in such newspapers, other publications or by such other means as the Scheme Administrators deem appropriate for one day a week for three consecutive weeks following the Termination Date. The cost of placing the announcements shall be payable out of the Scheme Assets.

**J: MISCELLANEOUS**

**56. Indemnity**

56.1 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 Adjudicator (as defined in Schedule I) or by any of their employees or agents or any Committee Member (or any Nominated Representative, PPB Representative, Alternate or PPB 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.

56.2 Subject to the Act and save as provided for in clause 56.1, no person mentioned in clause 56.1 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.

56.3 Subject to the Act, the Companies shall indemnify the persons mentioned in clause 56.1 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 them 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 clause 56.2.

**57. Assignability**

Without prejudice to clauses 14.13, 26.5 to 26.9 and 26.15, if a Scheme Creditor entitled to a payment in respect of an Established Liability gives notice to the Scheme Administrators under clause 59 that he wishes his payment to be paid to another person, or that he has assigned such entitlement to payment of an Established Liability to another person, the Scheme Administrators shall make such payment to that other person accordingly and any such notice must specify the name and address of the person to whom payment is to be made.

**58. Costs of the Scheme**

The following shall be paid or reimbursed by the Companies in full out of the Scheme Assets and in priority to any Established Liabilities:

- 58.1 all liabilities, costs, charges, expenses and disbursements incurred by the Companies in connection with the Companies' provisional liquidations and/or with the negotiation, preparation and implementation of the Scheme including but not limited to the fees of the Provisional Liquidators and the Scheme Administrators, all legal, financial and actuarial costs and any tax incurred by the Companies after the Petition Date which would have been payable as an expense of the winding-up if a winding-up order had been made against the Companies on the Effective Date;
- 58.2 all costs and liabilities mentioned in clauses 10.9, 44 and 56; and
- 58.3 all costs and liabilities arising under clause 10(A) of the CPLA and all payments made to NNOFIC in accordance with clauses 14.6 and 14.8.
- 58.4 In the event that the Companies are in default of any obligation under clauses 58.2 and 58.3 or the CPLA, such person to whom such an obligation is owed shall expressly be permitted to bring such Proceedings as they are entitled and enforce any judgment or award or order obtained therein against those Companies or their property and the provisions of clause 10 shall not apply thereto.

59. **Notices**

Any notice or other communication to be given to either or both of the Companies under or in relation to this Scheme shall be given in writing in English and be delivered or served by hand or sent by pre paid first class post, and by air mail where it is addressed to a different country from that in which it is posted, to either or both of the Companies at their registered office (or such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this clause in such newspapers or publications as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks).

60. **Governing law and jurisdiction**

- 60.1 The Scheme shall be governed by and construed in accordance with English law and all the parties to it hereby agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement (dated 20 November 1996 and its appendices explaining the effect of the Scheme pursuant to section 426 of the Act) or any provision of the Scheme (including without limitation clause 60), 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.
- 60.2 Any dispute or difference in relation to the construction or interpretation of this clause shall be referred to the Court which shall also have exclusive jurisdiction in relation to these matters.

Dated this 20 day of November 1996.

**SCHEDULE I:  
DRAFT SPECIAL RESOLUTION**

**1. Notification of claims**

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

**2. Appointment of the Adjudicator**

- 2.1 There shall be an Adjudicator ("the Adjudicator") appointed for the purposes mentioned in this Resolution.
- 2.2 The first Adjudicator shall be [ ].
- 2.3 The Adjudicator may resign his appointment at any time by giving not less than one month's notice in writing to the Companies and the Creditors' Committee;
- 2.4 The provisions of clauses 30.2, 31.2 and 31.3 of the Scheme shall apply mutatis mutandis to the removal of the Adjudicator and appointment of any additional Adjudicator (save that the references to qualification within the meaning of section 390 of the Insolvency Act shall not apply).
- 2.5 In the event that there is a vacancy in the office of the Adjudicator (otherwise than by reason of his removal from office at a meeting of Scheme Creditors at which another individual is appointed in his place) the Scheme Administrators may with the consent of the Creditors' Committee fill the vacated office by appointing another person as Adjudicator.

**3. Determination of Notified Scheme Claims by the Scheme Administrators**

- 3.1 Subject to the following provisions of this paragraph, in relation to each Notified Scheme Claim, the Scheme Administrators shall use their reasonable endeavours to reach agreement



with the Scheme Creditor or Scheme Creditors concerned before the expiration of six months from the date on which notice has been received by the Scheme Administrators as to the admissible amount in respect of such Notified Scheme Claim after taking into account any Security Interest over the property of either or both of the Companies or any Letters of Credit or trust issued or created in respect of either or both of the Companies which the Scheme Creditor is entitled to enforce in accordance with clause 13 of the Scheme and any available set-off which may be taken into account in accordance with clause 14 of the Scheme and upon agreement being reached, the Notified Scheme Claim shall be deemed to be an Established Liability of an amount equal to the amount so agreed.

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

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

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

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

#### **4. Determination of Notified Scheme Claims by the Adjudicator**

4.1 On any Notified Scheme Claim being referred to the Adjudicator for determination by him in accordance with this paragraph, the Adjudicator shall, before the expiration of six months from the date on which such claim was referred to him by the Scheme Administrators, certify in writing to the Scheme Administrators and to the Scheme Creditor concerned what he considers subject to paragraph 3.1 to be the value of such Notified Scheme Claim, and upon such certificate being given, the Scheme Liability concerned shall, subject to paragraph 3.2, be deemed to be an Established Liability of an amount equal to the amount so certified.

4.2 The Adjudicator shall be entitled to lay down such reasonable provisions and prescribe such reasonable procedures as in his absolute discretion he may consider appropriate for the purpose of assisting him in reaching his decision and shall be entitled for such purpose to call for such information in relation to the relevant Notified Scheme Claim concerned as he may require.

4.3 At the time of the giving of any such certificate as is referred to in paragraph 4.1 in relation to a Notified Scheme Claim, the Adjudicator may make such directions in respect of his remuneration and in respect of the costs, charges and expenses incurred by him, by the Scheme

Administrators, by the Policyholders Protection Board, or by the Scheme Creditor or Scheme Creditors concerned, as he shall think just.

- 4.4 If the Adjudicator shall direct that any such remuneration, costs, charges and expenses be paid by the Scheme Administrators, the same shall forthwith be paid in full by the Scheme Administrators out of the Scheme Assets.
- 4.5 If the Adjudicator shall direct that any such remuneration, costs, charges and expenses be payable by a Scheme Creditor and the Scheme Creditor does not pay the same in full within one month after such direction, the relevant Company may pay any unpaid balance thereof in full out of the Scheme Assets. In any such case, for the purposes of determining whether such Scheme Creditor is entitled to receive any payments pursuant to paragraph 6, he shall be treated as having received on account of all Scheme Liabilities in respect of which he is so entitled an amount equal to the unpaid balance so paid by the relevant Company and the extent, if any, to which he is entitled to any payment pursuant to paragraph 6 shall be reduced accordingly.
- 4.6 Subject to paragraph 3.2, a certificate given by the Adjudicator in relation to a Notified Scheme Claim shall be final and no Scheme Creditor shall have any right to appeal therefrom or any claim against the Adjudicator in respect thereof except as provided in paragraph 4.7.
- 4.7 Subject to clause 10 of the Scheme, if at the expiration of six months from the date on which a Notified Scheme Claim is referred to the Adjudicator as aforesaid, no certificate shall have been given by the Adjudicator in accordance with paragraph 4.1, or if at any time after a Notified Scheme Claim has been referred to the Adjudicator but before such certificate has been given there is no Adjudicator in office for a period in excess of three months, then nothing in the Scheme shall preclude the Scheme Creditor who submitted that Notified Scheme Claim from taking any appropriate action in the Court which shall have exclusive jurisdiction for the purpose of securing a determination of the value of such claim.
- 4.8 The Scheme Administrators may, with the consent of the Creditors' Committee, and either generally or in respect of any particular Notified Scheme Claim, extend the time within which the Adjudicator is to provide his certificate pursuant to paragraph 4.1.

#### **5. Costs, charges and expenses**

Subject to paragraphs 4.3 and 4.4, the Companies shall pay all costs, charges and expenses incurred by the Adjudicator in the course of exercising and performing his powers, duties and functions under the Scheme and shall pay such remuneration to the Adjudicator for the exercise of his performance, duties and functions as may be agreed between the Adjudicator and the Scheme Administrators and approved by the Creditors' Committee. The Companies shall pay all such amounts in full out of the Cash Assets.

#### **6. Payment to Scheme Creditors**

- 6.1 Upon each Notified Scheme Claim becoming an Established Liability the provisions of Part C of the Scheme shall take effect in relation to each such Established Liability.
- 6.2 For the avoidance of doubt and subject to paragraph 8, Scheme Liabilities which at the date of the Special Meetings are Established Liabilities will continue to be payable and otherwise dealt with under the Scheme, without being affected by the preceding provisions of this Special Resolution.

**7. Conversion of Scheme Assets into cash**

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

**8. Effect on Scheme Liabilities**

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

**9. Interpretation**

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

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

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

**SCHEDULE II:  
PROCEDURE FOR THE APPOINTMENT OF THE INITIAL CREDITORS' COMMITTEE**

1. Expressions used in this Schedule shall bear the meanings given to them in the Scheme unless otherwise expressly stated to the contrary. References in this Schedule to paragraph numbers shall, unless the contrary intention appears, be construed as references to paragraphs of this Schedule.
2. Certain Scheme Creditors have submitted nominations for proposed members of the initial Creditors Committee ("Proposed Members").
3. Nominations for Proposed Members ("Nominations") were to be submitted to the Provisional Liquidators at Price Waterhouse, No 1 London Bridge, London SE1 9QL by close of business on 30 November 1995.
4. Proposed Members were only eligible for nomination to the initial Creditors' Committee if:
  - (a) the Proposed Member was either (i) an individual, body corporate or partnership being a Scheme Creditor or (ii) an authorised representative of such Scheme Creditor; and
  - (b) either (i) the value of the Proposed Member's Scheme Liability was in excess of US\$100,000 (or the equivalent in another currency, on the date the Proposed Member's Nomination was signed); or (ii) the Proposed Member was supported (such support to be demonstrated by signature on the Nomination in relation to the Proposed Member) by a Scheme Creditor who had a Scheme Liability in excess of US\$100,000 (or the equivalent in another currency, on the date the Proposed Member's Nomination was signed) or (iii) the Proposed Member was supported (such support to be demonstrated by signature on the Nomination in relation to the Proposed Member) by any two or more Scheme Creditors who had combined Scheme Liabilities in excess of US\$100,000 (or the equivalent in another currency on the date the Proposed Member's Nomination was signed); and
  - (c) a Nomination was completed by the Proposed Member or on its behalf and returned to the Provisional Liquidators in accordance with paragraph 3.
5. The Provisional Liquidators submitted to Scheme Creditors with the Scheme a list of those individuals who had been nominated for membership of the initial Creditors Committee.
6. Scheme Creditors shall vote at the Scheme Meetings on the composition of the initial Creditors' Committee.
7.
  - (a) All Scheme Creditors shall be entitled to vote on the composition of the initial Creditors' Committee, whether they voted for or against the Scheme or abstained.
  - (b) The votes of Scheme Creditors on the composition of the initial Creditors' Committee shall be the same as the Scheme Liabilities which they are permitted to vote on the Scheme in respect of their claims against the Companies ignoring, for these purposes, the Guarantees.
8. Each Scheme Creditor may vote for up to seven Proposed Members, and where a Scheme Creditor votes for more than one Proposed Member, the amount of his Scheme Liabilities shall be divided equally between the persons for whom he votes.

9.
  - (a) The Proposed Members who, in descending order, have received by value the most votes shall, together with the Policyholders Protection Board, be the initial Creditors' Committee.
  - (b) The Scheme Administrators may, subject to paragraphs 4(a), (b)(i) to (iii) and (c) inclusive appoint in addition up to two further members of the initial Creditors' Committee but so that its total membership shall in no circumstances exceed nine persons plus the Policyholders Protection Board. In deciding whether or not to make and/or in making such an appointment, the Scheme Administrators will use their reasonable endeavours to ensure that the composition of the initial Creditors' Committee is such that it represents a proper balance of the interests of the Scheme Creditors as a whole.
10. In the event that a Scheme Creditor voting at the Scheme Meetings by proxy does not specify for which Proposed Members he wishes to vote, his proxy may vote or abstain on the composition of the initial Creditors' Committee at his discretion.
11. The result of the vote on the initial Creditors' Committee shall be notified to Scheme Creditors at the conclusion of the Scheme Meetings or as soon as reasonably practicable thereafter.

