

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION. THIS DOCUMENT SHOULD BE READ IN CONJUNCTION WITH THE SCHEME DOCUMENT DATED 20 NOVEMBER 1996.**

If you are in any doubt as to any aspect of this proposal or as to the action you should take, you should consult your insurance broker, lawyer, accountant or other professional adviser without delay.

Further copies of this document and the relevant Voting Forms can be obtained from the Run-off Company at the address listed overleaf or by visiting the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com).

---

**PROPOSAL IN RELATION TO**

**AN AMENDING SCHEME OF ARRANGEMENT**  
(pursuant to Part 26 of the Companies Act 2006)

between

**OIC RUN-OFF LIMITED**

(formerly Ralli Brothers Insurance Company Limited and The Orion Insurance Company plc)

**THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED**

(formerly Hull Underwriters' Association Limited and The London and Overseas Insurance Company plc)

(both subject to a scheme of arrangement)

and their respective

**SCHEME CREDITORS**

(as defined in the Amending Scheme)

---

The meetings of Scheme Creditors to consider the Amending Scheme will be held at 10.30am (English time) on 11 December 2014. Notice of the meetings is set out on pages 231 and 232 of this document.

Whether or not Scheme Creditors intend to be present at the meetings, they are requested to complete and return the relevant Voting Form(s) as soon as possible and no later than noon (English time) on 10 December 2014.

[www.oicrun-offltd.com](http://www.oicrun-offltd.com)

8 October 2014

## RESPONSIBILITY STATEMENT

To the best of the Scheme Administrators' knowledge and belief, the statements, opinions and information contained in this document are correct.

The statements, opinions and information contained in this document are made, held or given respectively as at the date of this document unless another time is specified and such statements, opinions and information are made, held or given solely by or on behalf of the Companies unless expressly attributed to another party.

None of the FSCS Scheme Manager, NNOFIC, Nat-Ned, 1845, ING Groep NV, any other member of the ING Group or the ILU or any of their respective directors, officers, employees or agents are responsible for any of the statements, opinions and information contained in this document.

Nothing contained in this document constitutes an admission of any fact or liability on the part of the Companies or any other person in respect of any asset to which they may be entitled or any claim against them.

The summary of the principal provisions of the Amending Scheme and related matters contained in this Amending Explanatory Statement is qualified in its entirety by reference to the Amending Scheme. The full text of the Amending Scheme is set out on pages 128 to 230.

The Scheme Administrators have not authorised any person to make any representation, whether oral, written, express or implied, concerning the proposed Amending Scheme, which is inconsistent with the statements made in this document. Consequently, if such representations are made, they should not be relied upon.

Each creditor of the Companies should not construe the contents of this document as legal, tax, financial or other professional advice. Each creditor should consult its own professional advisers as to the legal, tax, financial or other matters relevant to the action he should take in connection with the Amending Scheme.

Neither the Scheme Administrators, nor any partner, employee, agent, adviser, representative, affiliate, director, officer, member, beneficiary, investor, servant, shareholder, trustee, attorney, or other person acting on behalf of, or otherwise related to or affiliated with the Scheme Administrators or the Companies, nor any of their respective successors, shall have any personal liability directly or indirectly, under or in connection with: (a) this Amending Explanatory Statement, the Amending Scheme and any notices convening the Amending Scheme Meetings; (b) any agreement made or entered into under or pursuant to the Amending Explanatory Statement, the Amending Scheme and any such notices; or (c) any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. This exclusion of personal liability shall survive any termination of the Amending Scheme.

---

<b>Scheme Administrators</b>	<b>Legal advisers (UK)</b>	<b>Legal advisers (USA)</b>
Dan Schwarzmann Paul Evans PricewaterhouseCoopers LLP 7 More London Riverside London SE1 2RT United Kingdom	Hogan Lovells International LLP Atlantic House Holborn Viaduct London EC1A 2FG United Kingdom	Chadbourne & Parke LLP 30 Rockefeller Plaza New York NY 10112-0127 USA
<b>Scheme Actuarial Adviser</b>	<b>Run-off Company</b>	
Mark Allen PricewaterhouseCoopers LLP 7 More London Riverside London SE1 2RT United Kingdom	Armour Risk Management Limited 20 Old Broad Street London EC2N 1DP United Kingdom Telephone: +44 (0) 207 382 2020 Fax: +44 (0) 207 382 2001 Email: <a href="mailto:Oicclosurehelpdesk@armourrisk.com">Oicclosurehelpdesk@armourrisk.com</a>	

---

# TABLE OF CONTENTS

<b>PART I AMENDING EXPLANATORY STATEMENT</b>	<b>1</b>
<b>A: KEY DEFINITIONS</b>	<b>1</b>
<b>B: INDICATIVE TIMELINE</b>	<b>7</b>
<b>C: SUMMARY</b>	<b>9</b>
1. Background	9
2. Background to the Amending Scheme	12
3. Amending Scheme – Summary	14
4. Interests of Qualifying ILU Policyholders	15
5. Pre-1969 L&O Policyholders	16
6. Protected Liabilities and Potentially Protected Liabilities	17
7. Claims received after the Bar Date	18
8. Payments to Scheme Creditors	19
9. Voting procedure	19
10. Implementation of the Amending Scheme	20
11. Electronic communications	24
12. Recommendation	24
<b>D: PROGRESS TO DATE AND FINANCIAL INFORMATION</b>	<b>26</b>
13. Summarised Balance Sheet as at 31 December 2013	26
14. Liabilities	27
15. Reserves	27
16. Reinsurance collections and outwards commutations	28
17. Payments to Scheme Creditors	28
18. Receipts and payments	30
<b>E: FACTORS TO CONSIDER WHEN VOTING ON THE AMENDING SCHEME</b>	<b>31</b>
19. Options facing Scheme Creditors	31
20. Advantages and disadvantages of the Amending Scheme	34
21. Balance of advantages and disadvantages	38
<b>F: THE PROPOSED CLOSURE PROCESS</b>	<b>41</b>
22. Effectiveness and notifications	41
23. Completing the Claim Form	41
24. Submitting the Claim Form	43
25. The Valuation Date	44
26. The Bar Date	44
27. Calculation of Gross Liabilities and Net Liabilities	46
28. Dispute Resolution Procedure	48
29. Distributions	49
30. Payments to Qualifying ILU Policyholders (including the Qualifying ILU Policyholder Premium)	52
31. Qualifying ILU Policyholder Premium conditions and restrictions	54
32. Qualifying ILU Policyholder opt out	59
33. Pre-1969 L&O Policyholders	64
34. Scheme Creditors' duty to provide assistance	67
35. Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator and Individual Claimant Representative	67

36. Time periods and claims received after the Bar Date	68
37. The position for reinsurers	72
38. Withdrawal of a Claim Form	72
39. Policyholders Protection Board and FSCS Scheme Manager	72
40. Electronic communication and notices	77
41. Uncashed cheques	77
42. Payments to agents and pool managers	77
43. Payments in respect of Assignments	78
<b>G: VOTING PROCEDURE</b>	<b>79</b>
44. Approval of the Amending Scheme	79
45. Valuation of claims for voting purposes	79
46. Vote Assessor	81
47. Currency conversion for voting purposes	81
48. Appointing a proxy	81
49. Returning the Voting Form	81
50. Court sanction	82
51. Positions of key stakeholders	82
52. Directors' interests	83
<b>H: APPENDICES</b>	<b>84</b>
<b>DRAFT CLAIM FORM AND DRAFT CLAIM FORM GUIDANCE NOTES</b>	<b>85</b>
<b>Appendix A: Exchange rate conversion to US Dollars</b>	<b>99</b>
<b>Appendix B: Major loss codes</b>	<b>100</b>
<b>Curriculum vitae of the Scheme Actuarial Adviser</b>	<b>111</b>
<b>Curriculum vitae of the Scheme Adjudicator</b>	<b>112</b>
<b>Curriculum vitae of the No Notice Adjudicator</b>	<b>113</b>
<b>Curriculum vitae of the Vote Assessor</b>	<b>114</b>
<b>Curriculum vitae of the Individual Claimant Representative</b>	<b>115</b>
<b>List of Creditors' Committee members</b>	<b>116</b>
<b>Documents available for inspection</b>	<b>118</b>
<b>Summary table of Amending Scheme changes</b>	<b>119</b>
<b>PART II THE AMENDING SCHEME</b>	<b>128</b>
<b>Section 1: Definitions and interpretation</b>	<b>130</b>
1. Definitions	130
2. Interpretation	130
<b>Section 2: Preliminary</b>	<b>131</b>
3. Participation in the Scheme	131
4. Incorporation of the Amending Scheme	131
5. Modification of the Amending Scheme	131
<b>Section 3: General provisions</b>	<b>133</b>
6. Purpose of the Amending Scheme	133
7. Conditions precedent and the New Effective Date	133
8. Time periods and deadlines	133

9. Claims agreement outside the Scheme	133
<b>Section 4: Determination of claims</b>	<b>135</b>
10. Notice of New Effective Date, Bar Date and distribution of Claim Forms	135
11. Notification of claims and cessation of payments under the Original Scheme	136
12. Valuation of claims	137
13. Provision of Claim Forms	138
14. Completing and returning Claim Forms and Supporting Information before the Bar Date	138
15. Consequences of failure to submit a Claim Form	140
16. Enforcement of claims	140
17. Review and agreement of Net Liabilities	141
18. The Dispute Resolution Procedure	145
19. Estimation Guidelines	148
20. Notification of Scheme Creditors' Net Liabilities	149
<b>Section 5: Payments under the Amending Scheme</b>	<b>151</b>
21. Payments to Scheme Creditors in respect of Net Liabilities	151
22. Uncashed cheques	153
23. Treatment of agents	154
<b>Section 6: The Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative</b>	<b>155</b>
24. Qualification and appointment of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative	155
25. Resignation and removal of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative	155
26. General powers, rights, duties and functions of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative	156
27. Conflicts of interest	157
28. Specific powers, rights, duties and functions of the Scheme Actuarial Adviser	157
29. Specific powers, rights, duties and functions of the Scheme Adjudicator	158
30. Specific powers, rights, duties and functions of the No Notice Adjudicator	158
31. Specific powers, rights, duties and functions of the Individual Claimant Representative	159
<b>Section 7: Termination of the Scheme</b>	<b>160</b>
32. Termination of the Scheme	160
33. Consultation with the FSCS Scheme Manager in respect of termination of the Scheme	161
<b>Section 8: The Financial Services Compensation Scheme</b>	<b>162</b>
34. Calculation and payment of the Estimated Protected Value	162
35. Payment of Protected Liabilities	163
36. Assignment to the FSCS Scheme Manager	166
<b>Section 9: Opt out</b>	<b>167</b>
37. Opt out	167
38. Calculation of Estimated Qualifying Value and Estimated Opt Out Value	168
39. Review of Opt Out Proportion Figure	168
40. Application of the Scheme Assets in respect of Opt Out Qualifying ILU Policyholders	169
41. Payment to Opt Out Qualifying ILU Policyholders	171
<b>Section 10: Pre-1969 L&amp;O Policyholders</b>	<b>173</b>
42. Pre-1969 L&O Policyholders	173
<b>Section 11: The Bar Date</b>	<b>175</b>
43. The Bar Date	175

44. Qualifying ILU Policyholder claims after the Bar Date	176
45. Claims from individuals after the Bar Date	178
<b>Section 12: Miscellaneous provisions</b>	<b>181</b>
46. Scheme Creditors' duty to provide assistance	181
47. Blocked Monies	181
48. Releases	182
49. Notices and electronic communications	182
50. Payment in respect of Assignments	184
51. Costs of the Amending Scheme	184
52. Rights of third parties	184
53. Indemnity	184
54. Governing law and jurisdiction	185
<b>Appendices</b>	<b>186</b>
<b>Appendix 1 – Definitions</b>	<b>187</b>
<b>Appendix 2 - Estimation Guidelines</b>	<b>200</b>
<b>Appendix 3 – Supporting Evidence</b>	<b>214</b>
<b>Appendix 4 – Calculation of Estimated Qualifying Value and Estimated Opt Out Value</b>	<b>225</b>
<b>Appendix 5 – Costs agreement</b>	<b>228</b>
<b>Appendix 6 - Deed of adherence</b>	<b>230</b>
<b>PART III NOTICE OF AMENDING SCHEME MEETINGS</b>	<b>231</b>

# **PART I**

## **AMENDING EXPLANATORY STATEMENT**

### **A: KEY DEFINITIONS**

This Amending Explanatory Statement is intended to explain the main provisions of the Amending Scheme.

Unless the context otherwise requires or it is otherwise stated, references in this Amending Explanatory Statement to paragraphs are to the paragraphs of the Amending Explanatory Statement.

The following terms correspond to defined words and phrases in the Amending Scheme and are in some instances summaries of longer definitions. They are not intended to be comprehensive and where no definition is provided or where they are inconsistent with the terms used in the Amending Scheme, the Amending Scheme prevails over them.

"Agreed Liability"	any Scheme Liability agreed by the Companies and the relevant Scheme Creditor (but which has not become an Established Liability) before the New Effective Date;
"Amending Scheme"	the scheme of arrangement set out on pages 128 to 230 of this document in its present form or as modified;
"Amending Scheme Meetings"	the meetings of Scheme Creditors convened by each of the Companies with the leave of the Court to consider and, if thought fit, to approve the Amending Scheme;
"Assignee"	a Scheme Creditor of either or both of the Companies who is an assignee pursuant to one or more Assignments;
"Assignment"	a legal or equitable assignment of all or any part of the benefit of, or rights and benefits under, an Insurance Contract (including, but not limited to, the benefit of any past, present or future claims under or in respect of such Insurance Contract);
"Assignor"	an assignor pursuant to one or more Assignments;
"Bar Date"	midnight (English time) on the first Business Day falling 240 days after the New Effective Date;
"Best Estimate"	an estimate that is intended to represent the mean of the distribution of possible outcomes;
"Blocked Monies"	any monies payable to a Scheme Creditor under the Scheme, the payment of which is prohibited by an applicable law or regulation referred to in paragraph 47.1 of the Amending Scheme;
"Business Day"	any day (other than a Saturday, Sunday or UK public holiday) on which banks in the City of London are generally open for business;
"Claim Form"	the claim form made available on the Website for each Scheme Creditor known by the Companies, which shall be in the form set out in the draft in section H ( <i>Appendices</i> ) of this Amending Explanatory Statement or in a form substantially similar thereto;
"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;

"CPLA"	the agreement dated 20 November 1996 between NNOFIC, the Companies and the ILU, pursuant to which NNOFIC makes funds available to the Companies for paying Qualifying ILU Policyholders, an updated version of which will come into effect if the crystallisation and payment provisions of the Amending Scheme become effective;
"Creditors' Committee"	the committee of creditors established in accordance with the Original Scheme;
"Discharge Letter"	the Form of Discharge (in the form annexed to the CPLA in force at the relevant time at Appendix 7A, 7B, 8A or 8B as appropriate);
"Dispute Resolution Procedure"	the procedure for the resolution of Scheme Creditors' claims set out in the Amending Scheme;
"Dual Scheme Creditor"	a Scheme Creditor who has a claim against both of the Companies in respect of the same Scheme Liability, other than a Policyholder or a Qualifying ILU Policyholder;
"1845"	Nationale-Nederlanden Internationale Schadeverzekering SE, a Societas Europaea registered in England and Wales under company number SE00072;
"Established Liability"	a Scheme Liability which is established under the terms of the Original Scheme;
"Estimation Guidelines"	the guidelines for use in valuing claims set out in Appendix 2 of the Amending Scheme;
"Facility"	the loan facility available to the Companies under and subject to the terms of the CPLA;
"Facility Limit"	US\$450,000,000;
"FCA"	the Financial Conduct Authority (being, together with the PRA, the current statutory successor to the Financial Services Authority) and any successor regulatory authority with responsibility for the regulation of the Companies from time to time;
"FSCS Rules"	the rules of the FSCS Scheme Manager as amended and in force on the New Effective Date (and as amended after that date where such amendment has effect in relation to a company in liquidation before that date), made pursuant to the Financial Services and Markets Act 2000 (as amended);
"FSCS Scheme Manager"	Financial Services Compensation Scheme Limited (company number 03943048), being the current statutory successor to the PPB and to include any statutory successor to it;
"Gross Liabilities"	in respect of a Scheme Creditor, the sum of the Established Liabilities (as at the New Effective Date), Agreed Liabilities, Notified Outstanding Liabilities and IBNR Liabilities but before taking account of any Offset Amounts and any discount for the time value of money;
"IBNR Liability"	an incurred but not reported claim arising under or in respect of an Insurance Contract for the amount payable by one or both of the Companies in respect of a loss which has been incurred but has not been reported to or discovered by a Scheme Creditor plus the amount payable in respect of a general excess over Notified Outstanding Liabilities, to the extent that the current estimates of claims included as Notified Outstanding Liabilities may prove to be inadequate;

"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);
"ING Life Japan"	ING Life Insurance Company, Ltd, a company incorporated in Japan;
"Individual Claimant Representative"	Charles E. Bates or such other person as may be appointed as a successor to him in accordance with the provisions of the Scheme;
"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;
"Liability"	any obligation or liability, whether present, future, prospective or contingent;
"Lloyds Bank"	Lloyds Bank plc (incorporated in England and Wales under the Companies Act 1862 with registered number 002065);
"Lloyds Bank Agreement"	the guarantee and indemnity agreement dated 12 October 2010 between (amongst others) Lloyds Bank and the Companies;
"L&O"	The London and Overseas Insurance Company Limited (formerly known as The London and Overseas Insurance Company plc) (incorporated in England and Wales under the Companies Acts 1862 to 1890 with registered number 38706);
"Nat-Ned"	NN Group N.V., a company incorporated in the Netherlands that was formed from a merger involving ING Verzekeringen N.V., formerly known as Internationale Nederlanden Verzekeringen N.V.;
"Net Liabilities"	in respect of a Scheme Creditor, the value attributed to the Gross Liabilities (discounted for the time value of money) after subtracting any Offset Amounts;
"New Effective Date"	the date on which an office copy of the orders of the Court sanctioning the Amending Scheme is delivered to the Registrar of Companies in England and Wales for registration;
"NNOFIC"	Nationale-Nederlanden Overseas Finance and Investment Company, an unlimited company (incorporated in England and Wales under the Companies Act 1985 with registered number 2634701);
"No Notice Adjudicator"	Leo J. Jordan Sr or such other person as may be appointed as a successor to him in accordance with the provisions of the Scheme;
"No Notice Individual Creditor"	an individual who is permitted to submit a Claim Form after the Bar Date in the manner described in paragraph 36.13;
"Notified Outstanding Liability"	a claim arising under or in respect of an Insurance Contract for the amount payable by one or both of the Companies in respect of a loss which has been reported to or discovered by the Scheme Creditor and notified to one or both of the Companies but has not become an Agreed Liability or an Established Liability;
"Offset Amount"	in respect of a Scheme Creditor, any Liability of that Scheme Creditor to one or both of the Companies which, as at the Valuation Date, is due or may fall due in the future (after applying a discount for the time value of money);
"Opt Out Form"	the opt out form on the Website entitled "Opting Out";

"Opt Out Payment Percentage"	the percentage of a Qualifying Established Liability that the Scheme Administrators determine from time to time should be paid to Opt Out Qualifying ILU Policyholders;
"Opt Out Qualifying ILU Policyholder"	any Qualifying ILU Policyholder who has opted out of the crystallisation and payment provisions contained in the Amending Scheme;
"Ordinary Creditor"	a Scheme Creditor other than a Policyholder, a Qualifying ILU Policyholder, a Dual Scheme Creditor or NNOFIC;
"Original Scheme"	the schemes of arrangement between the Companies and their Scheme Creditors (as defined therein) dated 20 November 1996, which became effective on 7 March 1997, in the form unamended by the Amending Scheme;
"Orion"	OIC Run-Off Limited (formerly known as The Orion Insurance Company plc) (incorporated in England and Wales under the Companies Act 1929 with registered number 256100);
"Payment Percentage"	the percentage of an Established Liability (under the Original Scheme) or a Net Liability (under the Amending Scheme) that the Scheme Administrators determine from time to time should be paid to Scheme Creditors;
"Policyholder"	a Scheme Creditor of either or both of the Companies under an Insurance Contract (other than a Qualifying ILU Policy), but excluding NNOFIC;
"Post Bar Date Expenses"	the costs and expenses of the Companies (including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator) incurred in connection with the claims of Qualifying ILU Policyholders that are not individuals (other than Opt Out Qualifying ILU Policyholders) which are accepted after the Bar Date;
"Post Bar Date Individual Provision"	the provision made by the Companies to meet the Payment Percentage of any claims of individuals which are accepted after the Bar Date and the costs and expenses of the Companies (including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator) incurred in connection with such claims;
"Post Bar Date Provision"	the provision made by the Companies to meet any claims of Qualifying ILU Policyholders that are not individuals (other than Opt Out Qualifying ILU Policyholders) which are accepted after the Bar Date and the Post Bar Date Expenses;
"Postal Service Request"	a telephone or written communication from a Scheme Creditor made in accordance with paragraph 49.3 of the Amending Scheme requesting that all communications from the Companies, the Scheme Administrators and the Scheme Adjudicator be sent to the relevant Scheme Creditor by post, and not electronically;
"Potentially Protected Liability"	a Liability of either Company in respect of a claim which, as at the New Effective Date, is a claim in respect of an Agreed Liability, a Notified Outstanding Liability or an IBNR Liability that, when matured, would be eligible for protection under the Policyholders Protection Act 1975 or under the FSCS Rules if the Company were an insurance undertaking in default and the Policyholders Protection Act 1975 or the FSCS Rules applied to that default;

"Potentially Protected Policyholder"	a Scheme Creditor of either of the Companies in respect of a Potentially Protected Liability but excluding any Qualifying ILU Policyholder;
"PPB"	the Policyholders Protection Board established by the Policyholders Protection Act 1975;
"PRA"	the Prudential Regulation Authority (being, together with the FCA, the current statutory successor to the Financial Services Authority) and any successor regulatory authority with responsibility for the regulation of the Companies from time to time;
"Pre-1969 L&O Policyholder"	a Scheme Creditor under an Insurance Contract entered into by L&O with an inception date before 20 March 1969 and whose claims in respect of that Insurance Contract are subject to the Lloyds Bank Agreement;
"Protected Liability"	any Established Liability of either Company in respect of which the FSCS Scheme Manager owes a duty or is required to make payment;
"Protected Percentage"	in relation to a Protected Liability, the maximum percentage of that Protected Liability which the FSCS Scheme Manager would have a duty to pay;
"Protected Policyholder"	any Scheme Creditor to whom a Company owes a Protected Liability and who, in addition, is eligible for protection under section 16(9) of the Policyholders Protection Act 1975 or the FSCS Rules (but who is not a Qualifying ILU Policyholder);
"Qualifying Assignee"	a Scheme Creditor of either or both of the Companies who is an Assignee pursuant to one or more Assignments, where the claims (the benefit of which has been assigned under those Assignments) are in respect of one or more Qualifying ILU Policies;
"Qualifying Established Liability"	a Scheme Liability to a Qualifying ILU Policyholder which has become established under the terms of the Original Scheme;
"Qualifying ILU Policyholder"	a Scheme Creditor of either or both of the Companies under a Qualifying ILU Policy;
"Qualifying ILU Policyholder Premium"	an amount calculated and payable to Qualifying ILU Policyholders (who are not Opt Out Qualifying ILU Policyholders) in accordance with paragraphs 21.4 to 21.10 of the Amending Scheme;
"Qualifying ILU Policy"	<p>a contract of insurance, reinsurance or retrocession between either or both of the Companies and a Scheme Creditor evidenced by a policy signed and issued by the ILU:</p> <ol style="list-style-type: none"> <li>(1) in the case of L&amp;O, with an inception date on or after 20 March 1969; and</li> <li>(2) in the case of Orion, with an inception date on or after 28 August 1970;</li> </ol>
"Qualifying Liability"	a Scheme Liability to a Qualifying ILU Policyholder under a Qualifying ILU Policy;

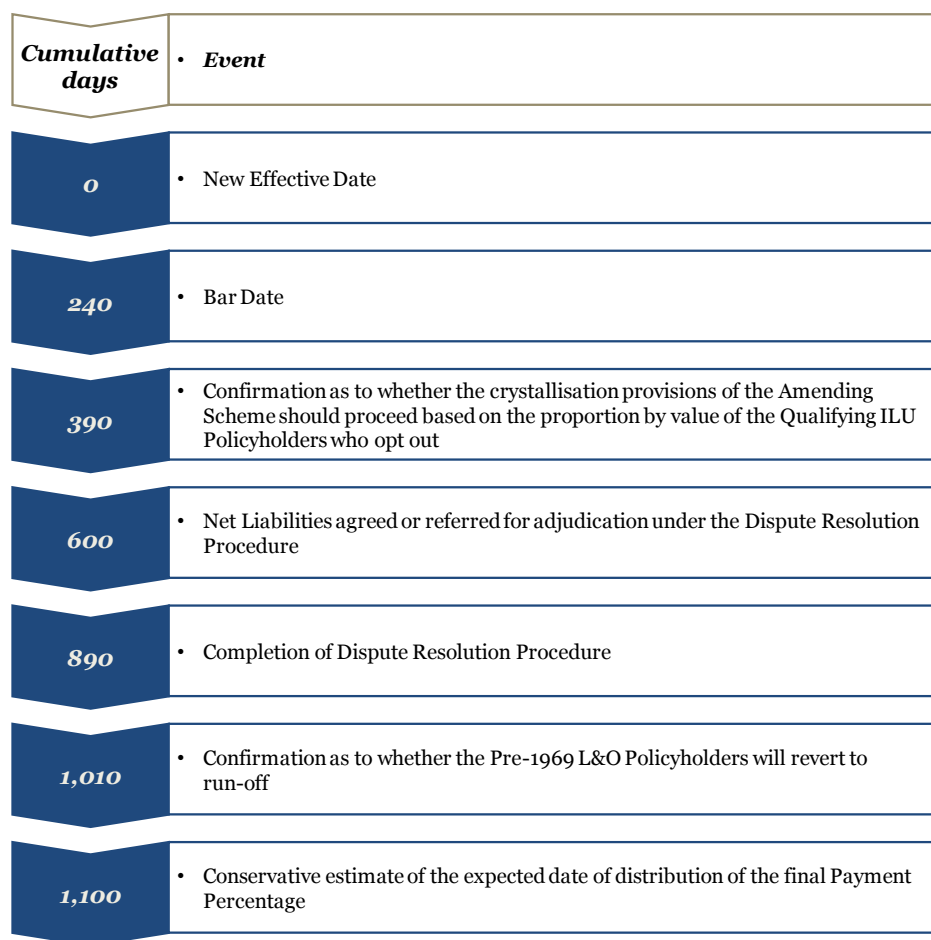
"Risk Free Rate"	the yield, as at the Valuation Date, on US Treasury bonds (or, in the case where the underlying Liabilities owed to a Scheme Creditor are predominantly payable in a currency other than US Dollars, equivalent government securities of the country in whose currency the Liabilities are payable) of a term that is appropriate taking account of the nature of the Scheme Liabilities;
"Run-off Company"	Armour Risk Management Limited or such other 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 Scheme;
"Scheme"	the Original Scheme, as amended by the Amending Scheme;
"Scheme Actuarial Adviser"	Mark Allen of PricewaterhouseCoopers LLP or such other person for the time being appointed as scheme actuarial adviser under the Scheme;
"Scheme Adjudicator"	Raji Bhagavatula FCAS MAAA of Milliman, Inc or such other person for the time being appointed as scheme adjudicator under the Scheme;
"Scheme Administrators"	Dan Schwarzmann and Paul Evans, each of PricewaterhouseCoopers LLP, or such other persons appointed to administer the Scheme;
"Scheme Creditor"	a creditor of either or both of the Companies in respect of a Scheme Liability other than, for certain purposes specified in the definition of this expression in the Amending Scheme, NNOFIC;
"Scheme Liability"	an obligation or Liability of either or both of the Companies as defined in the Amending Scheme, other than, for certain purposes specified in the definition of this expression in the Amending Scheme, certain Liabilities to NNOFIC;
"Security Interest"	any effective mortgage, letter of credit, charge, lien, assignment by way of security, bond or other security interest over any property of either or both of the Companies;
"Short Form Explanatory Statement"	the abridged version of the Amending Explanatory Statement sent by post to Scheme Creditors and available from the Website;
"US"	United States of America;
"Valuation Date"	31 December 2013;
"Valuation Option"	the claims determination process included in the Original Scheme allowing the Scheme Administrators, with the agreement of the Creditors' Committee and the approval of a majority in number representing at least 75% in value of Scheme Creditors (or each class of Scheme Creditor) voting in person or by proxy at special meetings of the Companies, to bring about the early closure of the Original Scheme by converting it from a reserving scheme of arrangement into a crystallisation scheme of arrangement;
"Vote Assessor"	Colin J.W. Czapiewski FIA MAAA FPSA FSAI or such other person for the time being appointed as vote assessor for the Amending Scheme Meetings;
"Voting Form"	the voting and proxy form to be used by Scheme Creditors for voting on the Amending Scheme;
"Website"	the Companies' website at <a href="http://www.oicrun-offltd.com">www.oicrun-offltd.com</a> ; and
"Winding-up Petitions"	the petitions to wind up the Companies, both presented to the Court on 20 October 1994.

## **B: INDICATIVE TIMELINE**

The following indicative timeline sets out the key dates in relation to the proposed Amending Scheme.

Valuation Date	31 December 2013
Voting Forms to be returned to the Scheme Administrators	10 December 2014
Amending Scheme Meetings	11 December 2014
Announcement of the result of the Amending Scheme Meetings	January 2015
Court hearing in England to sanction the Amending Scheme	January/February 2015
Court hearing in the US to obtain recognition and an order enforcing the Amending Scheme under the US Bankruptcy Code	January/February 2015
New Effective Date	28 February 2015
Bar Date - by which Scheme Creditors must submit their Claim Forms	New Effective Date + 240 days (approximately 8 months)
Latest expected date by which it is confirmed whether the crystallisation provisions of the Amending Scheme should proceed (based on the proportion by value of Qualifying ILU Policyholders who opt out)	New Effective Date + 390 days (approximately 1 year and 1 month)
Conservative estimate of the expected date by which the Post Bar Date Individual Provision will have been set	New Effective Date + 460 days (approximately 1 year and 3 months)
Latest expected date by which the Net Liabilities of each Scheme Creditor are agreed or referred for adjudication under the Dispute Resolution Procedure	New Effective Date + 600 days (approximately 1 year and 8 months)
Latest expected date by which the Dispute Resolution Procedure is completed	New Effective Date + 890 days (approximately 2 years and 6 months)
Latest expected date by which it is determined whether the Pre-1969 L&O Policyholders will revert to run-off	New Effective Date + 1,010 days (approximately 2 years and 10 months)
Conservative estimate of the expected date of distribution of the final Payment Percentage to Scheme Creditors other than Opt Out Qualifying ILU Policyholders (subject to confirmation that the Pre-1969 L&O Policyholders do not revert to run-off)	New Effective Date + 1,100 days (approximately 3 years and 1 month)

The timeline is set out in the form of a diagram below.



The timing of the payment of the final Payment Percentage is subject to change in the event that the Pre-1969 L&O Policyholders revert to run-off. This is explained in paragraph 33.

The Amending Scheme allows the Scheme Administrators to extend, in their absolute discretion, any date or deadline, other than the Bar Date. Hence this timeline and all corresponding dates should be considered as indicative only.

## C: SUMMARY

### 1. Background

- 1.1. The Amending Scheme is proposed by the Scheme Administrators, acting on behalf of the Companies. The current Scheme Administrators are Dan Schwarzmann and Paul Evans, both of PricewaterhouseCoopers LLP.
- 1.2. The Companies are currently subject to the terms of the Original Scheme. The Original Scheme is a reserving scheme of arrangement. It provides for Scheme Creditors' claims to be agreed in the ordinary course of business, except that Scheme Creditors are paid a percentage of their claims as and when they become Established Liabilities during the course of the run-off. Those Scheme Creditors that are Qualifying ILU Policyholders receive additional payments as explained in paragraph 1.18.
- 1.3. The Original Scheme was approved by the Companies' respective Scheme Creditors on 14 February 1997 and subsequently sanctioned by an order of the Court made on 5 March 1997. The Original Scheme became effective on 7 March 1997.
- 1.4. Cross guarantees were entered into by the Companies. Their effect is that every Scheme Creditor under the Original Scheme has the same net claims against both Companies. To minimise administrative costs and to take account of the effect of the cross guarantees, the Original Scheme provides for all Scheme Creditors to receive a common, single Payment Percentage on their Established Liabilities.
- 1.5. The initial Payment Percentage was set at 15% in September 1997 and, following consultation with the Creditors' Committee, has been increased in stages to its current level of 58%. Payments in respect of the Payment Percentage to Scheme Creditors by the Companies prior to 31 December 2013 totalled US\$622 million. The most recent increase in the Payment Percentage from 57% to 58% was approved by the Creditors' Committee in November 2013.
- 1.6. The run-off of the Companies' business has been managed by various Run-off Companies under the supervision of the Scheme Administrators. The current Run-off Company is Armour Risk Management Limited.

#### ***Purpose of the Amending Scheme***

- 1.7. A crystallisation scheme is a type of scheme which is designed to finalise the affairs of an insurer as soon as possible. To achieve this, a mechanism is typically put in place to estimate the value of contingent claims and other claims of an uncertain value against the company. A methodology for valuing those claims is adopted, which should then enable a final payment to be made to all creditors.
- 1.8. The Original Scheme contains a Valuation Option allowing the Scheme Administrators, with the agreement of the Creditors' Committee, to bring about the early closure of the Original Scheme by converting it from a reserving scheme of arrangement into a crystallisation scheme of arrangement. Under the terms of the Original Scheme, a majority in number representing at least 75% in value of Scheme Creditors (or each class of Scheme Creditor) would also need to have voted in favour of the Valuation Option before it could be implemented by the Scheme Administrators.
- 1.9. While the Scheme Administrators consider that it would be in the interests of Scheme Creditors to introduce a crystallisation scheme in respect of the Companies (while at the same time protecting the interests of Qualifying ILU Policyholders), for the reason set out in paragraph 2.9, the Scheme Administrators consider that this will be better achieved through the implementation of the Amending Scheme (instead of through the Valuation Option). The Amending Scheme includes an enhanced claims determination process to reflect the development of the Companies' creditor profile and the improvements in scheme technology and practice that have occurred since the Original Scheme became effective in March 1997.
- 1.10. All creditors of the Companies are referred to in both the Original Scheme and the Amending Scheme as "Scheme Creditors". Scheme Creditors are, broadly speaking, all persons who would be creditors of one or both of the Companies in the event of their compulsory liquidations. However, Scheme Creditors do not include NNOFIC for certain purposes specified in the definition of "Scheme Creditor" in the Amending Scheme.

- 1.11. Under the Amending Scheme, Scheme Creditors will be required to notify the Companies of their claims by the Bar Date. After the Bar Date, Scheme Creditors will agree their Net Liabilities with the Companies and receive payment at the Payment Percentage rate, or in full if they are Qualifying ILU Policyholders. Qualifying ILU Policyholders who do not opt out of the crystallisation and payment provisions of the Amending Scheme before the Bar Date will also, subject to satisfying certain conditions, receive a Qualifying ILU Policyholder Premium.
- 1.12. There are certain conditions and features which affect the process under which Net Liabilities are agreed and paid under the Amending Scheme, in particular with regard to the position of:
  - 1.12.1. Qualifying ILU Policyholders;
  - 1.12.2. Pre-1969 L&O Policyholders; and
  - 1.12.3. Qualifying ILU Policyholders (who are not individuals) and individuals (whether or not those individuals are Qualifying ILU Policyholders) who are, in certain circumstances, entitled to submit claims after the Bar Date.
- 1.13. The purpose of the Amending Scheme is to allow for the agreement of the majority of Scheme Liabilities and to facilitate the distribution of the Companies' assets earlier than would have been the case under the Original Scheme. It is also expected that the final Payment Percentage will be higher than under the Original Scheme, resulting primarily from the savings in run-off costs that should be achieved if the Amending Scheme becomes effective. The Amending Scheme also allows Qualifying ILU Policyholders to opt out of the crystallisation and payment provisions of the Amending Scheme in respect of future claims and thereby to leave their insurance coverage in place.

#### ***Further information***

- 1.14. The Amending Scheme proposal should be read in conjunction with the Original Scheme, which is available from the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com).
- 1.15. The Amending Scheme will amend the terms of the Original Scheme. The provisions of the Original Scheme will remain in effect, save as amended by the Amending Scheme. Section H (*Appendices*) contains a table outlining which provisions of the Original Scheme will continue to apply and which provisions will be amended by the Amending Scheme (if it becomes effective). In the event of any inconsistency between the terms of the Original Scheme and the terms of the Amending Scheme, the terms of the Amending Scheme will prevail.
- 1.16. The Short Form Explanatory Statement is an abridged version of this Amending Explanatory Statement. It consists of a summary of the main terms of the Amending Scheme. The Short Form Explanatory Statement has been sent to all Scheme Creditors, potential creditors of the Companies and relevant insurance market intermediaries of whom the Companies are aware.

#### ***Qualifying ILU Policyholders***

- 1.17. Certain of the Companies' policies were written through the ILU. For the purpose of the Scheme, a Qualifying ILU Policy is one which was signed and issued by the ILU with an inception date on or after 28 August 1970 in the case of Orion, and 20 March 1969 in the case of L&O.
- 1.18. The position of Qualifying ILU Policyholders and the arrangements for them to receive additional monies are described at pages 4 and 5 of the Explanatory Statement to the Original Scheme. Under the Original Scheme, in addition to the Payment Percentage received by all Scheme Creditors, each Qualifying ILU Policyholder receives a further payment or payments from the Companies up to the full amount (i.e. 100p in the £) of its Qualifying Established Liability.
- 1.19. In order to qualify for this "top-up" payment, a Qualifying ILU Policyholder must notify its claims to the Companies by no later than 31 December 2035. Prior to making any such "top-up" payment, the Companies must receive either:
  - 1.19.1. a Discharge Letter addressed to the Companies and executed by the relevant Qualifying ILU Policyholder; or

- 1.19.2. where the "top-up" payment is to be paid to an agent (such as a broker) and not directly to the Qualifying ILU Policyholder, an indemnity in respect of such payment in favour of the Companies from that agent in the form specified in the CPLA.
- 1.20. Under the terms of the Discharge Letter, the Qualifying ILU Policyholder (amongst other things) confirms receipt of the payments in respect of its Qualifying Established Liabilities from the Companies and discharges the Companies from their obligations in respect of the Qualifying ILU Policyholder's claims. The Qualifying ILU Policyholder further confirms the receipt of such payments and subrogates the Companies to all of that Qualifying ILU Policyholder's rights against third parties in respect of those claims.
- 1.21. The Companies make these "top-up" payments out of funds borrowed for that purpose from NNOFIC under the Facility. The terms of the Facility under which NNOFIC lends monies to the Companies to make payments to Qualifying ILU Policyholders are set out in the CPLA. A revised version of the CPLA will be entered into by the Companies, NNOFIC and the ILU, if the Amending Scheme becomes effective, to reflect the new terminology and administrative procedures for payments to be made under the Amending Scheme.
- 1.22. The amount of funds that may be borrowed by the Companies from NNOFIC under the Facility is limited to US\$450 million (including funds that the Companies have already drawn down under the Facility). Should this amount be exhausted, a further amount of US\$3.5 million per year will be made available in perpetuity by NNOFIC to the Companies to meet the claims of Qualifying ILU Policyholders.
- 1.23. As each "top-up" payment is made by the Companies to discharge an Established Liability of a Qualifying ILU Policyholder out of monies borrowed from NNOFIC under the Facility, NNOFIC gains an Established Liability equal to the amount of the Established Liability of that Qualifying ILU Policyholder that was discharged by the "top-up" payment. NNOFIC is deemed to have received a payment in respect of that Established Liability equal to the existing Payment Percentage. NNOFIC then receives, by way of partial repayment of "top up" payments that it has advanced to the Companies, any future Payment Percentage increases or compensatory interest paid by the Companies in respect of each such Established Liability. NNOFIC is bound by the Original Scheme and has agreed to be bound by the Amending Scheme. Payments made to Qualifying ILU Policyholders up until 31 December 2013 out of monies borrowed from NNOFIC under the Facility totalled US\$216 million, meaning that at that time the amount of the Facility remaining available was then US\$234 million, plus the annual payment of US\$3.5 million thereafter referred to in paragraph 1.22.
- 1.24. Unless an amount to be paid by NNOFIC is stated not to be drawn under the Facility, all payments that NNOFIC makes at any time will be made under and subject to the terms of the CPLA and will be subject to the Facility Limit referred to above, as reduced by amounts that the Companies have borrowed under the CPLA up to that time.
- 1.25. Under the Amending Scheme, NNOFIC will continue to fund "top-up" payments to Qualifying ILU Policyholders in a similar manner, pursuant to an updated CPLA (see paragraph 1.21) provided those claims are made to the Companies by 31 December 2035. However, NNOFIC will not receive repayment in relation to "top-up" payments to Opt Out Qualifying ILU Policyholders that it funds under the CPLA in respect of claims made by Opt Out Qualifying ILU Policyholders after the New Effective Date.
- 1.26. In addition to these "top-up" payments, under the Amending Scheme, Qualifying ILU Policyholders will, subject to satisfying certain conditions, receive a further payment in the form of a premium, referred to as the Qualifying ILU Policyholder Premium.
- 1.27. However, a Qualifying ILU Policyholder may, if it so wishes, opt out of the crystallisation and payment provisions of the Amending Scheme in respect of future claims, in which case it will not receive the Qualifying ILU Policyholder Premium.

### ***Scheme Liabilities***

- 1.28. The majority of the Companies' Scheme Liabilities by value have been agreed. Of the remaining Scheme Liabilities, most of them are long-tail and, in the opinion of the Scheme Administrators, in the absence of the Amending Scheme, would be unlikely to be agreed for many years. In recent years, the Scheme Administrators have commuted some of these long-tail Liabilities with Scheme Creditors on a bilateral basis. This increased the level of certainty with regard to the Companies' insurance reserves and led to increases in the Payment Percentage. The large number of Scheme Creditors remaining with relatively low claim values does, however, mean that continuing with the Original Scheme is no longer a cost effective method of supporting further increases in the Payment Percentage.

### ***Run-off costs***

- 1.29. As at 31 December 2013, the Companies had incurred over US\$300 million of run-off costs since the start of their provisional liquidations in October 1994. If the Companies remain in run-off under the Original Scheme, it is projected by the Scheme Administrators that the run-off will continue beyond 2035. The Scheme Administrators estimate that, absent the Amending Scheme, the total run-off costs for the period 2014 to 2035 under the Original Scheme could reach US\$200 million (or more). By introducing a mechanism to crystallise future Liabilities, the Amending Scheme seeks to save a large proportion of these future run-off costs. This saving should, in turn, increase the amount of the Companies' assets that are available for distribution to Scheme Creditors in the form of a higher Payment Percentage than would have been the case under the Original Scheme.

### ***Reinsurance collections***

- 1.30. Reinsurance cash collections up until 31 December 2013 totalled US\$691 million. With the exception of amounts payable by Lloyds Bank under the Lloyds Bank Agreement (which are referred to in this document as if they were reinsurance proceeds, see paragraph 33 for more details), the majority of the Companies' reinsurance assets in respect of reinsurers who are pure reinsurers or net debtors of the Companies have been commuted. It is therefore likely that, if the Companies remained in run-off under the Original Scheme, the Companies would not make any further significant reinsurance recoveries other than from Lloyds Bank under the Lloyds Bank Agreement.

### ***ING Group demerger***

- 1.31. Some significant structural changes are expected to take place in the ING Group in the next few years. In particular, the Companies and NNOFIC are to become part of a sub-group that will be divested by ING Groep N.V. in order to comply with requirements of the European Commission. The base case for this divestment is an initial public offering of shares in Nat-Ned, which is now the Dutch insurance holding company. The sub-group headed by Nat-Ned will include the Companies, NNOFIC, the remainder of ING's European insurance and investment management companies and ING Life Japan. That sub-group will also include 1845. ING Groep N.V. has agreed with the European Commission to dispose of more than 50% of its stake in Nat-Ned by the end of 2015 and to dispose of its remaining interest in Nat-Ned by the end of 2016. It is not expected that these structural changes will affect the operation of the Scheme or the Facility.

## **2. Background to the Amending Scheme**

- 2.1. The possible alternatives to continuing the run-off of the Companies under the Original Scheme are as follows:
- 2.1.1. placing the Companies into insolvent liquidation;
  - 2.1.2. activating the Valuation Option (described in paragraph 1.8); and
  - 2.1.3. proposing the Amending Scheme.
- 2.2. The Scheme Administrators consider that the Amending Scheme is the best alternative out of these three options.

### ***Comparison with liquidation***

- 2.3. The Scheme Administrators consider that the Amending Scheme has a number of advantages over putting the Companies into insolvent liquidation. These are as follows:
- 2.3.1. the rules that apply to the winding-up of an insurer (the Insurers (Winding Up) Rules 2001 (SI 2001/3635) and the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353)) (together, the "**Winding-Up Rules**") are inflexible and could be disadvantageous to Scheme Creditors. For example, the Winding-Up Rules provide that direct insurance debts (e.g. monies owed to an insurer's own policyholders) are to be paid in priority to all other unsecured debts, except staff remuneration and pensions contributions. This rule does not, however, apply to policyholders of other insurance companies which the insurer has reinsured, or Policyholders of the other Company who might have had a claim under the relevant cross guarantee (referred to in paragraph 1.4). Such policyholders therefore could be significantly disadvantaged as a result of any application of the Winding-Up Rules. The advantage of the Amending Scheme process is that such payment priority provisions of the Winding-Up Rules would not apply;
  - 2.3.2. the prospect of payments being made to Scheme Creditors earlier than would be likely in a liquidation due to a more efficient claims agreement process;
  - 2.3.3. the application of set-off in a manner that is likely to allow payment to Scheme Creditors earlier than would be practicable in a liquidation;
  - 2.3.4. in contrast to a compulsory winding-up by the Court, the Companies will not be required to place their cash assets, as at 31 December 2013 approximately US\$616 million, in the Insolvency Services Account at the Bank of England. Consequently, the Companies would avoid having to pay the statutory investment and handling fees associated with that account;
  - 2.3.5. a more flexible investment policy may be adopted which is suitable to the security, currency, handling and yield requirements of the Companies. For example, under the Amending Scheme it will be possible to maintain funds in different currencies to reflect the need to make payments to Policyholders in the different currencies of their claims. In a compulsory liquidation, however, the cash assets could only be invested in UK government securities to the extent that they were not required in the short-term;
  - 2.3.6. Policyholders can be paid in the currency provided for by their policies. In a liquidation, creditors' claims would be converted into pounds sterling using the exchange rate at the date of the winding-up order, regardless of the fact that many of those claims may not be established for some time. Consequently, in a liquidation, creditors could be exposed to exchange rate movements resulting from currency mismatches between dividends and claims; and
  - 2.3.7. material savings in future legal fees are likely to be achieved as a result of the efficiency gains resulting from the Dispute Resolution Procedure.
- 2.4. Notwithstanding the advantages of the Amending Scheme over liquidation highlighted in paragraph 2.3, the Scheme Administrators consider that it would be unlikely, for the reasons given in paragraphs 2.5 to 2.7, that the Court would, in any event, place the Companies into liquidation.
- 2.5. On 3 March 2004 the Insurers (Reorganisation and Winding Up) Regulations 2004 (the "**2004 Regulations**") came into force in the UK, amending the Insurers (Reorganisation and Winding Up) Regulations 2003 (the "**2003 Regulations**"). The 2003 Regulations were introduced in order to implement in the UK the EU Directive on the reorganisation and winding-up of insurance undertakings (Directive 2001/17/EC). That Directive has two main effects on insurers: (1) an insurance undertaking may only take reorganisation measures or be wound up in the state where it is authorised, and, if it does so, then those measures will be

effective throughout the EU; and (2) in any winding-up of an insurance undertaking, direct policyholders have priority over all other creditors.

- 2.6. The 2004 Regulations and the amendments they introduced are particularly relevant to the Amending Scheme. First, where a scheme of arrangement, such as the Original Scheme, was already in operation on 20 April 2003, the 2004 Regulations now provide that there can be no winding-up of the company subject to that scheme of arrangement without the permission of the Court. This permission will only be granted in exceptional circumstances. This applies both to a creditors' voluntary liquidation and a compulsory liquidation. Second, if such an insurance company is wound up, the assets of that company which are subject to the scheme of arrangement will be distributed directly to policyholders in accordance with the provisions of that scheme of arrangement. These provisions were included in the 2004 Regulations to rectify an unintended consequence of the 2003 Regulations, which was effectively to provide an incentive for direct policyholders to vote against a scheme of arrangement in order to force a company into liquidation and thus to acquire priority over other creditors.
- 2.7. Therefore, there should be little incentive for direct Policyholders to oppose the Amending Scheme in order to try to force the Companies to go into liquidation, in an attempt to obtain a better level of priority over other creditors than that provided by the Original Scheme. In particular, in the opinion of the Scheme Administrators, the Court is most unlikely to authorise the Companies' liquidations as the proposal of the Amending Scheme does not itself create or constitute the "exceptional circumstances" that would justify making a winding-up order in respect of the Companies.

#### ***Valuation Option***

- 2.8. As described at paragraph 1.8, under the Original Scheme, the Scheme Administrators may, with the agreement of the Creditors' Committee, institute the Valuation Option if they consider it to be in the best interests of the Companies' creditors as a whole.
- 2.9. The Scheme Administrators have concluded that it would be in the interests of the Scheme Creditors as a whole to implement a crystallisation scheme in respect of the Companies, but on terms that are more detailed than those set out in the Valuation Option in the Original Scheme. As noted in paragraph 1.9, more detailed terms are required to reflect changes in the Companies' position since the implementation of the Original Scheme, refinements following experience with other crystallisation schemes and changes to business and communication practices.

#### ***Amending Scheme***

- 2.10. The Scheme Administrators consider that the Amending Scheme has a number of advantages over continuing the run-off under the Original Scheme.
- 2.11. Most fundamentally, the Scheme Administrators, the Creditors' Committee, NNOFIC, the ILU and the FSCS Scheme Manager all consider that the Amending Scheme will result in an increase in the amount of the Companies' assets being distributed to Scheme Creditors, and that payments will be made to Scheme Creditors earlier in the great majority of cases than would otherwise be the case if the Original Scheme continued in its present form. A detailed list of the advantages and disadvantages of the Amending Scheme is set out in paragraphs 20 and 21.

### **3. Amending Scheme – Summary**

- 3.1. The Amending Scheme provides, subject to certain exceptions, for the crystallisation and agreement of all remaining Scheme Liabilities, based on currently available information and through the application of the Estimation Guidelines.
- 3.2. Under the Amending Scheme, all Scheme Creditors (other than NNOFIC, Opt Out Qualifying ILU Policyholders, Protected Policyholders, Potentially Protected Policyholders, No Notice Individual Creditors and, in certain conditions set out in paragraphs 36.4 to 36.11, Qualifying ILU Policyholders) will need to submit a Claim Form or the information required by paragraphs 23.16 and 23.17 by the Bar Date.
- 3.3. Each such Scheme Creditor will be provided with a personalised Claim Form, setting out details of its Established Liabilities and Agreed Liabilities, as shown by the Companies' records. The Scheme Creditor will be asked to submit details on its Claim Form of any other

claims it considers that it has against the Companies, including Notified Outstanding Liabilities and IBNR Liabilities. The Scheme Creditor will also be required to provide supporting information relating to its policies relevant for agreeing its Gross Liabilities. The Scheme Administrators will use the information contained on a Scheme Creditor's Claim Form to agree the value of that Scheme Creditor's Gross Liabilities.

- 3.4. In then agreeing that Scheme Creditor's Net Liabilities, the Scheme Administrators, in consultation with the Scheme Actuarial Adviser, will take into account, among other things, any discount for the time value of money (in respect of any Notified Outstanding Liabilities and IBNR Liabilities) and any Offset Amount that may be due to the Companies from that Scheme Creditor. If the calculation of Net Liabilities is disputed by the Scheme Administrators or the Scheme Creditor, the matter can be referred to the Scheme Adjudicator for adjudication under the Dispute Resolution Procedure. The Dispute Resolution Procedure is described in more detail in paragraph 28.
- 3.5. In addition to payment of their Net Liabilities in respect of their Qualifying ILU Policies in full (subject to the terms of the CPLA), Qualifying ILU Policyholders (who have not opted out of the crystallisation and payment provisions of the Amending Scheme) may, subject to certain conditions and restrictions, receive a premium, the Qualifying ILU Policyholder Premium, above the amount of their Net Liabilities in respect of their Qualifying ILU Policies. The rationale and conditions for payment of the Qualifying ILU Policyholder Premium are described in paragraphs 30 and 31.
- 3.6. Qualifying ILU Policyholders may instead opt out of the crystallisation and payment provisions of the Amending Scheme and continue to have their claims paid in accordance with the Original Scheme. A Qualifying ILU Policyholder wishing to opt out for this purpose must inform the Scheme Administrators of its decision before the Bar Date.
- 3.7. If over 30% by value of the Qualifying ILU Policyholders decide to opt out, the crystallisation and payment provisions of the Amending Scheme will not take effect. In those circumstances, all Scheme Creditors will revert to run-off under the terms of the Original Scheme. The details of this calculation and the process by which all Scheme Creditors could revert to run-off are set out in more detail in paragraph 32.
- 3.8. If the crystallisation and payment provisions of the Amending Scheme come into effect, there are certain circumstances in which the future claims of Pre-1969 L&O Policyholders may revert to run-off in accordance with the terms of the Original Scheme, in order to maximise the recovery of the Companies' assets for the benefit of all Scheme Creditors. Further details of the circumstances in which this may occur and its implications are given in paragraph 33.

## **4. Interests of Qualifying ILU Policyholders**

- 4.1. Qualifying ILU Policyholders will be treated as follows under the Amending Scheme:
  - 4.1.1. subject to paragraph 4.1.2, Qualifying ILU Policyholders (who are not Opt Out Qualifying ILU Policyholders) can, subject to the terms of the CPLA, expect to receive payment of their claims in full as long as those claims are notified to the Companies before the Bar Date and in each case the Companies receive either:
    - (a) a completed and executed Discharge Letter in accordance with the terms of the CPLA; or
    - (b) where any "top-up" payment is to be paid to an agent (such as a broker) and not directly to the Qualifying ILU Policyholder, an indemnity in respect of such payment in favour of the Companies from that agent in the form specified in the CPLA;
  - 4.1.2. Opt Out Qualifying ILU Policyholders and those Qualifying ILU Policyholders (who are not Opt Out Qualifying ILU Policyholders) whose claims have been accepted by the Companies after the Bar Date in accordance with paragraphs 36.4 to 36.11 can, subject to the terms of the CPLA, expect to receive payment of their claims in full as long as those claims are notified to the Companies before 31 December 2035 and in each case the Companies receive either:

- (a) a completed and executed Discharge Letter in accordance with the terms of the CPLA; or
  - (b) where any "top-up" payment is to be paid to an agent (such as a broker) and not directly to the Qualifying ILU Policyholder, an indemnity in respect of such payment in favour of the Companies from that agent in the form specified in the CPLA;
- 4.1.3. the expected higher Payment Percentage under the Amending Scheme will not improve the position of the Qualifying ILU Policyholders as much as the other Scheme Creditors. This is because, regardless of the level of the Payment Percentage, their claims are, subject to the terms of the CPLA, already being paid out in full as and when they are agreed under the Original Scheme. The Scheme Administrators, NNOFIC and the ILU have therefore agreed that Qualifying ILU Policyholders will, in addition to the full payment of their claims, also receive payment of the Qualifying ILU Policyholder Premium, subject to paragraph 4.1.4 and certain conditions (including the completion and execution of a Discharge Letter in accordance with the terms of the CPLA). The premium is not available under the Original Scheme, as explained at paragraphs 30 and 31. The premium will be funded by NNOFIC. The terms on which NNOFIC is to fund the premium are set out in an agreement between NNOFIC and the Companies, which is separate from the Amending Scheme and the CPLA; and
- 4.1.4. Qualifying ILU Policyholders will be allowed to opt out of the crystallisation and payment provisions of the Amending Scheme before the Bar Date and, subject to the terms of the CPLA, continue to have their claims paid in full in accordance with the Original Scheme. Opt Out Qualifying ILU Policyholders will not receive payment of the Qualifying ILU Policyholder Premium referred to in paragraph 4.1.3.
- 4.2. If the estimated value of the aggregate Net Liabilities of the Opt Out Qualifying ILU Policyholders exceeds 30% of the estimated value of the aggregate Net Liabilities of all Qualifying ILU Policyholders, the crystallisation and payment provisions of the Amending Scheme shall not take effect. In those circumstances, all Scheme Creditors will revert to run-off under the terms of the Original Scheme.
- 4.3. As long as this 30% threshold is not exceeded, allowing Qualifying ILU Policyholders to opt out of the crystallisation and payment provisions of the Amending Scheme is expected to reduce the level of the estimated final Payment Percentage in the Amending Scheme by less than one percentage point (when compared with the estimated final Payment Percentage in the Amending Scheme if there was no opt out). Provided again that the 30% threshold is not exceeded, and subject to the treatment of the Pre-1969 L&O Policyholders described in paragraph 5, it should be possible to determine the final Payment Percentage within three years of the Amending Scheme becoming effective. In contrast, if the 30% threshold is exceeded and all Scheme Creditors revert to run-off, the final Payment Percentage is unlikely to be determined under the Original Scheme until after 2035.

## **5. Pre-1969 L&O Policyholders**

- 5.1. As referred to in paragraph 1.30, amounts remain payable by Lloyds Bank in respect of the Lloyds Bank Agreement. These arrangements are described in more detail in paragraph 33. The expected recovery from Lloyds Bank is estimated to have a significant impact on the level of the final Payment Percentage. Given the size of the estimated recovery, the Scheme Administrators understand that Lloyds Bank may not wish to pay the full amounts that fall due to the Companies under the Lloyds Bank Agreement as a result of the Amending Scheme. In this instance, the Scheme Administrators will then determine, in consultation with the Creditors' Committee, whether the Pre-1969 L&O Policyholders should revert to run-off, so that payment can be requested from Lloyds Bank as and when the claims of Pre-1969 L&O Policyholders are agreed by the Companies in the ordinary course.

- 5.2. If the Pre-1969 L&O Policyholders revert to run-off, the timing and level of the final Payment Percentage for all Scheme Creditors will be dependent on the level of claims submitted in future by the Pre-1969 L&O Policyholders and the level of recoveries made from Lloyds Bank in respect of those claims. In those circumstances:
- 5.2.1. the Payment Percentage is estimated to rise quickly to a level in excess of the estimated final Payment Percentage that would have been payable if the run-off of all of the Companies' business had continued under the Original Scheme;
  - 5.2.2. the level of the final Payment Percentage will be affected by the extent to which the amount of the future claims of the Pre-1969 L&O Policyholders agreed by the Companies and the amount of recoveries made from Lloyds Bank in respect of those claims differ from the amount of such claims and recoveries that would otherwise have occurred under the crystallisation and payment provisions of the Amending Scheme;
  - 5.2.3. it may not be possible to determine the final Payment Percentage for all Scheme Creditors for many years into the future, until all of the claims of the Pre-1969 L&O Policyholders have been agreed and all recoveries in respect of those claims have been made from Lloyds Bank;
  - 5.2.4. the estimated final Payment Percentage is nonetheless around the same as it would have been if the Pre-1969 L&O Policyholders had not reverted to run-off; and
  - 5.2.5. the estimated final Payment Percentage in the Amending Scheme is also higher than the estimated final Payment Percentage under the Original Scheme (in the absence of the Amending Scheme).
- 5.3. The Pre-1969 L&O Policyholders will not revert to run-off in respect of any of their Established Liabilities and Agreed Liabilities. These Liabilities will continue to be dealt with and paid by the Companies in accordance with the crystallisation and payment provisions of the Amending Scheme.

## **6. Protected Liabilities and Potentially Protected Liabilities**

- 6.1. Where a Scheme Creditor has a claim for a Protected Liability or a Potentially Protected Liability, that claim may be submitted using either a Claim Form or in the ordinary course to the Companies.
- 6.2. Where the Scheme Creditor is in any doubt as to whether or not a Liability is a Protected Liability or a Potentially Protected Liability, the Companies strongly recommend that the relevant Scheme Creditor submits details of the relevant Liability to the Companies using a Claim Form so as to be received by the Companies before the Bar Date.
- 6.3. Provided that the Amending Scheme becomes effective, where a Liability is determined to be a Protected Liability and it is reported after the New Effective Date, the claim will be dealt with, and any payment will be made, by the FSCS Scheme Manager.
- 6.4. A payment will be made under the Amending Scheme by the Companies to the FSCS Scheme Manager to reflect the FSCS Scheme Manager's assumption of responsibility for making payments to Protected Policyholders and Potentially Protected Policyholders. The payment will be an amount equal to the then current Payment Percentage applied to (i) the estimated value of the Companies' Potentially Protected Liabilities as at the Valuation Date, plus (ii) the aggregate value of those Protected Liabilities for which the FSCS Scheme Manager has not yet received payment of the Payment Percentage from the Companies. The Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, will determine the amount of the payment under (i) above by applying the same Estimation Guidelines as are used to calculate the Notified Outstanding Liabilities and IBNR Liabilities for other Scheme Creditors. No payments shall be made directly by the Companies to Scheme Creditors in respect of Potentially Protected Liabilities.
- 6.5. Full details of the treatment of Protected Policyholders and Potentially Protected Policyholders are given in paragraph 39.

## **7. Claims received after the Bar Date**

- 7.1. Claims received from Qualifying ILU Policyholders after the Bar Date will be considered in the very limited circumstances set out in paragraph 7.2. These arrangements solely reflect the unique circumstances of the Amending Scheme, including the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders.
- 7.2. Any Qualifying ILU Policyholder which is not an individual and who can demonstrate to the satisfaction of the No Notice Adjudicator that the reason that it did not submit a Claim Form before the Bar Date was that it neither knew, nor could reasonably be expected to have known, about the Amending Scheme and the requirement to submit a Claim Form before the Bar Date, will be entitled to submit claims after the Bar Date. These Qualifying ILU Policyholders will, subject to certain conditions, receive payment of their claims (to the extent such claims become Net Liabilities) in full in accordance with the Amending Scheme. Details of these conditions are set out at paragraphs 36.4 to 36.11.
- 7.3. Claims received from individuals after the Bar Date will also be considered in the very limited circumstances set out in paragraph 7.4, which reflect the unique circumstances of the Amending Scheme set out in paragraph 7.1.
- 7.4. An individual (whether or not that individual is a Qualifying ILU Policyholder) who can demonstrate to the satisfaction of the No Notice Adjudicator that he or she acquired rights against either or both of the Companies by operation of the law governing his or her rights or under the terms of the relevant policy with the Companies may also submit a claim after the Bar Date, provided that such individual can also demonstrate that:
  - 7.4.1. he or she neither knew about, nor could reasonably be expected to have known about, the Amending Scheme before the Bar Date; or
  - 7.4.2. no claim had arisen in his or her favour in connection with the relevant policy before the Bar Date; or
  - 7.4.3. before the Bar Date, he or she neither knew, nor could reasonably be expected to have known, that he or she had suffered significant injury.
- 7.5. Any such individual's claim will remain subject to all the requirements and limitations of all applicable law governing that claim and the provisions of the policy under which the individual claims, including in both respects, limitations in respect of the passage of time with the exceptions that: (i) applicable law shall not include the legal consequences of any injunction against such claims issued by a US Bankruptcy Court under the US Bankruptcy Code in connection with the recognition of the Original Scheme or the Amending Scheme; and additionally (ii) a claim shall not be deemed barred by applicable law solely because the insured entity in respect of whose Insurance Contract the claim against the Companies arises is subject to the crystallisation and payment provisions of the Amending Scheme.
- 7.6. Such No Notice Individual Creditors will receive payment of their claims (to the extent such claims become Net Liabilities) in accordance with the Amending Scheme out of the Post Bar Date Individual Provision at the prevailing Payment Percentage and, if any No Notice Individual Creditor is also a Qualifying ILU Policyholder by virtue of the particular provision of a policy or provision of law under which they are claiming, would receive a "top-up" funded by amounts provided by NNOFIC under the Facility. Once the Post Bar Date Individual Provision is exhausted, further claims from such No Notice Individual Creditors will not be met by the Companies (or by NNOFIC) to any extent. The Scheme Administrators will, however, retain the power to increase the amount of the Post Bar Date Individual Provision, using Scheme Assets, such that the Payment Percentage in respect of all Net Liabilities of No Notice Individual Creditors can be paid in full. The Scheme Administrators consider that the likelihood of this being applicable is extremely small.
- 7.7. Any decision of the No Notice Adjudicator under the provisions of the Amending Scheme will be final and binding (except in the case of fraud or arithmetical error or the No Notice Adjudicator making an irrational determination). For the purposes of this paragraph and paragraph 36.3, an irrational determination would be a determination which was so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the No Notice Adjudicator, would have made that same determination.

- 7.8. The costs of the No Notice Adjudicator in relation to Qualifying ILU Policyholders which are not individuals (which exclude any dividend payments to be made by the Companies to any Scheme Creditors) will be paid out of the Post Bar Date Provision described in paragraph 36.9, with any shortfall of such costs (excluding any dividend payments) funded by NNOFIC. The costs of the No Notice Adjudicator in relation to No Notice Individual Creditors will be paid out of the Post Bar Date Individual Provision described in paragraph 36.18 (but any shortfall of such costs will not be funded by NNOFIC). The Amending Scheme also allows for the costs of the No Notice Adjudicator in dealing with a Scheme Creditor's claim to be recovered in certain circumstances from that Scheme Creditor.

## **8. Payments to Scheme Creditors**

- 8.1. The Payment Percentage under the Original Scheme is currently 58%.
- 8.2. As Net Liabilities are agreed, the Payment Percentage will be reviewed by the Scheme Administrators and, if necessary, revised, until the final Payment Percentage is determined. Whenever the Payment Percentage is increased or the final Payment Percentage is determined, Scheme Creditors who have already received payments in respect of their Net Liabilities at the lower Payment Percentage will each receive an additional payment (including compensatory interest) to reflect the increase in the Payment Percentage.
- 8.3. The extent and timing of any revisions to the Payment Percentage and the level of the final Payment Percentage will depend on a number of factors, including the total value of Net Liabilities agreed with Scheme Creditors, the amount recovered from Lloyds Bank under the Lloyds Bank Agreement and whether or not the Pre-1969 L&O Policyholders revert to run-off.
- 8.4. Payments in respect of claims from:
- 8.4.1. Opt Out Qualifying ILU Policyholders;
  - 8.4.2. Protected Policyholders and Potentially Protected Policyholders; and
  - 8.4.3. Qualifying ILU Policyholders (who are not individuals) and individuals (whether or not those individuals are Qualifying ILU Policyholders) whose claims are submitted to the Companies after the Bar Date,

and which become Established Liabilities or Net Liabilities (as the case may be), will be made on a different basis from payments to other Scheme Creditors.

- 8.5. Full details of the payments to be made to Scheme Creditors are set out in paragraph 29.

## **9. Voting procedure**

- 9.1. The notice convening the Amending Scheme Meetings on 11 December 2014 is set out on pages 231 and 232 of this document.
- 9.2. Each class of Scheme Creditor for each Company will need to approve the Amending Scheme by a majority in number representing at least 75% in value of those Scheme Creditors of each class who, being so entitled, vote in person or by proxy at their respective Amending Scheme Meeting(s).
- 9.3. There will be Amending Scheme Meetings for the following classes of Scheme Creditor:
- 9.3.1. Orion:
    - (a) Policyholders (other than Qualifying ILU Policyholders) with IBNR Liabilities and Notified Outstanding Liabilities;
    - (b) Policyholders (other than Qualifying ILU Policyholders) with Scheme Liabilities (other than IBNR Liabilities and Notified Outstanding Liabilities), Dual Scheme Creditors and Ordinary Creditors; and
    - (c) Qualifying ILU Policyholders.

9.3.2. L&O:

- (a) Policyholders (other than Qualifying ILU Policyholders) with IBNR Liabilities and Notified Outstanding Liabilities;
- (b) Policyholders (other than Qualifying ILU Policyholders) with Scheme Liabilities (other than IBNR Liabilities and Notified Outstanding Liabilities), Dual Scheme Creditors and Ordinary Creditors; and
- (c) Qualifying ILU Policyholders.

9.4. In each meeting that a Scheme Creditor is entitled to attend, its vote will be valued by reference to the value of that Scheme Creditor's estimated Scheme Liabilities in that class.

9.5. In valuing a Scheme Creditor's Scheme Liabilities for voting purposes at the Amending Scheme Meetings:

9.5.1. in respect of the classes referred to in paragraphs 9.3.1(a) and 9.3.2(a), the value of that Scheme Creditor's claims in respect of Notified Outstanding Liabilities and IBNR Liabilities (other than Notified Outstanding Liabilities and IBNR Liabilities arising out of Qualifying ILU Policies) will be combined to give a single value;

9.5.2. in respect of the classes referred to in paragraphs 9.3.1(b) and 9.3.2(b), the value of that Scheme Creditor's Established Liabilities and Agreed Liabilities (other than Established Liabilities and Agreed Liabilities arising out of Qualifying ILU Policies) will be combined to give a single value; and

9.5.3. in respect of the classes referred to in paragraphs 9.3.1(c) and 9.3.2(c), the value of that Scheme Creditor's Established Liabilities, Agreed Liabilities, Notified Outstanding Liabilities and IBNR Liabilities in respect of Qualifying ILU Policies will be combined to give a single value.

9.6. The amounts referred to in paragraph 9.5 will then be adjusted to take account of any discount for the time value of money in respect of Notified Outstanding Liabilities and IBNR Liabilities, and to take account of any Offset Amount and Security Interest. The Voting Form contains guidance notes as to how Scheme Creditors should complete details of their claims for voting purposes. Paragraph 45 sets out in more detail how Scheme Creditors' claims will be valued for voting purposes at the Amending Scheme Meetings.

9.7. A Vote Assessor will be appointed to review the values placed on Scheme Creditors' claims for voting purposes. The Vote Assessor will prepare a report for submission to the Court at the sanction hearing on the reasonableness of those voting values. This report will include his determination of the value that should be attributed for voting purposes to any Scheme Creditor's claim, where that Scheme Creditor was unable to agree on the voting value of the claim with the relevant Company. The Chairman of the Amending Scheme Meetings will indicate to the Vote Assessor which, if any, other votes should, in his opinion, be reviewed by the Vote Assessor.

9.8. If approved by the Scheme Creditors by the requisite majorities referred to in paragraph 9.2 and sanctioned by the Court, on the New Effective Date the Amending Scheme will become legally binding and effective on all Scheme Creditors, even if they voted against it or did not vote.

9.9. Full details of the voting procedure are set out in paragraphs 44 to 49.

## **10. Implementation of the Amending Scheme**

10.1. To become legally binding on each of the Companies and their respective Scheme Creditors, a majority in number representing not less than 75% in value of each class of Scheme Creditor voting in person or by proxy at their respective Amending Scheme Meetings must vote to approve the Amending Scheme.

- 10.2. Instructions for voting on the Amending Scheme are set out on the Voting Form. For each Company, there will be one Amending Scheme Meeting for each class of Scheme Creditor. For the Amending Scheme to become effective, it will need to be approved by the requisite majorities of each class of Scheme Creditor. Further details of the classes of Scheme Creditor are given in paragraph 44.
- 10.3. If the Amending Scheme is approved by the requisite majorities of Scheme Creditors, the Court will be asked to sanction it.
- 10.4. A permanent injunction was obtained on 6 March 1997 under section 304 of the US Bankruptcy Code, which, among other things, stayed proceedings against the Companies, and granted recognition of the Original Scheme, in the US. This injunction remains binding and is still in effect. However, the section 304 process for recognition of schemes of arrangement in the US has since been replaced by a new Chapter 15 of the US Bankruptcy Code.
- 10.5. The Scheme Administrators therefore intend to apply under Chapter 15 for: (i) recognition of the English proceedings pending before the Court with respect to the Amending Scheme; and (ii) enforcement of the Amending Scheme itself. An order enforcing the Amending Scheme will prevent Scheme Creditors from proceeding against the Companies in relation to Scheme Liabilities in that jurisdiction and require them instead to rely on the provisions of the Amending Scheme for the satisfaction of such Liabilities. It is proposed that the effectiveness of the Amending Scheme will be dependent on obtaining an order enforcing the Amending Scheme under the US Bankruptcy Code. The Scheme Administrators have taken advice from Chadbourne & Parke LLP. The advice is that a petition for recognition of the English proceedings in respect of the Amending Scheme and an order enforcing the Amending Scheme in the US are likely to succeed.
- 10.6. The Companies will file their Chapter 15 petitions after the conclusion of the Amending Scheme Meetings and will schedule the hearing to consider the Companies' request for an order granting recognition to and enforcing the Amending Scheme for a date after the Court has sanctioned the Amending Scheme. Following the issuance of an order enforcing the Amending Scheme by the US Bankruptcy Court under the US Bankruptcy Code, the Court order sanctioning the Amending Scheme will be delivered to the Registrar of Companies. Upon delivery to the Registrar, the Amending Scheme will become effective and it will be legally binding on all Scheme Creditors. If, for any reason, an order enforcing the Amending Scheme under the US Bankruptcy Code is not issued, the Court order will not be delivered and the Amending Scheme will not become effective.
- 10.7. The Amending Scheme allows the Companies, at any time during the Scheme, to enter into agreements with Scheme Creditors in respect of their claims. Where a Scheme Creditor enters into such an agreement with the Companies, the amount agreed by the Companies with the Scheme Creditor in respect of that Scheme Creditor's claims will be used by the Companies as a basis for determining that Scheme Creditor's Net Liabilities under the Amending Scheme. In those circumstances, that Scheme Creditor will receive the current Payment Percentage in respect of its agreed claim earlier than would have otherwise been the case. The Scheme Administrators will adopt a consistent approach when negotiating and reaching agreement with Scheme Creditors in this way. Furthermore, the Scheme Administrators, in accordance with the terms of the Scheme, will only enter into any such agreement where they consider that to do so would be in the best interests of the Scheme Creditors as a whole.
- 10.8. As soon as possible after the Amending Scheme has become effective, the Scheme Administrators will, wherever possible, advertise that fact in the publications listed at paragraph 26.2. They will inform Scheme Creditors in the same advertisement of the timing of the Bar Date for submitting claims. The timing of the Bar Date will also be advertised on the Website.
- 10.9. Within 60 days of the New Effective Date, the Scheme Administrators will make available on the Website a Claim Form for each Scheme Creditor whom the Companies believe has or may have a claim against either or both of the Companies. The Claim Form will contain details of existing Scheme Liabilities that have been accepted by the Companies (i.e. the Scheme Creditor's Established Liabilities and Agreed Liabilities according to the Companies' records).

- 10.10. Each Scheme Creditor will be provided with a unique login identification ("ID") and password to access the Website and its Claim Form in a form substantially the same as shown in the draft in section H (*Appendices*). Scheme Creditors should, where possible, submit their completed Claim Forms electronically via the Website. This should reduce the Companies' administrative costs, thus maximising the funds available for distribution to Scheme Creditors. Any Scheme Creditor who wishes to receive a hard copy version of the Claim Form by post must make a request to this effect to the Run-off Company in accordance with the instructions described at paragraph 11.3.
- 10.11. Each Scheme Creditor should check the details of its claims set out on its Claim Form. Scheme Creditors should be aware that it is their sole responsibility to verify the accuracy and completeness of any claims information provided by the Companies on the Claim Forms.
- 10.12. If a Scheme Creditor agrees that the information contained in its Claim Form is accurate, it should confirm its agreement by submitting the Claim Form to the Companies in accordance with the Claim Form Guidance Notes set out in draft in section H (*Appendices*).
- 10.13. If a Scheme Creditor disagrees with any information in its Claim Form or wishes to make a claim that is not included in its Claim Form (for example, in respect of Notified Outstanding Liabilities and IBNR Liabilities), then that Scheme Creditor must revise its Claim Form accordingly to include its new claims or amendments to the information relating to its existing claims and submit the revised Claim Form to the Companies before the Bar Date. The Scheme Creditor must submit supporting documentation and evidence to substantiate the information it includes in respect of its claims in accordance with the requirements set out in Appendices 2 (*Estimation Guidelines*) and 3 (*Supporting Evidence*) of the Amending Scheme.
- 10.14. The Amending Scheme allows for claims to be submitted by alternative means so long as the Scheme Creditor provides the same information in respect of, and in support of, its claims as would have been required if the Scheme Creditor had submitted its claims on a Claim Form. This can include claim information provided by the Scheme Creditor on the Voting Form, providing that the Scheme Creditor confirms that the information provided on the Voting Form remains true and accurate in all respects and complies with the information requirements set out in the Amending Scheme.
- 10.15. If a Scheme Creditor considers that it is a Potentially Protected Policyholder in respect of some or all of its claim for Notified Outstanding Liabilities and/or IBNR Liabilities, it is requested to notify the Scheme Administrators that part of its Liability is a Potentially Protected Liability (as such Liability may be eligible for payment by the FSCS Scheme Manager). The Scheme Creditor should do so by contacting the Run-off Company by post at the address set out at the beginning of this document, or by email at [oioclosurehelpdesk@armourrisk.com](mailto:oioclosurehelpdesk@armourrisk.com). Full details of the circumstances in which a Potentially Protected Policyholder's claims may be paid by the FSCS Scheme Manager are set out in paragraph 39.
- 10.16. Subject to paragraphs 23.16 and 23.17, Scheme Creditors must complete and return their Claim Forms (together with all required supporting information) so as to be received by the Companies before the Bar Date. As noted in paragraph 10.10, Scheme Creditors will have the option of submitting Claim Forms and supporting information to the Companies electronically via the Website or by post but, in each case, the Claim Forms must be received by the Companies before the Bar Date. The Bar Date is midnight (English time) on the first Business Day falling 240 days after (and including) the New Effective Date.
- 10.17. Subject only to certain very limited exceptions referred to in paragraphs 23.16, 23.17 and 36:
- 10.17.1. Claim Forms received by the Companies after the Bar Date will not be considered for the purposes of the Amending Scheme; and
- 10.17.2. any claim notified to the Companies after the Bar Date will therefore not form part of that Scheme Creditor's claim for the purposes of the Amending Scheme.

- 10.18. If the Scheme Administrators become aware (whether before or after the Bar Date but, in any event, before the payment of the final Payment Percentage) that, as a result of an administrative error, they have failed to insert details of any Established Liabilities or Agreed Liabilities of a Scheme Creditor on that Scheme Creditor's Claim Form pursuant to paragraph 23.2, the Scheme Administrators will include the amount of those Established Liabilities and Agreed Liabilities when determining the amount of that Scheme Creditor's Gross Liabilities pursuant to paragraphs 27.1 and 27.2.
- 10.19. If the Companies do not receive an amended or modified Claim Form from a Scheme Creditor before the Bar Date, subject to paragraphs 23.16 and 23.17, the relevant Scheme Creditor will be deemed to have accepted the details of any existing Scheme Liabilities (i.e. their Established Liabilities and Agreed Liabilities) that have been accepted by the Companies and which, subject to paragraph 10.18, are referred to on the Claim Form made available by the Companies to that Scheme Creditor on the Website.
- 10.20. If a Scheme Creditor with only Notified Outstanding Liabilities and/or IBNR Liabilities does not return a Claim Form and appropriate supporting information before the Bar Date, subject to paragraphs 23.16 and 23.17, that Scheme Creditor will be deemed to have no claims against the Companies (subject to the limited exceptions allowing Qualifying ILU Policyholders and individuals to claim after the Bar Date set out in paragraph 36).
- 10.21. The Scheme Administrators have formed the view, with the assistance of the Scheme Actuarial Adviser, that all of the potential Liabilities of the Companies, and therefore all of the potential Liabilities in each class of Scheme Creditor, should be capable of being reasonably estimated using the principles set out in the Estimation Guidelines. It is possible that some Scheme Creditors will decide, for whatever reason, not to submit claims of a particular type or not to provide the supporting information required to substantiate claims of a particular type in the Amending Scheme. All such claims will be valued at zero in the Amending Scheme, either because no claim has been made by the Scheme Creditor, or because, in the opinion of the Scheme Administrators, insufficient supporting information has been supplied by the relevant Scheme Creditor to substantiate its claim.
- 10.22. The Claim Form will be used by the Companies to agree the value of the Gross Liabilities owed by the Companies to that Scheme Creditor. This will involve the agreement of all Liabilities owed by the Companies to that Scheme Creditor (including Established Liabilities, Agreed Liabilities, Notified Outstanding Liabilities and IBNR Liabilities) but before taking into account any discount for the time value of money, Offset Amount and Security Interest. The Gross Liabilities will be determined as at the Valuation Date, after taking into account any new valid information in respect of those Gross Liabilities received by the Scheme Administrators between the Valuation Date and the Bar Date. The Scheme Administrators have set the Valuation Date as 31 December 2013.
- 10.23. The Scheme Administrators will apply the Estimation Guidelines, with the assistance of the Scheme Actuarial Adviser, in seeking to reach agreement with Scheme Creditors in respect of their future claims (i.e. Notified Outstanding Liabilities and IBNR Liabilities). Further details regarding the Estimation Guidelines are set out in paragraphs 27.4 to 27.6.
- 10.24. Once the Gross Liabilities have been determined, the Scheme Administrators will seek to agree the Net Liabilities owed to that Scheme Creditor. The Scheme Creditor's Net Liabilities will be an amount equal to its Gross Liabilities less any discount for the time value of money, Offset Amount and Security Interest.
- 10.25. If the Scheme Administrators and a Scheme Creditor are unable to reach agreement upon the amount of that Scheme Creditor's Gross Liabilities, Offset Amount, future payment pattern for discounting for the time value of money in respect of that Scheme Creditor's Gross Liabilities or any other matter (other than the Estimation Guidelines and the Risk Free Rate) which affects the amount of the Scheme Creditor's Net Liabilities, the matter will be referred to the Scheme Adjudicator for adjudication under the Dispute Resolution Procedure.
- 10.26. In addition, if the Scheme Administrators are unable to reach agreement as to whether or not a Scheme Creditor is a Qualifying ILU Policyholder, that matter will be referred to the Scheme Adjudicator for adjudication under the Dispute Resolution Procedure.

- 10.27. Upon referral, the Scheme Administrators will send a notice to the Scheme Adjudicator setting out the details of the disputed matter. The Scheme Adjudicator will review the matter in accordance with the Dispute Resolution Procedure and issue a determination, together with, at her sole discretion, an appropriate explanation of the reasons for this determination. The Scheme Adjudicator's determination of any disputed matter submitted to her under the provisions of the Amending Scheme will be binding and final on the Companies, the Scheme Administrators and the relevant Scheme Creditor (except in the case of fraud or arithmetical error or the Scheme Adjudicator making an irrational determination). For the purposes of this paragraph and paragraphs 28.4, 35.6 and 36.18 an irrational determination would be a determination which was so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination.
- 10.28. The costs of the Scheme Adjudicator will be paid by the Companies as expenses of the Amending Scheme. The Amending Scheme also allows for the costs of the Scheme Adjudicator in dealing with a Scheme Creditor's claim to be recovered in certain circumstances from that Scheme Creditor.
- 10.29. A full description of the Amending Scheme closure process is set out in paragraphs 22 to 43.

## **11. Electronic communications**

- 11.1. The Amending Scheme allows for communications to be sent electronically. The Amending Explanatory Statement, its Appendices, the Amending Scheme, the Short Form Explanatory Statement, the Original Scheme and the Voting Form are all being made available electronically for download via the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com).
- 11.2. The Companies will make all Claim Forms available on the Website. Each Scheme Creditor will be provided with a unique ID and password to enable it to access its Claim Form, but no other Scheme Creditor's Claim Form, on the Website. It is anticipated that communications between the Scheme Administrators and Scheme Creditors will be conducted primarily through making documentation available for download via the Website and by email.
- 11.3. If any Scheme Creditor wishes to communicate with the Scheme Administrators by post, it must make a Postal Service Request. In that request, the Scheme Creditor must provide the information specified on the Postal Service Request form. A copy of the Postal Service Request form will be sent to Scheme Creditors as part of any notice sent to them informing them that the Amending Scheme has become effective. A Postal Service Request must be made to the Run-off Company at the address set out at the beginning of this document by completing and returning a Postal Service Request form or telephoning or otherwise contacting the Run-off Company to provide them with the information that would otherwise be required on the Postal Service Request form. The Scheme Administrators will instruct the Run-off Company to write to that Scheme Creditor, confirming that it has received the Postal Service Request form and that the Scheme Creditor will receive subsequent communications, including a Claim Form, by post.
- 11.4. Full details of the electronic communication arrangements in connection with the Scheme are in paragraph 40.
- 11.5. These provisions will continue to apply even if the crystallisation and payment provisions of the Amending Scheme do not take effect and all Scheme Creditors revert to run-off under the Original Scheme (see paragraph 3.7).

## **12. Recommendation**

- 12.1. The Scheme Administrators consider that the Amending Scheme has a number of advantages over continuing the run-off under the Original Scheme. A detailed list of the advantages and disadvantages of the Amending Scheme is set out in paragraphs 20 and 21.
- 12.2. The Scheme Administrators consider that the Amending Scheme will result in an increase in the amount of the Companies' assets being distributed to Scheme Creditors, and that payments will be made to Scheme Creditors earlier in the great majority of cases than would otherwise be the case if the Original Scheme continued in its present form.

- 12.3. Subject to certain conditions (including the completion and execution of a Discharge Letter in accordance with the terms of the CPLA), Qualifying ILU Policyholders who participate in the crystallisation and payment provisions of the Amending Scheme will, for the reasons set out in paragraph 4.1.3, receive a Qualifying ILU Policyholder Premium in addition to payment of their Net Liabilities in respect of their Qualifying ILU Policies in full. This premium is not payable under the Original Scheme.
- 12.4. Scheme Creditors who are Qualifying ILU Policyholders may nonetheless consider that they do not want to participate in the crystallisation and payment provisions of the Amending Scheme. The Amending Scheme caters for this possibility by allowing such Qualifying ILU Policyholders to opt out of the crystallisation and payment provisions of the Amending Scheme before the Bar Date and so retain their insurance coverage, whether or not they voted in favour of the Amending Scheme. If a Qualifying ILU Policyholder opts out, its claims will, subject to the terms of the CPLA, continue to be paid in full in accordance with the terms of the Original Scheme. It will not, however, receive payment of the Qualifying ILU Policyholder Premium.
- 12.5. There are also provisions in the Amending Scheme dealing with Protected Policyholders and Potentially Protected Policyholders who are covered under the FSCS Rules.
- 12.6. The Amending Scheme also contains the following provisions that the Scheme Administrators consider to be novel in a crystallisation scheme of arrangement:
- 12.6.1. the opportunity for:
- (a) Qualifying ILU Policyholders (who are not individuals); and
  - (b) individuals (whether or not those individuals are Qualifying ILU Policyholders),
- in certain very limited circumstances to bring a claim against the Companies after the Bar Date (described in more detail in paragraph 36); and
- 12.6.2. the appointment of an Individual Claimant Representative to represent the rights of such individuals (whose claims are submitted and become Net Liabilities after the Bar Date) in the setting of the Post Bar Date Individual Provision.
- These features have been included solely to address the unique circumstances of the Amending Scheme, including the nature of the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders.
- 12.7. It is the opinion of the Scheme Administrators, NNOFIC and the ILU that:
- 12.7.1. the implementation of the Amending Scheme will reduce costs and therefore increase the amount of the Companies' assets available for distribution to Scheme Creditors compared to the amount which would have been available for distribution under the Original Scheme;
- 12.7.2. the level of the Qualifying ILU Policyholder Premium available to Qualifying ILU Policyholders who participate in the crystallisation and payment provisions of the Amending Scheme will reward those Qualifying ILU Policyholders for giving up their coverage; and
- 12.7.3. the availability of an opt out, as described in paragraph 12.4, should deal with the concerns of Qualifying ILU Policyholders who wish to retain their coverage, rather than participate in the crystallisation provisions of the Amending Scheme.

Accordingly, the Scheme Administrators and the ILU have formed the view that the advantages of the Amending Scheme outweigh its disadvantages. Hence they each recommend that all Scheme Creditors who are entitled to do so vote in favour of the Amending Scheme. In addition, the Creditors' Committee supports the Amending Scheme and the FSCS Scheme Manager has also approved and agreed to be bound by the Amending Scheme.

## D: PROGRESS TO DATE AND FINANCIAL INFORMATION

### 13. Summarised Balance Sheet as at 31 December 2013

- 13.1. Below is a summary of the consolidated audited balance sheets of the Companies as at 31 December 2013 and as at 31 December 1995, adjusted for dividends paid to date. The balance sheet as at 31 December 1995 is consistent with the financial position set out on page 23 of the Explanatory Statement to the Original Scheme (which is presented in sterling and restated in US dollars at the rate applicable on 31 December 1995 of US\$1.55:£1).

	Consolidated 2013 US\$million	Consolidated 1995 US\$million	Consolidated 1995 £million
<b>Assets</b>			
Investments and cash	616	408	263
Reinsurance recoverable (including amounts recoverable in respect of paid claims, Notified Outstanding Liabilities and IBNR Liabilities, net of provisions) and other assets	97	851	549
Scheme dividend payments to date	622	-	-
	<b>1,335</b>	<b>1,259</b>	<b>812</b>
<b>Liabilities</b>			
Reserves – Notified Outstanding Liabilities and IBNR Liabilities (gross)	(460)	(1,604)	(1,035)
Due to NNOFIC	(287)	(160)	(103)
Provision for future run-off costs	(31)	-	-
Creditors excluding NNOFIC	(397)	(186)	(120)
Scheme dividend payments to date	(622)	-	-
	<b>(1,797)</b>	<b>(1,950)</b>	<b>(1,258)</b>
<b>Net Liabilities</b>	<b>(462)</b>	<b>(691)</b>	<b>(446)</b>

- 13.2. Amounts due to NNOFIC include:

- 13.2.1. amounts that NNOFIC agreed, under the terms of the Original Scheme, would be subordinated to all other claims against the Companies; and
- 13.2.2. amounts drawn down under the Facility, less any dividends paid to NNOFIC in respect of the corresponding Established Liabilities.

13.3. Below is a summary of the amounts due to NNOFIC from the Companies:

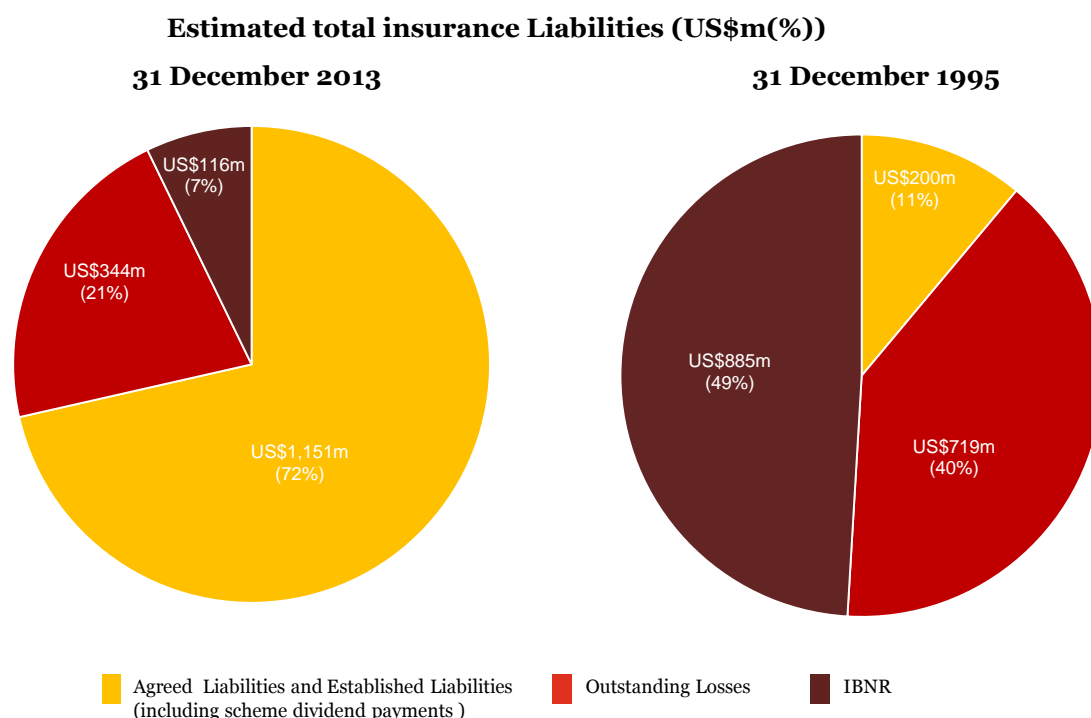
	Consolidated US\$million
<b>Subordinated debt:</b>	
• Original balance in 1995	(142)
• Amounts assigned to NNOFIC from OIM Limited and Orion Insurance General Limited in 1996	(13)
<b>Borrowing under the terms of the Facility</b>	<b>(216)</b>
<b>Less: Scheme dividend payments to date</b>	<b>84</b>
<b>Balance as at 31 December 2013</b>	<b>(287)</b>

13.4. These summarised consolidated balance sheets are not intended to give an estimate of the eventual outcome of the Original Scheme, regardless of whether the Amending Scheme comes into effect.

## 14. Liabilities

14.1. Since the Original Scheme became effective, a large proportion of the Companies' Liabilities have become Established Liabilities or Agreed Liabilities, either as claims have been submitted in the ordinary course of business or as claims have been agreed by way of bilateral settlement and commutation discussions.

14.2. The following charts illustrate the change in the breakdown of the Companies' Liabilities as at 31 December 2013 compared to 31 December 1995:

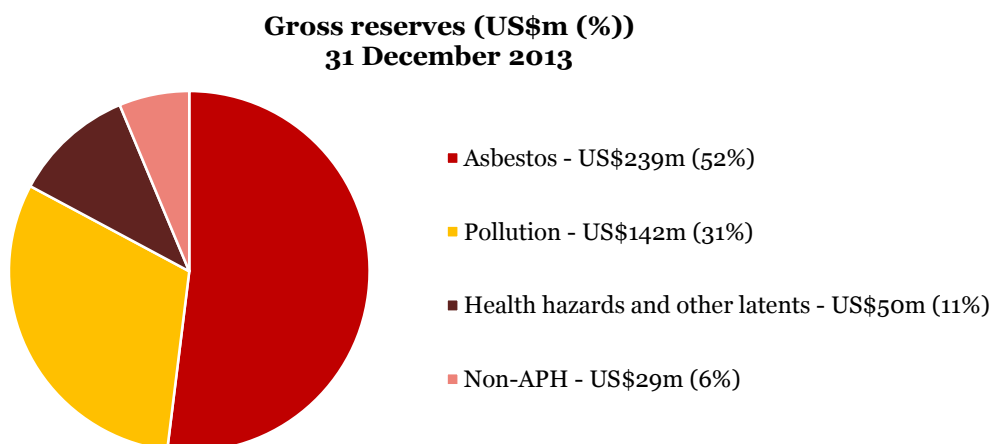


14.3. These charts illustrate that the proportion of the Companies' total insurance Liabilities that have been established or agreed has increased from 11% as at 31 December 1995 to 72% as at 31 December 2013.

## 15. Reserves

15.1. The Companies' gross reserves include provisions for claims that are yet to be notified or agreed in the form of Notified Outstanding Liabilities and IBNR Liabilities.

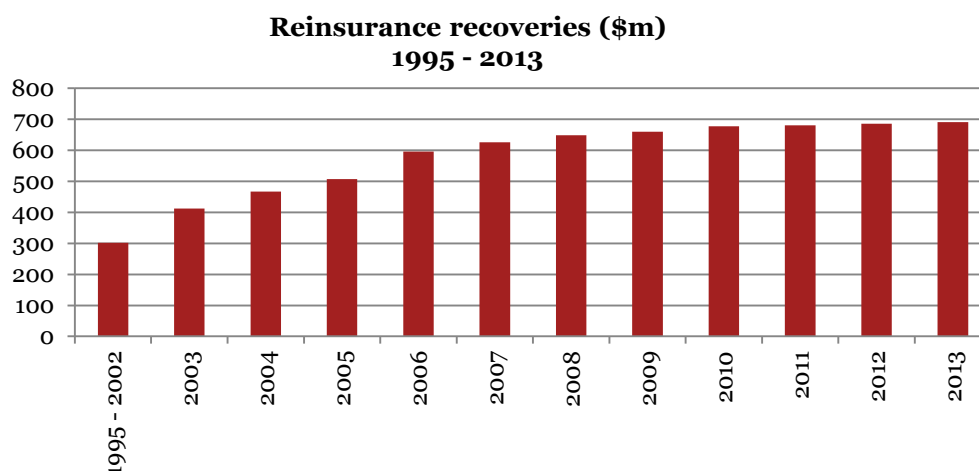
- 15.2. Gross reserves held by the Companies as at 31 December 2013 comprise:



- 15.3. Over 94% of the Companies' estimated reserves now relate to APH Liabilities (i.e. asbestos, environmental pollution and health hazard and other latent Liabilities), compared to 69% as at 31 December 1995.

## 16. Reinsurance collections and outwards commutations

- 16.1. A total of US\$691 million has been recovered by the Companies from its reinsurers (who were net debtors of the Companies) prior to 31 December 2013.
- 16.2. The following chart shows the cumulative level of reinsurance recoveries made by the Companies since 1995:

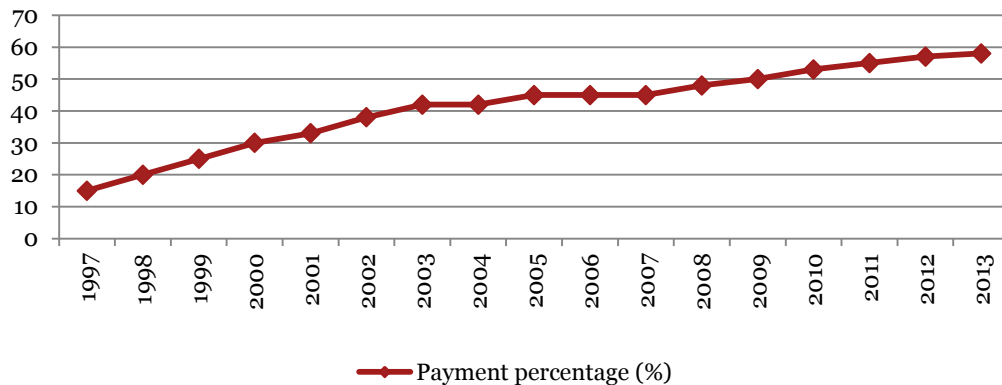


- 16.3. After discussions with the Creditors' Committee in 2003, the Scheme Administrators embarked on a programme to commute all the major outwards reinsurance contracts of the Companies. The commutation programme has now largely been completed with the exception of amounts recoverable from Lloyds Bank under the Lloyds Bank Agreement. It is therefore unlikely that if the Companies remained in run-off under the Original Scheme, the Companies would make any further significant reinsurance recoveries, other than from Lloyds Bank under the Lloyds Bank Agreement.

## 17. Payments to Scheme Creditors

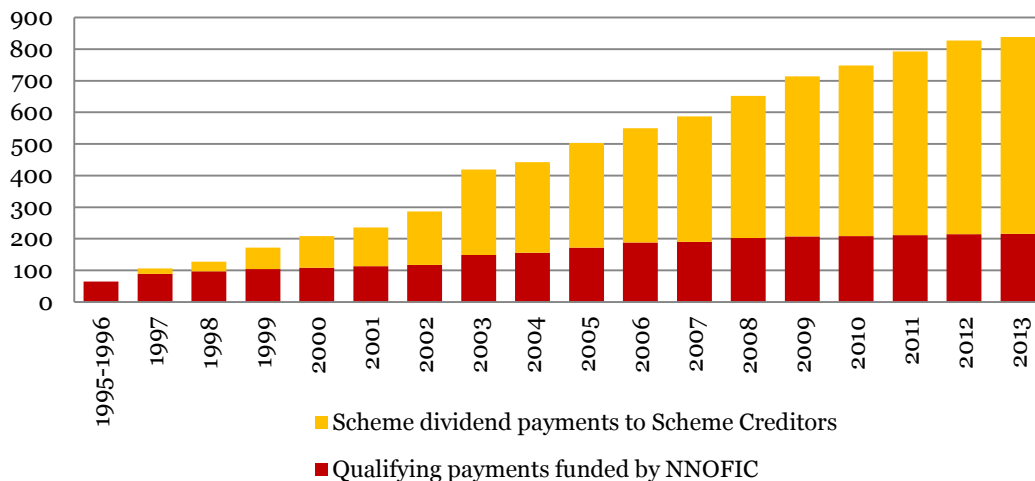
- 17.1. The Payment Percentage has been increased on a number of occasions over the life of the Original Scheme as illustrated in the chart overleaf. It was last increased in November 2013, to 58%. The increases in the Payment Percentage have resulted from the successful collection of reinsurance recoveries from net debtors and greater certainty with respect to the Companies' total Liabilities.

**Payment Percentage (%)**  
**1997 - 2013**



- 17.2. From the date that the Original Scheme became effective (i.e. 7 March 1997) to 31 December 2013, US\$622 million has been paid by the Companies by way of Payment Percentage to Qualifying ILU Policyholders, other Scheme Creditors with Established Liabilities and by way of partial repayment of "top-up" payments to NNOFIC in respect of the value of any claims assigned to NNOFIC by Qualifying ILU Policyholders.
- 17.3. In addition, a total of US\$216 million using 2013 year-end exchange rates (or US\$214 million using exchange rates as set out in a letter of credit dated 20 October 1994 given by Nat-Ned and 1845 in favour of the ILU) has been paid by the Companies to Qualifying ILU Policyholders with Established Liabilities from monies borrowed by the Companies from NNOFIC under the Facility.
- 17.4. The cumulative payments made by the Companies to Scheme Creditors (including to Qualifying ILU Policyholders out of funds borrowed from NNOFIC under the Facility) are illustrated in the following chart by year:

**Scheme payments (US\$m)**  
**1995 - 2013**



## 18. Receipts and payments

18.1. The receipts and payments of the Companies from 21 October 1994 (the date on which the Companies entered provisional liquidation) to 31 December 2013 can be summarised as follows:

	US\$million
<b>Receipts</b>	
Reinsurance recoveries	691
NNOFIC under the CPLA	216
Interest	422
Group relief and tax repayments	44
Other income	11
	<b>1,384</b>
<b>Payments</b>	
Qualifying ILU Policyholders under the CPLA	(216)
Scheme dividend payments	(622)
Compensatory interest on Scheme dividend payments	(38)
Run-off Companies	(192)
Provisional Liquidators' and Scheme Administrators' fees and expenses	(70)
Legal advisers' fees and expenses	(28)
Other professional fees and charges	(73)
Letter of Credit drawdowns	(13)
	<b>(1,252)</b>
<b>Movements in cash (excluding realised and unrealised gains/losses on investment activities)</b>	<b>132</b>

## **E: FACTORS TO CONSIDER WHEN VOTING ON THE AMENDING SCHEME**

### **19. Options facing Scheme Creditors**

- 19.1. The Companies have been in run-off for 22 years. The Companies have been subject to the terms of the reserving scheme put in place by the Original Scheme for 17 years.
- 19.2. The Companies now have the following options:
- 19.2.1. Continue run-off under the Original Scheme with a forecast closure date of beyond 2035 - claims will be submitted by Scheme Creditors as they arise and will be processed by the Companies. Scheme Creditors will receive the Payment Percentage to the extent that their claims become Established Liabilities under the Original Scheme. The Payment Percentage (currently set at 58%) may increase periodically and additional payments will then be made to Scheme Creditors with Established Liabilities in order to reflect the new Payment Percentage; or
- 19.2.2. Implement a crystallisation under the Amending Scheme with a forecast closure date of 2018 - Scheme Creditors' claims in respect of actual, contingent and prospective Liabilities will be submitted in advance of the Bar Date. When agreement is reached over the valuation of those claims, deductions will be made to effect a discount for the time value of money and any Offset Amount and Security Interest. Scheme Creditors will receive the Payment Percentage to the extent that their claims are determined to be Net Liabilities. The Payment Percentage will be reviewed by the Scheme Administrators and, if necessary, revised, until a final Payment Percentage is determined. It is anticipated that, in the great majority of cases, payments will be made to Scheme Creditors earlier and at a higher Payment Percentage than would have been the case under the Original Scheme.
- 19.3. The implementation of the crystallisation and payment provisions of the Amending Scheme is subject to two key conditions which may significantly alter the effect of the Amending Scheme. These are explained in paragraphs 19.5 and 19.6.
- 19.4. Qualifying ILU Policyholders can elect to opt out of the crystallisation and payment provisions of the Amending Scheme before the Bar Date. Any Qualifying ILU Policyholder who opts out will continue to have its claims determined and paid in accordance with the Original Scheme.
- 19.5. In view of the unique circumstances of the Amending Scheme and the nature of the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders, the crystallisation and payment provisions of the Amending Scheme will only be implemented if no more than 30% by value of Qualifying ILU Policyholders opt out. In this respect:
- 19.5.1. if no more than 30% by value of Qualifying ILU Policyholders opt out, the crystallisation and payment provisions of the Amending Scheme will be implemented. The claims of the Opt Out Qualifying ILU Policyholders will, however, remain in run-off and they will be dealt with under the provisions of the Original Scheme:
- (a) Opt Out Qualifying ILU Policyholders will, subject to the terms of the CPLA, be paid in full to the extent that their claims become Qualifying Established Liabilities in the ordinary course of business and provided that, where applicable, they have completed and executed a Discharge Letter in accordance with the terms of the CPLA. Opt Out Qualifying ILU Policyholders will be paid, in respect of each such Qualifying Established Liability, an amount equal to the then current Opt Out Payment Percentage. Subject to the terms of the CPLA, each Opt Out Qualifying ILU Policyholder will receive an additional "top-up" payment from the Companies out of monies borrowed and received from NNOFIC under the Facility up to the full amount of its Qualifying Established Liability;

- (b) an amount of the Companies' assets will be set aside by the Scheme Administrators to pay the Opt Out Payment Percentage on the claims of Opt Out Qualifying ILU Policyholders. Those claims (the "**Opt Out Scheme Liabilities**") will be valued by the Scheme Administrators at the same time as the claims of all other Scheme Creditors (who are subject to the crystallisation and payment provisions of the Amending Scheme). The amount of the Companies' assets to be set aside will be equal to the amount of the estimated future claims of the Opt Out Qualifying ILU Policyholders multiplied by the then current Payment Percentage. That amount will be increased if the Payment Percentage increases, by an amount equal to the increase in the Payment Percentage as applied to the Opt Out Scheme Liabilities together with an amount for compensatory interest. The Scheme Administrators will set and revise the Opt Out Payment Percentage from time to time in a similar manner to that used by them to set the Payment Percentage. When setting the Opt Out Payment Percentage, the Scheme Administrators will take into account the amount of the Companies' assets set aside to pay the Opt Out Payment Percentage on the claims of Opt Out Qualifying ILU Policyholders and the level of claims received and likely to be received by the Companies from Opt Out Qualifying ILU Policyholders;
- (c) at the same time, the Scheme Administrators will also set aside an amount from the Companies' assets to meet the future run-off costs of the Companies (excluding dividend payments) in dealing with the claims of the Opt Out Qualifying ILU Policyholders. The run-off costs for the Opt Out Qualifying ILU Policyholders are estimated to be very small in comparison to the total estimated future run-off costs that would be incurred if the Original Scheme proceeded in its unamended form. It is estimated that the amount that the Companies will have to set aside to meet the run-off costs of the Opt Out Qualifying ILU Policyholders will reduce the level of the estimated final Payment Percentage in the Amending Scheme by less than one percentage point (when compared with the estimated final Payment Percentage in the Amending Scheme if there was no opt out);
- (d) the amount of assets set aside referred to in paragraphs (b) and (c) above must be agreed with NNOFIC and the ILU; and
- (e) for so long as the Companies pay the Opt Out Payment Percentage of claims due to Opt Out Qualifying ILU Policyholders pursuant to the Scheme, NNOFIC will top up those payments subject to the terms of the CPLA provided those claims are made to the Companies by 31 December 2035. Once the assets referred to in paragraphs (b) and (c) above have been set aside, if they become insufficient to meet the Opt Out Payment Percentage of claims of Opt Out Qualifying ILU Policyholders (in the case of those assets referred to in paragraph (b) above) or run-off costs in connection with those Opt Out Qualifying ILU Policyholders (in the case of those assets referred to in paragraph (c) above), NNOFIC will make such payment to the Companies to enable the Companies to meet such claims or costs (as the case may be) in full, provided that (i) amounts that NNOFIC so pays to the Companies to enable the Companies to meet claims will count against the Facility and will therefore be paid subject to the terms of the CPLA, whereas the amounts that NNOFIC so pays to the Companies to enable the Companies to meet run-off costs will not count against the Facility and (ii) the claims are submitted to the Companies by 31 December 2035. Once the Established Liabilities of all Opt Out Qualifying ILU Policyholders and all run-off costs incurred in connection with those Opt Out Qualifying ILU Policyholders have been paid in full (and subject to the requirement that all such Policyholders submit their claims to the Companies by 31 December 2035), any such assets remaining in the Companies will be paid to NNOFIC; and

- 19.5.2. if more than 30% by value of Qualifying ILU Policyholders opt out, then the crystallisation and payment provisions of the Amending Scheme shall not take effect. In those circumstances, all Scheme Creditors (including those who are not Qualifying ILU Policyholders) will revert to run-off and have their claims agreed and paid in the ordinary course under and subject to the terms of the Original Scheme.
- 19.6. In certain circumstances as set out below, the future claims of the Pre-1969 L&O Policyholders (i.e. their Notified Outstanding Liabilities and IBNR Liabilities) may revert to run-off and be dealt with in the ordinary course under the Original Scheme. In this respect:
- 19.6.1. the level of future claims of Pre-1969 L&O Policyholders will determine the amounts that are due from Lloyds Bank under the Lloyds Bank Agreement. The arrangements with Lloyds Bank are described in paragraph 33. Should Lloyds Bank not pay the full amounts due under the Lloyds Bank Agreement in respect of the claims once calculated under the Amending Scheme, the Scheme Administrators will determine, in consultation with the Creditors' Committee, whether the Pre-1969 L&O Policyholders should revert to run-off, so that payment can be requested from Lloyds Bank as and when those claims fall due in the ordinary course; and
- 19.6.2. if the Pre-1969 L&O Policyholders revert to run-off:
- (a) the claims of Pre-1969 L&O Policyholders (other than in respect of Established Liabilities and Agreed Liabilities agreed by the Companies prior to the Bar Date) will not be agreed in accordance with the crystallisation and payment provisions of the Amending Scheme. The claims will instead need to be submitted by the Pre-1969 L&O Policyholders to the Companies in the ordinary course of business as they currently are under the Original Scheme. The Pre-1969 L&O Policyholders will receive the same Payment Percentage (plus compensatory interest) as all other Scheme Creditors in respect of their claims as and when they become Established Liabilities under the terms of the Original Scheme. These claims would then form the basis of the claims to be submitted by the Companies to Lloyds Bank for payment under the Lloyds Bank Agreement;
  - (b) the Pre-1969 L&O Policyholders will only revert to run-off in respect of their future claims (i.e. Notified Outstanding Liabilities and IBNR Liabilities) under their Pre-1969 L&O Policies (as defined in paragraph 33.1). Any claims of the Pre-1969 L&O Policyholders:
    - (i) which are, or which become, Established Liabilities and Agreed Liabilities in respect of Pre-1969 L&O Policies; and
    - (ii) are in respect of policies that such Scheme Creditor may have with the Companies other than Pre-1969 L&O Policies,

will be dealt with and paid in accordance with the crystallisation and payment provisions of the Amending Scheme (unless, in relation to all of its Qualifying ILU Policies only, the relevant Scheme Creditor opts out of those provisions in accordance with the Amending Scheme). Set-off in respect of the Pre-1969 L&O Policyholders will be applied in a similar manner to that applicable to the Opt Out Qualifying ILU Policyholders, as summarised in paragraph 32.8;
  - (c) the Payment Percentage payable to all Scheme Creditors, including those Scheme Creditors whose claims are included in the Amending Scheme crystallisation and payment process, will be revised from time to time as any uncertainty over the value of the future claims of the Pre-1969 L&O Policyholders and recoveries from Lloyds Bank under the Lloyds Bank Agreement reduces over time;

- (d) the Payment Percentage is estimated to rise quickly to a level in excess of the estimated final Payment Percentage that would have been payable if the run-off of all of the Companies' business had continued under the Original Scheme;
- (e) the level of the final Payment Percentage will be affected by the extent to which the amount of the future claims of the Pre-1969 L&O Policyholders agreed by the Companies and the amount of recoveries made from Lloyds Bank in respect of those claims differ from the amount of such claims and recoveries that would otherwise have occurred under the crystallisation and payment provisions of the Amending Scheme;
- (f) it may not be possible to determine the final Payment Percentage for all Scheme Creditors for many years into the future, until all of the claims of the Pre-1969 L&O Policyholders have been agreed and all recoveries in respect of those claims have been made from Lloyds Bank;
- (g) the estimated final Payment Percentage is nonetheless around the same as it would have been if the Pre-1969 L&O Policyholders had not reverted to run-off. This is because Lloyds Bank is obliged under the Lloyds Bank Agreement to meet the future costs of the Scheme Administrators in dealing with the Pre-1969 L&O Policyholders in run-off; and
- (h) the estimated final Payment Percentage in the Amending Scheme is also higher than the estimated final Payment Percentage under the Original Scheme (in the absence of the Amending Scheme). This is because of the savings in run-off costs that will be achieved if the Amending Scheme becomes effective, even if the Pre-1969 L&O Policyholders revert to run-off.

## **20. Advantages and disadvantages of the Amending Scheme**

- 20.1. The Scheme Administrators consider that the Amending Scheme has a number of advantages over the Companies remaining in run-off under the Original Scheme. The principal advantages in applying a crystallisation procedure at this stage are set out at paragraphs 20.2 to 20.4. The advantages of implementing the Amending Scheme, rather than relying on the Valuation Option provisions in the Original Scheme, are set out in paragraph 20.5. The principal disadvantages of the Amending Scheme, which, in the opinion of the Scheme Administrators, are outweighed by the advantages, are set out at paragraphs 20.7 to 20.11. Certain other advantages and disadvantages are noted to be specific to individual categories of Scheme Creditor.

### ***Advantages for all Scheme Creditors***

- 20.2. Reduction in costs resulting in a higher Payment Percentage
- 20.2.1. The Companies' run-off costs currently include the costs of the Run-off Company, the Scheme Administrators' fees, actuarial fees, legal advisers' fees and other professional fees. The Run-off Company's costs include salaries, property, IT and other overhead costs. The Companies' annual run-off costs, excluding legal fees incurred in relation to the preparation of the Amending Scheme, currently exceed US\$18 million. These costs should be significantly lower under the Amending Scheme than if claims were left to mature in the ordinary course. This is because, save for those matters described in paragraph 20.2.2, it will be unnecessary for the Scheme Administrators to continue to manage the run-off, as would be the case were the Original Scheme to remain unamended. Unless closed earlier, the Original Scheme is projected to continue beyond 2035. The Scheme Administrators estimate that, absent the Amending Scheme, the total run-off costs for the period 2014 to 2035 under the Original Scheme could reach US\$200 million (or more).
  - 20.2.2. There will be a short term increase in the annual costs incurred by the Companies as the majority of the remaining Scheme Liabilities are determined in accordance with the terms of the Amending Scheme. Certain provisions will also be set aside to meet:

- (a) the claims of Qualifying ILU Policyholders (who are not individuals) and individuals (whether or not those individuals are Qualifying ILU Policyholders) which are submitted and become Net Liabilities after the Bar Date (see paragraphs 36.9 and 36.18 respectively);
- (b) the costs of dealing with the claims of (i) Opt Out Qualifying ILU Policyholders and (ii) Qualifying ILU Policyholders (who are not individuals) and individuals (whether or not those individuals are Qualifying ILU Policyholders) admitted after the Bar Date (including the costs of the No Notice Adjudicator) (see paragraphs 32.12, 36.9 and 36.18); and
- (c) the claims of the Pre-1969 L&O Policyholders which have not been agreed should their claims revert to run-off (see paragraph 33).

All the Scheme Administrators' costs (including their professional fees and legal advisers' fees) incurred in dealing with the claims of the Pre-1969 L&O Policyholders should be recoverable from Lloyds Bank under the terms of the Lloyds Bank Agreement. Save for the matters highlighted in this paragraph, where provisions are set aside to deal with the relevant costs, no further significant costs should be incurred by the Companies after 2018 (the forecast date for payment of the final Payment Percentage). The cost savings should mean an increase in the funds available for distribution to Scheme Creditors and a higher Payment Percentage than would have been the case under the Original Scheme.

- 20.2.3. The expected cost savings under the Amending Scheme (when compared to the Original Scheme) are in excess of US\$100 million. The main portion of these cost savings relate to the costs of the Run-off Company and the costs of the Scheme Administrators and professional fees incurred in administering the run-off under the Original Scheme. This benefit is the principal reason why the Scheme Administrators expect that the final Payment Percentage will be higher under the Amending Scheme than under the Original Scheme. As at the date of this Amending Explanatory Statement, the Scheme Administrators estimate that the final Payment Percentage under the Amending Scheme in comparison to the Original Scheme will be as follows:

Estimated final Payment Percentage	
Original Scheme	71%
Amending Scheme	78%

### 20.3. Faster release of funds

- 20.3.1. Claims that will not under the Original Scheme be agreed for some years should be agreed under the Amending Scheme at a much earlier date. On the projected timetable, the majority of funds will be paid under the Amending Scheme to Scheme Creditors by 2018. This is considerably earlier than currently anticipated under the Original Scheme.
- 20.3.2. If the Original Scheme continues, it is unlikely that there would be a further significant increase in the Payment Percentage in the coming years. This is because the remaining Scheme Liabilities are long tail, and any remaining claims would have to be dealt with over a lengthy period of time.
- 20.3.3. The benefit of the higher estimated final Payment Percentage (78%) under the Amending Scheme (as shown in paragraph 20.2) is therefore increased by the fact that it will be paid to Scheme Creditors at an earlier date than the lower estimated final Payment Percentage under the Original Scheme (71%).

20.4. Early release of safety margin

20.4.1. In accordance with the terms of the Original Scheme, the Scheme Administrators, when calculating the Payment Percentage, have used conservative estimates of future Scheme Liabilities by including an appropriate safety margin. Under the Original Scheme, unless the Companies commuted or settled the remaining Scheme Creditors' claims, this safety margin will have to be retained at some level until all Scheme Liabilities have been quantified. This is projected to occur under the Original Scheme no earlier than 2035.

20.4.2. As the Amending Scheme requires the valuation of future and contingent Scheme Liabilities, the total amount of Scheme Liabilities brought within the Amending Scheme will be determined once and for all. The timetable for implementation of the Amending Scheme assumes that the majority of Scheme Liabilities will have been determined by 2017. Provided that the Pre-1969 L&O Policyholders do not revert to run-off, it will be unnecessary for the Scheme Administrators to retain any safety margin with respect to the Scheme Liabilities when setting the Payment Percentage after that date. Even if the Pre-1969 L&O Policyholders revert to run-off, the Scheme Administrators should be able to retain a much smaller safety margin. As a result, all, or the majority, of the safety margin could be released and the monies distributed to Scheme Creditors earlier under the Amending Scheme than would have otherwise been possible under the Original Scheme.

20.5. Improved terms and administrative features

As noted in paragraph 1.8, the Valuation Option allows for the conversion of the Original Scheme into a crystallisation scheme. However, the Scheme Administrators consider that this conversion will be better effected through implementing the Amending Scheme. The Amending Scheme contains more extensive and complete claims valuation provisions than were set out in the Original Scheme. The Amending Scheme also includes provisions dealing with uncashed cheques, the treatment of agents and pools and new clauses allowing electronic communications. These provisions should improve the implementation of the Scheme.

***Advantages specific to Qualifying ILU Policyholders***

20.6. Qualifying ILU Policyholder Premium

20.6.1. Under the Amending Scheme, Qualifying ILU Policyholders may, subject to the conditions and restrictions set out in paragraph 31, receive a Qualifying ILU Policyholder Premium. If the Amending Scheme is not approved or otherwise does not take effect, Qualifying ILU Policyholders will be unable to receive a Qualifying ILU Policyholder Premium.

20.6.2. Under the Amending Scheme, individual Qualifying ILU Policyholders, who consider that their interests are best served by foregoing the Qualifying ILU Policyholder Premium and leaving their insurance coverage in place, can elect to opt out of the crystallisation and payment provisions of the Amending Scheme before the Bar Date and continue to submit claims under the Original Scheme.

***Disadvantages for all Scheme Creditors (other than Protected Policyholders, Potentially Protected Policyholders and Opt Out Qualifying ILU Policyholders)***

20.7. Failure to submit a Claim Form

20.7.1. Save in certain very limited circumstances detailed in paragraph 36, Claim Forms received by the Companies after the Bar Date will not be considered for the purposes of the Amending Scheme. Subject to paragraphs 23.16 and 23.17, Scheme Creditors who have additional Scheme Liabilities (including Notified Outstanding Liabilities and/or IBNR Liabilities): (i) which are not shown on their Claim Form; or (ii) who do not have a Claim Form, and who, in each case, do not submit details of their claims on their Claim Form before the Bar Date, will receive no payment in respect of those additional claims under the Amending Scheme. Any such Scheme

Creditor will only receive payment under the Amending Scheme in respect of any Established Liabilities and Agreed Liabilities that have been accepted by the Companies and which, subject to paragraph 10.18, are set out on its Claim Form made available by the Companies to that Scheme Creditor on the Website.

- 20.7.2. The effect of this is that, save in certain very limited circumstances detailed in paragraph 36 and subject to paragraphs 10.18, 23.16 and 23.17, Scheme Creditors (including Scheme Creditors with IBNR Liabilities) who become aware only after the Bar Date of potential claims for which they did not make any allowance on a Claim Form will receive no further payment because all rights under their policies will have been extinguished under the Amending Scheme. Such Scheme Creditors would, but for the Amending Scheme, have been able to make a claim against the Companies and, subject to such claim becoming an Established Liability, to have that claim paid under the terms of the Original Scheme. This includes individuals who have statutory claims against the Companies who may not be aware that they have a possible claim against the Companies. However, their position has (solely on account of the unique circumstances of the Amending Scheme, including the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders) been addressed under the Amending Scheme through the Post Bar Date Individual Provision.

20.8. Estimation of Scheme Liabilities

The claims agreement process under the Amending Scheme will provide for the estimation of Scheme Liabilities which are uncertain in value based on information submitted before the Bar Date, including claims for Notified Outstanding Liabilities and IBNR Liabilities and any Offset Amounts. Any Scheme Creditors whose Scheme Liabilities mature after the Bar Date will not receive payment at the Payment Percentage in respect of those Scheme Liabilities as they fall due. Instead, they will receive a payment based upon the value of their claims for Notified Outstanding Liabilities and IBNR Liabilities (less any Offset Amount) as agreed with the Companies or determined by the Scheme Adjudicator as at the Valuation Date in accordance with the Estimation Guidelines. As explained in paragraph 25.4, this payment will be agreed on a Best Estimate basis. This means that, while Scheme Creditors should benefit from the expected higher Payment Percentage in the Amending Scheme, they will, depending on their actual future claims experience and, if applicable, the Companies' estimation of reinsurance recoveries from Scheme Creditors, ultimately receive an amount in respect of their Scheme Liabilities that is different (either greater or smaller) from the amount that they would have received had the Companies' business remained subject to the terms of the Original Scheme.

20.9. Failure to provide sufficient supporting information

If a Scheme Creditor does not provide sufficient information before the Bar Date to establish part or all of its claim for Notified Outstanding Liabilities and/or IBNR Liabilities against the Companies, its claim (or the relevant part of its claim) for these additional amounts may be valued at nil under the Amending Scheme. In those circumstances, the Scheme Creditor would receive no payment under the Amending Scheme in respect of those additional claims whereas it would have received a payment under the Original Scheme if sufficient evidence in support of its additional claims could have been provided in the future.

20.10. Waiver of legal privilege

In the course of a Scheme Creditor providing information to establish part or all of its claim for additional Agreed Liabilities, Notified Outstanding Liabilities and/or IBNR Liabilities against the Companies, that Scheme Creditor may inadvertently waive any legal privilege that it or a third party has over that information. A Scheme Creditor who is in any doubt as to the effect of waiving such legal privilege is advised to seek its own independent legal advice prior to providing such information.

20.11. Reversion to run-off and Scheme Creditors' costs

If the 30% opt out threshold is exceeded, the Companies will revert to run-off. In this case, while payments under the Original Scheme will have been deferred (see paragraph 32.26), Scheme Creditors will not receive any of the intended benefits of the accelerated claims determination mechanism under the Amending Scheme. Furthermore, prior to such reversion to run-off, Scheme Creditors may have incurred costs in preparing and submitting the Voting Forms and Claim Forms in respect of their claims, which will not be reimbursed by the Companies.

***Disadvantage specific to Pre-1969 L&O Policyholders***

20.12. Pre-1969 L&O Policyholders may not be subject to the crystallisation and payment process

As set out in paragraph 33, Pre-1969 L&O Policyholders may be required to revert to run-off in respect of their future claims, in order to maximise the final Payment Percentage for all Scheme Creditors. If this is the case, they will not receive the benefits (or suffer the disadvantages) of early claims agreement in the crystallisation process in respect of those claims. Furthermore, prior to such reversion to run-off, Pre-1969 L&O Policyholders may have incurred costs in preparing and submitting the Voting Forms and Claim Forms in respect of those future claims, which will not be reimbursed by the Companies. They will, instead, need to continue the existing process of submitting and agreeing their claims as and when they fall due. They will only receive the Payment Percentage in respect of those claims once they have been submitted, agreed and become Established Liabilities in accordance with the terms of the Original Scheme. Thus, in the event of a reversion to run-off, their position will be as it now is under the Original Scheme save that they will still receive the benefit of any increased Payment Percentage on their claims resulting from the operation of the Amending Scheme.

***Disadvantage specific to reinsurers of the Companies***

20.13. Operation of set-off

20.13.1. As explained in paragraph 27.9, unlike the Original Scheme, the Amending Scheme allows the Companies to set-off against a Scheme Creditor's Gross Liabilities any present and future, contingent and unliquidated Liabilities of that Scheme Creditor that are owed to the Companies.

20.13.2. The extent to which reinsurers are affected by the set-off provisions will, to a very large extent, depend upon the relative size of their claims against the Companies and their potential reinsurance Liabilities to the Companies. The possible effects for reinsurers in different positions are described in paragraph 27.12.

20.13.3. Any payments made from time to time under the Original Scheme to Scheme Creditors (who are reinsurers) are already reduced on account of the Scheme Administrators' estimation of the Scheme Creditors' contingent reinsurance Liabilities to ensure that they are not overpaid.

20.13.4. Therefore, in practical terms, subject to any potential variations in final payment amounts referred to in paragraph 27.12 (which may be either positive or negative), the accelerated set-off mechanism under the Amending Scheme itself, which includes provisions under which allowance is made for the time value of money and the likely pattern of claims and reinsurance recoveries, should not materially prejudice reinsurers of the Companies generally in this regard.

**21. Balance of advantages and disadvantages**

21.1. In the opinion of the Scheme Administrators, the advantages of the Amending Scheme significantly outweigh its disadvantages.

***All Scheme Creditors***

21.2. The Companies have now been in run-off and have not written any new business for 22 years. As explained in paragraph 14.1, the majority of the Companies' Scheme Liabilities by value have been agreed. Most of the claims which the Companies receive now come from US

corporate entities in relation to long-tail Liabilities such as asbestos, environmental pollution and health hazard claims.

- 21.3. The Scheme Administrators consider that continuing with the Original Scheme is no longer a cost effective way of facilitating the orderly conclusion of the Companies' affairs. As explained in paragraph 20.2, one of the principal advantages of the Amending Scheme is the cost savings that should arise as a result of its implementation. These cost savings ought to increase the amount of the Companies' assets available for distribution and lead to all Scheme Creditors receiving a higher Payment Percentage than they would receive if the Amending Scheme did not proceed.
- 21.4. For the reasons set out in paragraph 2, the Scheme Administrators consider that implementing the Amending Scheme is preferable to placing the Companies into insolvent liquidation or activating the Valuation Option.
- 21.5. Furthermore, it is the Scheme Administrators' opinion that the specific safeguards built into the Amending Scheme for Scheme Creditors (including in respect of Qualifying ILU Policyholders, Protected Policyholders, Potentially Protected Policyholders and Pre-1969 L&O Policyholders) ensure that the advantages of the Amending Scheme will outweigh any disadvantages it may have for those Scheme Creditors.
- 21.6. The decision whether or not to vote in favour of the Amending Scheme does, however, depend on the individual circumstances of each Scheme Creditor. Each Scheme Creditor must make its own assessment of how the Amending Scheme could affect its own interests and vote accordingly.

#### ***Qualifying ILU Policyholders***

- 21.7. The Scheme Administrators recognise that some of the key advantages relating to the final Payment Percentage are less relevant for Qualifying ILU Policyholders than for other Scheme Creditors. This is because Qualifying ILU Policyholders are, subject to the terms of the CPLA, paid in full in respect of their Qualifying Established Liabilities (subject to the satisfaction of certain conditions) under the terms of the Original Scheme and subject to the terms of the CPLA. It is nonetheless the Scheme Administrators' opinion that the specific safeguards built into the Amending Scheme, which allow Qualifying ILU Policyholders to opt out or (subject to satisfying certain conditions) to receive the Qualifying ILU Policyholder Premium if they do not opt out, will ensure that the advantages of the Amending Scheme also outweigh any disadvantages it may have for Qualifying ILU Policyholders.
- 21.8. Paragraph 36 describes a further safeguard, which has been built into the Amending Scheme in respect of Qualifying ILU Policyholders (who are not individuals) who have claims against the Companies and who do not find out about the Amending Scheme until after the Bar Date. That safeguard has been included solely to reflect the unique circumstances of the Amending Scheme, including the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders. Such Qualifying ILU Policyholders will, if they satisfy the conditions set out in paragraphs 36.5 to 36.7, still be able to bring a claim against the Companies after the Bar Date.
- 21.9. Finally, as set out in paragraphs 32.29 to 32.31, the Scheme Administrators consider, in consultation with the Scheme Actuarial Adviser, that the risk of the Facility being exhausted as a result of the Amending Scheme is extremely remote. The overall security of Qualifying ILU Policyholders should, in all reasonably plausible circumstances, be enhanced by the operation of the Amending Scheme.

#### ***Protected Policyholders and Potentially Protected Policyholders***

- 21.10. The Scheme Administrators consider that the proposed changes to the way in which Protected Policyholders and Potentially Protected Policyholders will be dealt with under the Amending Scheme will not affect their statutory rights against the FSCS Scheme Manager and thus the recoveries they achieve in respect of their claims.

#### ***Pre-1969 L&O Policyholders***

- 21.11. Whilst the Pre-1969 L&O Policyholders might be required to revert to run-off, they would still receive the benefit of any increased Payment Percentage on their claims resulting from the operation of the Amending Scheme in those circumstances. The purpose of such reversion to run-off would be solely to maximise the recoveries made by the Companies, and

thereby the Payment Percentage paid to all Scheme Creditors (including the Pre-1969 L&O Policyholders).

***Individuals***

- 21.12. Despite the proposed widespread advertising of the Bar Date (described in paragraph 26), individuals (whether or not those individuals are Qualifying ILU Policyholders) who may have claims against the Companies may not find out about the Amending Scheme until after the Bar Date and therefore would potentially lose the chance they would otherwise have had to make a claim against the Companies. Solely to address the unique circumstances of the Amending Scheme, including the nature of the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders, a specific safeguard has been built into the Amending Scheme in respect of such individuals by allowing them, if they satisfy certain conditions, to bring a claim against the Companies after the Bar Date (see paragraphs 36.12 to 36.19 for more detail).

## **F: THE PROPOSED CLOSURE PROCESS**

### **22. Effectiveness and notifications**

- 22.1. The Amending Scheme will become effective if the requisite majorities of each class of Scheme Creditors vote in favour of it at each of the Amending Scheme Meetings, the Court makes an order sanctioning the Amending Scheme, the US Bankruptcy Court issues an order enforcing the Amending Scheme under the US Bankruptcy Code and the Court's order sanctioning the Amending Scheme is filed with the Registrar of Companies. The date of that filing will be the New Effective Date.
- 22.2. The Scheme Administrators will contact by post, as soon as reasonably practicable after the New Effective Date, every person whom the Companies believe to be a Scheme Creditor (including all persons who were sent notice of the Amending Scheme Meetings) and brokers, agents and representatives known to have placed business with the Companies. The Scheme Administrators will request that those brokers and any other intermediaries who receive notice of the Amending Scheme should notify all possible Scheme Creditors of whom they are aware so as to enable all Claim Forms to be returned to the Companies before the Bar Date.
- 22.3. The Scheme Administrators' letter will include a notice stating that the Amending Scheme has become effective and will provide details of the Bar Date. The letter will also explain that any further copies of the Amending Scheme and this Amending Explanatory Statement may be downloaded from the Website or obtained free of charge from the Scheme Administrators at the contact details set out at the beginning of this document. A further letter with, where applicable, details of the relevant Scheme Creditor's login ID and password for accessing its Claim Form on the Website will be sent by post within 60 days of the New Effective Date. The Scheme Creditor may then amend its Claim Form using the Website. Claim Forms will be sent by post to any person who has made a Postal Service Request.
- 22.4. The Scheme Administrators will, wherever possible, as soon as possible after the New Effective Date, also advertise in the publications set out at paragraph 26.2 that the Amending Scheme has become effective and provide details of the timing of the Bar Date. These advertisements will contain a request from the Scheme Administrators that any Scheme Creditor who has not received any of the documents referred to in paragraph 22.3 should contact the Scheme Administrators as soon as possible.
- 22.5. Each Scheme Creditor should, where possible, access, amend and submit its individual Claim Form via the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com). Any Scheme Creditor who wishes to receive a hard copy Claim Form and to communicate with the Companies by post, must make a request to this effect to the Run-off Company in accordance with the instructions described in paragraph 11.3.

### **23. Completing the Claim Form**

- 23.1. The Claim Form will contain a number of empty data fields for Scheme Creditors to complete and may also contain some details inserted by the Scheme Administrators. Details of the data fields on the Claim Form for Scheme Creditors to check and complete, including those that must be completed for a claim to be accepted, are attached in draft in section H (*Appendices*).
- 23.2. The Scheme Administrators will insert in the Claim Form, to the extent known by the Companies, details of:
- 23.2.1. certain policies held by that Scheme Creditor according to the Companies' records;
  - 23.2.2. the relevant Scheme Creditor's Agreed Liabilities; and
  - 23.2.3. the relevant Scheme Creditor's Established Liabilities (subject to paragraph 23.3.3).
- 23.3. The Scheme Administrators will not insert in the Claim Form any details relating to:
- 23.3.1. the relevant Scheme Creditor's Notified Outstanding Liabilities or IBNR Liabilities;

- 23.3.2. claims where the Scheme Administrators are unable to identify the Scheme Creditor, for example where policies have been issued on the Companies' behalf by third parties under binding authorities, brokers' covers or lineslips, but where any relevant information such as the name or address of the Scheme Creditor concerned has not been supplied to the Scheme Administrators and details of the relevant Scheme Creditor have not subsequently become known to the Scheme Administrators for any reason whatsoever; and
- 23.3.3. claims that the Scheme Administrators are aware have been assigned by that Scheme Creditor to a third party (for example, Qualifying ILU Policyholders who have received payment in full will have assigned their claim to NNOFIC).
- 23.4. The Claim Form will indicate where information, documentation or other materials must be provided by Scheme Creditors if they wish to make a claim in respect of: (i) Agreed Liabilities and/or Established Liabilities not already appearing on the Claim Form; (ii) Notified Outstanding Liabilities; or (iii) IBNR Liabilities.
- 23.5. Each Scheme Creditor should complete its Claim Form, inserting relevant details and providing amended details of its claims where it disagrees with the details inserted by the Scheme Administrators. Scheme Creditors are encouraged to use the Website to confirm or amend their Claim Forms. If a Scheme Creditor wishes to return its Claim Form by post, it must do so using the Claim Form provided to it by the Scheme Administrators, using continuation sheets where necessary. Subject to certain exceptions set out in paragraphs 23.16 and 23.17, claims that are not made using a Claim Form may be rejected.
- 23.6. Scheme Creditors will not be able to amend the details for certain data fields through the Website. Instead, Scheme Creditors wishing to amend data fields in the Claim Form that cannot be directly edited by the user (e.g. adding new policies) should contact the Run-off Company before the Bar Date at the address set out at the beginning of this document. They should request the Run-off Company to update those data fields or they should provide such information to the Run-off Company by post before the Bar Date.
- 23.7. If any claim is notified by a Scheme Creditor to the Companies before the New Effective Date, but does not become an Established Liability before the New Effective Date, the relevant Scheme Creditor should ensure that details of that claim are properly inserted on its Claim Form and, if applicable, the relevant supporting information is provided to the Companies.
- 23.8. If a Scheme Creditor wishes to correct Established Liabilities and Agreed Liabilities appearing on a Claim Form, it must amend the relevant field of the Claim Form. If a Scheme Creditor wishes to make a claim for additional Agreed Liabilities which are not already appearing on the Claim Form, it must amend the relevant field of the Claim Form to include details of the value of those additional claims.
- 23.9. If a Scheme Creditor wishes to make a claim in respect of Notified Outstanding Liabilities, it must insert details of the value of those Notified Outstanding Liabilities in the required field of the Claim Form.
- 23.10. If a Scheme Creditor wishes to make a claim in respect of IBNR Liabilities, it must insert details of the value of those IBNR Liabilities in the relevant fields of the Claim Form.
- 23.11. For example, claims for IBNR Liabilities might be made by a Scheme Creditor if:
  - 23.11.1. it has a history of claims under a policy for which the policy limits have not been exhausted and the Scheme Creditor expects that further claims will be received; or
  - 23.11.2. it has not previously claimed under a policy but has received claims on lower layer policies which it expects to develop adversely so that higher layer policies written by the Companies are expected to be affected; or
  - 23.11.3. it has not previously claimed under a policy but is aware of risk factors that commonly give rise to Liabilities of a known type on policies written by the Companies; or

- 23.11.4. it has evidence that its policies may be vulnerable to currently unknown claim types that will have a reasonable chance of affecting policies written by the Companies (for example, a pharmaceutical company with a history of different product claims such that there is a reasonable chance of a new type of claim emerging in the future that will affect policies written by the Companies).
- 23.12. If a Scheme Creditor considers that it is a Potentially Protected Policyholder in respect of some or all of its claim for all or any of its Notified Outstanding Liabilities or IBNR Liabilities, it is requested to notify the Scheme Administrators (by contacting the Run-off Company) that part or all (as the case may be) of its claim is a Potentially Protected Liability. The Run-off Company can be contacted at the address set out at the beginning of this document.
- 23.13. Where claims are being made by a Scheme Creditor that are in addition to or differ from the claims included on a Claim Form by the Companies, that Scheme Creditor must provide the supporting documentation required by the Scheme Administrators, in accordance with the Estimation Guidelines and Supporting Evidence Appendices to the Amending Scheme and the guidance notes to the Claim Form. Where a market settlement agreement is used by a Scheme Creditor as evidence to support any additional claims that it may have, the Scheme Administrators may, depending upon the period of time for which the market settlement agreement has been in force and the value of those additional claims, require the Scheme Creditor to submit further information in support of those additional claims (including, where applicable, information in accordance with the Estimation Guidelines and Supporting Evidence Appendices).
- 23.14. Without appropriate supporting evidence, or where insufficient information or other materials are provided by a Scheme Creditor to support its additional claim, the Scheme Administrators may reject such additional claim or assess it as having no value for the purposes of valuation under the Amending Scheme. If that Scheme Creditor has no other claims against the Companies, it will receive no payment under the Amending Scheme other than in respect of those claims that, subject to paragraph 26.8, were included by the Companies on its Claim Form in respect of Established Liabilities and Agreed Liabilities.
- 23.15. Scheme Creditors whose Scheme Liabilities mature after the Bar Date will receive no further payment as all rights under their policies will have been extinguished under the Amending Scheme (except where they are Protected Policyholders, Potentially Protected Policyholders, Opt Out Qualifying ILU Policyholders, NNOFIC and those Qualifying ILU Policyholders and No Notice Individual Creditors whose claims are agreed by the Companies in accordance with paragraphs 36.4 to 36.19 and, if applicable, Pre-1969 L&O Policyholders).
- 23.16. Where a Scheme Creditor does not submit a Claim Form via the Website or by post but does otherwise provide the same information to the Companies before the Bar Date, then that information will be accepted as the Claim Form for that Scheme Creditor provided that the Scheme Creditor confirms that the information is to be used with respect to its claim in the Amending Scheme.
- 23.17. This can include information provided by the Scheme Creditor on the Voting Form, provided that the Scheme Creditor confirms that the information on the Voting Form remains true and accurate in all respects, and complies with the information requirements set out in the Amending Scheme.

## **24. Submitting the Claim Form**

- 24.1. The Claim Form may be amended and resubmitted any number of times by the Scheme Creditor before the Bar Date. The last Claim Form received from a particular Scheme Creditor will be considered to be the relevant Claim Form, unless the Scheme Administrators consider, in their discretion, that this Claim Form was not intended to prevail. Documentation and any other materials may be submitted by post to the Run-off Company at the address set out at the beginning of this document or to the Run-off Company c/o Armour Risk Management Inc, 1880 JFK Boulevard, Suite 801, Philadelphia PA 19103, USA. Such documentation may also be submitted electronically via the Website or to [ois.run-offlimited@uk.pwc.com](mailto:ois.run-offlimited@uk.pwc.com).

- 24.2. Once received, the Scheme Administrators, with assistance from the Scheme Actuarial Adviser if necessary, will review the relevant Claim Form and supporting documentation returned by each Scheme Creditor with a view to determining that Scheme Creditor's Net Liabilities.

## **25. The Valuation Date**

- 25.1. In order to be fair to all Scheme Creditors, a single reference date will be used to calculate all Scheme Liabilities.
- 25.2. All Scheme Liabilities dealt with under the Amending Scheme will be valued initially as at the Valuation Date. The Valuation Date is 31 December 2013.
- 25.3. Notwithstanding the cut-off imposed on information concerning claims development by the adoption of the Valuation Date, the Scheme Administrators will take account of information in relation to claims development after the Valuation Date up until the Bar Date. Each Scheme Creditor should, therefore, when completing its Claim Form, estimate any Notified Outstanding Liabilities and IBNR Liabilities as at the Valuation Date and then adjust them to allow for:
- 25.3.1. any losses that have been notified to or discovered by the Scheme Creditor between the Valuation Date and the Bar Date;
  - 25.3.2. any Established Liabilities and/or Agreed Liabilities of that Scheme Creditor arising between the Valuation Date and the New Effective Date; and
  - 25.3.3. any new information received by the Scheme Creditor between the Valuation Date and the Bar Date in respect of its Notified Outstanding Liabilities and IBNR Liabilities.
- 25.4. In all cases, Scheme Creditors should value their Scheme Liabilities as a Best Estimate.

## **26. The Bar Date**

- 26.1. The Bar Date is midnight (English time) on the first Business Day falling 240 days after (and not including) the New Effective Date.
- 26.2. The Bar Date will, wherever possible, be advertised in the following newspapers and periodicals as soon as practicable after the New Effective Date:
- 26.2.1. in the International Editions of Financial Times and Wall Street Journal;
  - 26.2.2. in the United Kingdom: Financial Times, The Times, Lloyd's List, Post Magazine, The Irish News, The Belfast Newsletter, Daily Record, The Scottish Sun, South Wales Evening Post and insuranceday;
  - 26.2.3. in the United States of America: Wall Street Journal, Business Insurance, International New York Times, The Washington Post, New York Times, Los Angeles Times, San Francisco Chronicle, San Jose Mercury News, The Dallas Morning News, Houston Chronicle, Fort Worth Star-Telegram, Tampa Bay Times, Orlando Sentinel, Sun Sentinel, The Miami Herald, Chicago Tribune, Milwaukee Wisconsin Journal Sentinel, Wisconsin State Journal, The Times-Picayune, New Orleans City Business, The Des Moines Register, The Gazette (Iowa), Quad-City Times, TimesCitizen, Hartford Courant, New Haven Register, Connecticut Post, The Providence Journal, The Newport Daily News, The Bergen Record, APP Asbury Park Press, Beaumont Enterprise, The Advocate, The Columbia Star, Pittsburgh Post-Gazette, Midland Daily News, The Florida Times-Union, The Atlanta Journal-Constitution, The Plain Dealer, Tulsa World, Richmond Times-Dispatch and USA Today;
  - 26.2.4. in Puerto Rico: El Nuevo Dia;
  - 26.2.5. in Guam: Pacific Daily News;
  - 26.2.6. in Canada: The Globe and Mail and La Presse;

- 26.2.7. in France: Les Echos and Le Parisien/Aujourd'hui en France;
  - 26.2.8. in Belgium: De Tijd and Les Echos;
  - 26.2.9. in Germany: Bild and Frankfurter Allgemeine Zeitung für Deutschland;
  - 26.2.10. in Italy: La Repubblica;
  - 26.2.11. in the Netherlands: NRC Handelsblad and De Volkskrant;
  - 26.2.12. in Spain: El País;
  - 26.2.13. in Australia: Australian Financial Review;
  - 26.2.14. in Aviation Week and Space Technology, TradeWinds, New York Law Journal, The National Law Journal, Insurance Journal Magazine, Risk Magazine, Maritime Market Magazine, Maritime Reporter and Engineering News, Maritime Professional, MJ Maritime Journal and American Shipper Magazine International Trade & Logistics;
  - 26.2.15. in The Insurance Receiver; and
  - 26.2.16. in the Andrews–Westlaw publications: Westlaw Journal Asbestos, Westlaw Journal Environmental and Westlaw Journal Toxic Torts.
- 26.3. The advertisements will, wherever possible, be placed in the hard copy version (and, where available, the online version) of each of the publications listed in paragraph 26.2. The publications have been selected by reference to:
- 26.3.1. those jurisdictions where the Scheme Administrators believe the Companies' Policyholders are located. The Scheme Administrators have reached their views on Policyholder location based upon the Companies' records and the information they have obtained since the Companies' provisional liquidation began on 21 October 1994;
  - 26.3.2. those jurisdictions where individuals might be able to bring direct claims against either or both of the Companies (see paragraph 36.12); and
  - 26.3.3. the nature of the businesses which the Companies have insured.
- 26.4. The Bar Date will also be published on the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com).
- 26.5. Subject to paragraphs 23.16 and 23.17, Scheme Creditors must complete and return their Claim Forms (together with all required supporting information) so as to be received by the Companies before the Bar Date.
- 26.6. Subject only to certain very limited exceptions detailed in paragraphs 23.16, 23.17 and 36:
- 26.6.1. Claim Forms received by the Companies after the Bar Date will not be considered for the purposes of the Amending Scheme; and
  - 26.6.2. any claim notified to the Companies after the Bar Date will therefore not form part of that Scheme Creditor's claim for the purposes of the Amending Scheme.
- 26.7. It will be each Scheme Creditor's responsibility to ensure that all of its claims are recorded on its Claim Form so as to be received by the Companies before the Bar Date.
- 26.8. Notwithstanding paragraph 26.7, if the Scheme Administrators become aware (whether before or after the Bar Date but, in any event, before the payment of the final Payment Percentage) that, as a result of an administrative error, they have failed to insert details of any Established Liabilities or Agreed Liabilities of a Scheme Creditor on that Scheme Creditor's Claim Form pursuant to paragraph 23.2, the Scheme Administrators will include the amount of those Established Liabilities and Agreed Liabilities when determining the amount of that Scheme Creditor's Gross Liabilities pursuant to paragraphs 27.1 and 27.2.

- 26.9. If the Companies do not receive an amended or modified Claim Form from a Scheme Creditor before the Bar Date, save where information is provided in accordance with paragraphs 23.16 and 23.17, the relevant Scheme Creditor will be deemed to have accepted the details of any existing Scheme Liabilities (i.e. their Established Liabilities and Agreed Liabilities) that have been accepted by the Companies and which, subject to paragraph 26.8, are referred to on the Claim Form made available by the Companies to that Scheme Creditor on the Website.

## **27. Calculation of Gross Liabilities and Net Liabilities**

- 27.1. The Scheme Administrators, in consultation with the Scheme Actuarial Adviser, will calculate the Gross Liabilities owed by the Companies to the relevant Scheme Creditor from the information on the relevant Claim Form or, where applicable, the relevant Voting Form or other form accepted in place of the Claim Form in accordance with the Amending Scheme. If that Scheme Creditor has made a claim for any Notified Outstanding Liabilities and/or IBNR Liabilities, the Scheme Administrators will apply the Estimation Guidelines to determine the value of such claims.
- 27.2. The Scheme Administrators will then seek to agree with each Scheme Creditor the value of the Gross Liabilities owed by the Companies to that Scheme Creditor. This will involve the agreement of all Scheme Liabilities owed by the Companies to that Scheme Creditor (including Established Liabilities, Agreed Liabilities, Notified Outstanding Liabilities and IBNR Liabilities).
- 27.3. At the same time, the Scheme Administrators will also seek to agree with each Scheme Creditor the value of any deductions to be made to the value of that Scheme Creditor's claims, including:
- 27.3.1. any discount to be applied for the time value of money in respect of that Scheme Creditor's Gross Liabilities; and
  - 27.3.2. any Offset Amount (i.e. any amounts owed by that Scheme Creditor to the Companies).

### ***Estimation Guidelines***

- 27.4. The Estimation Guidelines comprise those principles, policies and assumptions which are set out in Appendix 2 to the Amending Scheme.
- 27.5. These guidelines are designed to assist Scheme Creditors with the claims agreement process under the Amending Scheme. They provide Scheme Creditors with detailed guidance on how claims for Notified Outstanding Liabilities and IBNR Liabilities should be calculated and supported for the purposes of submission under the Amending Scheme. The Scheme Administrators will apply the Estimation Guidelines, with the assistance of the Scheme Actuarial Adviser, in seeking to reach agreement with Scheme Creditors in respect of such future claims. If the Scheme Administrators are unable to reach agreement with a Scheme Creditor as to any of these amounts, they will be referred to the Scheme Adjudicator for determination by her in accordance with the Dispute Resolution Procedure. Scheme Creditors will be able to challenge the proper application of the Estimation Guidelines by the Scheme Administrators, but not the Estimation Guidelines themselves.
- 27.6. The Estimation Guidelines are designed to be flexible. The intention behind the Estimation Guidelines is to ensure that, as far as possible, a fair estimate of its claims is obtained for each Scheme Creditor. The Estimation Guidelines therefore provide for the possibility of Scheme Creditors using their own models for assessing their Scheme Liabilities, so long as, in the opinion of the Scheme Administrators, such methods are well supported and justified and the assumptions that they use can be reasonably justified by the Scheme Creditor.

### ***Discount for the time value of money***

- 27.7. The Scheme Administrators will calculate the discount for the time value of money for each Scheme Creditor by applying the Risk Free Rate to expected future payment patterns, as at the Valuation Date, that the Scheme Administrators consider are appropriate to the nature of that Scheme Creditor's Liabilities. The Scheme Administrators will also apply this discounting approach when calculating any Offset Amounts.

- 27.8. No Scheme Creditor may dispute or challenge the Risk Free Rate applied to its Gross Liabilities and any Offset Amounts. A Scheme Creditor may, however, suggest an alternative payment pattern for discounting provided that the Scheme Creditor can supply a calculation in support of that alternative payment pattern which, in the opinion of the Scheme Administrators, is fully supported and includes justifiable underlying assumptions.

***Offset Amounts: set-off***

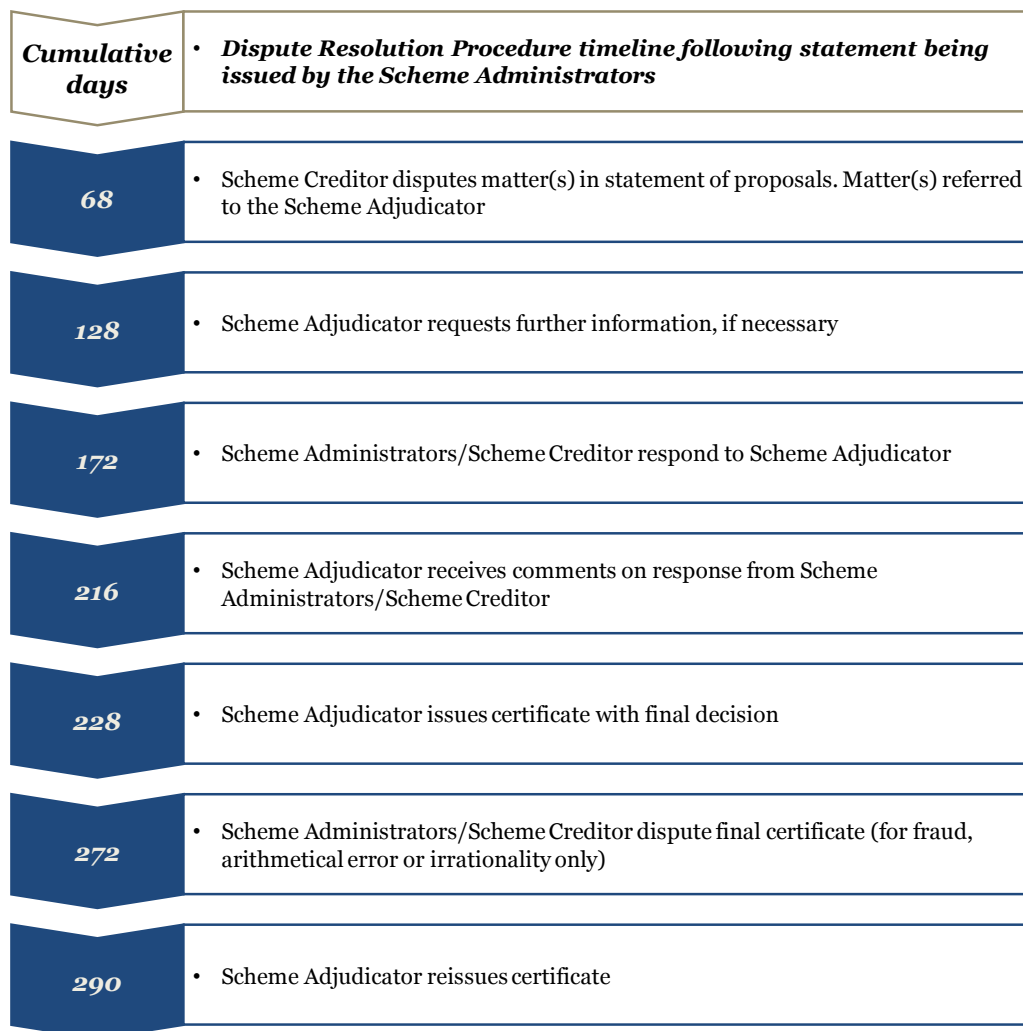
- 27.9. Under the Amending Scheme, all claims in each direction between the Companies and a Scheme Creditor, both present and contingent, will be determined and brought into account by way of set-off for the purposes of agreeing a final net balance between the Companies and the relevant Scheme Creditor and thereby determining that Scheme Creditor's Net Liabilities.
- 27.10. The set-off mechanism under the Amending Scheme will therefore differ from that operated under the Original Scheme. Unlike the set-off process under the Original Scheme (which allowed the Companies to revise their estimate of a Scheme Creditor's future Liabilities to the Companies at any time during the duration of the Original Scheme), the Offset Amount (once calculated under the Amending Scheme) will not be revised to take account of any new information or any change of circumstances (thereby reflecting the crystallising nature of the Amending Scheme). The set-off provisions under the Amending Scheme will provide for the accelerated estimation and determination of future and contingent amounts owed by Scheme Creditors to the Companies, mirroring the mechanism used for establishing the Companies' own Liabilities to them.
- 27.11. The Scheme Administrators will calculate the value of the Offset Amount (if any) to be applied to a Scheme Creditor's claim in consultation with the Scheme Actuarial Adviser and in accordance with the Estimation Guidelines. This may include the processing of the Companies' Gross Liabilities through the Companies' reinsurance systems to determine any reinsurance recoveries due to the Companies from that Scheme Creditor. The Scheme Administrators will seek to agree the value of the Companies' outwards claims against the relevant Scheme Creditor at the same time as they agree that Scheme Creditor's Gross Liabilities under the Amending Scheme.
- 27.12. The effect of the set-off provisions on reinsurers of the Companies will depend to a very large extent upon the relative size of their respective claims against the Companies and their reinsurance Liabilities to the Companies. Each Offset Amount will be calculated as part of the crystallisation process and will not be revised to take into account any new information or change of circumstances thereafter. Some reinsurers (who are net Scheme Creditors) may receive an increased payment under the Amending Scheme as their contingent reinsurance Liability to the Companies might ultimately have increased in the ordinary course. However, other reinsurers (who are net Scheme Creditors) may receive a reduced, or no, payment under the Amending Scheme as their contingent reinsurance Liability to the Companies might ultimately have reduced in the ordinary course.

***Agreement of Net Liabilities***

- 27.13. Once the Gross Liabilities, Offset Amount, any discount for the time value of money in respect of Gross Liabilities and any other deduction (such as a Security Interest) have been determined, by agreement between the Scheme Administrators and the Scheme Creditor, the Scheme Administrators will send to each Scheme Creditor a statement confirming that Scheme Creditor's Net Liabilities no later than 360 days after the Bar Date.
- 27.14. If the Scheme Administrators and a Scheme Creditor have not reached agreement in respect of that Scheme Creditor's Net Liabilities within 360 days of the Bar Date, the Scheme Administrators will send to the Scheme Creditor a statement of proposals setting out (among other things) the amount of that Scheme Creditor's Net Liabilities which the Scheme Administrators are willing to agree. If, within 30 days of receipt of that statement, the Scheme Creditor gives notice to the Scheme Administrators that it disputes any matter in the statement (other than the Estimation Guidelines and the Risk Free Rate), then that matter will be referred by the Scheme Administrator to the Scheme Adjudicator for adjudication under the Dispute Resolution Procedure.

## 28. Dispute Resolution Procedure

- 28.1. The notice issued by the Scheme Administrators will set out details of the disputed matters that have been referred to the Scheme Adjudicator.
- 28.2. A conservative timeline for the Dispute Resolution Procedure, as from 360 days after the Bar Date, is outlined in the following diagram:



- 28.3. To assist in her review of the disputed matter(s), the Scheme Adjudicator will have access to the Companies' records, and may require further documents or other materials to be supplied to her. The Scheme Adjudicator may also require any of the relevant parties, including the Scheme Creditor (or its authorised representative), to appear before the Scheme Adjudicator to give further information and/or explanation regarding the disputed matter(s).
- 28.4. The Scheme Adjudicator's determination in respect of the disputed matter(s) will, insofar as the law allows, be binding and final on the Companies, the Scheme Administrators and the relevant Scheme Creditor (except in the case of fraud, arithmetical error or the Scheme Adjudicator making an irrational determination). The Scheme Adjudicator will issue her determination, together with, at her sole discretion, an appropriate explanation of the reasons for this determination, no later than 890 days after the New Effective Date.

- 28.5. The Scheme Adjudicator may also make a determination as to who should bear the costs of the referral to adjudication. It is anticipated that the costs of the referral to adjudication will be borne by the relevant Scheme Creditor where that referral is vexatious or spurious or otherwise unreasonable. Where she considers it appropriate, the Scheme Adjudicator may ask the relevant Scheme Creditor to provide such security for costs as the Scheme Adjudicator deems necessary to cover the Scheme Adjudicator's costs in dealing with the Scheme Creditor's claim.
- 28.6. The Scheme Adjudicator cannot review or determine any matter relating to any Qualifying ILU Policyholder Premium, other than in respect of the manner in which such premium may be limited. See paragraph 31 for the circumstances in which the Qualifying ILU Policyholder Premium may be limited.
- 28.7. All Net Liabilities of the Scheme Creditors will be determined by the Scheme Administrators, whether by agreement or under the Dispute Resolution Procedure, no later than 1,010 days after the New Effective Date.
- 28.8. The Scheme Administrators acknowledge that, as a result of adopting the Dispute Resolution Procedure and the terms of the Amending Scheme, Scheme Creditors (other than Opt Out Qualifying ILU Policyholders, Protected Policyholders, Potentially Protected Policyholders, NNOFIC and/or the ILU (in relation to their respective rights in relation to any breach by either of the Companies of its obligations to NNOFIC or the ILU under the CPLA) and Pre-1969 L&O Policyholders whose claims revert to run-off) will be prohibited from commencing or continuing any form of legal proceedings against the Companies in order to obtain payment or to establish the existence or amount of a claim against the Companies. However, notwithstanding this, the Scheme Administrators consider that the Dispute Resolution Procedure sets out a practical and cost-effective process for resolving any disputes regarding Scheme Creditors' claims in an independent, fair and efficient manner.

## **29. Distributions**

- 29.1. The Companies will make payments to Scheme Creditors in respect of their Net Liabilities (and any Scheme Liabilities that apply, as referred to in paragraph 29.12, if not paid earlier) at the then current Payment Percentage.
- 29.2. Qualifying ILU Policyholders will be paid in respect of their Net Liabilities in the manner described in paragraphs 30 and 31.
- 29.3. In some cases the Companies (or, where funds are provided by NNOFIC, NNOFIC as a consequence of law or regulation that is directly or indirectly applicable to it) may be prevented by a law or regulation (such as sanctions regulations) from making payment to a Scheme Creditor under the Amending Scheme. In such a case, the Companies will deal with such Blocked Monies in accordance with the relevant law or regulation, or as instructed by the relevant authority. In the absence of any instructions as to how to deal with the Blocked Monies, the Companies will hold them in an account with a United Kingdom clearing bank until the Companies receive instructions from the relevant authority, or it becomes legal to pay the monies to the relevant Scheme Creditor (which, in the case of monies advanced by NNOFIC, will require additional prior written approval from NNOFIC and the ILU). If neither of these matters has occurred upon the termination of the Scheme, the Blocked Monies will be paid by the Companies to one or more registered UK charities selected at the discretion of the Scheme Administrators. The Scheme Liabilities in respect of which such Blocked Monies would otherwise have been payable shall then be deemed to be cancelled and the relevant Scheme Creditor shall have no rights in respect of them.
- 29.4. Payment by the Companies in respect of Net Liabilities will be in full and final settlement of all claims of the relevant Scheme Creditor against the Companies. In addition, by accepting payment, the relevant Scheme Creditor warrants as at the date of termination of the Scheme that it has not received any other payment in respect of the same Liability as a result of which a third party may have a claim against the Companies and agrees to indemnify the Companies against all losses, damages, costs, claims, Liabilities, proceedings, demands and expenses (including legal fees) incurred by the Companies pursuant to a breach of such warranty.

- 29.5. After the Bar Date, the Payment Percentage will be reviewed and, if deemed appropriate by the Scheme Administrators, increased in accordance with the relevant provisions of the Original Scheme. However, the Payment Percentage will not be increased until sometime after the Bar Date when there is more certainty about the ultimate value of claims submitted against the Companies under the Amending Scheme. In any event, the Payment Percentage will not be increased until after the Scheme Administrators have determined whether the crystallisation and payment provisions of the Amending Scheme will come into effect, which depends upon the proportion by value of Qualifying ILU Policyholders who opt out. See paragraphs 32.18 to 32.28 for further details.
- 29.6. Thereafter, the Payment Percentage may be increased a number of times as and when Net Liabilities are agreed.
- 29.7. The extent and timing of any revisions to the Payment Percentage and the level of the final Payment Percentage will depend upon a number of factors. These factors will include the total value of the Net Liabilities agreed with Scheme Creditors, the amount recovered by the Companies from Lloyds Bank (as to which see paragraph 33) and whether or not the Pre-1969 L&O Policyholders revert to run-off. The manner in which the level of the Payment Percentage might be affected by the treatment of the Pre-1969 L&O Policyholders is set out in paragraph 29.8. If the Pre-1969 L&O Policyholders revert to run-off, the Pre-1969 L&O Policyholders will receive the Payment Percentage (referred to in paragraph 29.1) in respect of their claims, but only as and when the Liabilities of the Companies to those Pre-1969 L&O Policyholders become Established Liabilities.
- 29.8. The Payment Percentage will be affected by the treatment of the Pre-1969 L&O Policyholders under the Amending Scheme. However, regardless of whether the Pre-1969 L&O Policyholders revert to run-off, the estimated final Payment Percentage:
  - 29.8.1. will be higher, and will be reached more quickly, than the estimated final Payment Percentage under the Original Scheme (in the absence of the Amending Scheme); and
  - 29.8.2. will vary slightly, depending on the proportion by value of Qualifying ILU Policyholders who opt out, but it is estimated that this variation will always be less than one percentage point (when compared with the estimated final Payment Percentage where no Qualifying ILU Policyholders opt out).
- 29.9. If the Pre-1969 L&O Policyholders revert to run-off:
  - 29.9.1. the Payment Percentage payable to all Scheme Creditors, including those Scheme Creditors whose claims are included in the Amending Scheme crystallisation and payment process, will be revised from time to time as any uncertainty over the value of the future claims of the Pre-1969 L&O Policyholders and recoveries from Lloyds Bank under the Lloyds Bank Agreement reduces over time;
  - 29.9.2. the Payment Percentage is estimated to rise quickly to a level in excess of the estimated final Payment Percentage that would have been payable if the run-off of all of the Companies' business had continued under the Original Scheme;
  - 29.9.3. the level of the final Payment Percentage will be affected by the extent to which the amount of the future claims of the Pre-1969 L&O Policyholders agreed by the Companies and the amount of recoveries made from Lloyds Bank in respect of those claims differ from the amount of such claims and recoveries that would otherwise have occurred under the crystallisation and payment provisions of the Amending Scheme;
  - 29.9.4. it may not be possible to determine the final Payment Percentage for all Scheme Creditors for many years into the future, until all the claims of the Pre-1969 L&O Policyholders have been agreed and all recoveries in respect of those claims have been made from Lloyds Bank;
  - 29.9.5. the estimated final Payment Percentage is nonetheless around the same as it would have been if the Pre-1969 L&O Policyholders had not reverted to run-off; and

- 29.9.6. the estimated final Payment Percentage in the Amending Scheme is also higher than the estimated final Payment Percentage under the Original Scheme (in the absence of the Amending Scheme).
- 29.10. Following the termination of the Scheme, no Scheme Creditor will have any claim of any nature (so far as is permitted by law) against the Companies, the Scheme Administrators, the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator, the Individual Claimant Representative, NNOFIC, the ILU, the FSCS Scheme Manager (except in relation to Protected Liabilities), the Trustee, Nat-Ned, 1845 or any other member of the ING group in respect of a Scheme Liability.
- 29.11. Under the terms of the Scheme, Scheme Creditors (other than Qualifying ILU Policyholders) receive compensatory payments in the event of an increase in the Payment Percentage. If required under current tax law, the Companies will withhold basic rate tax from any compensatory payments made to Scheme Creditors under the Scheme. In that event, US resident Scheme Creditors may be entitled to receive such amounts gross, or to receive a refund of any UK tax withheld at source, provided the relevant Her Majesty's Revenue & Customs forms are duly completed and authorised by the Internal Revenue Service.
- 29.12. Payments in respect of claims from:
- 29.12.1. Opt Out Qualifying ILU Policyholders;
- 29.12.2. Protected Policyholders and Potentially Protected Policyholders; and
- 29.12.3. Qualifying ILU Policyholders (who are not individuals) or individuals (whether or not those individuals are Qualifying ILU Policyholders) whose claims are submitted to the Companies after the Bar Date,
- which become Established Liabilities or Net Liabilities (as the case may be) will be made on a different basis from payments to other Scheme Creditors.
- 29.13. Opt Out Qualifying ILU Policyholders will, subject to the terms of the CPLA, continue to have their claims paid in full after the Bar Date as and when their claims fall due and become Qualifying Established Liabilities under the Original Scheme. This payment will consist of the Opt Out Payment Percentage plus an amount borrowed by the Companies from NNOFIC under the Facility and subject to the terms of the CPLA. Subject to the terms of the CPLA, NNOFIC will bear the risk of the actual claim and run-off expense amounts of the Opt Out Qualifying ILU Policyholders differing from the amounts estimated in the Amending Scheme.
- 29.14. Protected Policyholders and Potentially Protected Policyholders will continue to be paid after the Bar Date by the FSCS Scheme Manager as and when their claims fall due.
- 29.15. Qualifying ILU Policyholders whose claims are submitted and become Net Liabilities after the Bar Date will be paid in the manner set out in, and subject to the requirements of, paragraphs 36.4 to 36.11. Individuals whose claims are submitted and become Net Liabilities after the Bar Date will be paid in the manner set out in, and subject to the requirements of, paragraphs 36.12 to 36.19.
- 29.16. The Companies may, at the Scheme Administrators' discretion and at any time during the Scheme, enter into an agreement with a Scheme Creditor for which payment may be made to agree the value of that Scheme Creditor's claims against the Companies. The amount agreed by the Companies with the Scheme Creditor will be used by the Companies as a basis for determining that Scheme Creditor's Net Liabilities under the Amending Scheme. The Scheme Administrators will endeavour to adopt and maintain a consistent approach when negotiating and reaching agreement with Scheme Creditors in this way. Furthermore, the Scheme Administrators, in accordance with the terms of the Scheme, will only enter into any such agreement where they consider that to do so would be in the best interests of the Scheme Creditors as a whole.

### **30. Payments to Qualifying ILU Policyholders (including the Qualifying ILU Policyholder Premium)**

30.1. Under the Original Scheme, Qualifying ILU Policyholders receive 100% of their Established Liabilities subject to the conditions set out in paragraph 4.1.1. This is as a result of the arrangements described on page 4 of the Explanatory Statement to the Original Scheme whereby Qualifying ILU Policyholders are paid by the Companies in respect of their Qualifying Established Liabilities:

30.1.1. the current Payment Percentage payable to all Scheme Creditors; and

30.1.2. a further "top-up" payment up to the full amount of their Qualifying Established Liabilities using funds borrowed by the Companies for that purpose from NNOFIC under the Facility and subject to the terms of the CPLA. NNOFIC then steps into the shoes of the Scheme Creditor, with a claim equal to the total amount of the relevant Qualifying Established Liabilities, to the extent only that it is entitled to receive any future payments arising from increases in the Payment Percentage and the associated compensatory interest.

30.2. An example is set out below of the way in which Qualifying ILU Policyholders are paid under the Original Scheme in respect of their Qualifying Established Liabilities:

30.2.1. a Qualifying Established Liability that is agreed for a value of US\$100 receives a payment of US\$58 from the Companies (based on the current Payment Percentage of 58%) and a further US\$42 from the Companies, using funds borrowed from NNOFIC under the Facility;

30.2.2. the total payment to the Qualifying ILU Policyholder is therefore increased to US\$100 (the full value of its claim); and

30.2.3. NNOFIC then steps into the shoes of the Scheme Creditor for US\$100 in respect of that Established Liability but is deemed to have received the US\$58 paid by the Companies by way of the existing Payment Percentage. NNOFIC is entitled to receive future payments in respect of any increases in the Payment Percentage (subject to a cap of US\$42) and the associated compensatory interest.

30.3. Under the Amending Scheme, in addition to receiving, subject to the terms of the CPLA, 100% of their Net Liabilities in respect of their Qualifying ILU Policies, Qualifying ILU Policyholders (who are not Opt Out Qualifying ILU Policyholders) will, subject to the conditions and restrictions described in paragraph 31, also receive a Qualifying ILU Policyholder Premium (which, as is explained in paragraph 30.9, will be funded by NNOFIC) which will be an amount equal to:

30.3.1. the discount for the time value of money applied to that Qualifying ILU Policyholder's Notified Outstanding Liabilities and IBNR Liabilities under its Qualifying ILU Policies; plus

30.3.2. 10% of the undiscounted value of that Qualifying ILU Policyholder's Notified Outstanding Liabilities and IBNR Liabilities.

Paragraph 31 sets out the conditions and restrictions which may apply to the payment of the Qualifying ILU Policyholder Premium.

30.4. In the same manner as is currently required under the existing CPLA for the Original Scheme, prior to making any "top-up" payments under the revised CPLA for the Amending Scheme in respect of Qualifying ILU Policyholders' claims, the Companies must receive either:

30.4.1. a Discharge Letter executed by the relevant Qualifying ILU Policyholder in the form specified in the CPLA (as amended to reflect the Amending Scheme); or

- 30.4.2. where the "top-up" payment is to be paid to an agent (such as a broker) and not directly to the Qualifying ILU Policyholder, an indemnity in respect of such payment in favour of the Companies from that agent in the form specified in the CPLA.
- 30.5. The Scheme Administrators recognise that Qualifying ILU Policyholders will not benefit as materially as other Scheme Creditors from the expected increase in the Payment Percentage under the Amending Scheme. This is because their Qualifying Established Liabilities are, subject to the terms of the CPLA, already being paid out in full as and when they are agreed under the Original Scheme. Subject to the conditions described in paragraph 31, the payment of the Qualifying ILU Policyholder Premium provides additional benefits to Qualifying ILU Policyholders in this position and incentivises them to support the Amending Scheme.
- 30.6. As the Qualifying ILU Policyholder Premium includes an element for the discount for the time value of money applied to a Qualifying ILU Policyholder's claim, the benefit of the Qualifying ILU Policyholder Premium will be much higher for Qualifying ILU Policyholders with long-tail claims (that will not settle for many years) than for Qualifying ILU Policyholders with short-tail claims (that are close to settlement). This is intended to reflect the much greater uncertainty regarding the future quantum and payment of such long-tail claims.
- 30.7. The Qualifying ILU Policyholder Premium will, subject to the conditions and restrictions set out in paragraph 31 (and, where applicable, the completion and execution of a Discharge Letter in accordance with the terms of the CPLA), be payable to all Qualifying ILU Policyholders. However, where the Qualifying ILU Policyholder is a net debtor of the Companies and it does not pay those debts (in whole or in part) that the Scheme Administrators consider are due from it to the Companies, the Scheme Administrators may retain such amount of the Qualifying ILU Policyholder Premium (which would otherwise be payable to that Qualifying ILU Policyholder) to discharge those debts.
- 30.8. The Qualifying ILU Policyholder Premium will be calculated before any Offset Amount is deducted from the Qualifying ILU Policyholder's Gross Liabilities. As a simple example, where: (i) a Qualifying ILU Policyholder has no Established Liabilities and Agreed Liabilities; (ii) that Qualifying ILU Policyholder has Notified Outstanding Liabilities of US\$50 and IBNR Liabilities of US\$50; (iii) both the Notified Outstanding Liabilities and IBNR Liabilities are subject to a 30% discount for the time value of money; and (iv) an Offset Amount of US\$50 applies (including a discount for the time value of money):
- 30.8.1. the Qualifying ILU Policyholder Premium will be an amount equal to  $(US\$100 \times 30\%) + (US\$100 \times 10\%) = US\$40$ ;
- 30.8.2. the Net Liabilities will be an amount equal to the Gross Liabilities (US\$100) less the discount for the time value of money (US\$30) less the Offset Amount (US\$50) = US\$20; and
- 30.8.3. the Qualifying ILU Policyholder receives US\$60 in total, made up of the Qualifying ILU Policyholder Premium of US\$40 and its Net Liabilities of US\$20.
- 30.9. The Qualifying ILU Policyholder Premium:
- 30.9.1. will be funded entirely by NNOFIC and not by the Companies. The payment of this premium will not therefore affect the level of the Payment Percentage; and
- 30.9.2. will not be paid out of the Facility and so will leave unaffected the ability of the Companies to make any "top-up" payments to Qualifying ILU Policyholders described in paragraph 30.1.2 out of the Facility and under and subject to the terms of the CPLA.
- 30.10. The terms on which NNOFIC is to pay the Qualifying ILU Policyholder Premium are set out in a separate agreement between NNOFIC and the Companies (the "**Premium and Expenses Agreement**").
- 30.11. If the Amending Scheme is not approved, the Original Scheme will continue to operate and Qualifying ILU Policyholders will receive no Qualifying ILU Policyholder Premium.

### **31. Qualifying ILU Policyholder Premium conditions and restrictions**

- 31.1. There are certain conditions and restrictions on the payment of the Qualifying ILU Policyholder Premium. These are:
- 31.1.1. the Qualifying ILU Policyholder Premium will not be paid to Opt Out Qualifying ILU Policyholders;
  - 31.1.2. subject to paragraph 31.1.3, the payment of the Qualifying ILU Policyholder Premium is conditional upon the relevant Qualifying ILU Policyholder warranting to the Companies that the Liabilities which are the subject matter of the Qualifying ILU Policyholder's Claim Form have not been assigned (in whole or in part) to an Assignee;
  - 31.1.3. where the Liabilities that are the subject matter of the Qualifying ILU Policyholder's Claim Form have been assigned to an Assignee and notice of that Assignment has been received by the Companies, then the Qualifying ILU Policyholder Premium will not be paid to the Assignor, but, subject to the other conditions and limitations set out in this paragraph 31.1, to the Assignee;
  - 31.1.4. a Qualifying ILU Policyholder Premium will only be paid to those Qualifying ILU Policyholders who are, or who have at any time been, liable to pay (in whole or in part) any of the underlying Liabilities which gave rise to their respective claims against the Companies. Those Qualifying ILU Policyholders who are free of any obligation to pay any such Liabilities will not receive the Qualifying ILU Policyholder Premium. For example, a debt trader who has acquired a Qualifying ILU Policyholder's claim as a Qualifying Assignee but is free of any Liability to pay any underlying claims would not be entitled to receive the Qualifying ILU Policyholder Premium; likewise, an individual who is a Qualifying ILU Policyholder may not have a corresponding obligation to pay a Liability and therefore would not be entitled to receive the Qualifying ILU Policyholder Premium;
  - 31.1.5. when a claim is agreed in the Amending Scheme on the basis of an agreed structured market settlement:
    - (a) if all payments have not yet been made, and there are no uncertainties regarding the amounts or timing of future payments, then the claim for future payments in the Amending Scheme will be discounted in full and no Qualifying ILU Policyholder Premium will be paid; or
    - (b) if there are residual uncertainties regarding the amounts and timings of payments to be made under the market settlement, for example because of the existence of underlying claim thresholds that must be met before payments can be made, then assumptions may be made regarding such issues in valuing the claim in the Amending Scheme. Depending on those issues, some or all of the Qualifying ILU Policyholder Premium may be paid; and
  - 31.1.6. a Qualifying ILU Policyholder's Gross Liabilities (plus the Qualifying ILU Policyholder Premium) must not exceed any limit or other restriction imposed by the relevant policy (after the application of a discount on the policy limits to reflect the time value of money). When calculating whether policy limits have been exceeded for this purpose, the Scheme Administrators will take into account all claims received under the relevant policy, whether received before or after the New Effective Date. Where a Qualifying ILU Policyholder's Gross Liabilities are at or near that Policyholder's remaining policy exposure, the Qualifying ILU Policyholder Premium will be reduced to zero or a much smaller amount as described in paragraphs 31.2 and 31.3.
- 31.2. The manner in which the Qualifying ILU Policyholder Premium may be reduced as a result of a Qualifying ILU Policyholder's Gross Liabilities being at or near its remaining policy exposure is demonstrated in the illustrative examples given on pages 56 to 58. In most cases,

the Qualifying ILU Policyholder Premium will not be reduced because the value of the Qualifying ILU Policyholder's claim in the Amending Scheme will fall well short of the remaining available policy exposure.

31.2.1. Example 1 is based on this type of situation where:

- (a) the Qualifying ILU Policyholder purchased a single policy with limits of US\$100 (no reinstatements);
- (b) Established Liabilities of US\$35 have been paid in full on this policy, made up of the Payment Percentage plus a further payment by the Companies out of monies borrowed from NNOFIC under the Facility (as described in paragraph 30.1.2);
- (c) Agreed Liabilities on this policy have been valued at US\$5;
- (d) Notified Outstanding Liabilities and IBNR Liabilities on this policy have been valued under the Amending Scheme at US\$20 (before any discount for the time value of money); and
- (e) the discount of the Notified Outstanding Liabilities and IBNR Liabilities (assumed also to apply to the discounting of the exposure that may be affected by Notified Outstanding Liabilities and IBNR Liabilities) reduces those undiscounted amounts by 30%.

31.2.2. In example 2, it has been assumed that the Notified Outstanding Liabilities and IBNR Liabilities are valued at US\$50 (rather than US\$20 as in example 1). The total exhaustion on the policy is US\$90 (US\$35+US\$5+US\$50), i.e. close to the exhaustion of policy limits.

31.2.3. In example 3, it has been assumed that the Notified Outstanding Liabilities and IBNR Liabilities are valued at US\$60, such that the policy is totally exhausted as the total estimated claim amounts are US\$100 (US\$35+US\$5+US\$60).

31.2.4. The calculation of the Qualifying ILU Policyholder's:

- (a) total undiscounted claim;
- (b) total discounted claim; and
- (c) Qualifying ILU Policyholder Premium (before and after any limitation)

in examples 1, 2 and 3 is shown on pages 56 to 58.

31.2.5. These examples are not exhaustive of all of the scenarios that may apply and the underlying assumptions adopted in the examples are not intended to reflect the assumptions that will necessarily be appropriate in respect of any particular claim from any Qualifying ILU Policyholder.

**Example 1: Maximum Qualifying ILU Policyholder Premium (all amounts US\$)**

<b>Policy Limits</b>	<b>100</b>
Undiscounted Claim	
Established Liabilities previously paid under the policy	35
Agreed Liabilities	5
Notified Outstanding Liabilities and IBNR Liabilities	20
Total Claim	25
Discount to Notified Outstanding Liabilities and IBNR Liabilities	
Established Liabilities previously paid under the policy	35
Agreed Liabilities	5
Notified Outstanding Liabilities and IBNR Liabilities	20
Actuarially assessed discount for time value of money (30% x 20)	-6
Total Claim after discount	(A) 19
Calculation of Qualifying ILU Policyholder Premium	
Discount applied to Notified Outstanding Liabilities and IBNR Liabilities	6
10% x Notified Outstanding Liabilities and IBNR Liabilities (10% x 20)	2
Premium before limitation	(B) 8
<b>Total Claim plus Premium before limitation</b>	<b>(A)+(B) 27</b>
Discounted remaining policy exposure	
Established Liabilities previously paid under the policy	35
Agreed Liabilities	5
Exposure at risk from Notified Outstanding Liabilities and IBNR Liabilities	60
Actuarially assessed discount for time value of money (30% x 60)	-18
Discounted remaining policy exposure	(C) 47
Total claim after discount plus Premium before limitation	(A)+(B) 27
Discounted remaining policy exposure	(C) 47
Compare (A) + (B) with (C): Adjustment to Premium (zero because 47>27)	0
Revised Total Claim after discount plus adjusted Premium (27-0)	27
Made up of: Discounted Claim (19)	19
Adjusted Premium (8-0)	8

The table shows that the discounted remaining policy exposure (US\$47) is well in excess of the value of the total claim discounted for the time value of money (US\$19) plus the Qualifying ILU Policyholder Premium before limitation (US\$8). The Qualifying ILU Policyholder Premium is therefore paid in full (US\$8).

**Example 2: Limited Qualifying ILU Policyholder Premium (all amounts US\$)**

<b>Policy Limits</b>		<b>100</b>
Undiscounted Claim		
Established Liabilities previously paid under the policy	35	
Agreed Liabilities		5
Notified Outstanding Liabilities and IBNR Liabilities		50
Total Claim		55
Discount to Notified Outstanding Liabilities and IBNR Liabilities		
Established Liabilities previously paid under the policy	35	
Agreed Liabilities		5
Notified Outstanding Liabilities and IBNR Liabilities		50
Actuarially assessed discount for time value of money (30% x 50)		-15
Total Claim after discount	(A)	40
Calculation of Qualifying ILU Policyholder Premium		
Discount applied to Notified Outstanding Liabilities and IBNR Liabilities		15
10% x Notified Outstanding Liabilities and IBNR Liabilities (10% x 50)		5
Premium before limitation	(B)	20
<b>Total Claim plus Premium before limitation</b>	<b>(A)+(B)</b>	<b>60</b>
Discounted remaining policy exposure		
Established Liabilities previously paid under the policy	35	
Agreed Liabilities		5
Exposure at risk from Notified Outstanding Liabilities and IBNR Liabilities		60
Actuarially assessed discount for time value of money (30% x 60)		-18
Discounted remaining policy exposure	(C)	47
Total claim after discount plus Premium before limitation	(A)+(B)	60
Discounted remaining policy exposure	(C)	47
Compare (A) + (B) with (C): Adjustment to Premium (-13 because 47<60)		-13
Revised Total Claim after discount plus adjusted Premium (60-13)		47
Made up of: Discounted Claim (40)		40
Adjusted Premium (20-13)		7

The discounted remaining policy exposure (US\$47) is less than the value of the total claim discounted for the time value of money (US\$40) plus the Qualifying ILU Policyholder Premium before limitation (US\$20). The Qualifying ILU Policyholder Premium is therefore limited to US\$7.

**Example 3: No Qualifying ILU Policyholder Premium payable (all amounts US\$)**

<b>Policy Limits</b>	<b>100</b>
Undiscounted Claim	
Established Liabilities previously paid under the policy	35
Agreed Liabilities	5
Notified Outstanding Liabilities and IBNR Liabilities	60
Total Claim	65
Discount to Notified Outstanding Liabilities and IBNR Liabilities	
Established Liabilities previously paid under the policy	35
Agreed Liabilities	5
Notified Outstanding Liabilities and IBNR Liabilities	60
Actuarially assessed discount for time value of money (30% x 60)	-18
Total Claim after discount	(A) 47
Calculation of Qualifying ILU Policyholder Premium	
Discount applied to Notified Outstanding Liabilities and IBNR Liabilities	18
10% x Notified Outstanding Liabilities and IBNR Liabilities (10% x 60)	6
Premium before limitation	(B) 24
<b>Total Claim plus Premium before limitation</b>	<b>(A)+(B) 71</b>
Discounted remaining policy exposure	
Established Liabilities previously paid under the policy	35
Agreed Liabilities	5
Exposure at risk from Notified Outstanding Liabilities and IBNR Liabilities	60
Actuarially assessed discount for time value of money (30% x 60)	-18
Discounted remaining policy exposure	(C) 47
Total claim after discount plus Premium before limitation	(A)+(B) 71
Discounted remaining policy exposure	(C) 47
Compare (A) + (B) with (C): Adjustment to Premium (-24 because 47<71)	-24
Revised Total Claim after discount plus adjusted Premium (71-24)	47
Made up of: Discounted Claim (47)	47
Adjusted Premium (24-24)	0

The discounted remaining policy exposure (US\$47) is equal to the value of the total claim discounted for the time value of money (US\$47). Therefore no Qualifying ILU Policyholder Premium is payable in this example.

- 31.3. The following examples explain how the phrase "remaining policy exposure" in paragraph 31.1.6 and the manner in which that "remaining policy exposure" is to be discounted will be interpreted:

- 31.3.1. if adjacent vertical layers have been written by the Companies so that the lower policy is almost exhausted by the total undiscounted claims (including Notified Outstanding Liabilities and IBNR Liabilities) but the higher policy is claim free, then the remaining policy exposure will take into account the remaining exposure on both policies at an aggregate level. Subject to the conditions and restrictions set out in paragraph 31.1, the calculation of the Qualifying ILU Policyholder Premium will not consider the remaining exposure on each policy in isolation (when the Qualifying ILU Policyholder Premium might otherwise be limited by the fact that the lower layer policy is exhausted by the Qualifying ILU Policyholder's claim);
- 31.3.2. if a claim arises on a policy where reinstatements apply, so that there is notional remaining exposure from these reinstatements but the claims experience is such that only the current policy is affected by total undiscounted claims (including Notified Outstanding Liabilities and IBNR Liabilities) and it is almost impossible that a reinstatement will lead to future Liabilities being incurred, then the remaining policy exposure will not take into account exposure relating to reinstatements. For example, where a specific catastrophe exhausts a policy but where no other catastrophe is likely to affect the reinstatement cover, no Qualifying ILU Policyholder Premium will be paid;
- 31.3.3. if a claim arises on a policy where reinstatements apply, and future claims implicit in the estimated Notified Outstanding Liabilities and IBNR Liabilities are likely to affect those reinstatements (e.g. a policy giving reinsurance cover to an insurer's coverage of underlying asbestos assureds where future claims may emerge from the identification of new underlying assureds), then the remaining policy exposure will take into account exposure relating to reinstatements. Subject to the conditions and restrictions set out in paragraph 31.1, the Qualifying ILU Policyholder Premium will not be reduced in this situation;
- 31.3.4. if a claim arises on a policy where there is only a small chance of the policy being affected but, in that event, the policy will be fully exhausted, then the estimate of Notified Outstanding Liabilities and IBNR Liabilities will be based on the exhaustion of the policy multiplied by the chance of the policy being affected. In this situation, there will still be uncertainty surrounding the estimate of the possibility that the policy will be affected. Subject to the conditions and restrictions set out in paragraph 31.1, the Qualifying ILU Policyholder Premium will not be reduced in this situation; and
- 31.3.5. if a claim arises on a policy which is exhausted by total undiscounted indemnity claims, but defence costs are paid in addition to the policy limits, the remaining policy exposure may need to take into account the remaining exposure to those defence costs. In this situation, the Qualifying ILU Policyholder Premium is likely to be reduced to zero in respect of the indemnity component of the claim but, subject to the conditions and restrictions set out in paragraph 31.1, there will be no such limitation on the defence cost component of the claim.

## **32. Qualifying ILU Policyholder opt out**

- 32.1. Qualifying ILU Policyholders are, subject to the terms of the CPLA, entitled to receive payment of their Qualifying Established Liabilities in full under the Original Scheme provided that they have notified such claims to the Companies by no later than 31 December 2035.

- 32.2. The Amending Scheme sets out proposals for the agreement and payment of those claims by 2018. It also offers the additional benefit to Qualifying ILU Policyholders over and above those provided by the Original Scheme of, subject to certain conditions, the payment of the Qualifying ILU Policyholder Premium, as described in paragraphs 30 and 31. If a Qualifying ILU Policyholder should, however, not wish to take advantage of this benefit, then it can opt out of the crystallisation and payment provisions of the Amending Scheme and have its claims paid in full under the terms of the Original Scheme.
- 32.3. Qualifying ILU Policyholders will be allowed to opt out of the crystallisation and payment provisions of the Amending Scheme as the Scheme Administrators recognise and acknowledge that such policyholders may wish to leave their existing coverage in place (where their claims will, subject to the terms of the CPLA, still be paid in full under the Original Scheme). Only Qualifying ILU Policyholders will be allowed to opt out of the crystallisation and payment provisions of the Amending Scheme. The Scheme Administrators consider that it is appropriate to limit the availability of the opt out feature in this manner as it is only Qualifying ILU Policyholders who will be guaranteed (subject to the terms of the CPLA then in force) to have their Qualifying Established Liabilities paid in full under the Original Scheme. In contrast, other Scheme Creditors will only receive the Payment Percentage.
- 32.4. To opt out of the crystallisation and payment provisions of the Amending Scheme, a Qualifying ILU Policyholder must submit an Opt Out Form, either electronically or by post to be received by the Companies before the Bar Date. A Qualifying ILU Policyholder will only be entitled to opt out in respect of all its Qualifying ILU Policies. The Scheme Administrators consider that to allow Qualifying ILU Policyholders to opt out of the Amending Scheme in respect of some of their claims under certain Qualifying ILU Policies (but not others) would make the operation of the Amending Scheme excessively complex and expensive. Therefore, a Qualifying ILU Policyholder will be unable to opt out in respect of any individual Qualifying ILU Policies or type of claim.
- 32.5. A Qualifying ILU Policyholder will be unable to opt out in respect of any other policies (which are not Qualifying ILU Policies) that it may also have with the Companies. Claims under those policies will be dealt with under the crystallisation and payment provisions of the Amending Scheme (if it comes into effect).

***Treatment of Opt Out Qualifying ILU Policyholders***

- 32.6. The future claims of all Opt Out Qualifying ILU Policyholders will be estimated by the Scheme Administrators with the assistance of the Scheme Actuarial Adviser. This will allow the final Payment Percentage to be calculated and paid to all other Scheme Creditors.
- 32.7. After the Bar Date, Opt Out Qualifying ILU Policyholders will, subject to the terms of the CPLA, continue to have their claims paid in full as and when such claims become Qualifying Established Liabilities under the Original Scheme.
- 32.8. Where an Opt Out Qualifying ILU Policyholder is also a Scheme Creditor with claims that do not relate to its Qualifying ILU Policy or Qualifying ILU Policies, any claims that the Companies may have against such Scheme Creditor will be determined in accordance with the Amending Scheme to produce an Offset Amount. This Offset Amount may be set off, at the Scheme Administrators' discretion, against either that Scheme Creditor's:
- 32.8.1. Gross Liabilities under the Amending Scheme; or
- 32.8.2. future claims as and when they arise in the ordinary course in its capacity as an Opt Out Qualifying ILU Policyholder.
- 32.9. Opt Out Qualifying ILU Policyholders will be paid, in respect of each such Qualifying Established Liability, an amount equal to the then current Opt Out Payment Percentage. Each Opt Out Qualifying ILU Policyholder will also receive an additional "top-up" payment from the Companies (out of monies borrowed and received from NNOFIC under the Facility) up to the full amount of its Qualifying Established Liability. Opt Out Qualifying ILU Policyholders will not be paid the Qualifying ILU Policyholder Premium.

- 32.10. Within 360 days of the Bar Date, an amount will be estimated by the Scheme Administrators and set aside from the Companies' assets to pay the Opt Out Payment Percentage on the claims of the Opt Out Qualifying ILU Policyholders as and when they fall due. This amount, set aside to meet the Opt Out Scheme Liabilities, as referred to in paragraph 19.5.1(b), will be equal to the estimated aggregate future claims of the Opt Out Qualifying ILU Policyholders multiplied by the then Payment Percentage. The amount set aside will be subject to the review and agreement of NNOFIC and the ILU. This is on the basis that any shortfall between the Opt Out Payment Percentage and the Qualifying Established Liabilities of an Opt Out Qualifying ILU Policyholder will be paid out of the Facility. In the event that there is any disagreement between the Scheme Administrators, NNOFIC and the ILU regarding the calculation, the dispute will be referred to the Scheme Adjudicator for final determination. The amount so set aside described above will be increased if the Payment Percentage increases, by an amount equal to the increase in the Payment Percentage as applied to the amount of the Opt Out Scheme Liabilities together, where applicable, with an amount for compensatory interest.
- 32.11. To assist the Scheme Administrators in estimating the value of their claims, Opt Out Qualifying ILU Policyholders are requested to provide as much information as possible with respect to their policies and claims that they may have against the Companies and send such information to the Run-off Company at the contact details set out at the beginning of this document.
- 32.12. The Scheme Administrators will also estimate an amount to be set aside from the Companies' assets to meet the future run-off costs of the Companies (excluding dividend payments) in dealing with the Opt Out Qualifying ILU Policyholders. This amount, together with the amount also set aside referred to in paragraph 32.10, will be the **"Opt Out Scheme Assets"**.
- 32.13. This amount will again be subject to the review and agreement of NNOFIC and the ILU. In the event that there is any disagreement between the Scheme Administrators, NNOFIC and the ILU regarding the calculation, the dispute will be referred to the Scheme Adjudicator for final determination. Any shortfall in the amount set aside to meet those costs will be funded by NNOFIC to ensure that the run-off costs are met in full. Any funds advanced by NNOFIC to the Companies to meet that shortfall will not come from the Facility and will therefore not affect the security of the Qualifying ILU Policyholders to receive "top-up" payments.
- 32.14. For so long as the Companies pay the Opt Out Payment Percentage of claims due to Opt Out Qualifying ILU Policyholders pursuant to the Scheme, NNOFIC will top up those payments subject to the terms of the CPLA (with the top up payments therefore counting against the Facility Limit), provided those claims are made to the Companies by 31 December 2035. Subject to paragraph 32.15, NNOFIC will not, however, be entitled to any repayment of amounts which it advances to the Companies under the CPLA to fund payments to Opt Out Qualifying ILU Policyholders as a result of any subsequent increase to the Opt Out Payment Percentage.
- 32.15. Once the Established Liabilities of all Opt Out Qualifying ILU Policyholders and all run-off costs incurred in connection with those Opt Out Qualifying ILU Policyholders have been paid in full (and subject to the requirement that all such Policyholders submit their claims to the Companies by 31 December 2035), any Opt Out Scheme Assets remaining in the Companies will be paid to NNOFIC.
- 32.16. As noted in paragraph 20.2, the Scheme Administrators have calculated (with the assistance of the Scheme Actuarial Adviser) that the estimated final Payment Percentage under the Amending Scheme will be higher than the estimated final Payment Percentage under the Original Scheme. The amount set aside from the Companies' assets to meet the run-off costs in dealing with the Opt Out Qualifying ILU Policyholders will be significantly less than the amount of the run-off expenses that would have otherwise been incurred under the Original Scheme. This is because:
- 32.16.1. the total estimated run-off costs for the period 2014 to 2035 (were the Companies to remain in run-off under the Original Scheme) are greater than US\$200 million;

- 32.16.2. as at 31 December 2013, the total estimated value of the Companies' Scheme Liabilities in respect of claims from Qualifying ILU Policyholders is US\$105 million (7% in value of the total estimated value of the Companies' Scheme Liabilities); and
- 32.16.3. no more than 30% by value of Qualifying ILU Policyholders can opt out of the Amending Scheme if the crystallisation and payment provisions of the Amending Scheme are to proceed.
- 32.17. Accordingly, the proportion of the Companies' estimated Scheme Liabilities that will need to be covered by the costs for dealing with the Opt Out Qualifying ILU Policyholders is very small in comparison to the Companies' total estimated Scheme Liabilities. When this proportion is applied to the total run-off costs, the estimated value of the costs in dealing with the Opt Out Qualifying ILU Policyholders will be very low compared to the estimated level of run-off expenses under the Original Scheme. The Scheme Administrators have calculated that the amount that the Scheme Administrators will have to set aside for the costs of dealing with the Opt Out Qualifying ILU Policyholders will reduce the level of the estimated final Payment Percentage in the Amending Scheme by less than one percentage point (when compared with the estimated final Payment Percentage in the Amending Scheme if there was no opt out).
- Opt Out Threshold***
- 32.18. NNOFIC and the ILU consider that the benefits of the Amending Scheme to Scheme Creditors could be substantially reduced if a large proportion by value of Qualifying ILU Policyholders opt out.
- 32.19. The circumstances of the Amending Scheme are unique, including the nature of the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders. In view of these matters, the Scheme Administrators will only implement the crystallisation and payment provisions of the Amending Scheme if no more than 30% by value of Qualifying ILU Policyholders opt out of the Amending Scheme.
- 32.20. This 30% threshold calculation will be determined on the basis of estimates of claim values as at the Valuation Date that may arise from:
- 32.20.1. Opt Out Qualifying ILU Policyholders plus the Post Bar Date Provision (excluding the Post Bar Date Expenses) (X);
- 32.20.2. Qualifying ILU Policyholders who submit a Claim Form under the terms of the Amending Scheme and do not opt out (Y); and
- 32.20.3. Qualifying ILU Policyholders who do not submit a Claim Form under the terms of the Amending Scheme, minus the Post Bar Date Provision (excluding the Post Bar Date Expenses) (Z).

In each case the estimates will be revised to reflect information, if any, submitted by Qualifying ILU Policyholders prior to the Bar Date. This, together with the fact that the number and identity of Opt Out Qualifying ILU Policyholders will not be known until the Bar Date, means that the Scheme Administrators will only be able to undertake the calculation once the Bar Date deadline for the submission of claims has passed.

If the proportion (expressed as a percentage) of  $X/(X+Y+Z)$  exceeds 30% then the crystallisation and payment provisions of the Amending Scheme will not be implemented and all claims of Scheme Creditors, including claims from Scheme Creditors who are not Qualifying ILU Policyholders, will revert to run-off and be administered in accordance with the Original Scheme.

- 32.21. Methodologies have been set out in Appendix 4 to the Amending Scheme to determine the manner in which different subsets of IBNR Liabilities are to be reflected in the calculation described in paragraph 32.20.
- 32.22. The Scheme Administrators have agreed that the calculation (including the Scheme Administrators' estimates of future claims of Opt Out Qualifying ILU Policyholders) should be reviewed by, and agreed with, NNOFIC and the ILU. In the event that there is any

disagreement between the Scheme Administrators, NNOFIC and the ILU regarding the calculation, the dispute will be referred to the Scheme Adjudicator for final determination.

- 32.23. The 30% threshold has been set with reference to an assessment of the risk that the Facility Limit provided by NNOFIC under and subject to the terms of the CPLA would be insufficient to top up payments due to Opt Out Qualifying ILU Policyholders. An analysis undertaken by external actuarial advisers who have advised NNOFIC and the ILU indicates that, if the Amending Scheme is implemented:
- 32.23.1. at opt out levels lower than 27%, the security of Opt Out Qualifying ILU Policyholders in relation to the sufficiency of the Facility Limit under the CPLA would be greater than it would be under the CPLA without the Amending Scheme;
  - 32.23.2. at opt out levels greater than 30%, the security of Opt Out Qualifying ILU Policyholders in relation to the sufficiency of the Facility Limit under the CPLA would be lower than it would be without the Amending Scheme (were the 30% threshold to be removed from the Amending Scheme to allow it to proceed in those circumstances); and
  - 32.23.3. at opt out levels of between 27% and 30%, it is not certain that the security of Opt Out Qualifying ILU Policyholders in relation to the sufficiency of the Facility Limit under the CPLA would be greater than it would be under the CPLA without the Amending Scheme. This uncertainty arises from corresponding uncertainties in the various assumptions made when assessing that security and, in particular, uncertainty about how precisely that security would vary for different levels of opt out.
- 32.24. Overall, the actuarial advisers who have advised NNOFIC and the ILU estimate that the risk of exhaustion of the Facility Limit under and subject to the terms of the CPLA is less than one in 200 for all levels of opt out of less than 30%.
- 32.25. The calculation referred to in paragraph 32.20 should be finalised and agreed with NNOFIC and the ILU (whether by adjudication or otherwise) within 150 days of the Bar Date. This should be the latest date on which it could be determined that the crystallisation and payment provisions of the Amending Scheme would not come into effect and all Scheme Creditors would be required to revert to run-off under the Original Scheme.
- 32.26. The Scheme Administrators acknowledge that, if the Amending Scheme becomes effective, there will therefore be a period of time thereafter (which should, at the most, last 390 days, as shown in the timeline on page 8) during which Scheme Creditors will not know whether and when their claims will ultimately be determined and paid out under the Amending Scheme or will instead revert to run-off under the Original Scheme.
- 32.27. The Scheme Administrators consider, however, that this period of time is necessary to ensure that the calculation (referred to in paragraph 32.20) as to whether the 30% opt out threshold has been exceeded has been carried out fairly. They are also of the opinion that, given its importance, the calculation should be subject to a rigorous review process and, where necessary, independent adjudication.
- 32.28. The Scheme Administrators also consider that this process will not adversely affect the practical operations of the Companies and the Scheme Administrators' review and handling of Scheme Creditors' claims during that period of time.

#### ***Facility exhaustion***

- 32.29. In consultation with NNOFIC and the ILU, the Scheme Actuarial Adviser has undertaken a number of detailed calculations to determine whether there is a greater risk that the Facility Limit might be exceeded as a result of the Amending Scheme than would have been the case were the Companies to remain in run-off under the Original Scheme. The Scheme Administrators, NNOFIC and the ILU all agree that an important pre-requisite for the Amending Scheme to proceed is that it does not, in any material way, undermine the security of the Qualifying ILU Policyholders and their ability to receive "top-up" payments out of the Facility up to the full amount of their Qualifying Established Liabilities. If the Facility Limit was exceeded as a result of the Amending Scheme, it could lead to a delay in payment of

Qualifying ILU Policyholders' claims (where those claims exceeded the US\$3.5 million annual payment in any one year under and subject to the terms of the CPLA).

- 32.30. However, the Scheme Administrators consider, in consultation with the Scheme Actuarial Adviser, that the risk of the Facility Limit being exceeded under the Amending Scheme is very remote and that the overall security of Qualifying ILU Policyholders should, in all reasonably plausible circumstances, be enhanced by the Amending Scheme. This is due, in part, to the effect of any claims under the Amending Scheme being discounted for the time value of money and the increased Payment Percentage expected under the Amending Scheme. This, in turn, would reduce the level of the "top-up" payments that would need to be made under the Facility. Furthermore, any deterioration in settlement values of the claims of the Opt Out ILU Qualifying Policyholders would have been mirrored in any event by an equivalent deterioration in the Original Scheme.
- 32.31. The external actuarial advisers who have advised NNOFIC and the ILU have estimated that for Qualifying ILU Policyholder opt out levels of less than 30%, the likelihood of exhaustion of the Facility Limit under and subject to the terms of the CPLA is less than one in 200; in other words, they have estimated that Opt Out Qualifying ILU Policyholders have a likelihood of their Qualifying Established Liabilities being paid in full from the Facility in those circumstances that is greater than 99.5%. This is similar to the tolerance level that is currently applied when setting the financial resources requirements of UK insurance companies with reference to the likelihood that they will not be able to pay their claims as they fall due.

### **33. Pre-1969 L&O Policyholders**

- 33.1. All Liabilities arising from claims submitted by Pre-1969 L&O Policyholders under policies underwritten by L&O with an inception date before 20 March 1969 ("**Pre-1969 L&O Policies**") are covered by the Lloyds Bank Agreement. Any payments received by the Companies from Lloyds Bank under the Lloyds Bank Agreement are treated as assets of the Companies' general estate, which are therefore available for distribution to all Scheme Creditors. Based on current estimates of those Liabilities, the amounts recoverable from Lloyds Bank are likely to have a material effect on the level of the final Payment Percentage under the Amending Scheme.
- 33.2. Pre-1969 L&O Policyholders are not Qualifying ILU Policyholders due to the different policy inception dates that apply to each category of policyholder.
- 33.3. Based on the claims submissions that are made by Pre-1969 L&O Policyholders and the Gross Liabilities of those claims subsequently agreed by the Companies under the Amending Scheme, the Companies will submit a claim to Lloyds Bank for payment under the Lloyds Bank Agreement.
- 33.4. Given the size of the estimated recovery from Lloyds Bank, the Scheme Administrators understand that Lloyds Bank may not wish to pay the full amount arising under the Lloyds Bank Agreement as a result of the Amending Scheme. In this instance, if Lloyds Bank does not pay the full amount of that claim within 90 days of receipt of the claim (or such longer period of time as the Scheme Administrators may determine in consultation with the Creditors' Committee), the Scheme Administrators will then determine, in consultation with the Creditors' Committee, whether:
- 33.4.1. despite non-payment by Lloyds Bank of the full amount of the claim, the agreed Net Liabilities of the Pre-1969 L&O Policyholders should be included within the Amending Scheme crystallisation process and a final Payment Percentage be paid to all Scheme Creditors; or
- 33.4.2. the future claims of the Pre-1969 L&O Policyholders (i.e. Notified Outstanding Liabilities and IBNR Liabilities) should not be included in the Amending Scheme crystallisation process and should instead revert to run-off to be agreed or determined (as the case may be) and paid under the terms of the Original Scheme. In this case, set-off will be applied in a similar manner to that applicable to the Opt Out Qualifying ILU Policyholders described in paragraph 32.8.

- 33.5. The considerations that the Scheme Administrators will take into account when determining whether the Pre-1969 L&O Policyholders will revert to run-off will include the following matters:
- 33.5.1. whether the reversion to run-off would be in the best interests of all Scheme Creditors;
  - 33.5.2. the uncertainty regarding the level and timing of the final Payment Percentage for the reasons set out in paragraphs 33.6.5 and 33.6.6;
  - 33.5.3. the recovery from Lloyds Bank being dependent upon the continued solvency of Lloyds Bank;
  - 33.5.4. any costs of the Scheme Administrators incurred in dealing with the future claims of the Pre-1969 L&O Policyholders in run-off will not be borne by the Companies. Such costs will be payable by Lloyds Bank under the Lloyds Bank Agreement. Those costs should not therefore affect the overall level of the final Payment Percentage; and
  - 33.5.5. the obligation of the Pre-1969 L&O Policyholders to continue to submit claims in the ordinary course in order for their claims to become Established Liabilities and receive the Payment Percentage.
- 33.6. Any reversion to run-off of the Pre-1969 L&O Policyholders' future claims will have a bearing on the level and timing of the final Payment Percentage. It will also affect the timing of any increases to the Payment Percentage. If the Pre-1969 L&O Policyholders revert to run-off:
- 33.6.1. the claims of Pre-1969 L&O Policyholders under Pre-1969 L&O Policies (other than in respect of Established Liabilities and Agreed Liabilities agreed by the Companies prior to the Bar Date) will not be agreed in accordance with the crystallisation and payment provisions of the Amending Scheme. The claims will instead need to be submitted by the Pre-1969 L&O Policyholders to the Companies in the ordinary course of business in the same way as is currently done under the Original Scheme. The Pre-1969 L&O Policyholders will receive the same Payment Percentage (plus compensatory interest) as all other Scheme Creditors in respect of their claims as and when they become Established Liabilities under the terms of the Original Scheme. These claims would then form the basis of the claims to be submitted by the Companies to Lloyds Bank for payment under the Lloyds Bank Agreement;
  - 33.6.2. the Pre-1969 L&O Policyholders will only revert to run-off in respect of their future claims (i.e. Notified Outstanding Liabilities and IBNR Liabilities) under their Pre-1969 L&O Policies. Any claims of the Pre-1969 L&O Policyholders:
    - (a) which are, or which become, Established Liabilities and Agreed Liabilities in respect of Pre-1969 L&O Policies; and
    - (b) are in respect of policies that such Scheme Creditor may have with the Companies other than Pre-1969 L&O Policies,

will be dealt with and paid in accordance with the crystallisation and payment provisions of the Amending Scheme (unless, in relation to all of its Qualifying ILU Policies only, the relevant Scheme Creditor opts out of those provisions in accordance with the Amending Scheme). Set-off in respect of the Pre-1969 L&O Policyholders will be applied in a similar manner to that applicable to the Opt Out Qualifying ILU Policyholders, as summarised in paragraph 32.8;
  - 33.6.3. the Payment Percentage payable to all Scheme Creditors, including those Scheme Creditors whose claims are included in the Amending Scheme crystallisation and payment process, will be revised from time to time as any uncertainty over the value of the future claims of the Pre-1969 L&O Policyholders and recoveries from Lloyds Bank under the Lloyds Bank Agreement reduces over time;

- 33.6.4. the Payment Percentage is estimated to rise quickly to a level in excess of the estimated final Payment Percentage that would have been payable if the run-off of all of the Companies' business had continued under the Original Scheme;
  - 33.6.5. the level of the final Payment Percentage will be affected by the extent to which the amount of the future claims of the Pre-1969 L&O Policyholders agreed by the Companies and the amount of recoveries made from Lloyds Bank in respect of those claims differ from the amount of such claims and recoveries that would otherwise have occurred under the crystallisation and payment provisions of the Amending Scheme;
  - 33.6.6. it may not be possible to determine the final Payment Percentage for all Scheme Creditors for many years into the future, until all the claims of the Pre-1969 L&O Policyholders have been agreed and all recoveries in respect of those claims have been made from Lloyds Bank;
  - 33.6.7. the estimated final Payment Percentage is nonetheless around the same as it would have been if the Pre-1969 L&O Policyholders had not reverted to run-off; and
  - 33.6.8. the estimated final Payment Percentage in the Amending Scheme is also higher than the estimated final Payment Percentage under the Original Scheme (in the absence of the Amending Scheme).
- 33.7. The Scheme Administrators' decision as to whether the Pre-1969 L&O Policyholders revert to run-off will not affect the implementation of the crystallisation and payment provisions of the Amending Scheme with regard to all other Scheme Creditors (including Qualifying ILU Policyholders).
- 33.8. The Scheme Administrators acknowledge that the process outlined in paragraphs 33.3 to 33.7 introduces an element of uncertainty for the Pre-1969 L&O Policyholders as to how their future claims will be dealt with under the Amending Scheme. The Scheme Administrators acknowledge that, if the Amending Scheme becomes effective, there may be a considerable period of time thereafter (which could last nearly three years, as shown in the timeline on page 8) during which the Pre-1969 L&O Policyholders will not know whether their future claims might be required to revert to run-off under the Original Scheme or will instead be determined under the Amending Scheme. The Scheme Administrators also acknowledge that any reversion to run-off of such claims would affect the level (either higher or lower) and timing of the Payment Percentage.
- 33.9. Notwithstanding this, however, the Scheme Administrators are strongly of the opinion that this process is appropriate to ensure that the Companies maximise their recoveries in the Amending Scheme from Lloyds Bank under the Lloyds Bank Agreement. The Scheme Administrators' strong belief is that this process benefits and is in the best interests of all Scheme Creditors (including Pre-1969 L&O Policyholders, as such Policyholders receive the same Payment Percentage (plus compensatory interest) on their Established Liabilities as all other Scheme Creditors and therefore benefit in the same way as all other Scheme Creditors from increased recoveries from Lloyds Bank). The Scheme Administrators consider that the period of time (referred to in paragraph 33.8) for determining whether the future claims of the Pre-1969 L&O Policyholders will revert to run-off is unavoidable. This is because the claim to be submitted by the Companies to Lloyds Bank for payment under the Lloyds Bank Agreement will be based on the level of claims that are made by the Pre-1969 L&O Policyholders under the Amending Scheme and subsequently agreed (by adjudication if necessary) by the Companies. The Companies will not therefore be able to calculate the amount of the claims to be submitted to Lloyds Bank until all of the claims of the Pre-1969 L&O Policyholders have been agreed or determined under the Amending Scheme.
- 33.10. In summary, the Scheme Administrators believe that the proposed treatment of Pre-1969 L&O Policyholders under the Amending Scheme is in the best interests of the general body of Scheme Creditors, will have no significant effect on the estimated final Payment Percentage and imposes no significant disadvantage on the Pre-1969 L&O Policyholders over and above a limited period of uncertainty as to whether or not their claims will revert to run-off.

### **34. Scheme Creditors' duty to provide assistance**

- 34.1. Scheme Creditors are required by the Amending Scheme to provide such co-operation and assistance as the Scheme Administrators, the Scheme Actuarial Adviser, the Scheme Adjudicator and the No Notice Adjudicator may reasonably require, for example in relation to:
- 34.1.1. the production of information relevant to the processing of claims;
  - 34.1.2. the release of (the balance of) funds held as collateral in respect of any Security Interest(s) held by that Scheme Creditor once the relevant Scheme Liability has been paid;
  - 34.1.3. the recovery of any of the Companies' assets; and
  - 34.1.4. the enforcement of obligations owed to the Companies.

### **35. Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator and Individual Claimant Representative**

- 35.1. The Amending Scheme provides for the appointment of a Scheme Actuarial Adviser, a Scheme Adjudicator, a No Notice Adjudicator and an Individual Claimant Representative.
- 35.2. Each of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative may be removed by a resolution passed at a meeting of Scheme Creditors convened in accordance with clauses 47 to 52 of the Original Scheme. The resolution must name a replacement who, in the reasonable opinions of the Scheme Administrators, NNOFIC and the ILU, is duly and adequately qualified to discharge his or her respective functions as Scheme Actuarial Adviser, Scheme Adjudicator, No Notice Adjudicator or Individual Claimant Representative (as the case may be) under the Amending Scheme. The appointment of such replacement must also be approved in writing by the Scheme Administrators, NNOFIC and the ILU.
- 35.3. If there is a vacancy in the office of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator or the Individual Claimant Representative (otherwise than by reason of his or her removal from office in the manner referred to in paragraph 35.2), the Scheme Administrators may, with the consent of the Creditors' Committee, NNOFIC and the ILU, fill that vacancy by appointing another individual or person with the relevant qualifications for that office.

#### ***Scheme Actuarial Adviser***

- 35.4. The Scheme Actuarial Adviser must be a member of an actuarial body that is affiliated to the International Actuarial Association and have suitable experience.
- 35.5. The first Scheme Actuarial Adviser will be Mark Allen of PricewaterhouseCoopers LLP. A summary of his qualifications and experience is set out at section H (*Appendices*). He will be responsible for, among other things, assisting the Scheme Administrators in agreeing the Net Liabilities of Scheme Creditors.

#### ***Scheme Adjudicator***

- 35.6. The first Scheme Adjudicator will be Raji Bhagavatula of Milliman, Inc. A summary of her qualifications and experience is set out at section H (*Appendices*). She will be responsible for, among other things, adjudicating on the resolution of disputed matters in accordance with the Dispute Resolution Procedure. Insofar as the law allows, her decision will be binding on all parties (except in the case of fraud, arithmetical error or her making an irrational determination).

#### ***No Notice Adjudicator***

- 35.7. The first No Notice Adjudicator will be Leo J. Jordan Sr. A summary of his qualifications and experience is set out at section H (*Appendices*). He will be responsible for determining whether certain claims may be submitted against the Companies by Qualifying ILU Policyholders (who are not individuals) and individuals (whether or not those individuals are Qualifying ILU Policyholders) after the Bar Date.

### ***Individual Claimant Representative***

- 35.8. The first Individual Claimant Representative will be Charles E. Bates, Chairman of Bates White Economic Consulting. A summary of his qualifications and experience is set out at section H (*Appendices*). He will be responsible for representing the rights and interests of those individuals who may have a right to bring claims after the Bar Date as No Notice Individual Creditors during the process of determining the Post Bar Date Individual Provision.

### ***Independence***

- 35.9. Each of the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative is independent of the Companies, in that he or she has had no previous employment with them and will not be remunerated on any form of contingency basis. In particular, none of the Scheme Adjudicator, the No Notice Adjudicator or the Individual Claimant Representative is engaged under an arrangement whereby they would receive any financial bonus or other payment conditional upon the Amending Scheme becoming effective.
- 35.10. In the event of conflicts of interest arising between the Scheme Actuarial Adviser, the Vote Assessor, the No Notice Adjudicator, the Scheme Adjudicator or the Individual Claimant Representative and the Companies or a Scheme Creditor, the Scheme Actuarial Adviser, the Vote Assessor, the No Notice Adjudicator, the Scheme Adjudicator or the Individual Claimant Representative (as the case may be) may continue to act with the informed consent of the relevant parties, or a suitably qualified alternate may be appointed by the Scheme Administrators in respect of the conflicted matter. Where the conflicted matter relates to a Qualifying Liability, the appointment of any alternate must also be approved in writing by NNOFIC and the ILU.
- 35.11. Each of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative will be paid for their respective roles under the Amending Scheme on a time and cost basis. The costs of the Scheme Actuarial Adviser and the Scheme Adjudicator will be paid by the Companies as expenses of the Amending Scheme. Pursuant to paragraph 51 of the Amending Scheme, expenses of the Amending Scheme are paid by the Companies in full out of the Companies' assets as Priority Liabilities (i.e. in priority to Scheme Creditors' claims). The future run-off costs of the Companies (excluding dividend payments) in dealing with the Opt Out Qualifying ILU Policyholders will be paid out of the amount to be set aside from the Companies' assets to meet those costs as Priority Liabilities (see paragraph 32.12). The costs of the No Notice Adjudicator (which exclude any dividend payments to be made by the Companies to any Scheme Creditors) in relation to Qualifying ILU Policyholders that are not individuals will be paid out of the Post Bar Date Provision as Priority Liabilities, with any shortfall of these costs (excluding any dividend payments) being funded by NNOFIC. The costs of the No Notice Adjudicator in relation to No Notice Individual Creditors will be paid out of the Post Bar Date Individual Provision as Priority Liabilities, which NNOFIC will not top up or otherwise contribute to. The costs of the Individual Claimant Representative will be paid as Priority Liabilities.

## **36. Time periods and claims received after the Bar Date**

- 36.1. The Scheme Administrators have the unilateral discretion to extend any time periods under the Amending Scheme, other than the Bar Date.
- 36.2. The Amending Scheme allows for only the following circumstances described in paragraphs 36.4 to 36.19 in which claims received after the Bar Date may be considered for payment.
- 36.3. Any decision of the No Notice Adjudicator referred to in this paragraph 36 will, insofar as the law allows, be binding on all parties (except in the case of fraud or the No Notice Adjudicator making an irrational determination).

### ***Qualifying ILU Policyholders***

- 36.4. Under and subject to the terms of the CPLA, in addition to the Payment Percentage received by all Scheme Creditors, Qualifying ILU Policyholders are entitled to receive a further payment or payments up to the full amount of their Qualifying Established Liabilities, provided that such claims are notified to the Companies by no later than 31 December 2035. Taking account of the unique circumstances of the Amending Scheme, including the nature of the arrangements entered into with NNOFIC and the ILU in respect of Qualifying ILU Policyholders, the Scheme Administrators have therefore agreed that, to ensure that the operation of the Amending Scheme does not prejudice Qualifying ILU Policyholders, the Scheme Administrators will consider claims received after the Bar Date from Qualifying ILU Policyholders (who are not individuals) in certain very limited circumstances (as described in paragraphs 36.5 to 36.8).
- 36.5. Any Qualifying ILU Policyholder (who is neither an Opt Out Qualifying ILU Policyholder nor an individual) who can demonstrate that the reason that it did not submit a Claim Form before the Bar Date was that it neither knew, nor could reasonably be expected to have known, about the Amending Scheme and of such requirement, will be entitled to submit a claim against the Companies after the Bar Date.
- 36.6. The decision as to whether such a Qualifying ILU Policyholder will be entitled to submit a claim after the Bar Date will be taken by the No Notice Adjudicator.
- 36.7. In addition to satisfying the requirement set out in paragraph 36.5, such a Qualifying ILU Policyholder will also have to satisfy the No Notice Adjudicator that it has complied with the following conditions before it may submit a claim after the Bar Date:
- 36.7.1. the Qualifying ILU Policyholder must have delivered to the No Notice Adjudicator one or more policy documents in its name written by either or both of the Companies and issued by the ILU which clearly demonstrate, to the satisfaction of the No Notice Adjudicator, that such policyholder is a Qualifying ILU Policyholder;
  - 36.7.2. the Qualifying ILU Policyholder must have entered into a costs agreement with the No Notice Adjudicator in respect of the No Notice Adjudicator's costs for reviewing the Qualifying ILU Policyholder's claim; and
  - 36.7.3. the Qualifying ILU Policyholder must have provided all supporting information and documentation that the No Notice Adjudicator may require to determine whether the Qualifying ILU Policyholder is entitled to submit a claim against the Companies.
- 36.8. Those Qualifying ILU Policyholders who are allowed by the No Notice Adjudicator to submit claims after the Bar Date will have their claims agreed or determined by the Scheme Administrators and, where applicable, by the Scheme Adjudicator in accordance with the terms of the Amending Scheme.
- 36.9. Such claims of Qualifying ILU Policyholders of the type referred to in paragraph 36.5 (to the extent they are agreed or determined (as the case may be) by the Scheme Administrators to be Net Liabilities) will be paid out of a provision set aside from the Companies' assets by the Scheme Administrators. The amount of this provision will be US\$750,000 (as adjusted to take account of changes in reserves between 31 December 2007 and the Valuation Date, any new information received between the Valuation Date and the Bar Date and discounted for the time value of money in accordance with the Estimation Guidelines). This amount (before adjustments and excluding any adjudication expenses) of US\$750,000 has been set by the Scheme Administrators in consultation with the Scheme Actuarial Adviser and has been agreed with NNOFIC and the ILU. The amount of any adjustments to this amount of US\$750,000, and also the amount of the provision to be established to cover the Post Bar Date Expenses, will be agreed between the Scheme Administrators, NNOFIC and the ILU and, in the event of any dispute, referred to the Scheme Adjudicator for final determination. The amount of the Post Bar Date Provision will be this amount of US\$750,000 (as adjusted and discounted in the manner set out above) plus a provision for the Post Bar Date Expenses.

- 36.10. Any surplus of the Post Bar Date Provision (after all claims submitted by Qualifying ILU Policyholders after the Bar Date and all costs in dealing with such claims (including, but not limited to, the costs of the No Notice Adjudicator) have been paid in full), will be paid to NNOFIC. Any shortfall in the Post Bar Date Provision to meet the claims submitted by Qualifying ILU Policyholders after the Bar Date will be paid by the Companies out of funds borrowed from NNOFIC under the Facility, subject to the terms of the CPLA. Any shortfall in the Post Bar Date Provision to meet the costs of dealing with such claims (including the costs of the No Notice Adjudicator) will also be paid by the Companies out of funds provided by NNOFIC, but such funds will not come out of the Facility and will therefore not count against the Facility Limit.
- 36.11. A Qualifying ILU Policyholder who is allowed by the No Notice Adjudicator to submit a claim after the Bar Date will not be able to opt out of the Amending Scheme.

***Individuals***

- 36.12. In certain circumstances, individuals based in certain jurisdictions who are not Policyholders might be able to bring direct claims against either or both of the Companies, for example, in the UK under the Third Parties (Rights Against Insurers) Act 1930 and in a number of states of the US under the various laws which apply in those states.
- 36.13. Taking account of the matters set out in paragraph 36.12, the Amending Scheme provides that any individual who can demonstrate to the No Notice Adjudicator that he or she acquired rights against either or both of the Companies by law or under the terms of the relevant policy with the Companies may also submit a claim after the Bar Date, provided that such individual can also demonstrate that:
- 36.13.1. he or she neither knew, nor could reasonably be expected to have known, about the Amending Scheme before the Bar Date; or
- 36.13.2. no claim had arisen in his or her favour in connection with the relevant policy before the Bar Date; or
- 36.13.3. before the Bar Date, he or she neither knew, nor could reasonably be expected to have known, that he or she had suffered significant injury,

(each such individual being a "**No Notice Individual Creditor**"). These provisions have been included solely to address the unique circumstances of the Amending Scheme, including the nature of the agreements entered into by NNOFIC and the ILU in respect of Qualifying ILU Policyholders.

- 36.14. The No Notice Adjudicator will decide in each case whether an individual will be entitled to submit a claim as a No Notice Individual Creditor against the Companies after the Bar Date.
- 36.15. Any such individual's claim will remain subject to all the requirements and limitations of all applicable law governing that claim and the provisions of the Insurance Contract under which the individual claims, including in both respects, limitations in respect of the passage of time, with the exceptions that (i) applicable law shall not include the legal consequences of any injunction against such claims issued by a US Bankruptcy Court under the US Bankruptcy Code in connection with the recognition of the Original Scheme or the Amending Scheme and additionally (ii) a claim shall not be deemed barred by applicable law solely because the insured entity in respect of whose Insurance Contract the claim against the Companies arises is subject to the crystallisation and payment provisions of the Amending Scheme.
- 36.16. In addition to satisfying the requirement set out in paragraph 36.13, an individual will also have to provide all supporting information and documentation that the No Notice Adjudicator may require to determine whether that individual is entitled to submit a claim against the Companies as a No Notice Individual Creditor.
- 36.17. No Notice Individual Creditors will have their claims agreed or determined by the Scheme Administrators and, where applicable, by the Scheme Adjudicator in accordance with the terms of the Amending Scheme.

- 36.18. Such claims (to the extent they are agreed or determined (as the case may be) by the Scheme Administrators or the Scheme Adjudicator (as the case may be) to be Net Liabilities), and the costs of such claims (including the relevant costs of the No Notice Adjudicator), will be paid out of a provision set aside from the Companies' assets by the Scheme Administrators (the "**Post Bar Date Individual Provision**"). The amount of the Post Bar Date Individual Provision will be determined by the Scheme Administrators after the Bar Date on the basis that it is a fair and equitable estimate (taking into account the interests of both No Notice Individual Creditors and all other Scheme Creditors) of the amount which will be required to meet claims by No Notice Individual Creditors submitted after the Bar Date and such related costs. The Scheme Administrators, in view of the matters set out in paragraph 36.12, have appointed a representative to represent the rights and interests of those individuals who may have a right to bring claims in the future as No Notice Individual Creditors (the "**Individual Claimant Representative**"). The amount of the Post Bar Date Individual Provision determined by the Scheme Administrators will therefore be subject to the review and agreement of both NNOFIC and the Individual Claimant Representative. In the event that there is any disagreement between the Scheme Administrators, NNOFIC and the Individual Claimant Representative regarding the amount of the Post Bar Date Individual Provision, the dispute will be referred to the Scheme Adjudicator for final determination. Each of the Scheme Administrators, NNOFIC and the Individual Claimant Representative will be given a full and fair opportunity to present their respective positions to the Scheme Adjudicator before the amount of the Post Bar Date Individual Provision is determined. The Scheme Adjudicator's determination will be final and binding on the Companies, the Scheme Administrators, NNOFIC, the Individual Claimant Representative and the No Notice Individual Creditors (to the extent permitted by law and except in the case of arithmetical error or the Scheme Adjudicator making an irrational determination).
- 36.19. As and when such claims are agreed or determined (as the case may be) by the Scheme Administrators or the Scheme Adjudicator (as the case may be) to be Net Liabilities, they will be paid out of the Post Bar Date Individual Provision at the then current Payment Percentage. If any No Notice Individual Creditor is, in his capacity as such, also a Qualifying ILU Policyholder by virtue of the particular provision of a policy or provision of law under which they are claiming, that individual would also receive a "top-up" funded by amounts provided by NNOFIC under the Facility and subject to the terms of the CPLA. However, once the Post Bar Date Individual Provision is exhausted, further claims from such No Notice Individual Creditors (whether or not they are Qualifying ILU Policyholders) will not be met by the Companies (nor in any amount by NNOFIC), subject to the Scheme Administrators' power to increase the amount of the Post Bar Date Individual Provision referred to in paragraph 36.20.
- 36.20. As is the case for Qualifying ILU Policyholders generally under the CPLA, other than for Opt Out Qualifying ILU Policyholders and Qualifying ILU Policyholders whose claims are admitted in the manner set out in paragraph 36.5, a No Notice Individual Creditor who is also a Qualifying ILU Policyholder will not receive a "top-up" payment if the amount he or she would receive from the Companies would still be inadequate to meet the full amount of his or her Net Liability. This means that if the Companies are unable to pay the full Payment Percentage out of the Post Bar Date Individual Provision, a No Notice Individual Creditor who is also a Qualifying ILU Policyholder will not receive any additional payment funded by NNOFIC (or otherwise from the Companies). The Scheme Administrators will, however, retain the power to increase the amount of the Post Bar Date Individual Provision to ensure that the Payment Percentage in respect of all Net Liabilities of No Notice Individual Creditors can be paid in full. The Scheme Administrators consider therefore that the likelihood of such No Notice Individual Creditors (who are also Qualifying ILU Policyholders) being affected in this way is remote.
- 36.21. It follows from the above description of the arrangements relating to No Notice Individual Creditors, who may also be Qualifying ILU Policyholders, and to Qualifying ILU Policyholders who are not individuals, that may allow them to bring claims after the Bar Date, that Qualifying ILU Policyholders who are individuals and Qualifying ILU Policyholders that are not individuals are subject to different treatment under the Amending Scheme in a number of respects.

- 36.22. In particular, the conditions which Qualifying ILU Policyholders must satisfy in order to bring such claims differ according to whether or not they are individuals (see, in particular, paragraphs 36.5 to 36.7 and 36.13 to 36.20). The Scheme Administrators consider that this difference is appropriate, given the likely contrasts in circumstances between the two groups (for example, an individual may, due to the nature of his or her illness, not realise that he or she has suffered significant injury until after the Bar Date).
- 36.23. In addition, their claims would be paid from different provisions (the Post Bar Date Individual Provision for individuals and the Post Bar Date Provision for Qualifying ILU Policyholders who are not individuals). The Post Bar Date Provision will be replenished by NNOFIC to the extent that it is ultimately insufficient to pay the Payment Percentage of claims that are permitted and made after the Bar Date by Qualifying ILU Policyholders which are not individuals and/or the costs of the No Notice Adjudicator in connection with such claims. No such replenishment will take place in relation to the Post Bar Date Individual Provision where it is insufficient to pay the Payment Percentage of claims made after the Bar Date by Qualifying ILU Policyholders who are individuals and/or the costs of the No Notice Adjudicator in connection with such claims. However, as noted in paragraph 7.6, the Scheme Administrators will retain the power to increase the amount of the Post Bar Date Individual Provision, using Scheme Assets, so that the Payment Percentage of such claims can be paid in full. The Scheme Administrators consider that the likelihood of this being applicable is extremely small; however, they also consider that its existence means that this latter distinction in the treatment between Qualifying ILU Policyholders who are individuals and Qualifying ILU Policyholders who are not individuals is likely to have no practical effect.
- 36.24. Any surplus in the Post Bar Date Individual Provision, after all claims of No Notice Individual Creditors (to the extent they become Net Liabilities) have been paid at the Payment Percentage and such related costs have been paid in full, will be released back to the Companies and made available for distribution to Scheme Creditors with valid claims brought against the Companies before the Bar Date.

### **37. The position for reinsurers**

The Scheme Administrators will continue to pursue collections from the Companies' remaining reinsurers, to the extent that the Companies consider them to be net debtors of the Companies, to ensure that maximum funds are realised for the benefit of Scheme Creditors.

### **38. Withdrawal of a Claim Form**

In the absolute discretion of the Scheme Administrators, they may withdraw and reissue a Claim Form to a Scheme Creditor at any time before the Bar Date and the withdrawn Claim Form will no longer be valid.

### **39. Policyholders Protection Board and FSCS Scheme Manager**

- 39.1. Protected Policyholders are Scheme Creditors who may be eligible to receive payments from the FSCS Scheme Manager in respect of their Established Liabilities pursuant to the Policyholders Protection Act 1975 and/or the FSCS Rules. Potentially Protected Policyholders are Scheme Creditors with claims for (i) Agreed Liabilities and (ii) Notified Outstanding Liabilities and/or IBNR Liabilities which would, when matured, be similarly protected under the Policyholders Protection Act 1975 and/or the FSCS Rules and which would fall due for payment by the FSCS Scheme Manager.

#### ***Position under the Original Scheme - PPB***

- 39.2. The PPB was established under the Policyholders Protection Act 1975 to protect certain policyholders who might be prejudiced as a result of the inability of authorised insurance companies carrying on business in the United Kingdom to meet certain of their Liabilities.
- 39.3. The Policyholders Protection Act 1975 imposed an obligation on the PPB, on a liquidation of such an insurance company, to pay 90% (or, in limited cases, 100%) of such company's Liabilities to certain categories of policyholder in respect of certain types of insurance policy (see paragraphs 39.11 to 39.16).

- 39.4. Section 16 of the Policyholders Protection Act 1975 gave the PPB discretion to provide financial assistance to companies in financial difficulty. In order to assist those Scheme Creditors who would have been protected under the Policyholders Protection Act 1975 in the event of the liquidation of the Companies, the PPB agreed to be bound by the Original Scheme and has continued to make payments to such Scheme Creditors in accordance with the terms of the Original Scheme.
- 39.5. There is an overall limitation on the obligation of the PPB under the Original Scheme in respect of any Scheme Creditor or Liability of the Companies by reference to the obligations it would have had if the Companies had been in liquidation.
- 39.6. The PPB participated in the Original Scheme on the basis that once a Scheme Liability had become an Established Liability under the terms of the Original Scheme, subject to the PPB being satisfied that the claimant in question was eligible to receive compensation payments from the PPB pursuant to the Policyholders Protection Act 1975 and subsequently the FSCS Rules, it would pay the Established Liability of that claim up to the Protected Percentage (i.e. the maximum percentage of the claim which the PPB would be statutorily obliged to pay if the Companies had been placed in liquidation). In consideration for making such payment, the PPB would take an assignment of the Scheme Creditor's Scheme Liability (and be paid the relevant Payment Percentage in respect of that Scheme Liability), including the right to receive further payments from the Companies in respect of such Scheme Liability in the event that the Payment Percentage was increased.
- 39.7. Clause 29.3(n) of the Original Scheme requires the Companies to obtain the approval of the Scheme Administrators, the PPB, NNOFIC and the ILU in relation to a Qualifying Liability, prior to entering into contractual arrangements with any Scheme Creditor under which all or part of the Companies' total Scheme Liabilities to the relevant Scheme Creditor:
- 39.7.1. are discharged in full consideration for a payment by either or both of the Companies; or
- 39.7.2. become, subject to the terms of the Original Scheme, an Established Liability otherwise than by agreement of claims in the ordinary 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.
- 39.8. Clause 29.4(b) of the Original Scheme provides that no such arrangement can be entered into unless, among other things, the PPB 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 PPB, that he is not a Protected Policyholder or that he waives any rights which he may have against the PPB) and agrees to this discharge of the Liability.
- Position under the Original Scheme – FSCS Scheme Manager***
- 39.9. On 1 December 2001, the Policyholders Protection Act 1975 was repealed by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001. However, the Policyholders Protection Act 1975 continued to apply in respect of certain of the Companies' Liabilities under the Original Scheme. The PPB's statutory functions, rights and obligations in relation to the Companies and their policies under the Policyholders Protection Act 1975 and the Original Scheme were transferred to the FSCS Scheme Manager.
- 39.10. The FSCS Scheme Manager's obligations under the Original Scheme have continued to be determined principally by reference to its duties under the Policyholders Protection Act 1975. The relevant duties are those, which, in the event of the liquidation of the Companies on the Record Date (being 20 November 1996) to which the Policyholders Protection Act 1975 would have applied, the FSCS Scheme Manager would have owed certain of the Companies' Policyholders or security holders in respect of policies issued or securities given by the Companies. There are two categories of Liabilities of the Companies towards such Policyholders or security holders which would qualify for protection under the Policyholders Protection Act 1975:
- 39.10.1. those where the Liability may be protected as to 100% of its amount; and
- 39.10.2. those where the Liability may be protected as to 90% of its amount.

*100% protection*

- 39.11. Subject to the relevant provisions of the Policyholders Protection Act 1975, in a liquidation to which the Policyholders Protection Act 1975 applies, and, therefore, in the Original Scheme (and the Amending Scheme should it come into effect), it is the duty of the FSCS Scheme Manager to secure that a sum equal to the full amount of any "liability subject to compulsory insurance" of a company in liquidation towards any policyholder (who need not be for these purposes a "private policyholder") or security holder under the terms of any policy or security which satisfies the requirements of specified enactments is paid to the policyholder or security holder as soon as is reasonably practicable after the beginning of the liquidation. For such purposes, as well as for the purposes of the 90% insurance referred to below, a policy must have been a policy of insurance which was a "United Kingdom policy" at the time when the liquidation of the company began.
- 39.12. "A liability subject to compulsory insurance" is a Liability required under specified enactments to be covered by insurance (or some other provision ensuring for its discharge). The specified enactments are section 1(4)(d) of the Riding Establishments Act 1964, section 1 of the Employers' Liability (Compulsory Insurance) Act 1969, Part VI of the Road Traffic Act 1988 and the equivalent provisions applicable in Northern Ireland. Policies evidencing contracts of insurance effected for the purpose of section 19 of the Nuclear Installations Act 1965 are also covered.
- 39.13. The FSCS Scheme Manager also has a duty, in a liquidation to which the Policyholders Protection Act 1975 applies (and accordingly the Amending Scheme should it become effective), subject to the relevant provisions of the Policyholders Protection Act 1975, to secure that a sum equal to the full amount of the Liability of a company in liquidation in respect of a sum payable to a person entitled to the benefit of a judgment under certain legislation (section 149 Road Traffic Act 1972, section 151 Road Traffic Act 1988 or the equivalent provisions in force in Northern Ireland) is paid to that person as soon as is reasonably practicable after the beginning of a liquidation.

*90% protection*

- 39.14. The 90% protection is available only in respect of the Liabilities of a company in liquidation towards "private policyholders". Subject to the relevant provisions of the Policyholders Protection Act 1975, in a liquidation to which the Policyholders Protection Act 1975 applies, it is the duty of the FSCS Scheme Manager to ensure that a sum equal to 90% of the amount of the Liability of an authorised insurance company in liquidation towards a "private policyholder" under the terms of the relevant policy is paid to that policyholder as soon as is reasonably practicable after the beginning of the liquidation.
- 39.15. A Liability will not qualify for the 90% protection unless the relevant policy is a "general policy". A "general policy" means any policy evidencing a contract the effecting of which constituted the carrying on of general business within the meaning of the Insurance Companies Act 1982, with the exception of reinsurance and certain specified classes of business. The categories of "general business" which are relevant for the 90% protection are accident, sickness, land vehicles, railway rolling stock, fire and natural forces, damage to property, motor vehicle liability, general liability, credit, suretyship, miscellaneous financial loss and legal expenses.

*Employers' liability (90% protection)*

- 39.16. The FSCS Scheme Manager has further obligations as a result of the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001 (2001 No 2967). In particular, the order extends protection to individuals with claims in respect of employers' liability policies which otherwise would have given rise to compensation payments under the Policyholders Protection Act 1975 if they had been underwritten after the Employers' Liability (Compulsory Insurance) Act 1969 came into force.

***Position under the Amending Scheme – FSCS Scheme Manager***

- 39.17. The implementation of a crystallisation scheme does not affect the Liability of the FSCS Scheme Manager to compensate Protected Policyholders and Potentially Protected Policyholders for the protected element of their claims which subsequently arise.

- 39.18. The FSCS Scheme Manager has agreed to the amendment of the Original Scheme and to be bound by and to participate in the Amending Scheme (if it becomes effective) subject to and upon the terms set out in paragraphs 39.19 to 39.34. This will be achieved through the FSCS Scheme Manager undertaking to the Court by a letter of consent to be bound by the Amending Scheme at the hearing to sanction the Amending Scheme (if it is approved by the requisite majorities of Scheme Creditors at the Amending Scheme Meetings).
- 39.19. The FSCS Scheme Manager will consent to the Amending Scheme and will continue to participate in the Scheme (i.e. the Original Scheme, as amended by the Amending Scheme) pursuant to its discretionary powers under section 16(4) of the Policyholders Protection Act 1975 to take such measures as it considers appropriate, for the purposes of assisting policyholders of a company in financial difficulties, to enable the company to carry on insurance business. The FSCS Scheme Manager has the power to make payments pursuant to section 16(4) of the Policyholders Protection Act 1975 on such terms and on such conditions as it thinks fit.
- 39.20. The basis on which the FSCS Scheme Manager will participate in the Amending Scheme will not differ substantially from its participation in the Original Scheme, as far as the exercise of its compensation functions are concerned. Thus there should be no difference insofar as Protected Policyholders and Potentially Protected Policyholders (as and when their claims mature) should continue to receive the Protected Percentage of their Scheme Liabilities after they have fallen due for payment in the ordinary course of business.
- 39.21. Protected Policyholders' and Potentially Protected Policyholders' claims will not be subject to automatic valuation and determination under the Amending Scheme. Instead, Protected Policyholders and Potentially Protected Policyholders will be allowed to continue to present their claims to the Companies (and after payment of the final Payment Percentage, to the FSCS Scheme Manager) as they fall due in the ordinary course of business.
- 39.22. Potentially Protected Liabilities will be valued by the Scheme Administrators in consultation with the Scheme Actuarial Adviser, irrespective of whether Scheme Creditors submit Claim Forms under the Amending Scheme in respect of such Liabilities. Scheme Creditors with Potentially Protected Liabilities will, however, be requested to give details of such Liabilities on their Claim Form.
- 39.23. If the Scheme Administrators do not agree with any information submitted by a Scheme Creditor in relation to a Potentially Protected Liability, the Scheme Administrators will be entitled to request further information or documents from the Scheme Creditor and will communicate this to the Scheme Actuarial Adviser. The Scheme Actuarial Adviser will, after consultation with the FSCS Scheme Manager, determine the value of Potentially Protected Liabilities for the purpose of the payment to the FSCS Scheme Manager, as referred to in paragraph 39.25.
- 39.24. On the basis of information currently known to the Scheme Administrators and the Scheme Actuarial Adviser, it is considered that Potentially Protected Liabilities may arise on certain employers' liability policies.
- 39.25. It is proposed that when the Companies make a distribution under the Amending Scheme to non-protected Scheme Creditors, they will make a corresponding payment to the FSCS Scheme Manager, who will then be in a position, having assessed eligibility under the Policyholders Protection Act 1975 and the FSCS Rules, to meet the claims of any remaining Protected Policyholders and Potentially Protected Policyholders. The payment will be an amount equal to the then current Payment Percentage applied to (i) the estimated value of the Companies' Potentially Protected Liabilities as at the Valuation Date plus (ii) the aggregate value of those Protected Liabilities for which the FSCS Scheme Manager has not yet received payment of the Payment Percentage from the Companies (together the "**Aggregate Amount**"). Under the Amending Scheme, Scheme Creditors with Potentially Protected Liabilities agree to such amount being paid to the FSCS Scheme Manager.
- 39.26. The amount of the payment will be calculated by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser. The amount of the payment under (i) in paragraph 39.25 will be calculated by applying the same Estimation Guidelines as are used to calculate the Notified Outstanding Liabilities and IBNR Liabilities for other Scheme Creditors. To ensure that the FSCS Scheme Manager is treated fairly and consistently with all

Scheme Creditors, further payments will be made by the Companies to the FSCS Scheme Manager to reflect any subsequent increases in the Payment Percentage.

- 39.27. Until the final Payment Percentage has been paid under the Amending Scheme, Scheme Creditors may submit and agree further claims against the Companies that come within the terms of policies issued by the Companies and which may be eligible for protection under the FSCS Rules. Those claims should be presented, as they have been throughout the Original Scheme, to the Run-off Company, who will (at no cost to the FSCS Scheme Manager) review the claims prior to submitting them, if agreed by the Companies, to the FSCS Scheme Manager. If and when the FSCS Scheme Manager is satisfied as to the validity, amount and eligibility for protection under the FSCS Rules of the claim, it will pay to the Scheme Creditor (or person entitled to payment in respect of that claim) the Protected Percentage of that amount.
- 39.28. When all amounts available for payment by the Companies under the Amending Scheme have been paid, the Companies will go into liquidation and the Amending Scheme will be terminated. Thereafter the rights of Policyholders in respect of any claims eligible for protection by the FSCS Scheme Manager will be dealt with in the liquidation of the Companies, subject to the terms of and in accordance with the FSCS Rules.
- 39.29. On payment of the final Payment Percentage, all rights of Policyholders whose claims may be eligible for such protection and have not yet matured will be assigned to the FSCS Scheme Manager under the Amending Scheme. This assignment is conditional upon the FSCS Scheme Manager subsequently paying eligible Policyholders at the rate set out in the FSCS Rules in respect of such claims when they mature and are agreed, subject to eligibility and other matters as set out in the FSCS Rules.
- 39.30. After the payment of the final Payment Percentage, Policyholders who consider their claims may be eligible for protection should present their claims directly to the FSCS Scheme Manager, who will be responsible for handling the claims. Payment to Policyholders under the FSCS Rules will depend on the application of the terms of the FSCS Rules to the claim, including those as to the validity, amount and eligibility of the claim and that the Liability giving rise to the claim in question is a Liability under a policy issued by either or both of the Companies.
- 39.31. In order to have their claims agreed, Policyholders will be required to provide documentary and other relevant evidence to support their claim, similar to that required by an insurer. In particular but without limitation, where either or both of the Companies has a lead solvent co-insurer, the Policyholder will be required to agree its claim with that lead solvent co-insurer and to provide evidence of the co-insurer's agreement to establish its claim against the relevant Company. The Policyholder will also need to satisfy the FSCS Scheme Manager that there are no circumstances in which the Companies would be likely to form a different view on the merits, Liability or quantum of the claim.
- 39.32. In order to give effect to the above provisions, each Scheme Creditor will be asked to confirm that it believes that it is a Protected Policyholder and if and to the extent that its claim against either or both of the Companies includes Potentially Protected Liabilities, it waives any right to receive any payment from the Companies in respect of its claims and it agrees that it will instead be entitled to a payment, subject to eligibility under and other terms and conditions of the FSCS Rules, from the FSCS Scheme Manager. Any Scheme Creditor who has already received a payment from the PPB or FSCS Scheme Manager and who has duly assigned its rights to the PPB or FSCS Scheme Manager will not be entitled to vote on the Amending Scheme in respect of that Established Liability.
- 39.33. Scheme Creditors are not obliged to notify the Scheme Administrators by the Bar Date of any future Potentially Protected Liabilities when submitting Claim Forms, but it would be helpful to the Scheme Administrators if Scheme Creditors would do so. It would also be prudent for Scheme Creditors to do so for the reasons set out at paragraph 39.34. If they choose not to do so, Scheme Creditors may instead wait until the Potentially Protected Liabilities actually mature, and then submit claims in the ordinary course to the Companies until the payment of the final Payment Percentage, and thereafter to the FSCS Scheme Manager in accordance with the terms of the Amending Scheme as set out at paragraph 39.30.

- 39.34. Scheme Creditors who mistakenly consider themselves to be Protected Policyholders but who do not notify the Scheme Administrators of their Notified Outstanding Liabilities and IBNR Liabilities on a Claim Form (together with supporting information) before the Bar Date will not be entitled to any payments from the Companies or from the FSCS Scheme Manager should those claims become agreed and turn out to be unprotected.

#### **40. Electronic communication and notices**

- 40.1. Where the Amending Scheme requires something to be done by a certain date, the applicable deadline is midnight, English time, on that date. Where Scheme Creditors are sending communications to the Companies or the Scheme Administrators, the time of receipt will be the time of actual receipt by the Companies or the Scheme Administrators (as the case may be).
- 40.2. The Amending Scheme allows for communications to be sent electronically. The Amending Explanatory Statement, its Appendices, the Amending Scheme, the Original Scheme, the Voting Form, the Short Form Explanatory Statement, the notice for the Amending Scheme Meetings and the Postal Service Request form are all being made available electronically for download via the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com). The Companies will make available all Claim Forms using the facilities offered through the Website, and if a Scheme Creditor wishes to amend the Claim Form or make new claims, it may do so via the Website. It is also anticipated that communications between the Scheme Administrators and Scheme Creditors will be conducted primarily through documentation being made available for download using the facilities available through the Website and by electronic mail.
- 40.3. If any Scheme Creditor wishes to continue to communicate by post, they must make a Postal Service Request in accordance with the instructions in paragraph 11.3. Scheme Creditors who wish to make a Postal Service Request are encouraged to make that election as soon as possible, to ensure that they receive all relevant communications.

#### **41. Uncashed cheques**

- 41.1. The Amending Scheme provides a mechanism for dealing with uncashed and returned cheques.
- 41.2. Any uncashed cheques as at the New Effective Date and any cheque issued on or after the New Effective Date (other than in respect of the final Payment Percentage) will, if not presented within six months of the date of issue, be cancelled.
- 41.3. The funds represented by any cancelled cheques shall be available for distribution to all other Scheme Creditors and for return to NNOFIC to the extent that the funds represented by the cheque were provided by NNOFIC under and subject to the terms of the CPLA.
- 41.4. However, the Companies will retain the discretion to reissue any cheque at the written request of the Scheme Creditor concerned at any time up until the earlier of six years after the date of issue of the relevant cheque and the date the final Payment Percentage is paid by the Companies.
- 41.5. Any cheque in respect of any payment relating to the final Payment Percentage will, if not presented within six months of the date of issue, be cancelled and subject to appropriate legal and tax advice on the consequences for the Companies, any funds represented by those uncashed cheques will be either distributed by the Scheme Administrators as a further dividend or paid to one or more registered UK charities selected at the discretion of the Scheme Administrators.

#### **42. Payments to agents and pool managers**

The Companies will have the discretion to make payments to any underwriting agent of the Companies (such as holders of binding authorities, brokers' covers and line-slips) or managers of pools where the Companies have a Liability to such pools if, for example, that agent or pool manager has identified a claim but, after making reasonable efforts, neither the Companies nor the underwriting agent or pool manager is able to identify the Scheme Creditor for whom the policy was written. Any such payment will bind each underlying Scheme Creditor in respect of that Liability as if payment had been made to each of them individually.

### **43. Payments in respect of Assignments**

- 43.1. Assignees will be entitled to receive the Payment Percentage under the Amending Scheme in respect of their assigned claims (which have not yet become Established Liabilities), subject to the following conditions:
  - 43.1.1. notice of the Assignment must have been provided to the Scheme Administrators;
  - 43.1.2. the Scheme Administrators must be satisfied (having received such information and documentation as they may require in respect of the Assignment) that the Assignment was legally valid; and
  - 43.1.3. the Scheme Administrators have determined that the assigned claim is a Net Liability under the terms of the Amending Scheme.
- 43.2. Qualifying Assignees will also be entitled to receive "top-up" payments under the Amending Scheme in respect of their assigned claims (which have not yet become Qualifying Established Liabilities), subject to the following conditions:
  - 43.2.1. where applicable, the Qualifying Assignee (and, where required by the Scheme Administrators, the Assignor) must have executed a Discharge Letter in respect of the assigned claims;
  - 43.2.2. the Scheme Administrators are of the opinion that the Assignment satisfies the conditions set out in paragraphs 43.1.1 and 43.1.2; and
  - 43.2.3. the Scheme Administrators have determined that the assigned claim is a Net Liability arising under a Qualifying ILU Policy under the terms of the Amending Scheme.
- 43.3. A Qualifying Assignee will not receive payment of the Qualifying ILU Policyholder Premium (see paragraph 31.1.4) if it is not, or has not been at any time, liable to pay (in whole or in part) any of the underlying Liabilities that gave rise to its claim against the Companies.
- 43.4. Where an Assignment has taken place:
  - 43.4.1. any Liability of the Companies to the relevant Assignee in respect of a claim that was assigned pursuant to such Assignment shall be extinguished to the extent that either of the Companies have, in accordance with the terms of the Scheme, already made any payment in respect of the same claim to the relevant Assignor; and
  - 43.4.2. any Liability of the Companies to the relevant Assignor in respect of a claim that was assigned pursuant to such Assignment shall be extinguished to the extent that either of the Companies have, in accordance with the terms of the Scheme, already made any payment in respect of the same claim to the relevant Assignee.

## **G: VOTING PROCEDURE**

### **44. Approval of the Amending Scheme**

- 44.1. Before the Amending Scheme can become effective and legally binding, it must be approved by the requisite majority of Scheme Creditors at each Amending Scheme Meeting. The requisite majority is a majority in number representing not less than 75% in value of those Scheme Creditors (or class thereof) who, at each Amending Scheme Meeting, being so entitled, are present in person or by proxy and vote.
- 44.2. There will be Amending Scheme Meetings for the following classes of Scheme Creditor:
- 44.2.1. Orion:
- (a) Policyholders (other than Qualifying ILU Policyholders) with IBNR Liabilities and Notified Outstanding Liabilities;
  - (b) Policyholders (other than Qualifying ILU Policyholders) with Scheme Liabilities (other than IBNR Liabilities and Notified Outstanding Liabilities), Dual Scheme Creditors and Ordinary Creditors; and
  - (c) Qualifying ILU Policyholders.
- 44.2.2. L&O:
- (a) Policyholders (other than Qualifying ILU Policyholders) with IBNR Liabilities and Notified Outstanding Liabilities;
  - (b) Policyholders (other than Qualifying ILU Policyholders) with Scheme Liabilities (other than IBNR Liabilities and Notified Outstanding Liabilities), Dual Scheme Creditors and Ordinary Creditors; and
  - (c) Qualifying ILU Policyholders.
- 44.3. If any Scheme Creditor is a Scheme Creditor within more than one class against a particular Company then he will be entitled to vote at both meetings for that Company.
- 44.4. Qualifying ILU Policyholders and other Scheme Creditors have been placed into separate classes because of the difference between the payment arrangements for Qualifying ILU Policyholders and other Scheme Creditors. In addition, the opt out election is only available to Qualifying ILU Policyholders.
- 44.5. The Scheme Administrators will arrange for a facility to be made available for each class of Scheme Creditor where the members of that class may consult together in respect of the Amending Scheme prior to the Amending Scheme Meetings.
- 44.6. If the Amending Scheme is passed by the requisite majorities, sanctioned by the Court as referred to in paragraph 50 and an order enforcing the Amending Scheme is issued by the US Bankruptcy Court, the Amending Scheme will then become legally binding on all Scheme Creditors, even if they voted against the Amending Scheme or did not vote. The Amending Scheme will be binding regardless of whether a Scheme Creditor's Scheme Liabilities are accepted, rejected or valued as having a nominal or no value under the Amending Scheme, whether for voting or distribution purposes.
- 44.7. A notice convening the Amending Scheme Meetings on 11 December 2014 is at pages 231 and 232 of this document. That notice will, wherever possible, be advertised in the newspapers and periodicals listed in paragraph 26.2. The notice will also be published on the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com).

### **45. Valuation of claims for voting purposes**

- 45.1. In order to determine whether the requisite majorities for voting purposes have been reached, the Companies must be notified of the value of the claim of each Scheme Creditor who votes in person or by proxy.

- 45.2. Scheme Creditors can notify the Companies of their claim(s) for voting purposes by using the Voting Form sent with the Short Form Explanatory Statement dated 8 October 2014. Scheme Creditors requiring additional Voting Forms should either access the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com) to download blank copies, or contact the Run-off Company. Queries about Voting Forms may be directed in the first instance to the Run-off Company at the contact details set out at the beginning of this document.
- 45.3. The Voting Form (with sections for Qualifying ILU Policyholders, for other Policyholders with IBNR Liabilities and Notified Outstanding Liabilities and for other Policyholders with Scheme Liabilities (other than IBNR Liabilities and Notified Outstanding Liabilities), Dual Scheme Creditors and Ordinary Creditors) seeks an estimate of the amount of that Scheme Creditor's claims against the Companies.
- 45.4. In valuing a Scheme Creditor's claims against a Company for voting purposes at the Amending Scheme Meetings:
- 45.4.1. in respect of the classes referred to in paragraphs 44.2.1(a) and 44.2.2(a), the value of that Scheme Creditor's claims in respect of Notified Outstanding Liabilities and IBNR Liabilities (other than Notified Outstanding Liabilities and IBNR Liabilities arising out of Qualifying ILU Policies) will be combined to give a single value;
  - 45.4.2. in respect of the classes referred to in paragraphs 44.2.1(b) and 44.2.2(b), the value of that Scheme Creditor's Established Liabilities and Agreed Liabilities (other than Established Liabilities and Agreed Liabilities arising out of Qualifying ILU Policies) will be combined to give a single value; and
  - 45.4.3. in respect of the classes referred to in paragraphs 44.2.1(c) and 44.2.2(c), the value of that Scheme Creditor's Established Liabilities, Agreed Liabilities, Notified Outstanding Liabilities and IBNR Liabilities in respect of Qualifying ILU Policies will be combined to give a single value.
- 45.5. The amounts referred to in paragraph 45.4 will then be adjusted to take account of any discount for the time value of money in respect of Notified Outstanding Liabilities and IBNR Liabilities, and to take account of any Offset Amount and Security Interest.
- 45.6. Particulars must be provided of any estimated claim(s), and will need to include details of the basis upon which any figure has been estimated. Information must be provided to enable the Chairman of the Amending Scheme Meetings to judge whether, and to what extent, such estimates of claim(s) can be accepted for voting purposes. In doing so, the Chairman may refer to the Scheme Actuarial Adviser for advice in relation to the estimated claims.
- 45.7. Where a Scheme Creditor has assigned a Scheme Liability after the date of the Winding-up Petitions, notice of that Assignment has been provided to the Companies and the Scheme Administrators are satisfied that such Assignment is legally valid, the Assignee will be treated by the Companies as the Scheme Creditor in respect of that Scheme Liability for voting purposes (but subject to any amounts that may be due to the Companies from the Assignor). Where both the Assignor and the Assignee submit a claim for voting purposes the matter will be referred to the Vote Assessor for inclusion in his report on the reasonableness of voting values for submission to the Court.
- 45.8. The Chairman of the Amending Scheme Meetings (who is to be one of the Scheme Administrators or such other independent person as the Scheme Administrators may nominate) will verify these claims against the Companies' records and will determine whether or not these estimates of claims are fair and reasonable before they are counted for voting purposes.
- 45.9. Even if Scheme Creditors are currently in dispute with the Companies about their claim(s), they will be eligible to vote at the Amending Scheme Meetings. Acceptance by the Chairman of a Scheme Creditor's estimate of its claim(s) for voting purposes will not affect or prejudice the Scheme Administrators' rights to dispute the claim(s) for any other purpose.
- 45.10. If agreement cannot be reached between the Company and a Scheme Creditor on the quantum of a Scheme Creditor's Liabilities for voting purposes, the matter will be referred to

the Vote Assessor for inclusion in his report on the reasonableness of voting values for submission to the Court.

#### **46. Vote Assessor**

- 46.1. The Vote Assessor will be Colin Czapiewski. A summary of his qualifications and experience is set out in section H (*Appendices*). If Colin Czapiewski is unable to act as the Vote Assessor for any reason, it is proposed that his replacement be such other independent and sufficiently qualified person as the Scheme Administrators may nominate.
- 46.2. Colin Czapiewski was a partner of Lane, Clark & Peacock LLP and provided actuarial services to the Companies up until 2003 for which Lane, Clark & Peacock LLP received fees. The principal area of support was the provision of reserve information for the purposes of the Companies' statutory accounts.
- 46.3. Colin Czapiewski has also acted as a scheme adjudicator on a number of insurance schemes of arrangement involving the crystallisation of creditors' claims for which partners in PricewaterhouseCoopers LLP acted as scheme administrators.
- 46.4. The Scheme Administrators consider that Colin Czapiewski is independent of the Companies in that he has had no direct previous employment with them and will not be remunerated on any form of contingency basis.
- 46.5. The Vote Assessor will prepare a report for submission to the Court on the reasonableness of the voting values used. The Chairman of the Amending Scheme Meetings will provide the Vote Assessor with details of all votes submitted in relation to the Amending Scheme. The direction of the vote (i.e. whether the Scheme Creditor has voted for or against the Amending Scheme) will not, however, be disclosed to the Vote Assessor. The Chairman of the Amending Scheme Meetings will indicate to the Vote Assessor which votes, in his opinion, should be reviewed by the Vote Assessor including, without limitation, all votes referred to him under paragraphs 45.7 and 45.10.
- 46.6. The Vote Assessor will report his findings to the Chairman and subsequently prepare a report for the Court to be made available prior to the sanction hearing.

#### **47. Currency conversion for voting purposes**

Claims against the Companies are denominated in various currencies. In order to determine whether or not the requisite majority (as to the value of the claims of Scheme Creditors voting in favour of the Amending Scheme) has been achieved, the value of all claims of Scheme Creditors in currencies other than US Dollars will be converted into US Dollars at the mid-market rate for US Dollars published by the Financial Times as at the Valuation Date.

#### **48. Appointing a proxy**

- 48.1. Scheme Creditors of the Companies are entitled to vote at the relevant Amending Scheme Meeting(s), either in person (or, in the case of corporations, by a duly authorised representative) or by proxy (i.e. a person nominated to attend the Amending Scheme Meetings and vote on their behalf).
- 48.2. Scheme Creditors of the Companies who wish to appoint a proxy must complete the Voting Form in accordance with the instructions printed on the form. These instructions should be followed carefully, since the Voting Form may otherwise be rejected as invalid. Completion and return of the Voting Form(s) will not prevent the relevant Scheme Creditor from attending in person at the Amending Scheme Meetings.

#### **49. Returning the Voting Form**

- 49.1. In order for a Scheme Creditor to vote and have their vote counted, they must complete the estimate of their claims against the Companies on the Voting Form and ensure it is provided to the Chairman of the Amending Scheme Meetings before the vote is taken at the relevant Amending Scheme Meeting. Scheme Creditors must do this whether they intend to vote in person at the Amending Scheme Meetings or whether they intend to appoint a proxy.

- 49.2. The Voting Form may be returned by hand, post, fax or email to the Run-off Company at the address set out at the beginning of this document. Forms should be returned before noon (English time) on 10 December 2014.
- 49.3. If a Scheme Creditor returns a faxed or email copy of the Voting Form, the signed original must be received by the Companies at the postal return address of the Run-off Company set out at the beginning of this document within 7 days after the Amending Scheme Meetings (i.e. close of business on 18 December 2014) or their vote may not be counted.
- 49.4. The Voting Form may also be handed to the Chairman of the Amending Scheme Meetings before or at the start of the Amending Scheme Meetings.
- 49.5. After the Amending Scheme Meetings the votes must be checked and verified. The time required to complete this verification process will depend upon the number of votes involved and the number of outstanding original Voting Forms.
- 49.6. Additional copies of the Voting Form can be downloaded from the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com).

## **50. Court sanction**

- 50.1. If the Amending Scheme is passed by the requisite majorities of Scheme Creditors, the Court will be asked to sanction it. If the Court sanctions the Amending Scheme and the US Bankruptcy Court then issues an order enforcing the Amending Scheme under the US Bankruptcy Code, the Court order will be delivered to the Registrar of Companies for registration. Once the Court order is delivered, the Amending Scheme will become effective. All Scheme Creditors will then be bound by the Amending Scheme, including those who may have voted against it or who did not vote. The provisions of the Original Scheme will continue in all respects except where varied by the terms of the Amending Scheme. As soon as practicable following delivery of the Court order to the Registrar of Companies, the fact that the Amending Scheme has become effective will, wherever possible, be advertised in the newspapers and journals listed in paragraph 26.2.
- 50.2. It will also be published on the Website at [www.oicrun-offltd.com](http://www.oicrun-offltd.com).

## **51. Positions of key stakeholders**

- 51.1. The Scheme Administrators have kept each of the PRA, the FCA, the FSCS Scheme Manager, the ILU, NNOFIC and the Creditors' Committee regularly informed and appraised of developments in the Amending Scheme process.

### ***PRA and the FCA***

- 51.2. The Companies are authorised and regulated by the PRA and the FCA. The PRA and the FCA have been kept fully informed of the Amending Scheme as it has been developed and have been given copies of all relevant documents to review. The PRA's and the FCA's review has been directed at deciding whether there are any features of the Amending Scheme which should lead them to exercise their respective powers to prevent the Amending Scheme being put to Scheme Creditors. As at the date of this Amending Explanatory Statement, on the basis of the information available to them, each of the PRA and the FCA considers that there are no such features, and has no objection to the Amending Scheme proceeding to a vote of Scheme Creditors.
- 51.3. The Scheme Administrators expect the PRA and the FCA to continue to monitor the progress of the Amending Scheme and to take account of any issues raised by Scheme Creditors, and to give their final opinion on the Amending Scheme to the Court if the votes of Scheme Creditors are successful and the Companies move to obtain sanction from the Court.

### ***Other stakeholders***

- 51.4. Each of the other key stakeholders in the Amending Scheme process (the FSCS Scheme Manager, the ILU and NNOFIC) have approved and agreed to be bound by the Amending Scheme. In addition, the Creditors' Committee (on a unanimous basis) supports the Amending Scheme.

## **52. Directors' interests**

- 52.1. The current directors, Dan Schwarzmenn, who is a partner in PricewaterhouseCoopers LLP, and Paul Evans receive no remuneration from the Companies in their capacities as directors of the Companies.
- 52.2. Neither of the directors will receive any remuneration, compensation or incentives as a result of the successful implementation of the Amending Scheme or under the terms of the Amending Scheme itself.
- 52.3. Neither of the directors has any direct or indirect shareholdings in either of the Companies or any of its subsidiaries.
- 52.4. The directors are also the Scheme Administrators of the Companies. PricewaterhouseCoopers LLP are in receipt of fees for the provision of services to the Scheme Administrators under the Original Scheme. PricewaterhouseCoopers LLP will receive fees for the provision of services to the Scheme Administrators under the Amending Scheme.

Dated 8 October 2014

## **H: APPENDICES**

<b>Draft Claim Form and Draft Claim Form Guidance Notes</b>	<b>85</b>
<b>Curriculum vitae of the Scheme Actuarial Adviser</b>	<b>111</b>
<b>Curriculum vitae of the Scheme Adjudicator</b>	<b>112</b>
<b>Curriculum vitae of the No Notice Adjudicator</b>	<b>113</b>
<b>Curriculum vitae of the Vote Assessor</b>	<b>114</b>
<b>Curriculum vitae of the Individual Claimant Representative</b>	<b>115</b>
<b>List of Creditors' Committee members</b>	<b>116</b>
<b>Documents available for inspection</b>	<b>118</b>
<b>Summary table of Amending Scheme changes</b>	<b>119</b>

## H: APPENDICES

### DRAFT CLAIM FORM AND DRAFT CLAIM FORM GUIDANCE NOTES

#### OIC RUN-OFF LIMITED ("OIC") AND THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED ("L&O") AMENDING SCHEME OF ARRANGEMENT ("AMENDING SCHEME")

##### FORM A: SIGNING FORM

Scheme Creditor name (note 1): .....

Scheme Creditor reference (note 2): .....

Scheme Creditor address:.....

Contact name (note 1): .....

Contact telephone number: .....

Email address (note 1): .....

To be signed by a duly authorised individual on behalf of the Scheme Creditor. If you are the duly authorised representative, agent or attorney of the Scheme Creditor enter the capacity in which you have signed the form (for example director, partner, agent and/or attorney) below.

**You should read the Claim Form, instructions and Claim Form Guidance Notes carefully. Failure to follow the instructions and guidance set out in those documents may result in a claim being rejected in whole or in part. A signature on this form shall constitute the giving of a warranty that the signatory has been duly authorised by the relevant Scheme Creditor to sign the form on its behalf.**

Print name:	Signed:	Position:	Date:
	Authorised Employee / Agent / Attorney / Other (please specify) (note 3)		

##### NOTES:

- (1) Enter the name and address of the Scheme Creditor and provide details of a contact name and email address in block capitals.
- (2) The Scheme Creditor reference number should have been provided to you either included on correspondence or by the OIC Help Desk. If you do not have a reference number, please contact the OIC Help Desk.
- (3) Please sign and date the form when you have completed all of the Claim Form. This should be signed by an authorised person from within your organisation. Please confirm your exact capacity by deleting the descriptions which do not apply (Authorised Employee / Agent / Attorney / Other (please specify)).

**FORM B: SUMMARY CLAIM FORM**

Scheme Creditor name:	Scheme Creditor reference:
-----------------------	----------------------------

**All values owing by OIC/L&O should be entered as a negative amount.**

Currency of claims (note 1)	Agreeds (A) (note 2)	Notified Outstanding Liabilities (B) (note 3)	IBNR Liabilities (Non-Qualifying Liabilities) (C) (note 4)	IBNR Liabilities (Qualifying Liabilities) (C) (note 4)	Total (D) A+B+C=D	Unpaid Ledger Balances (E) (note 5)	Gross Liabilities D+E
Total USD Equivalent (note 6)							

## NOTES: Form B: Summary Claim Form

- (1) **Currency of claims:** Enter the relevant currency code as detailed in Appendix A or enter "Other" and use the relevant exchange rate applicable as at the Valuation Date from the UK edition of the Financial Times.
- (2) **Agreeds:** Those Established Liabilities and Agreed Liabilities that have been agreed by the Companies.
- (3) **Notified Outstanding Liabilities:** All claims in respect of losses reported to or discovered by you but which have not become an Established Liability or an Agreed Liability.
- (4) **IBNR Liabilities:** An incurred but not reported claim arising under or in respect of an Insurance Contract for the amount payable by one or both of the Companies in respect of a loss which has been incurred but has not been reported to or discovered by a Scheme Creditor plus the amount payable in respect of a general excess over Notified Outstanding Liabilities, to the extent that the current estimates of claims included as Notified Outstanding Liabilities may prove to be inadequate.

Split the IBNR Liabilities between non-Qualifying Liabilities and Qualifying Liabilities according to the policies against which you are claiming IBNR Liabilities. To identify the difference between non-Qualifying ILU Policies and Qualifying ILU Policies, refer to the User Guide on the Website or contact the OIC Help Desk.

Enter the values only in the Total USD Equivalent row and provide any supporting information in accordance with the Estimation Guidelines and Supporting Evidence guidance (Appendices 2 and 3 of the Amending Scheme respectively).

- (5) **Unpaid Ledger Balances:** These are agreed claims which either relate to non-insurance items or cannot be allocated to a specific insurance contract.
- (6) **Total USD Equivalent:** Enter the overall total for each column once you have converted the total for each currency into USD using the rate of exchange in Appendix A.

### FORM C: NEW POLICIES

(1) Scheme Creditor name:	(2) Scheme Creditor reference:
---------------------------	--------------------------------

Ref (note 1)	Company (note 2)	Policy reference (note 3)	OIC/L&O policy reference (note 4)	Broker reference (note 5)	Supporting documentation (note 6)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

## FORM C: NEW POLICIES: Continuation Sheet

Scheme Creditor name:	Scheme Creditor reference:
-----------------------	----------------------------

[illegible]

### NOTES: Form C: New Policies

Use this form to advise the Companies of any policies not provided by the Companies on the Claim Form and for which you wish to claim for Agreed Liabilities, Notified Outstanding Liabilities and/or IBNR Liabilities.

- (1) **Ref:** This is a sequential reference number, one for each row of data.
- (2) **Company:** The name of the company insured or reinsured by the policy.
- (3) **Policy reference:** The reference number entered on the policy documentation.
- (4) **OIC/L&O policy reference:** Enter the internal OIC/L&O policy reference used by the Companies, if known.
- (5) **Broker reference:** The unique reference number provided by the broker who placed the policy.
- (6) **Supporting documentation:** Detail the documents you are providing in support of the policies, for instance, cover note, slip or policy wording. The Companies will then verify the documentation before agreeing and processing any claims submitted that attach to those policies.

### FORM D: DETAILED CLAIM FORM

Scheme Creditor name:	Scheme Creditor Reference:	Group Share / Scheme Share (note 1)	Currency
-----------------------	----------------------------	-------------------------------------	----------

**All values owing by OIC/L&O should be entered as a negative amount.**

Ref (note 2)	Your policy ref (note 3)	OIC/L&O policy ref (note 4)	Major loss (note 5)	Claim description (note 6)	Loss date (note 7)	LPC broker ref (note 8)	LPC closing ref (note 9)	Agreed Liabilities (note 10)	Notified Outstanding Liabilities (note 11)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

**FORM D: DETAILED CLAIM FORM: Continuation Sheet**

Scheme Creditor name	Scheme Creditor reference:	Group Share / Scheme Share	Currency
----------------------	----------------------------	----------------------------	----------

**All values owing by OIC/L&O should be entered as a negative amount.**

[illegible]

## NOTES: Form D: Detailed Claim Form

Use this form to advise the Companies of:

- (i) any Agreed Liabilities not detailed on the Claim Form provided by the Companies. If you wish to advise the Companies of any amendments to Agreed Liabilities on the Claim Form already provided by the Companies, please do this on that Claim Form, detailing which information is incorrect, insert the correct details and attach the supporting information; and
- (ii) all Notified Outstanding Liabilities for which you wish to make a claim.

Use a separate form for each original currency for which you wish to submit claims.

- (1) **Group Share / Scheme Share:** This relates to situations in which the Companies wrote business as part of a pooling arrangement and therefore claims are in part payable by pool members other than the Companies. Indicate whether you are calculating claims values at a group share (all pool companies) or scheme share (OIC/L&O only) level. This choice should apply to all claims. Do not choose the group share level for some claims and scheme share level for other claims. If the pooling arrangement did not apply you may leave this section blank.
- (2) **Ref:** This is a sequential reference number, one for each row of data.
- (3) **Your policy ref:** The reference number entered on the policy documentation. If applicable, this should be the same as the policy reference entered on Form C New Policies.
- (4) **OIC/L&O policy ref:** If you have ever been provided with an internal OIC/L&O policy reference used by the Companies, please enter it here.
- (5) **Major loss:** Refer to Appendix B in order to select the appropriate "major loss" for this field or, if none apply, enter the word "None".
- (6) **Claim description:** Enter a brief description of the claim.
- (7) **Loss date:** Enter the date of loss for the claim.
- (8) **LPC broker ref:** If the claim has been processed through the LPC (the London Processing Centre, now Xchanging), enter the broker reference assigned by the LPC.
- (9) **LPC closing ref:** If the claim has been processed through the LPC, enter the closing reference assigned by the LPC.
- (10) **Agreed Liabilities:** Insert the value of any Agreed Liabilities that have not been included on the Claim Form by the Companies. If applicable, values should be entered at either the group share level or scheme share level depending on your selection as described in note 1 above.
- (11) **Notified Outstanding Liabilities:** Insert the value of any claims in respect of losses reported to or discovered by you but which have not become an Established Liability or an Agreed Liability. If applicable, values should be entered at either the group share level or scheme share level depending on your selection as described in note 1 above.

### FORM E: UNPAID LEDGER BALANCES

Scheme Creditor name:	Scheme Creditor reference:	Currency:
-----------------------	----------------------------	-----------

**All values owing by OIC/L&O should be entered as a negative amount.**

Ref (note 1)	Company (note 2)	Signing date (note 3)	Lead broker (note 4)	Amount (note 5)	Transaction type/description (note 6)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

**FORM E: UNPAID LEDGER BALANCES: Continuation Sheet**

Scheme Creditor name:	Scheme Creditor reference:	Currency:
-----------------------	----------------------------	-----------

**All values owing by OIC/L&O should be entered as a negative amount.**

[illegible]

### **NOTES: Form E: Unpaid Ledger Balances**

Please use this form to provide details of any agreed claims which relate to non-insurance transactions or cannot be allocated to a specific policy.

- (1) **Ref:** This is a sequential reference number, one for each row of data.
- (2) **Company:** The name of the Company to which the transaction relates.
- (3) **Signing date:** If applicable, the date the transaction was processed by a bureau.
- (4) **Lead broker:** If applicable, the broker or intermediary that processed the transaction.
- (5) **Amount:** Amount in its original currency.
- (6) **Transaction type/description:** Details of the transaction.

## GENERAL INSTRUCTIONS FOR THE COMPLETION OF CLAIM FORM

### 1. Scheme Creditors

If you are a Scheme Creditor with amounts owing by the Companies you will be provided with a pre-populated Claim Form which includes Established Liabilities, Agreed Liabilities and certain policy information according to the Companies' records. This can also be provided electronically (please contact the OIC Help Desk at the number overleaf for an electronic copy). If you have reinsured the Companies you will also be provided with all unpaid agreed claims in the Companies' records for your information.

If you are a Scheme Creditor for which the Companies have no record of there being any amounts owing to you please use this pro-forma blank Claim Form to advise the Companies of any claims (Agreed Liabilities, Notified Outstanding Liabilities and IBNR Liabilities) and their related policies which you wish to submit.

### 2. Claim Form

The Claim Form consists of five forms as follows:

Form A: Signing Form	Complete only one form for your claim.
Form B: Summary Claim Form	Fill out this summary form for the total for which you are claiming split by currency with a total in US\$ equivalent as per the exchange rates listed in Appendix A.
Form C: New Policies	List all new policies which are not already listed and under which you wish to submit claims. Include details of the supporting documentation, e.g. cover, slip, policy wording, etc. which you are providing as evidence of you being insured and/or reinsured (as the case may be) by the Companies.
Form D: Detailed Claim Form	Include all claims that are not already listed.
Form E: Unpaid Ledger Balances	Provide information of other transactions owing to you by the Companies, e.g. expert fees.

### 3. Claim Form values

Only claims against the Companies at a gross level should be entered on the Claim Form with no reduction for scheme dividends already paid, time value of money discount or amounts owed to the Companies. Once the Claim Form has been received and agreed, adjustments will be made for any amounts owing to the Companies (including reinsurance and premiums) and the time value of money to arrive at a Net Liability.

Supporting documentation for any Agreed Liabilities not shown on a pre-populated Claim Form must be sufficient to enable the Companies to agree those claims. Supporting documentation for Notified Outstanding Liabilities and IBNR Liabilities should be in accordance with the Estimation Guidelines and the Supporting Evidence guidance (Appendices 2 and 3 of the Amending Scheme respectively).

Values due to you from the Companies should be entered using a negative number.

### 4. Crystallisation statements

Once all of the Claim Forms have been processed a crystallisation statement will be provided to you. You will be asked to confirm that you agree with the amount of your claim set out on that statement. This amount will include deductions for amounts owing to the Companies, any time value of money discount and any applicable scheme dividends already paid. If applicable, details of the amount of the Qualifying ILU Policyholder Premium will also be provided.

## **5. Return of the Claim Form (when not using the Website)**

The Claim Form and all relevant supporting documentation must be signed and returned to the Run-off Company on or before the Bar Date, which is [XXXX] 2015.

You may post, email or fax your signed Claim Form to Armour Risk Management Limited using the details below:

Post: Armour Risk Management Limited  
20 Old Broad Street  
London  
EC2N 1DP  
United Kingdom

Email: [oi closurehelpdesk@armourrisk.com](mailto:oi closurehelpdesk@armourrisk.com)

Fax: +44 (0)20 7382 2001

Alternatively, the signed Claim Form may be sent to the Scheme Administrators by post to the Run-off Company c/o Armour Risk Management Inc, 1880 JFK Boulevard, Suite 801, Philadelphia PA 19103, USA.

If you have any questions or need help with filling out the Claim Form, please contact the OIC Help Desk on +44 (0)20 7382 2020.

Claim Forms returned by fax or by email will only be accepted if they are legible.

If a Scheme Creditor does not submit its Claim Form together with the supporting documentation in accordance with the instructions accompanying the Claim Form and the Claim Form Guidance Notes by the Bar Date, that Scheme Creditor's claim will be limited to those Established Liabilities and Agreed Liabilities, if any, appearing on its pre-populated Claim Form.

## Appendix A: Exchange rate conversion to US Dollars

Code	Currency	Rate per 1 US Dollar at 31 December 2013
AED	United Arab Emirates Dirhams	3.6730
AUD	Australia Dollars	1.1178
BHD	Bahrain Dinars	0.3770
BMD	Bermuda Dollars	1.0000
BRL	Brazil Reals	2.3593
CAD	Canada Dollars	1.0625
CHF	Switzerland Francs	0.8894
CNY	China Yuan Renminbi	6.0539
DKK	Denmark Kroner	5.4141
EGP	Egypt Pounds	6.9486
EUR	Euro	1.3780
GBP	United Kingdom Pounds	1.6563
HKD	Hong Kong Dollars	7.7538
ISK	Iceland Kronur	115.4500
JPY	Japan Yen	105.105
KRW	South Korea Won	1055.35
KWD	Kuwait Dinars	0.2824
NOK	Norway Kroner	6.0669
NZD	New Zealand Dollars	1.2150
PLN	Poland Zlotych	3.0175
QAR	Qatar Riyals	3.6412
RUB	Russia Rubles	32.8600
SAR	Saudi Arabia Riyals	3.7505
SEK	Sweden Kronor	6.4226
SGD	Singapore Dollars	1.2626
TRY	Turkey Lira	2.1485
USD	United States Dollars	1.000
VEF	Venezuela Bolivares Fuertes	6.2921
ZAR	South Africa Rand	10.4738

## Appendix B: Major loss codes

1. Policies in relation to OIC (other than the HUG pool, Commercial Run-Off and Personal Lines) and L&O (other than Pre-1969 L&O Policyholders)

Major loss code	Major loss description
C0001	Hurricane bess
C0002	Hurricane carmen
C0003	Hurricane tracy
C0004	Collision edgar m queeny/corinthos
C0005	Dp 1 sinking of jacket
C0006	Mediterranean storms at palermo
C0007	New south wales storms 250574-270574
C0008	Hamburg floods 020176-040176
C0009	U.s.tornadoes 020474-040474
C0010	N.sea storms excl hamburg floods 020176-040176
C0011	Australian floods 250174-270174
C0012	G floods indivisible 020176-040176
C0013	Salem oil loss
C0014	Hurricane allen
C0015	Storms off algeria
C0016	Asbestosis pi/bi claims all years
C0017	Iran/iraq war detention losses
C0018	D.e.s.calims (diethylstilbestrol)all years
C0019	Hurricane alicia 17.8.83-20.8.83
C0020	D.d.t. Claims all years
C0021	Occidental petroleum claims all years
C0022	Agent orange claims all years
C0023	Pollution claims ex c0021/c0025/c0026 all years
C0024	1984 iran/iraq gulf losses
C0025	Charter oil co claims all years
C0026	Shell oil co claims all years
C0027	Asbestosis/silicosis joint claims all years
C0028	Asbestos bi/pi clms -facility surcharge all years
C0029	Silicosis claims all years
C0030	Asbestos facility accelerated cash flow all years
C0031	Typhoon ellen
C0032	Us winter freeze 17.12.83-30.12.83
C0033	Munich hail storm
C0034	Mexican earthquake
C0035	Radiation claims all years
C0036	Asbestos property claims all years
C0039	Occidental petroleum peruvian govt
C0040	Severe windstorms uk & europe
C0041	Storms at ensenada mexico
C0042	Products liability
C0043	Breast implants
C0044	Occidental petroleum (piper alpha) north sea
C0045	Barcelona,seawise giant,burmah endeavour
C0046	Asbestosis claims resolution fees all years
C0047	Hurricane juan
C0048	Hearing loss all years
C0049	Belco petroleum corp peruvian govt nationalization
C0050	Exxon valdez -oil pollution prince william sound
C0051	Black lung all years
C0052	10.9.89-25.9.89 hurricane hugo-tropical from 22/9
C0053	San francisco earthquake + 1 wk after shock 241089
C0054	Fire escape & gas explosion (phillips petroleum)
C0055	Hurricane jerry,gulf of mexico,texas
C0056	Storms -uk,holland & denmark cat 90a
C0057	Storm/floods uk & europe 310190-040290
C0059	Storms uk & europe 260290-020390
C0060	First party pollution losses only
C0061	Subsidence salt mine case all years

Major loss code	Major loss description
C0062	Pollution reinsurance involvement
C0063	Kuwait/iraq dispute confiscation/detention 2/8/90
C0064	19/3/89 arco platform - baker & echo 60 b&e
C0065	Pollution r/i london representation(related to C0062)
C0066	Pollution r/i defence expense (related to C0062)
C0067	Pollution london representation (related to C0023)
C0068	Pollution defence expense (related to C0023)
C0070	Olin corp pollution claims nmne all years
C0072	Asbestos d4 nmne all years
C0073	Sarabond nmne all years
C0074	Tetracycline claims nmne all years
C0075	G8 nmne all years
C0076	Pollution nmne all years
C0077	Non asbestos nmne all years
C0078	18-20/8/91 hurri bob torando/flooding nth carolina
C0079	Lead poisoning all years
C0080	Cyclone ian - west coast of australia
C0081	Health hazard - non marine only all years
C0082	5 vsls belonging to s.n.a.v dmed by heavy weather
C0083	23-28/8/92 'hurricane andrew' - gulf of mexico
C0084	Typhoon fred -south china seas losses
C0085	Hurricane gilbert
C0086	Typhoon colleen
C0087	Hurricane iniki,pacific ocean,hawaiian islands
C0088	Wind,hail,tornadoes-texas,oklahoma & nthn states
C0089	Cyclone orson off nw australia
C0090	Typhoon mireille – japan
C0091	Tornadoes/flooding-texas,louisiana,etc
C0092	H/w in spain,france & portugal
C0093	Typhoon lynn-sth china seas-taiwan
C0094	Asbestos named/not named project all years
C0095	Typhoon mike – philippines
C0096	Typhoon 'gay' thailand & india
C0097	Golden trader collision
C0098	Cyclone ofa/south pacific
C0099	Bad weather nth sea
C0100	Federal skeena collision,indonesia
C0101	Typhoon thelma south korea
C0102	Hesperus c/w sea spirit
C0103	Moby prince c/w agip abruzzo
C0104	Shane kincaid/z jackson-road accident,oklahoma
C0105	Typhoon abe - china seas
C0106	'Columbia new york'c/w'turecamo boys'
C0107	Cyclone val - sth pacific
C0108	New york - severe storms & floods
C0109	Los angeles riots
C0110	New orleans warehouse fire
C0111	D.b.c.p. (pesticide) related claims
C0112	Fire at denver stapleton apt
C0113	Typhoon ellie - pacific ocean
C0114	Bourbon platform
C0115	Columbine struck avondale drydock & sank
C0116	Jesky ace/chia wei collision in rough seas,w.korea
C0117	Collision of vsls in st lawrence seaway
C0118	Tropical cyclone affecting bay of bengal/bengladesh
C0119	Vsls detained @ liberia & dmed by rebels
C0120	Vsls barauni c/w umm al roos off dubai
C0121	Us bpmbing raids - libya
C0122	Damage to sonat 18'pipeline
C0123	Derailment caused pollution in sacramento river
C0124	Stena freighter c/w seiryu in yucatan channel
C0125	Typhoon judy - japanese seas
C0126	Collision between olympic dream & august thyssen

Major loss code	Major loss description
Co127	Collision between n588db & cgfcx helis,niagra fall
Co128	Collision between vessels nawaf and act 8
Co129	Grounding of vsl'louisiana brimstone'
Co130	Crsh-c-fbhy bell 204b in hay river base,n.w.canada
Co131	Crsh of zkevk-mnt aspiring natl park,new zealand
Co132	Electro magnetic field claims
Co133	'Peruvian reefer'c/w'atlantic stream',helsingborg
Co134	Panay sampaguita c/w platform g5-382(amoco)gulf su
Co135	Warehouse fire,contents contaminated,washington,us
Co136	Oil spill at los angeles
Co137	Tobacco related losses
Co138	Carpel tunnel syndrome all years
Co139	L&o p miscellaneous
Co140	Policy buy back - all departments
Co141	Asbestos related losses non product only
Co143	Pollution - environmental protection agency
Co144	Galaxy-n5532 crshd after t/o reno,nevada
Co145	Iberia-ecddu,crshd on mt.oiz,on appr.bilbao,148fax
Co146	Uta-fgdua,fire during cleaning @ charl de gaul apt
Co147	Air india-vtefo crshd into ocean off coast ireland
Co148	Delta-n726da,tristar crshd short of r/w @ dallas
Co149	Japan a/l-j8119 crshd into mtn after t/o
Co150	Ariane-ecsiii & spacenet sats destrdy after lauch
Co151	Air france-fgcbc under-carriage collapsd o/l rio
Co152	Arrow air-n950jw crshd on t/o @ gander,newfoundlnd
Co153	Korean a/l-hl7442 shot dwn by rusian acft,sakhln
Co154	Avianca-hk2910x b747 crshd on lndng,madrid
Co155	Hurricane elena-various damages(30.08.85-3.9.85)
Co156	Hurricane gloria - various damages
Co157	Nrthwst a/l-n312rc,crshd t/o detroit apt,michigan
Co158	Contl a/l-n626tx flippd over,26 fax,denver(cat87k
Co159	Sth african a/l-zssas crshd indian ocean-mauritus
Co160	Pac sth wst a/l-n350ps crshd @ paso robles,calif
Co161	Uk winter freeze-10/18.1.87-vars losses-(cat 87a)
Co162	Hoechst celanese-fire/explosn @ pampa,texas
Co163	Air france-n4506h,gear collapse t/o delhi apt,fire
Co164	Pan am-n739pa,crshd over lockerbie,259 fax-nth sea
Co165	Shell oil-explosn @ norco refinery-louisiana
Co166	Ocean odyssey-blowout/fire on block 22/30b fulmar
Co167	Rowan gorilla 1,jack/up mobile drillng unit sank
Co168	Brit midlnd-gobme crshd alongside m1(woodward govn
Co169	Indpndnt air-n7231t,crshd mtn o/l santo maria azor
Co170	Flying tiger-n807ft crshd hil nr kuala lumpa,4 fax
Co171	Utd a/l-n1819u engne explo/mech fail,sioux citytl
Co172	Korean air-hl7328,undrshot r/w,tripoli apt,libya
Co173	Uta,n54629,terrst attck,bomb explo.crshd niger(af
Co174	Air honduras,sahsa,n88705 crshd teguliglpa hondura
Co175	Us winter freeze-estn seaboard/wst texas (cat 24)
Co176	Newcastle earthquake australia(new sth wales)
Co177	Atlantic richfield-explo/fire(channel view)texas
Co178	Monarch of seas-fire in cabin,located on deck no.3
Co179	Avianca-hk2016,8 crew,65 fax + 85injdfjk apt-t/l
Co180	Indian a/l,ytepn,crshd short r/w,bangalore,india
Co181	Caac-hijacked,b2510 crshd @ guangzhou apt,china xi
Co182	Atlantic richfield-heat exchangers dmgd bayprt,tex
Co183	Tuxpan - vessel sunk due to heavy weather
Co184	Equitas commutation
Co185	Herald of free enterprise - capsized at zeebrugge
Co186	Bp refinery - grangemouth explosion and fire
Co187	Glacier bay - struck submerged object alaska
Co188	Bp refinery - explosion at zwinjdrecht antwerp
Co189	Hercules l382g - shot down by missile (zimex)
Co190	Honda europe - fire dmge to cars (whse ghent)

Major loss code	Major loss description
C0191	Pivot - attacked and set on fire
C0192	Havglint - attacked by iranian gunboats 2 killed
C0193	Haven - attacked by iranian gun boat
C0194	Well en-19 d-rjs enchovea plat1 - blowout and fire
C0195	Reijin - car carrier ran aground south of oporto
C0196	Treasure saga well 2/4-14 - out of control
C0197	Chevron corp - expl & fire richmond ref california
C0198	Al baz - blowout, fire & rig capsize, off nigeria
C0199	N416us - acft crashed after aborted t/o (us air)
C0200	Sally albatross - fire on board in drydock
C0201	Hand luggage expl @ manila apt
C0202	Kuwait/iraq dispute br airways hull losses only
C0203	Kuwait/iraq dispute br airways liab losses only
C0204	Kuwait/iraq dispute loss of 15 kuwait acft only
C0205	Amoco cadiz - stranded off brittany
C0206	Failure of foam insulation @ avondale
C0207	West venture well no 91 - blowout at sable is. Zap
C0208	Pan-am and klm crash at tenerife t/1 of 747's
C0209	N110aa dc10 (american a/l) crashed @ o'hare apt ch
C0210	Nedlloyd hoorn nb 905 fire
C0211	Vermi well no2 blow out
C0212	Ecdeg dc10 (spantax sa) crashed & burst into flame
C0213	Salm thistle field - broke adrift & damaged leg
C0214	Ocean ranger - semi sub drllg plat sunk in heavy w
C0215	Fire 'roger'
C0216	Injury to starkeiser da silva matos pires o/v 'fro
C0217	Castillo de bellver total loss of oil & vessel
C0218	Seawise university - fire at hong kong
C0219	Parker & parsley -fracturing of wells(baker hughes
C0220	American trader - oil spill off huntington beach,c
C0221	General dynamics - various workers compensation
C0222	Goodwyn 'a' - damage to primary piles
C0223	Sun corp - freeze losses
C0224	Vermillion block rig no 8 - blowout & fire louisia
C0226	WCA claims l & o 1969 & prior only
C0227	Clergy abuse / child molestation claims
C0228	C.A.A. Grounded all b737-400s due to engine proble
C0229	WCA claims - aviation and marine (all years)
C0230	Andina coffee losses

## 2. Policies in relation to Pre-1969 L&O Policyholders

Major loss code	Major loss description
A0001	ASBESTOS
A0002	HEALTH HAZARDS – BREAST IMPLANTS
A0003	HEALTH HAZARDS – DDT
A0004	HEALTH HAZARDS – DES
A0005	HEALTH HAZARDS – AGENT ORANGE
A0006	HEALTH HAZARDS
A0009	NON APH
A0010	POLLUTION

## 3. Policies in relation to HUG Pool

Major loss code	Major loss description
H0001	ASBESTOS
H0002	HEALTH HAZARDS – BREAST IMPLANTS
H0003	HEALTH HAZARDS – DDT
H0004	HEALTH HAZARDS – DES
H0005	HEALTH HAZARDS – AGENT ORANGE
H0006	HEALTH HAZARDS
H0009	NON APH
H0010	POLLUTION

## 4. Policies in relation to Commercial Run-Off and Personal Lines

Major loss code	Major loss description
W0001	ASB - ASBESTOSIS
W0002	ARB – ASBESTOS RELATED CONDITION
W0003	BRO – CHRONIC BRONCHITIS
W0004	ID DFN – INDUSTRIAL DEAFNESS
W0005	DPT – DIFFUSE PLEURAL THICKENING
W0006	LEU - LEUKEMIA
W0007	MES - MESOTHELIOMA
W0008	PLP – PLEURAL PLAQUES
W0009	VWF – VIBRATION WHITE FINGER
W0010	MIS - MISCELLENOUS
W0011	AST - ASTHMA
W0012	NIHL – NOISE INDUCED HEARING LOSS

## Draft Claim Form Guidance Notes

These notes set out a description of the Website menus which support the completion of the Claim Form and details of the data fields which must be confirmed, amended or completed in order for the Claim Form to be submitted as described in the Amending Scheme.

Scheme Creditors are encouraged to complete the information required using the Website where they will find a User Guide to ensure that the information is completed accurately.

Scheme Creditors may, as an alternative, request paper copies of Claim Forms. If this option is taken, the Run-off Company will enter the data provided and the Scheme Creditor will be asked to review and confirm the content of the Claim Form.

Some of the information is provided to assist Scheme Creditors in agreeing and reconciling the information the Companies hold in their own books and records.

Some of the information is required in accordance with the Estimation Guidelines. If Scheme Creditors do not provide all the information required by the Scheme Actuarial Adviser, this may prejudice the amount estimated for Notified Outstanding Liabilities and IBNR Liabilities under the Estimation Guidelines.

### 1. Quick launch bar

The quick launch bar provides details of the number of days until the Bar Date, the Scheme Creditor's current opt out status and hyperlinks to other areas of the Website. This bar can be collapsed and reopened as required.

### 2. Claim Form summary

This page summarises the Gross Liabilities of the Scheme Creditor based on the information provided by the Companies and subsequently amended by the Scheme Creditor. The value fields for Agrees, Notified Outstanding Liabilities, IBNR Liabilities and Unpaid Ledger Balances are hyperlinked to their respective screens. Where any of these hyperlinks are followed, the list presented will be filtered to contain only the items which contribute to that summary balance. It also provides an opt out filter to enable a review of the impact on claims values to be undertaken.

### 3. Submit Claim Form summary

In order to submit the Claim Form, the Scheme Creditor must collapse the quick launch bar and choose the "Submit All" option, where they will be requested to supply certain credentials including their login ID details. This is where Qualifying ILU Policyholders can elect to opt out of the crystallisation and payment provisions of the Amending Scheme with respect to all of their Qualifying ILU Policies.

### 4. Your Account Section

#### 4.1. Update address

This page provides the contact details held by the Companies for the Scheme Creditor and can be amended by the Scheme Creditor for any necessary changes. When the Scheme Creditor logs on to the Website, it will be presented with this page and asked to confirm or update the details shown.

#### 4.2. Download payment request

This page allows the Scheme Creditor to provide payment details to enable Scheme payments to be made by electronic funds transfer or cheque.

#### 4.3. Submission and opt out history

This page allows the Scheme Creditor to examine the status of its Claim Form submission(s).

#### 4.4. Scheme Creditor option settings

This page allows the Scheme Creditor to select whether to view the Claim Form data at a scheme share or group share level.

## 5. Contact us section

This section provides the Scheme Creditor with contact details for the Scheme Administrators and the Run-off Company. Details of the Scheme Creditor Website login ID should be provided with all correspondence.

## 6. Help section

This section provides access to help documentation to assist the Scheme Creditor in completing the Claim Form on the Website.

## 7. Inwards Claim Form menu

### 7.1. Claims

This page lists the claims as recorded in the Companies' books and records and allows the Scheme Creditor to confirm or amend those claims or add additional claims. New claims can be added either from here or from the Amend Policy screen. Clicking on the hyperlink from the claims closing reference will open individual claim details where the following fields are required to be checked, amended or completed:

Field name	Description
Company ID	The internal reference used by the Companies. This cannot be amended.
Company	The name of the company insured or reinsured by the policy. This cannot be amended.
Your reference	This will display any reference the Scheme Creditor has added to the policy.
Claim sequence number	This is a system generated number. This cannot be amended.
OIC Policy Reference	The internal reference number for the policy used by the Companies. This cannot be amended.
Claim closing reference	A unique internal reference number. This cannot be amended. All claims added by the Scheme Creditor will be assigned a reference of "Added".
Book name	Can be either: (1) OIC General Scheme and L&O 1969 & Post General Scheme; (2) L&O 1968 and prior; (3) L&O 1968 & Prior Constructed; (4) OIC/HUG Pool; (5) OIC/L&O Qualifying Scheme; (6) Commercial Run-Off; or (7) Personal Lines. This cannot be amended.
Currency	This is the original currency of the claim. This can only be updated for additional claims.
Major Loss	The major loss. This can only be updated for claims added by the Scheme Creditor, or for all claims with a Book Name of L&O 1968 & Prior, L&O 1968 & Prior Constructed or OIC/HUG Pool.
Loss Date	This shows the date of loss for the claim. This can only be updated for claims added by the Scheme Creditor.
Casualty Name	A short description of the casualty. This cannot be amended.
LPC Broker Reference	This can only be updated for claims added by the Scheme Creditor.
LPC Closing Reference	This can only be updated for claims added by the Scheme Creditor.
Agreeeds (Scheme)	The gross value of claims that have been agreed at the OIC scheme share level. Defined as "Established Liabilities" plus "Agreed Liabilities" at the Companies' scheme share level. Can only be amended if "Scheme Share" is selected on the Scheme Creditor Options Settings screen.
Agreeeds (Group)	The gross value of claims that have been agreed at the Companies' group share level. Defined as "Established Liabilities" plus "Agreed Liabilities" at the Companies' group share level. Can only be amended if "Group Share" is selected on the Scheme Creditor Options Settings screen.

Field name	Description
Outstanding Losses (Scheme)	Notified Outstanding Liabilities at the Companies' scheme share level. Can only be entered if "Scheme Share" is selected on the Scheme Creditor Options Settings screen.
Outstanding Losses (Group)	Notified Outstanding Liabilities at the Companies' group share level. Can only be entered if "Group Share" is selected on the Scheme Creditor Options Settings screen.
Description	This is a brief description of the claim. This can only be updated for claims added by the Scheme Creditor.

## 7.2. Policies

This page lists the Scheme Creditor's policies which are recorded within the Companies' systems and to which claims may apply. If a policy is not included on the list, click on the "Request Policy" button to request that it be loaded on to the Claim Form, whereupon a message will be sent to the Run-off Company.

Clicking on the hyperlink from "OIC Policy Ref" button will open the individual policy record, which includes the following fields to be checked, amended or completed:

Field name	Description
Company ID	The internal reference used by the Companies. This cannot be amended.
Company Name	The name of the company insured or reinsured by the policy. This cannot be amended. If it is incorrect please contact the Run-off Company to request that this field be updated.
Underwriting Year	The Companies' underwriting year. This cannot be amended. If it is incorrect please contact the Run-off Company to request that this field be altered.
Currency	Currency in which the policy limits are stated. All original currency limits and deductibles have been converted to US Dollars ("US\$").
Class	The class of business for the policy. This cannot be amended.
Stamp*	The underwriting stamp companies and their respective shares for the policy.
OIC Policy Ref	The internal reference number for the policy used by the Companies. This cannot be amended.
LPC Policy Ref	LPC policy reference. This cannot be amended.
Book Name	Can be either: (1) OIC General Scheme and L&O 1969 & Post General Scheme; (2) L&O 1968 and prior; (3) L&O 1968 & Prior Constructed; (4) OIC/HUG POOL; (5) OIC/L&O Qualifying Scheme; (6) Commercial Run-Off; or (7) Personal Lines. This field cannot be amended.
Transaction Entry Level	This is set to "Scheme Share" or "Group Scheme" depending on what was entered in the Scheme Creditor Option Settings.
Signed Line % (Scheme)*	The Companies' share of order at the Companies' scheme share level. This cannot be amended.
Signed Line % (Group)*	The Companies' share of order at the Companies' group share level. This cannot be amended.
Broker reference	Provided to assist in identification of policies (if available).
Your reference	Enter your reference. This field is displayed on the claims list to assist identification.

Field name	Description
Insured Name	The original insured name on the policy.
Lead Broker	The lead broker for the policy.
Inception Date	The coverage start date for the policy.
Expiry Date	The coverage end date for the policy.
Policy Type	Policy type description (Direct or Reinsurance).
Policy Transaction Entry Level	This is the transaction entry level for the policy and can be set to "Scheme Share" or "Group Share".
Market Policy Reference	Market Policy reference (if available).
Limit	The claim limit for the policy in US\$.
Deductible	The deductible or excess point for the policy in US\$.
Order %	The order percentage. For the OIC/HUG Pool Book Name, this relates to the OIC share of the HUG Pool.
Signed Line disputed	Check this box to indicate that the signed line is disputed. If this box is checked, once the policy is saved a message will be sent to the Run-off Company.
Costs Inclusive	Check "Yes" to indicate that defence costs are included in the limits. Leave blank if the defence costs are in addition to the stated limits.
Number of Reinstatements	The number of reinstatements available under the policy (99 = unlimited).
SIR (Self Insured Retention) and/or Primary Coverage	In some cases a direct or facultative policy will be subject to a self-insured retention or primary coverage deductible. The value of this deductible should be inserted.
Combined limits for BI and PD	Set to: "Bodily Injury", "Property Damage" or "Combined Limits" for asbestos claims.
Per Occurrence Basis	"Occurrence" indicating that the limits apply to claims on a per occurrence basis. "Aggregate" indicating that the limits apply only on an aggregate basis. "Both" indicating that the limits are the same for both types of claim.
Assigned	Indicates that the policy has been assigned to a third party. If assigned please check the field and enter the name of the Assignee. Once saved, a message to this effect will be sent to the Run-off Company.
I do not recognise this policy	Check this box if you do not recognise the policy. If this box is checked, a message will be sent to the Run-off Company.

*\*The Companies commenced underwriting marine and non-marine risks through a pooling arrangement that it managed on behalf of other participating pool members. The Companies would administer the underwriting stamp on behalf of other pool members or provide a proportional arrangement whereby an agreed amount of each involvement would be passed to the respective subscriber. For further information on the other participating members of this pooling arrangement that may be party to your claim, please contact the Run-off Company.*

### 7.3. Insured

This page lists those Insureds that appear on the policies provided on the Claim Form. The Scheme Creditor can access and update the Insured List screen and add, amend or disable an Insured. Disabling an Insured will not remove it from any existing policies but will remove it from the drop down list on the amend policy screen. The number of policies for the Insured is displayed as a hyperlink. This hyperlink can be followed to the Policy list screen where a list, filtered by policies for that Insured, is displayed.

The Scheme Creditor can provide details of any market settlements to which it has been a party and which it considers should be taken into account when agreeing its claim. The following fields require completion:

Field name	Description	Further information/supporting evidence required
Market Settlement Date	The date the settlement was agreed with the London market.	The Scheme Creditor should include details of its Website login ID with all correspondence. This information should be sent to the Run-off Company.
Settlement Type	Select a type from the list of settlement types. If the correct type is not shown please contact the Run-off Company to advise them of the correct type.	
Settlement Amount	The amount paid to the insured by the London market in US\$.	

#### 7.4. Ledger

This page lists those additional claims and transactions which have not been allocated to a specific policy. To include additional Ledger Items, the Scheme Creditor must use the "Add Ledger Item" option on the Ledger List screen. Only Ledger items added by the Scheme Creditor can be amended or deleted, using either the "Edit" or "Delete" icons on the Ledger List screen or from the Transaction Detail screen. Click on the ledger number hyperlink to view an individual ledger item. The following fields are required to be checked, amended or completed:

Field name	Description
Company ID	The internal reference used by the Companies. This cannot be amended.
Company Name	The name of the company to which the transaction relates. This cannot be amended.
Ledger Number	The internal transaction reference number. This cannot be amended.
Transaction Type	Shows the type of transaction which is either "Insurance" or "Other". This cannot be amended.
Signing Date	The date the closing/ledger item was processed by a bureau or the date that the Companies entered the closing/ledger item on to the system. If a ledger item is added, the date is set automatically to the input date and cannot be amended.
Posting Date	Date of posting to the Companies' ledger system. If a ledger item is added, the date is set automatically to the input date and cannot be amended.
Currency	This is the original currency of the transaction. This can only be updated for additional ledger transactions.
Lead Broker	The broker or intermediary who has processed the transaction. This can only be updated for additional ledger transactions.
Amount	Original currency amount. This can only be updated for ledger transactions added by the Scheme Creditor.
Transaction Description	Additional description of the transaction. This can only be updated for ledger transactions added by the Scheme Creditor.

#### 7.5. IBNR Liabilities

This page allows the Scheme Creditor to input summary values for IBNR Liabilities, split between Qualifying Liabilities and all other types of Scheme Liabilities. Policy details for all

IBNR Liabilities claimed must be present on the Claim Form. If they are not present please use the New Policy Request functionality or contact the Run-off Company.

## **8. Documents menu**

### **8.1. Claim Form documents**

#### **8.1.1. Claim Form data**

This page allows the Scheme Creditor to download the information that appears on the Claim Form (including Established Liabilities and Agreed Liabilities, and details of any Notified Outstanding Liabilities added by the Scheme Creditor) and save as Excel spreadsheets. These spreadsheets will reflect the current saved position on the Claim Form whether it has been submitted or not.

#### **8.1.2. Crystallisation statements**

When the Scheme Creditor's Claim Form has been accepted and processed, details of all Gross Liabilities and Net Liabilities that have been agreed between the Scheme Creditor and the Companies will be posted to this page to enable the Scheme Creditor to review and confirm agreement.

#### **8.1.3. Set-off values**

Where the Scheme Creditor has a two way relationship with the Companies, a Loss Report can be downloaded and saved as an Excel Spreadsheet. This provides details of the balances the Companies currently hold in respect of outwards reinsurance.

#### **8.1.4. General documents**

This page allows the Scheme Creditor to download any other general Claim Form documentation. For example, with respect to Qualifying ILU Policyholders only, a standard letter can be downloaded to be sent to the Run-off Company to confirm their decision to opt out by completing the Opt Out Form.

### **8.2. Scheme documents**

This page provides the Scheme Creditor with access to download various documents relevant to the Scheme, including the Original Scheme and Amending Scheme documents and the Amending Explanatory Statement.

### **8.3. Other documents**

This page provides the Scheme Creditor with access to download various other documents in relation to the Companies including press releases, market communications and annual reports.

## **9. Correspondence**

The Scheme Creditor should include details of its Website login ID with all correspondence. All further information/supporting evidence requested in the tables above should be sent to:

**Andrew Jones**

Armour Risk Management Limited  
20 Old Broad Street  
London  
EC2N 1DP  
United Kingdom

or **Robert Kingdom**

PricewaterhouseCoopers LLP  
7 More London Riverside  
London  
SE1 2RT  
United Kingdom

## **H: APPENDICES**

### **Curriculum vitae of the Scheme Actuarial Adviser**

#### **Mark Allen**

Mark joined PricewaterhouseCoopers LLP as a senior Property & Casualty ("P&C") actuary in 1987 and became a partner in October 1989. He is an actuarial partner specialising in run-off solutions in the Insurance Actuarial Division of PricewaterhouseCoopers LLP in the UK.

**Education:** BSc (Honours), University of London

**Qualification:** Fellow of the Institute and Faculty of Actuaries

#### **Membership of Groups/Associations:**

Member of ASTIN

Member of London Market Group

Member of General Insurance Study Group (GISG)

#### **Professional Experience:**

Mark completed his actuarial examinations in 1982 and was admitted as a fellow of the Institute and Faculty of Actuaries in 1984. He has spent over 30 years working in the P&C area of actuarial work. He was formerly employed by a major UK insurer where his responsibilities encompassed reserving, underwriting, planning, marketing and the design of management information systems.

Mark has led many assignments as a consultant, including:

- Advice on all aspects of reserving within numerous mergers and acquisitions situations, involving investigations into appropriate risk margins, bad debt reserves and claims handling provisions in run-off.
- Ground up analyses of asbestos filings for major US corporates exposed to inwards asbestos claims.
- Analyses of different trends in asbestos notification to underlying insureds.
- Production of ground up figures for asbestos and pollution notifications into underlying insureds, on a best estimate basis and according to various levels of confidence above a best estimate level.
- Commutation support to insurers in numerous deals with asbestos insureds, covering Australian, UK and US asbestos liabilities.
- Report to the UK regulator regarding the reserve adequacy of a major reinsurer bearing significant US asbestos claims.
- Expert witness in a major insurance litigation dealing with non-APH liabilities.
- Independent Expert in a number of Part VII transfers predominantly comprised of US asbestos liabilities.
- Scheme Actuary in a number of insolvencies of insurers and reinsurers focusing on US asbestos and pollution liabilities.
- Senior Actuarial Adviser in many solvent schemes of arrangement focusing on asbestos, pollution and non-APH liabilities.
- Mark has extensive contact with P&C actuaries in Europe and the US. He has been a member of various working parties and has co-authored a paper on Reinsurance To Close within Lloyd's. He speaks regularly at seminars and conferences on the issues surrounding asbestos in the UK, the US and around the world.

## **H: APPENDICES**

### **Curriculum vitae of the Scheme Adjudicator**

#### **Raji Bhagavatula FCAS MAAA**

Raji is a principal and consulting actuary in the New York office of Milliman, Inc. She joined the firm in 1990.

Raji advises clients in areas of mergers and acquisitions, pricing, reserving, strategic planning and general management. Raji is most recognised in her work in the evaluation of asbestos, pollution and other latent injury liabilities for both insurance companies and insureds.

Raji's client base includes large global insurance and reinsurance companies as well as Fortune 500 companies. She is the managing partner on many global reserving and due diligence assignments.

Raji is a frequent speaker at industry meetings. She has authored many papers and articles on reserving topics, including asbestos and pollution.

Raji has served on several Casualty Actuarial Society ("**CAS**") and American Academy of Actuaries ("**AAA**") committees including the AAA Mass Tort Subcommittee and the CAS Committee on Reserving which produced Actuarial Standard of Practice No. 36 "Statement of Actuarial Opinion Regarding Property/Casualty Loss and Loss Adjustment Expenses Reserves" and Actuarial Standard of Practice No. 43 "Property/Casualty Unpaid Claim Estimates".

**Education:** Master of Mathematics, Osmania University, India.

## **H: APPENDICES**

### **Curriculum vitae of the No Notice Adjudicator**

#### **Leo J. Jordan Sr – Certified Arbitrator**

Leo Jordan is an attorney licensed to practice in New York, Illinois, Maryland, Texas and the US Supreme Court. He is a former vice president and counsel for the State Farm Insurance Companies. His professional expertise is in insurance law and public policy. This includes:

- counselling corporate executives in complying with state and federal laws;
- managing litigation involving insurance coverage, extra-contractual and bad faith; and
- managing non-claim litigation involving agents, antitrust, civil rights and class actions.

He is a former chair of the TIPS Section of the ABA and also serves as an arbitrator for AAA and CPR Institute for Dispute Resolutions. He is also a volunteer arbitrator for the New York City Civil Courts System.

He has participated in 37 insurance and reinsurance arbitrations (of which 10 were as umpire), mediated 17 insurance and reinsurance cases and has handled over 800 cases during the last seven years. He was named Arbitrator of the Year by the Association of Arbitrators of the Civil Courts of the City of New York, 2005.

## **H: APPENDICES**

### **Curriculum vitae of the Vote Assessor**

#### **Colin J.W. Czapiewski FIA MAAA FPSA FSAI**

Colin Czapiewski began his career at the Prudential Assurance Company. In December 1985, he was appointed actuary at Terra Nova Insurance Company. In July 1993, he joined Lane Clark & Peacock LLP ("LCP"), consulting actuaries, as partner and Head of Insurance, where he built up the practice from scratch to become a significant player in the market. Colin spent several years on the remuneration committee of the partnership. He retired from LCP in April 2005 to work as a part time independent consultant.

Colin became a Fellow of the Institute of Actuaries in 1984. In 1990, he became a Member of the American Academy of Actuaries and in 1995 he was appointed an Honorary Member of the Polish Society of Actuaries. He was elected by members of his profession to the Council of the Institute of Actuaries in July 1995. Colin was the Institute representative on the General Insurance Board, which deals with non-life aspects of the actuarial profession, where he was responsible for Lloyd's issues during the eventful years of Equitas and the introduction of Lloyd's actuarial opinions. Currently, he sits on several committees within the profession including that of the non-life insurance section of the International Actuarial Association, known as ASTIN.

Colin has extensive actuarial experience in the specialised area of general insurance and risk management. He has written and presented a large number of papers around the world on a broad range of insurance related actuarial topics, including pricing, reserving, actuarial reporting, climate change issues, marine insurance, assessment of reinsurance security, expenses, latent claims (including asbestos and pollution), capital requirements, risk exposure, public and employers' liability, financial condition reporting, Solvency II, run off insurance and many other topics.

He has performed litigation support and arbitration for many insurance (and especially reinsurance) disputes in actuarial, underwriting and claims areas, where he is seen as an expert in the market. In the course of this, Colin has worked closely with lawyers and barristers. He is actively sought as an experienced expert witness.

For several years, Colin has been a non executive director of Beaufort Underwriting Agency Limited, at Lloyd's of London Insurance Market.

Colin has filled a variety of roles in a large number of both solvent and insolvent schemes of arrangement. Such roles not only include areas of actuarial work, but also independent scheme adjudicator, independent scheme vote assessor and chairman of scheme creditor meetings.

While a partner of LCP, Colin provided actuarial services to the Companies up until 2003 for which LCP were in receipt of fees. The principal area of support was in relation to providing reserve information for the purposes of the Companies' statutory accounts.

Colin has also acted as a scheme adjudicator on a number of insurance schemes of arrangement involving the crystallisation of creditors' claims for which partners in PricewaterhouseCoopers LLP acted as scheme administrators.

He has travelled extensively within Europe, the US, Canada, Australia and South Africa both for discussions with cedants, insurers and reinsurers, and to address seminars and conferences of actuaries and others in the insurance world.

Colin is a Liveryman of the Worshipful Company of Actuaries, and for 7 years he was Treasurer of the Actuaries Club.

## **H: APPENDICES**

### **Curriculum vitae of the Individual Claimant Representative**

#### **Charles E. Bates**

Charles E. Bates is a founding member of Bates White. Dr. Bates specialises in the application of statistics and computer modelling to large complex litigation matters requiring novel quantitative solutions. He has more than 20 years of experience and has testified in a variety of forums including the US Senate Judiciary Committee, Federal Bankruptcy Court, United States Tax Court, California Supreme Court and arbitration hearings.

Dr. Bates is a leading expert on methods of asbestos-liability forecasting. He has maintained an on-going research programme for the last 20 years on improving asbestos liability estimates. He is regularly retained on asbestos liability matters by insurance companies, corporations and financial creditors' committees in federal bankruptcy proceedings. Dr. Bates has published numerous papers on the trends and developments in the asbestos litigation environment and often speaks on these topics at national and international forums.

#### **Selected Experience:**

- Currently retained as an expert by Fortune 500 companies to produce asbestos expenditure estimates for annual and quarterly financial statements. Estimations aid clients with Sarbanes-Oxley and SEC reporting compliance.
- Testified before the Senate Judiciary Committee on the economic viability of the Trust Fund proposed under Section 852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005. Testimony clarified Bates White's independent analysis on the difference between current tort liabilities and potential entitlements created by the administrative no-fault trust fund that uses medical criteria for claims-filing eligibility.
- Led a team of economists that provided expert services in the historic antitrust case, *In re Vitamins Antitrust Litigation*, the largest US price-fixing case at that time. The case involved developing state-of-the-art economic models, damages analysis, client presentations, pre-trial discovery and industry research, as well as preparing evidence and testimony, depositions and a critique of opposing expert analyses and reports for a consortium of more than 150 companies.
- Served as testifying expert on behalf of Sealed Air in the fraudulent conveyance matter regarding the 1998 acquisition of Cryovac from W.R. Grace. Developed the then new standard of more detailed liability forecasting model and software in order to estimate the contemporaneously foreseeable asbestos liability of a defendant with more than US\$200 million in annual asbestos payments.
- Provided expert testimony on behalf of the taxpayers on the statistical basis and accuracy of shrinkage accruals in *Kroger v. Commissioner*. Citing Dr. Bates' testimony extensively, the court ruled in favour of Kroger.
- Testified in deposition on behalf of the unsecured creditors' committee in the ASARCO bankruptcy proceedings regarding the valuation of past and future asbestos-related personal injury claims.
- Testified in the Babcock & Wilcox bankruptcy confirmation hearing on behalf of the Insurers Joint Defense Group to address asbestos liability. Developed claims criteria evaluation framework to assess asbestos liability forecasts and trust distribution procedures.

#### **Education:**

PhD, Economics, University of Rochester  
MA, Economics, University of Rochester  
BA, Economics and Mathematics, University of California, San Diego

## H: APPENDICES

### List of Creditors' Committee members

Member:	Represented by:
<b>Beazer East, Inc</b>	<b>Chip McChesney</b> Three Rivers Management Inc. Suite 200, Manor Oak One 1910 Cochran Road Pittsburgh PA15220 USA
<b>Financial Services Compensation Scheme Manager</b>	<b>Daniel Heaton</b> Financial Services Compensation Scheme 10 <sup>th</sup> Floor Beaufort House 15 St Botolph Street London, EC3A 7QU United Kingdom
<b>International Policyholders Association</b>	<b>Pfizer Inc</b> c/o Bette Orr Gilbert LLP 1100 New York Avenue, Suite 700 N.W., Washington DC 20005-3987 USA and Sanford Berland 16 Wildwood Drive New York 11746 USA
<b>NNOFIC</b>	<b>Alex Arkema and Martin Rebisz</b> NNOFIC 60 London Wall London, EC2M 5TQ United Kingdom
<b>Resolute Management Limited (formerly Equitas Limited)</b>	<b>Rhydian Williams</b> London Underwriting Centre 6 <sup>th</sup> Floor, 3 Minster Court Mincing Lane London, EC3R 7DD United Kingdom
<b>The Dow Chemical Company</b>	<b>Greg Smith</b> The Dow Chemical Company 1320 Waldo Avenue, Suite 200 Midland Michigan 48642 USA

Member:	Represented by:
<b>Westinghouse Electric Corporation</b>	<b>David Strasser</b> Eckert Seamans Cherin & Mellott LLC 600 Grant Street, 44th Floor Pittsburgh Pennsylvania 15219-788 USA

---

## H: APPENDICES

### Documents available for inspection

1. Original Scheme and Explanatory Statement
2. 31 December 2013 annual reports and accounts
3. Support letters from members of the Creditors' Committee (other than the FSCS Scheme Manager and NNOFIC), the FSCS Scheme Manager, the ILU and NNOFIC
4. The Companies' Memorandum and Articles of Association
5. Amended and Restated Claims Payment and Loan Agreement
6. Premium and Expenses Payment Agreement
7. Deed of Amendment to Settlement Agreement
8. Letter of consent to act from Scheme Adjudicator
9. Letter of consent to act from No Notice Adjudicator
10. Letter of consent to act from Vote Assessor
11. Letter of consent to act from Individual Claimant Representative
12. Letter of the FCA confirming that it has no objection to the Amending Scheme
13. Letter of the PRA confirming that it has no objection to the Amending Scheme

Copies of the above documents will be available for inspection by Scheme Creditors after the date hereof until the close of the Amending Scheme Meetings at the following locations during ordinary business hours on weekdays (excluding Saturdays and public holidays).

---

**Robert Kingdom**

PricewaterhouseCoopers LLP  
7 More London Riverside  
London  
SE1 2RT  
United Kingdom

---

**Joe Bannister/Will Beck**

Hogan Lovells International LLP  
Atlantic House  
Holborn Viaduct  
London  
EC1A 2FG  
United Kingdom

---

**Howard Seife**

Chadbourn & Parke LLP  
30 Rockefeller Plaza  
New York  
NY 10112-0127  
USA

---

**Andrew Jones**

Armour Risk Management Limited  
20 Old Broad Street  
London EC2N 1DP  
United Kingdom

---

## H: APPENDICES

### Summary table of Amending Scheme changes

#### SECTION 1

##### Provisions of Original Scheme

1. The following table sets out how each clause of the Original Scheme will be amended by the Amending Scheme (if it comes into effect).
2. The table identifies for each clause of the Original Scheme:
  - (a) whether that clause is amended by the Amending Scheme;
  - (b) if so, which paragraphs of the Amending Scheme amend that clause; and
  - (c) where applicable, a summary of the changes made to that clause by the Amending Scheme.

Clause number in the Original Scheme	Amended by the Amending Scheme?	If yes, which paragraphs of the Amending Scheme amend that clause?	Summary of change
1 ( <i>Definitions</i> )	Yes	1 and Appendix 1	Appendix 1 of the Amending Scheme contains a list of all defined terms used in the Amending Scheme. Terms and expressions defined in the Original Scheme retain their same meaning, unless expressly defined or modified by Appendix 1 of the Amending Scheme.
2 ( <i>Interpretation</i> )	Yes	1.4 and 2	Paragraphs 1.4 and 2 of the Amending Scheme update the <i>Interpretation</i> clause of the Original Scheme. They make it clear that in the event of any inconsistency between the terms of the Original Scheme and the terms of the Amending Scheme, the terms of the Amending Scheme prevail.
3 ( <i>Details of the Companies</i> )	No	N/A	N/A

Clause number in the Original Scheme	Amended by the Amending Scheme?	If yes, which paragraphs of the Amending Scheme amend that clause?	Summary of change
4 ( <i>The purposes of the Scheme</i> ) & 6.1 ( <i>Application of the Scheme: Computation of Established Liabilities</i> )	Yes	6	Scheme purposes language updated by paragraph 6 of the Amending Scheme to reflect the crystallisation nature of the Amending Scheme.
5 ( <i>Participation in the Scheme</i> )	Yes	3	Updated to reflect relevant parties' participation in the Amending Scheme.
6.2 ( <i>Application of the Scheme: Computation of Established Liabilities</i> )	No	N/A	N/A
6.3 & 6.4 ( <i>Application of the Scheme: Computation of Established Liabilities</i> )	Yes	14-21	Process for agreement and computation of Established Liabilities amended by crystallisation provisions in paragraphs 14 to 21 of the Amending Scheme.
7 ( <i>Condition Precedent and Effective Date</i> )	Yes	7	Updated to reflect conditions precedent for Amending Scheme to become effective.
8 ( <i>Modification of the Scheme</i> )	Yes	5	Updated to reflect Amending Scheme process under Part 26 of the Companies Act 2006.
9 ( <i>The Memoranda and Articles of Association of the Companies</i> )	No	N/A	N/A

Clause number in the Original Scheme	Amended by the Amending Scheme?	If yes, which paragraphs of the Amending Scheme amend that clause?	Summary of change
10 ( <i>Stay of Proceedings</i> ) & 11 ( <i>Enforcement of Scheme Liabilities</i> )	Yes	15.1 to 15.3, 16 and 54.1	Updated to reflect that, other than in certain specified circumstances in respect of (i) Opt Out Qualifying ILU Policyholders, (ii) Pre-1969 L&O Policyholders, (iii) Protected Policyholders and Potentially Protected Policyholders and (iv) Qualifying ILU Policyholders (who are not individuals) and individuals (whether or not those individuals are Qualifying ILU Policyholders) who are allowed by the No Notice Adjudicator to submit claims after the Bar Date, no Scheme Creditor may commence any Proceedings against the Companies after the Bar Date.
12 ( <i>Effect of acts prohibited by clause 11 and Scheme Creditors receiving benefits after the Effective Date</i> )	No	N/A	N/A
13 ( <i>Letters of Credit and Security</i> )	No	N/A	N/A
14 ( <i>Mutual Liabilities and Set-Off</i> )	Yes	14 to 21 (including, in particular, 17.1(c), 17.3 to 17.15), 37, 42, 43 to 45 and 50	Superseded to reflect how Offset Amounts (i.e. amounts owed by the Scheme Creditor to the Companies) will be calculated for the purposes of determining a Scheme Creditor's Scheme Liabilities under the Amending Scheme.  Provisions in clause 14 of the Original Scheme will continue to apply in respect of determining the Established Liabilities of any (i) Opt Out Qualifying ILU Policyholders and (ii) Pre-1969 L&O Policyholders (whose claims revert to run-off).
15 ( <i>Current Policies</i> )	No	N/A	N/A
16 ( <i>Payment of Preferential Debts</i> )	No	N/A	N/A

Clause number in the Original Scheme	Amended by the Amending Scheme?	If yes, which paragraphs of the Amending Scheme amend that clause?	Summary of change
17 ( <i>Payment of Qualifying ILU Policyholders</i> )	Yes	21 (including, in particular, 21.4 to 21.10) – in respect of Qualifying ILU Policyholders (who are not Opt Out Qualifying ILU Policyholders) 41 (in respect of Opt Out Qualifying ILU Policyholders)	Updated to set out how Qualifying ILU Policyholders (including Opt Out Qualifying ILU Policyholders) will receive payment of their claims under the Amending Scheme.
18 ( <i>The Companies and NNOFIC</i> )	No	N/A	N/A
19 ( <i>Determination of Scheme Liabilities</i> )	Yes	14-21	Process for determining Scheme Liabilities updated to reflect crystallisation process under the Amending Scheme.
20 ( <i>Payments under the Scheme</i> )	No	N/A	N/A
21 ( <i>Policyholders', Qualifying ILU Policyholders' and Dual Scheme Creditors' rights against the Companies during the Scheme</i> )	No	N/A	N/A
22 ( <i>Claims by either Company against the other during the Scheme</i> )	No	N/A	N/A

Clause number in the Original Scheme	Amended by the Amending Scheme?	If yes, which paragraphs of the Amending Scheme amend that clause?	Summary of change
23 ( <i>Computation of the Payment Percentage and payments to Scheme Creditors</i> )	Yes	21.2, 41 and 42.4	Updated to reflect how the Payment Percentage and the Opt Out Payment Percentage will be calculated under the Amending Scheme.
24 ( <i>Mechanics of payments to Scheme Creditors</i> )	Yes	22 and 23	Updated to cover the treatment of uncashed cheques and payments to agents.
25 ( <i>Interest</i> )	No	N/A	N/A
26 to 28 ( <i>The Policyholders Protection Board</i> )	Yes	34 to 36	Updated to reflect that the FSCS Scheme Manager will assume responsibility for making payments to Scheme Creditors with Protected Liabilities.
29 ( <i>Restrictions on the Companies and the Directors</i> )	No (save in respect of clauses 29.3(n) and 29.4)	9	Clauses 29.3(n) and 29.4 of the Original Scheme updated to reflect the process by which the Companies may enter into contractual arrangements with a Scheme Creditor under which all or part of the Companies' total Scheme Liabilities to that Scheme Creditor are discharged.
30 to 35 ( <i>The Scheme Administrators</i> )	No	N/A	N/A
36 to 46 ( <i>The Creditors' Committee</i> )	No	N/A	N/A
47 to 52 ( <i>The Scheme Creditors</i> )	No	N/A	N/A
53 ( <i>Termination of the Scheme</i> )	Yes	32 and 33	Updated to reflect the process by which the Scheme may be terminated.
54 ( <i>Special Meetings</i> )	Yes	Amending Scheme as a whole	Superseded by Amending Scheme provisions.

Clause number in the Original Scheme	Amended by the Amending Scheme?	If yes, which paragraphs of the Amending Scheme amend that clause?	Summary of change
55 ( <i>Notice of termination of the Scheme</i> )	Yes	32.3	Updated to reflect the process by which the termination of the Scheme will be advertised.
56 ( <i>Indemnity</i> )	Yes	53	Indemnity provisions updated to include the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative.
57 ( <i>Assignability</i> )	Yes	50	New provision in paragraph 50 dealing with the payments in respect of assigned claims.
58 ( <i>Costs of the Scheme</i> )	Yes	51	Updated to reflect the treatment of costs incurred by the Companies and the Scheme Administrators in respect of the Amending Scheme.
59 ( <i>Notices</i> )	Yes	49	Notice provisions of Original Scheme superseded by provisions of paragraph 49 of the Amending Scheme which, among other things, permit notices to be sent by electronic means.
60 ( <i>Governing law and jurisdiction</i> )	Yes	54	Updated to reflect governing law and jurisdiction of the Amending Scheme.
Schedule 1 ( <i>Draft Special Resolution</i> )	Yes	Amending Scheme as a whole	Superseded by Amending Scheme provisions.
Schedule 2 ( <i>Procedure for the appointment of the initial Creditors' Committee</i> )	No	N/A	N/A

## SECTION 2

### Provisions of Amending Scheme

The following table sets out, in summary form, the further changes made to the Original Scheme by the Amending Scheme (in addition to those highlighted in the table in section 1 above).

Paragraph number in the Amending Scheme	Summary of change
4 ( <i>Incorporation of the Amending Scheme</i> )	Sets out how the Original Scheme is amended by the Amending Scheme.
8 ( <i>Time periods and deadlines</i> )	Sets out how time periods and deadlines under the Amending Scheme are calculated.
10 ( <i>Notice of New Effective Date, Bar Date and distribution of Claim Forms</i> )	Sets out how the process for: (i) advertising that the Amending Scheme has become effective and the Bar Date; and (ii) the distribution of the Claim Forms.
11 ( <i>Notification of claims and cessation of payments under the Original Scheme</i> )	Sets out: (i) the cut-off date by when claims will no longer be reviewed under the terms of the Original Scheme; and (ii) the processes by which Scheme Creditors can notify the Companies of their claims other than by means of a Claim Form.
12 ( <i>Valuation of claims</i> )	Sets out how claims will be valued under the Amending Scheme.
13 ( <i>Provision of Claim Forms</i> )	Sets out the process by which the Claim Forms will be sent to Scheme Creditors.
24 ( <i>Qualification and appointment of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative</i> )	Sets out the qualifications and appointment criteria for each of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative.
25 ( <i>Resignation and removal of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative</i> )	Sets out how each of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative may resign, or otherwise be removed, from their respective positions.
26 ( <i>General powers, rights, duties and functions of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative</i> )	Sets out the general powers, rights, duties and functions of each of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative.
27 ( <i>Conflicts of interest</i> )	Sets out the process for dealing with any actual or potential conflicts of interest in relation to the work undertaken by

Paragraph number in the Amending Scheme	Summary of change
	each of the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative under the Amending Scheme.
28 ( <i>Specific powers, rights, duties and functions of the Scheme Actuarial Adviser</i> )	Sets out the role of the Scheme Actuarial Adviser under the Amending Scheme.
29 ( <i>Specific powers, rights, duties and functions of the Scheme Adjudicator</i> )	Sets out the role of the Scheme Adjudicator under the Amending Scheme.
30 ( <i>Specific powers, rights, duties and functions of the No Notice Adjudicator</i> )	Sets out the role of the No Notice Adjudicator under the Amending Scheme.
31 ( <i>Specific powers, rights, duties and functions of the Individual Claimant Representative</i> )	Sets out the role of the Individual Claimant Representative under the Amending Scheme.
37 ( <i>Opt out</i> )	Sets out the process by which Qualifying ILU Policyholders may opt out of the crystallisation and payment provisions of the Amending Scheme.
38 ( <i>Calculation of Estimated Qualifying Value and Estimated Opt Out Value</i> )	Sets out the process for calculating the Estimated Qualifying Value and the Estimated Opt Out Value. The Estimated Qualifying Value and the Estimated Opt Out Value are the two key determinants of the Opt Out Proportion Figure (the figure used to determine whether the Amending Scheme should revert to run off based on the proportion by value of Qualifying ILU Policyholders who opt out of the crystallisation and payment provisions of the Amending Scheme).
39 ( <i>Review of Opt Out Proportion Figure</i> )	Sets out the process for calculating the Opt Out Proportion Figure (the figure used to determine whether the Amending Scheme should revert to run off based on the proportion by value of Qualifying ILU Policyholders who opt out of the crystallisation and payment provisions of the Amending Scheme).
40 ( <i>Application of the Scheme Assets in respect of Opt Out Qualifying ILU Policyholders</i> )	Sets out how assets will be set aside by the Companies for the purposes of meeting the claims of Opt Out Qualifying ILU Policyholders.
42 ( <i>Pre-1969 L&amp;O Policyholders</i> )	Sets out the circumstances in which the Pre-1969 L&O Claims of Pre-1969 L&O Policyholders may revert to run-off.
43 ( <i>The Bar Date</i> )	Sets out the certain very limited circumstances in which Qualifying ILU Policyholders (who are not individuals) and individuals (whether or not those individuals are Qualifying ILU Policyholders) may bring claims after the Bar Date.
44 ( <i>Qualifying ILU Policyholder claims after</i> )	Sets out the process for the payment of claims which are brought by Qualifying ILU Policyholders after the Bar Date

Paragraph number in the Amending Scheme	Summary of change
<i>the Bar Date)</i>	and which are agreed by the Companies.
<i>45 (Claims from individuals after the Bar Date)</i>	Sets out the process for the payment of claims which are brought by individuals after the Bar Date and which are agreed by the Companies.
<i>46 (Scheme Creditors' duty to provide assistance)</i>	Sets out duty on Scheme Creditors to assist the Companies, the Scheme Administrators, the Scheme Actuarial Adviser, the Scheme Adjudicator and/or the No Notice Adjudicator in respect of the Amending Scheme.
<i>47 (Blocked Monies)</i>	Sets out circumstances in which the Companies may be prevented from making Scheme payments to Scheme Creditors (for example, where such payments would breach international sanctions).
<i>48 (Releases)</i>	Sets out the release of any claims against the Relevant Parties upon termination of the Scheme.
<i>52 (Rights of third parties)</i>	Sets out that no third parties shall have any rights under the Amending Scheme by virtue of the operation of The Contracts (Rights of Third Parties) Act 1999.
<i>Appendix 2 (Estimation Guidelines)</i>	Sets out the guidelines to be applied by the Scheme Administrators, the Scheme Actuarial Adviser and the Scheme Creditors for valuing claims under the Amending Scheme.
<i>Appendix 3 (Supporting Evidence)</i>	Sets out the types of Supporting Information that should be provided by Scheme Creditors in support of their claims.
<i>Appendix 4 (Calculation of Estimated Qualifying Value and Estimated Opt Out Value)</i>	Sets out in detail the basis on which the Estimated Qualifying Value and the Estimated Opt Out Value are calculated.
<i>Appendix 5 (Costs agreement)</i>	Sets out the basis on which the No Notice Adjudicator's costs may be paid by those Qualifying ILU Policyholders seeking to bring claims after the Bar Date.
<i>Appendix 6 (Deed of adherence)</i>	Sets out the basis on which NNOFIC may be succeeded as a participant in the Amending Scheme.

**PART II**  
**THE AMENDING SCHEME**

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

between

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

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

and their respective

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

## Table of contents

<b>Section 1: Definitions and interpretation</b>	<b>130</b>
<b>Section 2: Preliminary</b>	<b>131</b>
<b>Section 3: General provisions</b>	<b>133</b>
<b>Section 4: Determination of claims</b>	<b>135</b>
<b>Section 5: Payments under the Amending Scheme</b>	<b>151</b>
<b>Section 6: The Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative</b>	<b>155</b>
<b>Section 7: Termination of the Scheme</b>	<b>160</b>
<b>Section 8: The Financial Services Compensation Scheme</b>	<b>162</b>
<b>Section 9: Opt out</b>	<b>167</b>
<b>Section 10: Pre-1969 L&amp;O Policyholders</b>	<b>173</b>
<b>Section 11: The Bar Date</b>	<b>175</b>
<b>Section 12: Miscellaneous provisions</b>	<b>181</b>
<b>Appendices</b>	<b>186</b>

## **Section 1: Definitions and interpretation**

### **1. Definitions**

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

### **2. Interpretation**

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

## **Section 2: Preliminary**

### **3. Participation in the Scheme**

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

### **4. Incorporation of the Amending Scheme**

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

### **5. Modification of the Amending Scheme**

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

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

## **Section 3: General provisions**

### **6. Purpose of the Amending Scheme**

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

### **7. Conditions precedent and the New Effective Date**

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

### **8. Time periods and deadlines**

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

### **9. Claims agreement outside the Scheme**

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

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

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

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

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

## **Section 4: Determination of claims**

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

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

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

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

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

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

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

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

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

## **12. Valuation of claims**

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

### **13. Provision of Claim Forms**

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

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

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

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

(b) those IBNR Liabilities which arise under any:

(i) Qualifying ILU Policy(ies); and

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

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

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

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

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

## **15. Consequences of failure to submit a Claim Form**

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

## **16. Enforcement of claims**

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

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

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

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

## **17. Review and agreement of Net Liabilities**

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

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

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

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

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

## **18. The Dispute Resolution Procedure**

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

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

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

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

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

## **19. Estimation Guidelines**

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

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

## **20. Notification of Scheme Creditors' Net Liabilities**

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

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

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

## **Section 5: Payments under the Amending Scheme**

### **21. Payments to Scheme Creditors in respect of Net Liabilities**

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

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

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

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

- (c) clause 18.4 of the Original Scheme shall not apply in relation to monies borrowed by either Company under the CPLA to enable that Company to discharge a particular Qualifying Established Liability to an Opt Out Qualifying ILU Policyholder, and accordingly, while the relevant Company will incur an Established Liability to NNOFIC in respect of such monies borrowed, NNOFIC shall not be entitled to repayment of any such monies borrowed under clause 18.4 of the Original Scheme, except in respect of any monies paid to NNOFIC pursuant to paragraph 41.5; and
- (d) clauses 18.3 and 18.4 of the Original Scheme shall continue to apply with respect to Qualifying Established Liabilities incurred before the New Effective Date and Agreed Liabilities that become Qualifying Established Liabilities on or after the New Effective Date.

## **22. Uncashed cheques**

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

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

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

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

- (a) not presented by its payee within six months of the date of issue or is lost or returned to the Companies or the Scheme Administrators; and
  - (b) a replacement cheque is not issued to the relevant payee pursuant to paragraph 22.1(b),
- the funds represented by that cheque shall be dealt with in accordance with paragraph 22.5.

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

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

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

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

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

## **23. Treatment of agents**

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

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

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

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

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

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

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

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

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

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

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

## **27. Conflicts of interest**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Section 7: Termination of the Scheme

### 32. Termination of the Scheme

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

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

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

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

## **Section 8: The Financial Services Compensation Scheme**

### **34. Calculation and payment of the Estimated Protected Value**

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

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

### **35. Payment of Protected Liabilities**

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

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

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

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

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

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

### **36. Assignment to the FSCS Scheme Manager**

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

## Section 9: Opt out

### 37. Opt out

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

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

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

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

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

### **39. Review of Opt Out Proportion Figure**

- 39.1. Following the calculation of the Estimated Qualifying Value and the Estimated Opt Out Value pursuant to paragraph 38 and, in any event within 90 days of the Bar Date, the Scheme Administrators shall, with the assistance of the Scheme Actuarial Adviser, calculate the Opt Out Proportion Figure.
- 39.2. Within 90 days of the Bar Date, the Scheme Administrators shall send a written statement to NNOFIC and the ILU, notifying them of the Opt Out Proportion Figure and inviting them to agree such Opt Out Proportion Figure within 30 days of the date of that statement. The statement shall set out details of the valuation methodology used and rationale for the calculation of the Opt Out Proportion Figure. The Scheme Administrators shall send together with such statement any other supporting information and background calculations as NNOFIC or the ILU may reasonably request.
- 39.3. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), NNOFIC and the ILU each either:
  - (a) gives notice to the Scheme Administrators that they agree with that statement; or
  - (b) does not give any notice to the Scheme Administrators under paragraph 39.4,the amount of the Opt Out Proportion Figure set out in the statement (as sent to NNOFIC and the ILU under paragraph 39.2) shall thereupon be deemed to have been agreed between, and become binding on, the Companies, the Scheme Administrators, NNOFIC and the ILU.
- 39.4. If within 30 days of the date of the Scheme Administrators' statement (or such longer period as the Scheme Administrators, NNOFIC and the ILU may agree), either NNOFIC or the ILU gives notice to the Scheme Administrators that it does not agree with the amount of the Opt Out Proportion Figure set out in that statement, then, within 10 days of receipt by the Scheme Administrators of that notice from NNOFIC or the ILU (as the case may be), a further notice shall be sent by the Scheme Administrators to the Scheme Adjudicator stating that the amount of the Opt Out Proportion Figure is being referred to the Scheme Adjudicator for adjudication in accordance with paragraph 39.5.
- 39.5. Subject to paragraph 8.1, the Scheme Adjudicator shall, within 30 days of the notice sent to the Scheme Adjudicator referred to in paragraph 39.4, issue to the Scheme Administrators, NNOFIC and the ILU a certificate stating his determination with respect to the amount of the Opt Out Proportion Figure referred to him, together with such explanation of, or reasons for, his determination which he, at his sole discretion, considers is appropriate.
- 39.6. The Scheme Adjudicator's determination in respect of the Opt Out Proportion Figure referred to him under paragraph 39.4 shall, insofar as the law allows, be final and binding on the Companies, the Scheme Administrators, NNOFIC and the ILU except in case of arithmetical error or irrationality. For the purposes of paragraphs 39.5 and 39.6 only, a determination made by the Scheme Adjudicator pursuant to paragraph 39.5 shall be deemed to be irrational if and only if the determination is one which is so unreasonable that no reasonable adjudicator, of similar standing, qualification and experience to the Scheme Adjudicator, would have made that same determination. If the Scheme Adjudicator's

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

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

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

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

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

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

#### **41. Payment to Opt Out Qualifying ILU Policyholders**

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

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

## Section 10: Pre-1969 L&O Policyholders

### 42. Pre-1969 L&O Policyholders

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

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

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

## Section 11: The Bar Date

### 43. The Bar Date

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

(a) a Qualifying ILU Policyholder who:

(i) is not an individual;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43.2. Any Scheme Creditor who is entitled to and wishes to submit a claim to be assessed by the No Notice Adjudicator under paragraph 43.1 must send a written notice to the Companies at their registered office setting out details of that claim. The Scheme Administrators shall, within 30 days of receipt of that notice, send a copy of that notice to the No Notice Adjudicator.

43.3. In addition to those requirements set out in paragraph 43.1, the No Notice Adjudicator shall not allow any claim submitted by a Scheme Creditor under paragraph 43.2 to be agreed or determined (as the case may be) in accordance with the terms of the Amending Scheme unless:

(a) where the Scheme Creditor is a Qualifying ILU Policyholder:

(i) that Qualifying ILU Policyholder has delivered to the No Notice Adjudicator one or more policy documents in its name written by either or both of the Companies and signed and issued by the ILU which clearly demonstrate, to the satisfaction of the No Notice Adjudicator, that Qualifying ILU Policyholder's status as a Qualifying ILU Policyholder; and

(ii) that Qualifying ILU Policyholder has entered into an agreement with the No Notice Adjudicator in the form set out in Appendix 5 (*Costs agreement*) or in a form substantially similar thereto; and

(b) in all cases to which paragraph 43.1 applies, the Scheme Creditor has submitted all such other evidence as the No Notice Adjudicator may from time to time require in order to establish whether (or the extent to which) that Scheme Creditor is entitled to make a claim against the Companies or either of them under the Scheme.

43.4. Any claim made pursuant to paragraph 43.1 shall be subject to the provisions of paragraphs 34 to 36 where such claim is or may be made in respect of a Potentially Protected Liability.

#### **44. Qualifying ILU Policyholder claims after the Bar Date**

44.1. The amount of the Post Bar Date Provision (set aside and retained in the Companies pursuant to paragraph 40.1(a) to pay the Payment Percentage in respect of any Net Liabilities of Qualifying ILU Policyholders to which paragraph 44.7 applies) shall be calculated by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, by:

(a) multiplying the 2007 Provision Figure by a factor based on the change in estimated reserve amounts for Qualifying ILU Policyholders for relevant claim types between 31 December 2007 and the Valuation Date (after any adjustments made by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, to take account of any new information in respect of those IBNR Liabilities received by the Scheme Administrators between the Valuation Date and the Bar Date);

(b) discounting the amount resulting from the calculation referred to in paragraph 44.1(a) for the time value of money by applying a Risk Free Rate to an appropriate pattern of future claims payments, as at the Bar Date, equivalent to the discounting calculations in paragraph 17.16; and

(c) adding such amount as the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, consider reasonable to enable the Companies to meet any present unpaid or future costs and expenses (discounted for the time value of money) incurred or to be incurred by the Companies in respect of Qualifying ILU Policyholders as referred to in paragraph 43.1(a), including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator in discharging their respective rights, obligations, duties and functions in relation thereto (together the "**Post Bar Date Expenses**").

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

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

44.9. In the event that:

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

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

44.10. The Companies and the Scheme Administrators shall not make any payments out of the Post Bar Date Provision other than for the purposes of paying:

- (a) Qualifying ILU Policyholders of the type referred to in paragraph 43.1(a) in accordance with paragraph 44.7, which may only be paid out of amounts set aside for that purpose under paragraphs 44.1(a) and 44.1(b);
- (b) the Post Bar Date Expenses, which may only be paid out of amounts set aside for that purpose under paragraph 44.1(c); or
- (c) NNOFIC pursuant to paragraph 44.9.

## **45. Claims from individuals after the Bar Date**

45.1. The amount of the Post Bar Date Individual Provision set aside and retained in the Companies pursuant to paragraph 40.1(b) shall be calculated by the Scheme Administrators, with the assistance of the Scheme Actuarial Adviser, on the basis that it should be a fair and equitable estimate (taking into account the interests of both No Notice Individual Creditors and all other Scheme Creditors) of the amount that the Companies will require to pay the Payment Percentage in respect of any Net Liabilities of No Notice Individual Creditors to which paragraph 45.8 applies, together with the costs of the Companies in dealing with such claims (including the relevant costs of the No Notice Adjudicator).

45.2. Within 360 days of the Bar Date, the Scheme Administrators shall send a written statement to each of NNOFIC and the Individual Claimant Representative (together with such supporting information and background calculations as either or both of NNOFIC and the Individual Claimant Representative may reasonably request), notifying them of the amount proposed for the Post Bar Date Individual Provision in accordance with paragraph 45.1 and inviting NNOFIC and the Individual Claimant Representative to agree this amount within 30 days of the date of that statement.

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

- (a) gives notice to the Scheme Administrators that it agrees with that statement; or
- (b) does not give any such notice at all to the Scheme Administrators,

the amount set out in the statement (as sent to NNOFIC and the Individual Claimant Representative under paragraph 45.2) shall thereupon be deemed to have been agreed

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

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

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

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

- 45.11. In the event that:

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

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

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

- (a) No Notice Individual Creditors of the type referred to in paragraph 43.1(b) in accordance with paragraph 45.8;
- (b) the costs and expenses of the Companies (including, but not limited to, the fees, costs and expenses of the Scheme Administrators and the No Notice Adjudicator) incurred in connection with the claims of such No Notice Individual Creditors; or
- (c) Scheme Creditors pursuant to paragraph 45.11.

## **Section 12: Miscellaneous provisions**

### **46. Scheme Creditors' duty to provide assistance**

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

### **47. Blocked Monies**

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

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

## **48. Releases**

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

48.2. Paragraph 48.1 shall survive any termination of the Scheme pursuant to paragraph 32.

## **49. Notices and electronic communications**

49.1. Any reference in the Scheme to the Scheme Administrators or the Scheme Adjudicator sending or giving a document shall, unless the contrary is stated and subject to paragraph 49.3, be construed as including the Scheme Administrators or the Scheme Adjudicator (as the case may be) sending such document or information Electronically or, in the case of the Scheme Administrators only, making the same available for accessing on, or downloading from, the Website.

49.2. Any reference in the Scheme to a Scheme Creditor or the Scheme Adjudicator sending or giving a document to the Scheme Administrators shall, unless the contrary is stated and subject to paragraph 49.3, be construed as including the Scheme Creditor or the Scheme Adjudicator sending such document or information Electronically on the Website or to the email address provided by the Scheme Administrators, and references in the Scheme to Post and "address" shall be construed accordingly.

49.3. If a Scheme Creditor (other than NNOFIC) does not want to communicate or receive communications Electronically, that Scheme Creditor must either sign and return to the Run-off Company the pre-addressed Postal Service Request form enclosed with the notice given under paragraph 10.3, or telephone or otherwise contact the Run-off Company to provide them with the information that would otherwise be required on the Postal Service Request form. The Run-off Company shall write to that Scheme Creditor, confirming that it has received the Postal Service Request form and that the Scheme Creditor will receive subsequent communications, including a Claim Form, by Post. Thereafter, no communications will be sent Electronically to that Scheme Creditor unless and until it gives notice (Electronically or by Post to the Run-off Company) withdrawing such Postal Service Request. The Run-off Company shall notify the Scheme Adjudicator of any request by a Scheme Creditor to receive communications by Post as soon as reasonably practicable following receipt of that Scheme Creditor's Postal Service Request form.

49.4. Notwithstanding any provision in the Original Scheme, and save as otherwise provided in the Amending Scheme and subject to paragraph 49.3, notices may be given either:

- (a) Electronically;
- (b) by Post; or
- (c) by fax.

49.5. Notices to the current Scheme Administrators shall be sent:

- (a) Electronically to [oic.run-offlimited@uk.pwc.com](mailto:oic.run-offlimited@uk.pwc.com);

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

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

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

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

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

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

## **50. Payment in respect of Assignments**

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

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

## **51. Costs of the Amending Scheme**

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

## **52. Rights of third parties**

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

## **53. Indemnity**

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

- 53.2. Subject to the Companies Act and save as provided for in paragraph 53.1, no person mentioned in paragraph 53.1 shall be liable for any loss unless such loss is attributable to his own negligence, wilful default, breach of duty, breach of trust, fraud or dishonesty.
- 53.3. Subject to the Companies Act, the Companies shall indemnify the persons mentioned in paragraph 53.1 against any Liability incurred by them in defending any proceedings, whether civil or criminal, in which judgment is given in their favour or which are discontinued before judgment is given or in which they are acquitted. The Companies shall also indemnify such persons in connection with any application in which relief is granted to them by the Court from any Liability for negligence, wilful default, breach of duty or breach of trust including without prejudice to the generality of the foregoing, the matters referred to in paragraph 53.2.

## **54. Governing law and jurisdiction**

- 54.1. The Scheme shall be governed by and construed in accordance with English law and all the parties to it agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Amending Explanatory Statement (dated 8 October 2014 and its appendices explaining the effect of the Scheme pursuant to section 897 of the Companies Act) or any provision of the Scheme (including without limitation this paragraph), or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme and for such purposes all the parties to the Scheme irrevocably submit to the exclusive jurisdiction of the Court. In relation to an Insurance Contract, nothing in paragraph 54.1 shall affect or alter or be taken to have affected or altered the proper law of the Insurance Contract or the jurisdiction of any court of competent jurisdiction selected by the parties to settle any dispute or hear and determine any suit, action or proceeding arising out of such Insurance Contract.
- 54.2. Any dispute in relation to the construction or interpretation of this paragraph 54 shall be referred to the Court which shall also have exclusive jurisdiction in relation to these matters.

Dated 8 October 2014

## Appendices

<b>Appendix 1 – Definitions</b>	<b>187</b>
<b>Appendix 2 – Estimation Guidelines</b>	<b>200</b>
<b>Appendix 3 – Supporting Evidence</b>	<b>214</b>
<b>Appendix 4 – Calculation of Estimated Qualifying Value and Estimated Opt Out Value</b>	<b>225</b>
<b>Appendix 5 – Costs agreement</b>	<b>228</b>
<b>Appendix 6 – Deed of adherence</b>	<b>230</b>

## Appendix 1 – Definitions

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

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

<b>"Business Day"</b>	any day (other than a Saturday, Sunday or UK public holiday) on which banks in the City of London are generally open for business;
<b>"CDDA"</b>	the Company Directors Disqualification Act 1986;
<b>"Chapter 15 Order"</b>	an order issued by the United States Bankruptcy Court that enforces the Amending Scheme in the United States of America;
<b>"Claim Form"</b>	the personalised claim form made available on the Website by the Scheme Administrators for each Scheme Creditor known by the Companies in accordance with paragraph 13.1, or otherwise made available in accordance with the Amending Scheme, which shall be in the form set out in draft in section H of the Amending Explanatory Statement or in a form substantially similar thereto;
<b>"Claim Form Guidance Notes"</b>	those guidance notes which accompany the Claim Form when it is made available on the Website by the Scheme Administrators for each known Scheme Creditor in accordance with paragraph 13.1, or otherwise made available in accordance with the Amending Scheme. The Claim Form Guidance Notes shall be in the form set out in draft in section H of the Amending Explanatory Statement or in a form substantially similar thereto;
<b>"Co-Insurer"</b>	any insurer, reinsurer or retrocessionaire (apart from either or both of the Companies);
<b>"Committee Member"</b>	has the meaning given to it in clause 36.2 of the Original Scheme;
<b>"Common Liability"</b>	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;
<b>"Commutated Liability"</b>	a Scheme Liability discharged by payment of consideration or by any other agreement in accordance with paragraph 9.1;
<b>"Companies"</b>	L&O and Orion, L&O or Orion individually being referred to as "the", or "a", "Company" or "the relevant Company";
<b>"Companies Act"</b>	the Companies Act 2006;
<b>"Compensatory Payment"</b>	has the meaning given to it in clause 23.8 of the Original Scheme;
<b>"Court"</b>	the High Court of Justice of England and Wales;
<b>"CPLA"</b>	the agreement dated 20 November 1996, as amended on or around the date of this Amending Scheme, between (1) NNOFIC, (2) Orion, (3) L&O and (4) the ILU, pursuant to which NNOFIC has agreed to make funds available to each of the Companies on trust for the sole purpose of enabling each of the Companies to make payment to Qualifying ILU Policyholders during the period of the Scheme in accordance with the terms of that agreement and the terms of the Scheme;

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

<b>"Facultative Reinsurance"</b>	<p>a method of reinsurance under which an insurer (ceding insurer) obtains reinsurance for each risk individually where:</p> <ul style="list-style-type: none"> <li>(a) there is no obligation on the ceding insurer to cede any particular risk;</li> <li>(b) it is the ceding insurer's choice as to how much it will cede and how much it will retain for itself on each risk; and</li> <li>(c) the prospective reinsurer is under no obligation to write any particular risk i.e. it can decline any risk and fix its share of any risk as agreed with the ceding insurer for that risk;</li> </ul>
<b>"Facultative Retrocession"</b>	<p>a method of reinsurance under which a reinsurer (the retrocedant) obtains reinsurances (retrocessions) for each risk individually where:</p> <ul style="list-style-type: none"> <li>(a) there is no obligation on the retrocedant to retrocede any particular risk;</li> <li>(b) it is the retrocedant's choice as to how much it will retrocede and how much it will retain for itself on each risk; and</li> <li>(c) the prospective reinsurer providing such retrocession (the retrocessionaire) is under no obligation to write any particular risk i.e. that reinsurer can decline any risk and fix its share of any risk as agreed with the retrocedant for that risk;</li> </ul>
<b>"Final Adjudication Date"</b>	the first Business Day falling 650 days after the Bar Date;
<b>"First Company"</b>	has the meaning given to it in paragraphs 17.5, 17.7 and 17.9 respectively;
<b>"FSCS Alternate"</b>	a person appointed by the chairman for the time being of the FSCS Scheme Manager (as the current statutory successor to the Policyholders Protection Board) or the FSCS Representative to represent the FSCS Scheme Manager at meetings of the Creditors' Committee pursuant to clause 39.4 of the Original Scheme;
<b>"FSCS Representative"</b>	a person appointed by the FSCS Scheme Manager (as the current statutory successor to the Policyholders Protection Board) to represent it at meetings of the Creditors' Committee pursuant to clause 39.3 of the Original Scheme;
<b>"FSCS Rules"</b>	the rules of the FSCS Scheme Manager as amended and in force on the New Effective Date, made pursuant to section 213 of FSMA (but incorporating also any amendment made after that date which has effect in relation to a company in liquidation on or before that date);
<b>"FSCS Scheme Manager"</b>	Financial Services Compensation Scheme Limited (company number 03943048), established pursuant to Part XV of FSMA (being the current statutory successor to the Policyholders Protection Board) and to include any statutory successor of it;
<b>"FSMA"</b>	the Financial Services and Markets Act 2000;
<b>"General Account"</b>	an account of mutual Scheme Liabilities (excluding Qualifying Liabilities) and mutual Offset Amounts (excluding Offset Amounts under or in relation to Qualifying Protection) existing at the Petition Date taken between a Company and a Scheme Creditor;
<b>"General Account Balance"</b>	a balance (after the application of paragraphs 17.4 and 17.5) on a General Account in favour of a Scheme Creditor;

<b>"Gross Liabilities"</b>	<p>in respect of a Scheme Creditor, the sum of the following Liabilities:</p> <ul style="list-style-type: none"> <li>(a) Established Liabilities (as at the New Effective Date);</li> <li>(b) Agreed Liabilities;</li> <li>(c) Notified Outstanding Liabilities; and</li> <li>(d) IBNR Liabilities,</li> </ul> <p>but before taking account of:</p> <ul style="list-style-type: none"> <li>(e) any Offset Amounts to be deducted in accordance with paragraphs 17.3 to 17.12;</li> <li>(f) any discount for the time value of money to be applied in accordance with paragraph 17.16; and</li> <li>(g) any deduction to be made after once more taking account of the matters set out in clauses 6.3(a) and (b) of the Original Scheme;</li> </ul>
<b>"IBNR Liability"</b>	<p>an incurred but not reported claim arising under or in respect of an Insurance Contract for the amount payable by one or both of the Companies in respect of a loss which has been incurred but has not been reported to or discovered by a Scheme Creditor plus the amount payable in respect of a general excess over Notified Outstanding Liabilities, to the extent that the current estimates of claims included as Notified Outstanding Liabilities may prove to be inadequate;</p>
<b>"ILU"</b>	<p>the Institute of London Underwriters, a company limited by guarantee, incorporated in England and Wales under the Companies Act 1867 with registered number 19900C;</p>
<b>"ILU Policy"</b>	<p>a contract of insurance, reinsurance or retrocession evidenced by a policy signed and issued by the ILU;</p>
<b>"Individual Claimant Representative"</b>	<p>Charles E. Bates or such other person as may be appointed as a successor to him in accordance with the provisions of the Scheme;</p>
<b>"Insolvency Act"</b>	<p>the Insolvency Act 1986;</p>
<b>"Insurance Contract"</b>	<p>any contract or policy of insurance, reinsurance or retrocession of any kind whatsoever entered into by or on behalf of either or both of the Companies;</p>
<b>"Liability"</b>	<p>any obligation or liability whether present, future, prospective or contingent, whether or not for a fixed or unliquidated amount, whether or not involving the payment of money, which arises at common law, in equity or by statute in England and Wales or in any other jurisdiction or in any other manner whatsoever; and for the avoidance of doubt where any obligation or liability, present, future, prospective or contingent, whether or not for a fixed or unliquidated amount, whether or not involving the payment of money, is void or, being voidable, has or shall have been duly avoided, no obligation or liability shall arise in respect of such obligation or liability;</p>
<b>"Lloyds Bank"</b>	<p>Lloyds Bank plc (incorporated in England and Wales under the Companies Act 1862 with registered number 002065);</p>
<b>"Lloyds Bank Agreement"</b>	<p>the agreement dated 12 October 2010 between TSBHSBHC, Lloyds Bank, Orion and L&amp;O;</p>
<b>"L&amp;O"</b>	<p>The London and Overseas Insurance Company Limited (formerly known as The London and Overseas Insurance Company plc) (incorporated in England and Wales under the Companies Acts 1862 to 1890 with registered number 38706);</p>

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

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

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

<b>"Potentially Protected Liability"</b>	a Liability of either Company in respect of a claim which, as at the New Effective Date, is a claim in respect of an Agreed Liability, a Notified Outstanding Liability or an IBNR Liability that, when matured, would be eligible for protection under the Policyholders Protection Act or under the FSCS Rules if the Company were an insurance undertaking in default and the Policyholders Protection Act or the FSCS Rules applied to that default;
<b>"Potentially Protected Policyholder"</b>	a Scheme Creditor of either of the Companies in respect of a Potentially Protected Liability but excluding any Qualifying ILU Policyholder;
<b>"Pre-1969 L&amp;O Claim"</b>	has the meaning given to it in paragraph 42.2;
<b>"Pre-1969 L&amp;O Policyholder"</b>	a Scheme Creditor under an Insurance Contract entered into by L&O with an inception date before 20 March 1969 and whose claims in respect of that Insurance Contract are subject to the Lloyds Bank Agreement;
<b>"Priority Liabilities"</b>	<p>any Liability of either or both of the Companies if and to the extent that it is a Liability of either or both of the Companies referred to in:</p> <p>(a) clause 58 of the Original Scheme; or</p> <p>(b) paragraph 51 including, but not limited to:</p> <ul style="list-style-type: none"> <li>(i) subject to paragraph 41.6(b), all Opt Out Expenses (<i>paragraph 40.1(c)(ii)</i>);</li> <li>(ii) subject to paragraph 44.10(b), the Post Bar Date Expenses;</li> <li>(iii) subject to paragraph 45.12, the expenses referred to in paragraph 45.12(b); and</li> <li>(iv) subject to paragraph 26.5, all remuneration, costs, charges and expenses reasonably incurred by the Scheme Actuarial Adviser, the Scheme Adjudicator, the No Notice Adjudicator and the Individual Claimant Representative in the course of exercising their respective powers, duties, functions and rights under the Scheme (<i>paragraphs 18.15, 18.16, 26.3 and 26.4</i>);</li> </ul>
<b>"Proceedings"</b>	<p>any action or other legal proceeding in any jurisdiction whatsoever:</p> <p>(a) including:</p> <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> <p>(b) excluding:</p> <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> <li>(ii) any other dispute resolution procedure which does not involve submission to the courts;</li> </ul>
<b>"Protected Liability"</b>	<p>any Established Liability of a Company in respect of which (and to the extent to which):</p> <p>(a) the FSCS Scheme Manager would owe a duty under sections 6 to 8 of the Policyholders Protection Act if that Company were a "company in liquidation" and the Record Date were the "beginning of the liquidation", in each case within the meaning of the Policyholders Protection Act, and references in those sections to the amount of any Liability were references to the amount as established in the case of an Established Liability in</p>

accordance with the Scheme (and for the avoidance of doubt but without limitation, where such a duty would only be owed under the Policyholders Protection Act in respect of a Liability towards a "private policyholder" or under the terms of a "United Kingdom policy", as those expressions are respectively defined in the Policyholders Protection Act, or a Liability of some other description, only an Established Liability which is also such a Liability shall be capable of qualifying as a Protected Liability); or

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

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

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

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

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

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

<b>"TSBHSBHC"</b>	TSB Hill Samuel Bank Holding Company Limited (formerly known as Hill Samuel Group Limited) (company number 162308);
<b>"Trustee"</b>	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;
<b>"2007 Provision Figure"</b>	US\$750,000;
<b>"US Dollars or US\$"</b>	United States Dollars or other lawful currency for the time being of the United States of America;
<b>"Valuation Date"</b>	31 December 2013;
<b>"Voting Form"</b>	the voting and proxy form to be used by Scheme Creditors for the purpose of voting on the Amending Scheme;
<b>"Website"</b>	the Companies' website at <a href="http://www.oicrun-offltd.com">www.oicrun-offltd.com</a> , or such other uniform resource locator as may be notified to Scheme Creditors by the Scheme Administrators; and
<b>"Winding-up Petitions"</b>	the petitions to wind up Orion numbered 006797 of 1994 and L&O numbered 006798 of 1994, both presented to the Court on the Petition Date.

## Appendix 2 - Estimation Guidelines

### Index

1. Introduction
2. Direct Insurance/Facultative Reinsurance of Direct Insurance Non-APH claims
3. Direct Insurance/Facultative Reinsurance of Direct Insurance APH claims
4. Reinsurance Non-APH claims
5. Reinsurance APH claims
6. Unanticipated latent claims

#### 1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **2.1. Projection techniques**

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

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

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

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

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

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

## **2.2. Alternative approaches where historical information may not be available**

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

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

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

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

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

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

### **3.1. Asbestos claims**

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

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

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

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

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

#### ***Claim numbers***

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

#### ***Expenses***

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

#### ***Trigger of coverage***

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

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

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

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

### ***Allocation of costs to the triggered period***

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

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

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

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

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

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

## **3.2. Environmental pollution claims**

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

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

### ***Clean-up costs***

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

### ***Expenses***

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

### ***PRP share***

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

### ***Governing law***

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

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

### ***Trigger of coverage***

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

### ***Allocation of costs to triggered policies***

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

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

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

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

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

### ***Coverage issues***

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

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

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

### ***Future sites***

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

## **3.3. Other health hazards**

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

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

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

### ***Claim numbers***

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

### ***Expenses***

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

### ***Trigger of coverage***

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

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

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

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

#### ***Allocation of costs to the triggered period***

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

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

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

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

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

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

### **3.4. Alternative approaches where historical information may not be available**

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

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

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

### **4. Reinsurance Non-APH claims**

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

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

#### **4.1. Overview**

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

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

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

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

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

#### **4.2. Catastrophes or other single large distorting losses**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4.5. Application to reinsurance programme**

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

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

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

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

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

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

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

#### **4.6. Projections using outwards reinsurance data**

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

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

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

#### **4.7. Benchmarking techniques**

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

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

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

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

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

- Class of business.

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

## **5. Reinsurance APH claims**

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

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

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

### **5.1. Estimation of underlying liabilities: Exposure-based model**

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

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

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

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

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

### **5.2. Estimation of underlying liabilities: Other approaches**

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

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

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

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

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

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

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

### **5.3. Benchmarking**

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

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

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

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

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

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

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

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

## **6. Unanticipated latent claims**

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

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

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

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

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

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

## Appendix 3 – Supporting Evidence

### Index

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

#### 1. Introduction

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

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

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

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

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

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

##### 3.1. Projection techniques

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

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

### **3.2. Alternative approaches where historical information may not be available**

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

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

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

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

### **4.1. Asbestos claims**

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

#### ***Agreements or settlements with any insurer***

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

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

#### ***Claims estimation data***

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

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

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

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

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

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

### ***Policy data***

The Scheme Creditor should provide policy data as follows:

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

### ***Basis of estimation***

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

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

## **4.2. Environmental pollution claims**

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

### ***Agreements or settlements with any insurer***

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

### ***Numbers of sites exposed***

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

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

### ***Claims estimation data***

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

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

### ***Policy data***

The Scheme Creditor should provide policy data as follows:

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

### ***Basis of estimation***

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

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

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

#### **4.3. Other health hazards claims**

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

##### ***Agreements or settlements with any insurer***

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

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

##### ***Claims estimation data***

The Scheme Creditor should provide details of:

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

##### ***Policy data***

The Scheme Creditor should provide policy data as follows:

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

### ***Basis of estimation***

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

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

#### **4.4. Alternative approaches where historical information may not be available**

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

### **5. Reinsurance Non-APH claims**

#### **5.1. Overview**

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

#### **5.2. Catastrophes or other single large distorting losses**

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

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

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

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

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

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

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

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

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

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

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

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

#### **5.5. Application to reinsurance programme**

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

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

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

#### **5.6. Projections using outwards reinsurance data**

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

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

#### **5.7. Benchmarking**

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

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

### **6. Reinsurance APH claims**

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

#### **6.1. Estimation of underlying liabilities: Exposure-based model**

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

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

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

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

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

## **6.2. Estimation of underlying liabilities: Other approaches**

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

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

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

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

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

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

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

### **6.3. Benchmarking**

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

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

## **7. Unanticipated latent claims**

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

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

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

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

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

### **Reserve Components**

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

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

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

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

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

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

**Initial estimate of the Opt Out Proportion Figure**

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

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

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

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

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

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

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

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

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

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

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

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

## Appendix 5 – Costs agreement

### FORM OF NO NOTICE ADJUDICATOR'S COSTS AGREEMENT

THIS AGREEMENT is made on the            day of            20\_\_\_\_

#### BETWEEN:

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

#### WHEREAS:

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

IT IS AGREED as follows:

#### 1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

#### 2. SECURITY FOR COSTS

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

### **3. FORM OF DEMAND**

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

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

### **4. APPLICATION OF FUNDS RECEIVED FROM THE QUALIFYING ILU POLICYHOLDER**

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

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

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

### **5. MISCELLANEOUS**

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

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

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

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

#### **The Qualifying ILU Policyholder**

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

#### **The No Notice Adjudicator**

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

## Appendix 6 - Deed of adherence

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

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

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

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

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

*[Insert date]*

### Scheme and Orion Trust Deed: Deed of Adherence

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

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

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

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

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

Executed as a deed by ) .....  
Director

*[insert name of Successor]* )  
)  
) .....  
) Director

# **PART III**

## **NOTICE OF AMENDING SCHEME MEETINGS**

Claim Nos. 5812 and 5813 of 2014

**IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

### **IN THE MATTERS OF** **OIC RUN-OFF LIMITED**

(formerly Ralli Brothers Insurance Company Limited and The Orion Insurance Company plc)

- and -

### **THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED**

(formerly Hull Underwriters' Association Limited and The London and Overseas Insurance Company plc)

(both subject to a scheme of arrangement)

- and -

### **IN THE MATTER OF THE COMPANIES ACT 2006**

#### **PROPOSED AMENDING SCHEME OF ARRANGEMENT**

**NOTICE IS HEREBY GIVEN** that, by an order dated 8 October 2014 made in the above matters, the High Court of Justice of England and Wales (the "**Court**") has directed that meetings (the "**Amending Scheme Meetings**") be convened of the Scheme Creditors (as defined in the Original Scheme referred to below) of the above companies (the "**Companies**") at 10.30am (English time), on 11 December 2014 at PricewaterhouseCoopers LLP, 1 Embankment Place, London, WC2N 6RH, United Kingdom for the purpose of considering and, if thought fit, approving (with or without modification) the amending scheme of arrangement proposed to be made between the Companies and their respective Scheme Creditors pursuant to Part 26 of the Companies Act 2006 (the "**Amending Scheme**"), amending certain terms and provisions of the scheme of arrangement dated 20 November 1996 which became effective on 7 March 1997 between the Companies and their Scheme Creditors (the "**Original Scheme**").

The Court has ordered that each Company should convene three meetings of Scheme Creditors to vote on their respective Amending Scheme as follows:

- (a) for Scheme Creditors who are Policyholders (other than Qualifying ILU Policyholders) with IBNR Liabilities and Notified Outstanding Liabilities;
- (b) for Scheme Creditors who are Policyholders (other than Qualifying ILU Policyholders) with Scheme Liabilities (other than IBNR Liabilities and Notified Outstanding Liabilities), Dual Scheme Creditors and Ordinary Creditors; and
- (c) for Scheme Creditors who are Qualifying ILU Policyholders,

(the terms "**Policyholders**", "**Qualifying ILU Policyholders**", "**IBNR Liabilities**", "**Notified Outstanding Liabilities**", "**Scheme Liabilities**", "**Dual Scheme Creditors**", "**Pre-1969 L&O Policyholders**", "**Ordinary Creditors**" each being as more particularly described in the Amending Explanatory Statement referred to below).

Depending on the type of its claim(s), a Scheme Creditor may be entitled to attend and vote at more than one of the Amending Scheme Meetings.

All Scheme Creditors are requested to attend the relevant Amending Scheme Meeting(s) at such time and place either in person or by proxy. Each Scheme Creditor will be required to register its attendance at the Amending Scheme Meetings. Registration will commence at 9.30am and Scheme Creditors are requested to arrive no later than 10.00am in order to register. The Chairman of the Amending Scheme Meetings will address Scheme Creditors generally on the Amending Scheme and on issues relevant to voting on the Amending Scheme at the commencement of the Amending Scheme Meetings.

Scheme Creditors may attend and vote in person (or, if a corporation, by a duly authorised representative) at the relevant Amending Scheme Meeting(s). Alternatively they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

Copies of the proposed Amending Scheme, the explanatory statement required to be provided pursuant to section 897 of the Companies Act 2006 (the "**Amending Explanatory Statement**") and the voting and proxy forms for use at the Amending Scheme Meetings (each a "**Voting Form**" and together, the "**Voting Forms**") can be downloaded from [www.oicrun-offltd.com](http://www.oicrun-offltd.com). Alternatively, hard copies can be obtained, free of charge, by sending a request to the run-off manager of the Companies, Armour Risk Management Limited ("**Armour**") marked for the attention of Andrew Jones.

Armour's contact details are as follows:

By post: Armour Risk Management Limited, 4th Floor, 20 Old Broad Street, London, EC2N 1DP United Kingdom

By email: [Oicclosurehelpdesk@armourrisk.com](mailto:Oicclosurehelpdesk@armourrisk.com)

By fax: +44 (0) 207 382 2001

By phone: +44 (0) 207 382 2020

Scheme Creditors are requested to return their completed and signed Voting Forms to Armour by post, email or fax at the above contact details by noon (English time) on 10 December 2014. Alternatively Scheme Creditors may hand their respective Voting Forms in at the registration desk prior to the Amending Scheme Meetings if attending in person or by proxy. However Scheme Creditors are urged to return the completed Voting Forms in advance of the Amending Scheme Meetings. Any Voting Form sent by fax or by email will not be accepted unless legible and the signed original Voting Form is subsequently received by Armour (marked for the attention of Andrew Jones) no later than 7 days after the Amending Scheme Meetings.

By the said order, the Court has appointed Dan Schwarzmenn or, failing him, Paul Evans or such other independent person as the Scheme Administrators of the Companies may nominate, to act as Chairman of the Amending Scheme Meetings and has directed the Chairman to report the results of the Amending Scheme Meetings to the Court.

Any Scheme Creditor who is unclear about or has any question concerning the action it is required to take in order to vote on the Amending Scheme or who would like to discuss the way in which its claims data is likely to be evaluated under the Amending Scheme process, should contact Armour using the contact details set out above.

If approved by the requisite majorities of Scheme Creditors, the Amending Scheme will be subject to the subsequent approval of the Court.

Dated: 8 October 2014

Hogan Lovells International LLP  
Atlantic House  
50 Holborn Viaduct  
London  
EC1A 2FG  
United Kingdom

Tel: +44 (0) 20 7296 2000  
Fax: +44 (0) 20 7296 2001  
[www.hoganlovells.com](http://www.hoganlovells.com)  
Ref: Joe Bannister/Will Beck  
Solicitors to the Scheme Administrators