

AUSTRALIAN SCHEMES OF ARRANGEMENT

(pursuant to section 411 of the Corporations Act 2001)

between

**HIH CASUALTY AND GENERAL INSURANCE LIMITED
(IN LIQUIDATION) ACN 008 482 291;**

**FAI GENERAL INSURANCE COMPANY LIMITED
(IN LIQUIDATION) ACN 000 327 855;**

**CIC INSURANCE LIMITED (IN LIQUIDATION)
ACN 004 078 880;**

**WORLD MARINE & GENERAL INSURANCES PTY LIMITED
(IN LIQUIDATION) ACN 000 093 112;**

**FAI TRADERS INSURANCE COMPANY PTY LIMITED
(IN LIQUIDATION) ACN 000 177 177;**

**FAI REINSURANCES PTY LIMITED (IN LIQUIDATION)
ACN 004 401 138;**

**FAI INSURANCES LIMITED (IN LIQUIDATION)
ACN 004 304 545; and**

**HIH UNDERWRITING AND INSURANCE (AUSTRALIA) PTY
LIMITED (IN LIQUIDATION) ACN 004 906 110;**

and their respective

SCHEME CREDITORS

(as defined in the schemes of arrangement)

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FSCS SCHEDULE

A. PRELIMINARY

1. Definitions

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

Acknowledged Creditor Claim	a Liability which is determined to be an Acknowledged Creditor Claim in accordance with clause 11;
Admissible Interest	interest to which a Scheme Creditor is entitled by reason of any contract, judgment or otherwise in respect of a period or periods prior to the Record Date. For the avoidance of doubt, this shall include a Liability in respect of a Scheme Creditor's liability for interest to a third party;
American Policyholders	a policyholder as defined in the US Trust Agreements;
ASIC	the Australian Securities and Investments Commission;
Asset in Australia	a Scheme Asset which is an "asset in Australia" within the meaning of section 116(3) of the Insurance Act on the Record Date and any Scheme Asset which has been converted into another form (cash or otherwise) after the Record Date shall be treated for the purposes of determining whether it is an "asset in Australia" as having the character which the Scheme Asset had at the Record Date;
Australian Court	the Supreme Court of New South Wales;
Australian Court Order	an order of the Australian Court approving The Australian Scheme pursuant to section 411(4)(b) of the Corporations Act;
Australian Dollar and AUD	the lawful currency of Australia;
Australian Provisional Liquidators	Anthony Gregory McGrath and Alexander Robert Mackay Macintosh in their capacity as joint provisional liquidators of each Scheme Company;
Bankruptcy Act	<i>Bankruptcy Act 1966</i> of the Commonwealth of Australia;
Business Day	a day other than a Saturday or Sunday or a public holiday in New South Wales;
Business Hours	between the hours of 9.00am and 5.00pm on a Business Day;
CIC	CIC Insurance Limited (In Liquidation) ACN 004 078 880, incorporated in Australia;
Co-Insurer	any insurer or reinsurer other than a Scheme Company;
Co-Insurer Liability Amount	the amount which is calculated in accordance with clause 22.4;
Common Liability	any liability arising under a contract (of insurance, reinsurance

	or retrocession) made between a Scheme Company, one or more Scheme Creditors and one or more Co-Insurers such that the rights and liabilities of the Scheme Companies and the Co-Insurers are co-ordinate, whether they are joint, several or differing in quantum;
Contract of Reinsurance	a contract of reinsurance within the meaning of s562A of the Corporations Act under which a Scheme Company is insured;
Controlled HIH Company	any body corporate which is a related entity of any Scheme Company and to which one or more of the Liquidators or UK Provisional Liquidators have been appointed, or are subsequently appointed, as liquidators or provisional liquidators;
Corporations Act	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
Council	the Council of Lloyd's constituted by section 3 of Lloyd's Act 1982;
Creditors' Committee	a creditors' committee established pursuant to Part M in respect of a Scheme Company;
Creditors' Committee Member	a member of a Creditors' Committee;
Default Judgment	an order, judgment, decision or award of a court or tribunal of competent jurisdiction which is obtained or entered against a Scheme Company by virtue only of a Scheme Company, or another party to a Proceeding, having omitted to take a procedural, interlocutory or intermediary step in such Proceeding;
Delegate	any person to whom the Scheme Administrators may delegate any of their functions and powers under clause 43.1(p);
De Minimis Amount	such amount determined in accordance with clause 38.1;
Designated Representative	a person designated in accordance with clause 49.3(b) to act as a Creditors' Committee Member;
Effective Date	the date on which The Australian Scheme becomes effective in accordance with clause 7;
Employee	any partner in the same firm as a Scheme Administrator, or any individual employed, whether under a contract of service or a contract for services, by that firm or by any company owned by that firm, who is employed by the Scheme Administrators in connection with the conduct of the Scheme Administrators' functions and powers under The Australian Scheme;
EMU	the Economic and Monetary Union as contemplated in the Treaty on European Union;
EMU Legislation	legislative measures of the European Council for the introduction of, changeover to, or operation of the Euro;

Entry Date	in respect of the currency of any member state of the European Union which is not a Participating Member State as at the date of The Australian Scheme, the date on which such member state's currency is converted into the Euro in accordance with EMU Legislation;
Established Scheme Claim	a Liability of a Scheme Company which has become agreed or determined to be an Established Scheme Claim under The Australian Scheme;
Estimation Date	the date determined to be the Estimation Date under clause 24;
Estimation Period	the period from the Estimation Date to the Termination Date;
Euro	the single currency of Participating Member States of the European Union;
Euro Unit	the currency unit of the Euro;
European former national currency unit	the unit of currency (other than a Euro unit) of a Participating Member State;
Explanatory Statement	the statement dated 10 February 2006 (and the appendices thereto) explaining the effect of The Australian Scheme, in compliance with sections 411 and 412 of the Corporations Act;
External Administrators	the Australian Provisional Liquidators, the Liquidators and the Scheme Administrators;
FAI General	FAI General Insurance Company Limited (In Liquidation) ACN 000 327 855, incorporated in Australia;
FAI Insurances	FAI Insurances Limited (In Liquidation) ACN 004 304 454, incorporated in Australia and registered as an overseas company in England and Wales under number FC005256;
FAI Traders	FAI Traders Insurance Company Pty Limited (In Liquidation) ACN 000 177 177, incorporated in Australia;
FAI Reinsurances	FAI Reinsurances Pty Limited (In Liquidation) ACN 004 401 138, incorporated in Australia;
Final Claim Form for Estimation	a notice to be given in accordance with clause 25.1(b);
Final Co-Insurer Judgment	an order, judgment, decision or award of a court or tribunal of competent jurisdiction referred to in clause 22.1(a);

Final Order	an order, judgment, decision or award of a court or tribunal of competent jurisdiction which is final and conclusive in relation to the merits of a Liability (or as the case may be a Section 562A(4) Application) and is not subject to any appeal, request for reargument, rehearing, reconsideration, or similar relief, and in relation to which the time to seek a stay, or to appeal, request reargument, rehearing, reconsideration, or similar relief, has expired. For the avoidance of doubt, this does not include a Default Judgment;
Final Settlement	a binding agreement, evidenced in writing, which of itself determines the obligations of a Co-Insurer under the contract in question (either as to liability or as to quantum);
FSCS	the Financial Services Compensation Scheme Limited (as further identified in the FSCS Schedule to The Australian Scheme);
FSCS Schedule	the schedule to The Australian Scheme entitled "FSCS Schedule";
HIH C&G	HIH Casualty and General Insurance Limited (In Liquidation) ACN 008 482 291, incorporated in Australia and registered as an overseas company in England and Wales under number FC017672;
HIH U & I	HIH Underwriting and Insurance (Australia) Pty Limited (In Liquidation) ACN 004 906 110, incorporated in Australia;
HIH Website	the information displayed via the internet at the URL http://www.hih.com.au ;
Insurance Act	<i>Insurance Act 1973</i> of the Commonwealth of Australia, as in force as at the Record Date;
Insurance Contract	a contract of insurance within the meaning of s562A of the Corporations Act in respect of a liability entered into by or on behalf of a Scheme Company as insurer, or under which a Scheme Company has assumed any liability as insurer, before the Record Date;
Insurance Liability	an Established Scheme Claim that is a Liability arising under an Insurance Contract;
Liability	any debt payable by, and all claims against, a Scheme Company (present or future, actual or contingent, due or to become due, ascertained or sounding only in damages) being debts or claims in Australia or in any other jurisdiction the circumstances giving rise to which occurred before or on the Record Date;
Liability in Australia	an Established Scheme Claim which is a "liability in Australia" of the Scheme Company within the meaning of section 116(3) of the Insurance Act;

Liquidators	Anthony Gregory McGrath and from 27 August 2001 to 1 July 2005, Alexander Robert Mackay Macintosh and since 1 July 2005, Christopher John Honey in their capacity as liquidators of a Scheme Company and in the case of each Scheme Company, any such other person or persons who may be appointed as liquidators by the Court;
Lloyd's	the society incorporated by Lloyd's Act 1871 by the name of Lloyd's of One Lime Street, London EC3M 7HA;
Lloyd's Syndicate	a member or group of members underwriting insurance business at Lloyd's to which a syndicate number is assigned by the Council;
Lloyd's Syndicate Member	an underwriting member underwriting insurance business as a member of a Lloyd's Syndicate;
Managing Agent	an underwriting agent which carries on underwriting for a Lloyd's Syndicate Member;
Nominated Representative	a person nominated by a Creditors' Committee Member in accordance with clause 50.1 to act as its representative on the Creditors' Committee;
Notice by Publication	notice in accordance with clause 69;
Notice of Determination of Common Liability	notice given in accordance with clause 22.1;
Notice of Estimation Date	notice to be given in accordance with clause 24.3 in the form of Annexure 2;
Notice of Litigation	notice to be given in accordance with clause 21 and in the form attached at Annexure 4;
Notified Liability	Liability notified to the Scheme Administrators pursuant to a Final Claim Form for Estimation in accordance with clause 25.1(b);
Office Holder	any person in his or her capacity as a Scheme Administrator, or a Delegate or a Scheme Adjudicator;
Participating Member State	at any time, each state participating in EMU at such time;
Payment Date	a date for payment set in accordance with clause 38.4;
Payment Percentages	in relation to Established Scheme Claims, the payment percentages of such Established Scheme Claims which are payable by a Scheme Company under The Australian Scheme from time to time as set under clause 37;

Pre-Scheme Costs	all costs, charges, expenses, remuneration and disbursements reasonably incurred by the External Administrators prior to the Effective Date in connection with the negotiation and preparation of The Australian Scheme, including the costs of holding the Scheme Meetings and the costs of obtaining the approval or sanction of the Courts, and of seeking other relief from the Courts, in relation to The Australian Scheme;
Priority Claim	any debt or claim described in sections 556 and 562 of the Corporations Act determined on the basis that the Record Date is the relevant date and on the basis that a "relevant authority" includes a reference to the Scheme Administrators;
Proceeding	any action or other legal proceeding including, without limitation, any judicial, quasi-judicial, administrative or regulatory process, arbitration, alternative dispute resolution procedure, judicial review or other adjudication to establish the existence or amount of any Liability;
Property	any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action and any money or property recovered under or pursuant to a Voidable Transaction Provision;
Quarter End Date	31 March, 30 June, 30 September or 31 December in each year during the period of The Australian Scheme;
Record Date	27 August 2001;
Reinsurance Asset	any amount or amounts in respect of a liability under an Insurance Contract received by a Scheme Company or the Liquidators under a Contract of Reinsurance;
Relevant Rate of Exchange	the rates of exchange quoted by the Reserve Bank of Australia, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators for the purchase of such currency at close of business (Sydney time) on the Quarter End Date nearest the payment run or such other date as is required by The Australian Scheme;
Report to Creditors	a report prepared for the purposes of clause 60.3;
Representative	a person determined to be a Representative in accordance with clause 15.1;
Review Date	such date at least once in each calendar year as the Scheme Administrators may from time to time, in consultation with the Creditors' Committee, in their absolute discretion decide;
Run-off Period	the period from the Effective Date to the Estimation Date;

Scheme Adjudicator	such person or persons who are appointed to be Scheme Adjudicators pursuant to clause 45;
Scheme Administrators	in the first instance, Anthony Gregory McGrath and Christopher John Honey in their capacity as Scheme Administrators of The Australian Scheme whilst they hold that office and such other persons as may be appointed as Scheme Administrators in accordance with The Australian Scheme;
Scheme Asset	all assets of a Scheme Company whether actual, prospective or contingent; for the avoidance of doubt, this expression shall include any asset which is held or recovered for the benefit of a Scheme Company or its creditors by the Liquidators;
Scheme Company	except where the context otherwise requires or as expressly provided, each of HIH C& G, FAI General, CIC, WMG, FAI Traders, FAI Reinsurances, FAI Insurances or HIH U & I separately;
Scheme Costs	the costs, charges, expenses, disbursements and remuneration referred to in clause 64.2;
Scheme Creditor	a creditor of a Scheme Company in respect of a Liability, including any assignee or other person entitled to claim in succession to or in substitution for any such Scheme Creditor in respect of the same Liability;
Scheme Meetings	a meeting of Scheme Creditors of a Scheme Company pursuant to an order of the Court to consider and, if thought appropriate, agree to The Australian Scheme;
Section 562A(4) Application	an application to a court of competent jurisdiction brought pursuant to section 562A(4) of the Corporations Act seeking orders that subsections 562A(2) and (3) of the Corporations Act do not apply to an amount received under a Contract of Reinsurance and that the amount received must, instead, be applied by the Liquidators in the manner specified in any order of the court which might be made pursuant to such application;
Section 562A(4) Order	a Final Order made under section 562A(4) of the Corporations Act that an amount received under a Contract of Reinsurance is to be applied in the manner specified in the Final Order;
Security	any effective letter of credit, deposit or reserve of funds, mortgage, charge, lien, assignment by way of security, bond or other security interest over Property of a Scheme Company, established to secure payment of any Liability by a Scheme Company;
Set-off	any set-off on which a Scheme Creditor may rely on under clause 13.1 or a Scheme Company may rely on under clauses 13.2 or 13.3;

Special Resolution	a resolution passed by a majority in number and more than three fourths in value of those voting and entitled to vote in person or by proxy at a meeting;
State Cut-through Legislation	the following statutory provisions in force as at 15 July 2001: <ul style="list-style-type: none"> (a) section 191 of the Motor Accidents Compensation Act 1999 (New South Wales); (b) section 61 of the Motor Accident Insurance Act 1994 (Queensland); (c) section 40 of the Workers Compensation Supplementation Fund Act 1980 (Australian Capital Territory); (d) section 235 of the Workers Compensation Act 1987 (New South Wales); (e) section 137(3) of the Work Health Act (Northern Territory); (f) section 129 of the Workers Rehabilitation and Compensation Act 1988 (Tasmania); (g) section 98(3) of the Workers Compensation Act 1958 (Victoria); (h) section 36 of the Employers' Indemnity Supplementation Fund Act 1980 (Western Australia); (i) section 103V of the Home Building Act 1989 (New South Wales);
Statutory Authority	a person or entity entitled to the benefit of the State Cut-through Legislation;
Sterling	the lawful currency from time to time of the United Kingdom;
Termination Date	the day upon which The Australian Scheme terminates in relation to a Scheme Company in accordance with clause 63;
The Australian Scheme	this scheme of arrangement in its present form (which includes the FSCS Schedule) as it applies to a Scheme Company subject to any modification, term or condition which the Australian Court may think fit to approve or impose;
Treaty on European Union	the Treaty of Rome of 25 March 1957, as amended by the Single European Act 1986 and the Maastricht Treaty (which was signed at Maastricht on 7 February 1992 and came into force on 1 November 1993), as amended from time to time;
Threshold Amount	an amount being not more than AUD2,000 determined by the Scheme Administrators with the approval of the Creditors'

Committee, to be a threshold amount for the purpose of clause 23.1;

Threshold Offer

an offer to pay either:

- (a) an amount in respect of an Established Scheme Claim (or the total of a Scheme Creditor's Established Scheme Claims); or
- (b) a percentage of an Established Scheme Claim (or the total of a Scheme Creditor's Established Scheme Claims);

UK Provisional Liquidators

Anthony James McMahon, Thomas Alexander Riddell and John Mitchell Wardrop, in their capacity as joint provisional liquidators of HIH C&G, FAI General, WMG and FAI Insurances and in the case of each such Scheme Company, such other person or persons who may be appointed provisional liquidators in England;

United Kingdom

United Kingdom of Great Britain and Northern Ireland;

US, USA or United States

United States of America, its territories and possessions, any State of the United States of America and the District of Columbia;

US Dollars

the lawful currency of the United States;

US Trust Fund Assets

Scheme Assets held by the Superintendent of Insurance for the State of New York as Conservator of the Trust Fund for the benefit of American Policyholders of FAI General in accordance with the terms of the trust agreement dated June 6, 1994 and by the Superintendent of Insurance for the State of New York as Conservator of the trust fund for the benefit of American Policyholders of HIH C & G in accordance with the terms of the trust agreement dated July 1, 1998;

US Trust Agreements

the trust agreements that apply to the US Trust Fund Assets;

Voidable Transaction Provisions

the provisions of:

- (a) Part 5.7B of the Corporations Act; and
- (b) any statute in any other jurisdiction which provides for analogous rights or powers;

Winding Up

in respect of a Scheme Company, the winding up of the Scheme Company under the order made by the Court on 27 August 2001 for the winding up of the Scheme Company;

WMG

World Marine & General Insurances Pty Limited (In Liquidation) ACN 000 093 112, incorporated in Australia.

2. Interpretation

- 2.1 Clause and part headings and the index to The Australian Scheme are inserted for convenience of reference only and do not affect the interpretation of The Australian Scheme.
- 2.2 In The Australian Scheme, unless the context otherwise requires or otherwise expressly provides for:
- (a) references to clauses and parts are to be construed as references to the clauses and the parts respectively of The Australian Scheme;
 - (b) references to (or to any specified provision of) The Australian Scheme shall be construed as references to The Australian Scheme (or that provision) as in force for the time being and as amended, supplemented, replaced or novated (in accordance with the terms of The Australian Scheme);
 - (c) references to any legislation (including subordinate legislation) shall be deemed to include references to such legislation as amended, re-enacted, replaced or extended, and includes any subordinate legislation issued under it;
 - (d) references to a person includes any natural person, and any type of entity or body of persons, whether or not it is incorporated or has a separate legal entity, and any executor, administrator or successor in law of the person;
 - (e) references to a party to The Australian Scheme or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (f) references to any thing (including a right, obligation or concept) includes each part of it;
 - (g) a singular word includes the plural, and vice versa;
 - (h) words importing one gender shall include all genders;
 - (i) if a word is defined, another part of speech has a corresponding meaning;
 - (j) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
 - (k) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.

B. THE AUSTRALIAN SCHEME

3. Independent Schemes

3.1 If The Australian Scheme becomes binding on the creditors, liquidators and contributories of a Scheme Company pursuant to section 411(4) of the Corporations Act, it operates as a compromise or arrangement in relation to those persons whether or not it also becomes binding on the creditors, liquidators and contributories of any other Scheme Company.

4. Parties other than each Scheme Company and the Scheme Creditors

4.1 Each of Anthony Gregory McGrath and Christopher John Honey has given and has not withdrawn his consent to act as a Scheme Administrator and if each have, not later than the Effective Date, executed a deed in the form of Annexure 1 and delivered it to the Scheme Company, they shall immediately thereon on the Effective Date be the first Scheme Administrators.

4.2 The Liquidators are bound by The Australian Scheme and will execute such documents, do or procure to be done such things, as are within their powers and are necessary or desirable to give effect to The Australian Scheme.

4.3 No person may be appointed as a Scheme Adjudicator under The Australian Scheme unless that person has first executed and delivered to the Scheme Company a deed in the form of Annexure 3.

4.4 The FSCS (as statutory successor to the Policyholders Protection Board) will execute a deed in the form of Annexure 5 making it bound by The Australian Scheme, under which it is to make certain payments to Protected Policyholders (as defined in the FSCS Schedule) in accordance with The Australian Scheme on terms contained in the FSCS Schedule.

5. Purpose of The Australian Scheme

5.1 The purpose of The Australian Scheme is:

- (a) subject to certain restrictions on the commencement or continuing of any Proceeding against any Scheme Company, to enable the Liabilities of a Scheme Company to be established and ascertained;
- (b) to provide for more cost-efficient and expeditious distributions to all Scheme Creditors than would be available pursuant to the winding up of each Scheme Company without The Australian Scheme;
- (c) to provide for payment by a Scheme Company to those Scheme Creditors whose Liabilities have from time to time become Established Scheme Claims;
- (d) to provide for the retention by each Scheme Company of sufficient Scheme Assets to enable the same payments to be paid by each Scheme Company to those of its creditors whose Liabilities do not become Established Scheme Claims until a later date; and
- (e) to provide for a final Estimation Date for the making of claims against each Scheme Company and for an estimation procedure.

6. Application of The Australian Scheme

6.1 The Australian Scheme shall apply to all Liabilities of each Scheme Company.

6.2 The Scheme Creditors accept their rights under The Australian Scheme in lieu of their entitlements to prove in, and receive a dividend from, the Winding Up.

7. **Effective Date**

7.1 The Australian Scheme shall be effective in respect of a Scheme Company when an office copy of a Court Order made in respect of that Scheme Company has been lodged with ASIC in accordance with sections 411 and 412 of the Corporations Act.

7.2 If The Australian Scheme does not become effective for any one or more Scheme Company, that shall not, of itself, prevent The Australian Scheme from becoming effective in respect of any other Scheme Company.

8. **Security and Trusts**

8.1 Nothing in The Australian Scheme shall affect the right of any person to take any lawful action to enforce:

- (a) any Security over the Property of a Scheme Company; and
- (b) any trust created (expressly, by implication or by operation of law) in respect of a Scheme Company and of which the person is a beneficiary, if such trust was created before the Effective Date.

8.2 Nothing in The Australian Scheme shall affect the right of each Scheme Company against any person in respect of any breach of trust or any wrongful drawdown or wrongful enforcement or any actual or potential invalidity of any Security created in respect of property of a Scheme Company.

9. **Affairs of each Scheme Company and the winding up of each Scheme Company**

9.1 To the fullest extent permissible at law, the Scheme Administrators shall manage, control and administer the Scheme Assets and affairs of a Scheme Company.

9.2 Subject to the provisions of The Australian Scheme and to any order of the Court, the Winding Up shall continue and the appointment of the Liquidators as liquidators of each Scheme Company shall not be affected. In particular, the Liquidators shall continue to perform their functions, duties and powers in relation to:

- (a) the Voidable Transaction Provisions; and
- (b) such other matters as the Scheme Administrators shall consider appropriate.

9.3 Subject to the provisions of The Australian Scheme, the Liquidators shall, as soon as reasonably practicable, make available to the Scheme Administrators for the purposes of The Australian Scheme, all Property of each Scheme Company held by or controlled by the Liquidators and shall make available to the Scheme Administrators any further Property of each Scheme Company which subsequently comes into their possession.

9.4 The Scheme Administrators shall only be obliged to distribute Scheme Assets which are made available to them in accordance with clause 9.3.

- 9.5 The Scheme Administrators shall:
- (a) do such acts and execute such documents as may be reasonably requested by the Liquidators in the proper course of their carrying out the Winding Up which are not inconsistent with The Australian Scheme; and
 - (b) pay to, or as requested by, the Australian Provisional Liquidators and the Liquidators the amounts referred to in clauses 64.1 and 64.2(b).
- 9.6 The Liquidators shall immediately notify the Scheme Administrators if they are served with any originating process in relation to a Section 562A(4) Application and shall keep the Scheme Administrators informed about the conduct of the application and of any Section 562A(4) Orders made.
- 9.7 If a Section 562A(4) Application is served on the Liquidators in relation to any amount which has been or is received by the Scheme Administrators, a Scheme Company or the Liquidators under a Contract of Reinsurance, and such amount has been or is received by or made available to the Scheme Administrators, the Scheme Administrators will, as soon as practicable after such service of such application, pay that amount to the Liquidators to be applied by the Liquidators in the manner specified in any order made in the Section 562A(4) Application or, if no such order is made, in accordance with The Australian Scheme.
10. **Banking and Investment**
- 10.1 The Scheme Administrators shall keep separate the Scheme Assets held by them in respect of each Scheme Company.
- 10.2 The Scheme Administrators shall maintain records for each Scheme Company of the Scheme Assets held by them sufficient to allow the Payment Percentages to be determined in respect of each Scheme Company.
- 10.3 The Scheme Administrators shall invest any monies held by each Scheme Company or the Scheme Administrators in accordance with the investment policy to be formulated by the Scheme Administrators from time to time in consultation with the Creditors' Committee.

C. ACKNOWLEDGED CREDITOR CLAIMS AND ESTABLISHED SCHEME CLAIMS

11. Acknowledged Creditor Claims

11.1 An Acknowledged Creditor Claim shall be the amount of a Liability of a Scheme Company which is:

- (a) agreed between a Scheme Company and the Scheme Creditor after the Record Date (including any Liability agreed between the Scheme Company and the Scheme Creditor prior to the Effective Date) or determined by the Scheme Administrators;
- (b) established by a Final Order; or
- (c) determined by a Scheme Adjudicator during the Estimation Period.

12. Established Scheme Claims

12.1 An Established Scheme Claim shall be the amount of an Acknowledged Creditor Claim:

- (a) after the Scheme Administrators or a Scheme Adjudicator have taken account of any Security which the Scheme Creditor holds in respect of the Acknowledged Creditor Claim and any Set-off; and
- (b) which is notified by the Scheme Administrators or a Scheme Adjudicator to the Scheme Creditor to be an Established Scheme Claim under The Australian Scheme.

12.2 The Scheme Administrators may notify a Scheme Creditor of the amount of its Established Scheme Claim at the time a payment is made to the Scheme Creditor in respect of the Established Scheme Claim under The Australian Scheme.

12.3 The Scheme Administrators must, when notifying a Scheme Creditor that a Liability is not accepted, whether in full or in part, as an Acknowledged Creditor Claim or that a Liability does not give rise, whether in full or in part, to an Established Scheme Claim, also give notice (as appropriate) to the Scheme Creditor of:

- (a) the Scheme Creditors' rights under clause 18.1; and
- (b) the Scheme Creditors' right of appeal under section 1321 of the Corporations Act.

13. Set-off

13.1 A Scheme Creditor may rely on any right of set-off of a Liability owed by a Scheme Company upon which it could have relied if that Scheme Company were being wound up in Australia and the order that the Scheme Company be wound up had been made on the Record Date.

13.2 A Scheme Company may rely on any right of set-off against a Liability upon which it could have relied if that Scheme Company were being wound up in Australia and the order that the Scheme Company be wound up had been made on the Record Date.

13.3 Furthermore, in determining the amount of an Established Scheme Claim after the Estimation Date, the Scheme Administrators or Scheme Adjudicator (as the case may be) shall allow a reduction for an estimate made by the Scheme Administrators or the Scheme Adjudicator (as the case may be) of the value of any amounts to which the Scheme Company may be or become entitled from the Scheme Creditor, which for any reason do not bear a certain value.

13.4 For the avoidance of doubt:

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

13.5 In determining any Set-off in relation to a Liability, where the amount set-off is expressed in a currency other than that of the relevant Liability, the amount set-off shall, in the absence of agreement otherwise between the Scheme Creditor and a Scheme Company, be converted, for the purpose of Set-off, into the currency in which the relevant Liability was incurred using the Relevant Rate of Exchange as at the Record Date. If the Liability is extinguished by Set-off leaving a balance payable to a Scheme Company, the balance shall be payable to a Scheme Company in the currency in which the amount set-off was incurred.

14. **Lloyd's**

14.1 In the case of Lloyd's Syndicates, the members of each Lloyd's Syndicate (or, where relevant, the trustees of appropriate trust funds or of collateral) shall be treated as if they were a single Scheme Creditor of each Scheme Company in respect of any Liability referable to that syndicate. The Scheme Administrators shall make any payment under The Australian Scheme to the Managing Agent of the relevant Lloyd's Syndicate who shall be responsible for ensuring the proper application of the payment. Where the members of a Lloyd's Syndicate owe money to a Scheme Company, they shall be treated as a single debtor of that Scheme Company in respect of the sum due referable to that Lloyd's Syndicate and the Scheme Administrators shall look to the Managing Agent of the Lloyd's Syndicate for payment. These provisions shall also apply for the purposes of determining rights of set-off and applying the provisions of clause 13.

14.2 Furthermore, for the purposes of The Australian Scheme, the effect of closing a year of account (**Year A**) by means of one or successive reinsurance(s) to close into a later year (**Year B**) of a Lloyd's Syndicate consisting of the same members and no others as the Year A Lloyd's Syndicate shall be deemed to have the result that the rights and liabilities of the members of the Lloyd's Syndicate in Year B are treated as if they were a continuation of, and the same as, the rights and liabilities of the members of the Lloyd's Syndicate in Year A.

14.3 The Scheme Administrators shall, in their absolute discretion, be entitled also to apply clause 14.2 in any case where, based on evidence produced to the Scheme Administrators on behalf of the relevant Lloyd's Syndicates, the Scheme Administrators consider that there is sufficient commonality in the composition of the membership of, and participation in, the Lloyd's Syndicate in respect of Year B, when compared to the composition of the membership of, and participation in, the Lloyd's Syndicate in respect of Year A, that it would be appropriate to treat the Year B Lloyd's Syndicate as a successor to the Year A Lloyd's Syndicate.

15. **Representatives**

15.1 The Scheme Administrators shall, in conjunction with the holders of lineslips, binders or agencies, use reasonable endeavours to split these covers to their principal level. The Scheme Administrators may, in their absolute discretion, determine managing general agents, the managers of underwriting pools, the holders of line slips or binding authorities or similar representative bodies to be a Representative.

15.2 The Scheme Administrators may, in their absolute discretion, treat:

- (a) a Representative as fully authorised to represent the Scheme Creditor concerned for all purposes in connection with The Australian Scheme; and
- (b) a Representative and each person for whom they are the Representative as if they were a single Scheme Creditor or, as the case may be, debtor in place of their principal or principals alone. This shall not affect the provisions of clause 14.

15.3 Accordingly the Scheme Administrators shall accept from the Representative any payment owed to a Scheme Company by the principal(s) of the Representative and may make any payment owed to the principal(s) under The Australian Scheme to the Representative.

16. **Currency of Liability**

16.1 A claim in respect of a Liability shall be made in and be determined to be an Acknowledged Creditor Claim in the currency in which it was incurred.

D. RUN-OFF PERIOD

17. Making and Agreement of Acknowledged Creditor Claims

- 17.1 During the Run-off Period, claims in respect of Liabilities may be made against a Scheme Company at any time and in the usual course of business and without any requirement for a Notice of Litigation to be given.
- 17.2 The Scheme Administrators may, at any time during the Run-off Period, and in the usual course of business, agree with a Scheme Creditor or otherwise determine that all or part of the amount of a Liability is an Acknowledged Creditor Claim.

18. Stay of Proceedings

- 18.1 During the Run-off Period no Scheme Creditor shall, without the prior agreement of the Scheme Administrators (which agreement must be in writing and must refer to this clause 18.1) and without derogating from the provisions of section 471B of the Corporations Act, institute or continue any Proceeding against a Scheme Company to establish the existence or amount of a Liability, except:
- (a) after the expiration of a period of six months after giving a Notice of Litigation; and
 - (b) in relation to a Common Liability, after the expiration of a period of six months after giving a Notice of Determination of Common Liability.
- 18.2 Clause 18.1 does not apply to a Section 562A(4) Application.
- 18.3 Subject to compliance with clause 18.1 or clause 28.4 by the Scheme Creditor, the Liquidators and the Scheme Administrators will not object to any application under the provisions of section 471B of the Corporations Act for leave to commence or continue with a Proceeding.
- 18.4 The costs of the Scheme Creditor incurred in respect of any Proceeding properly commenced or continued after the Effective Date shall not constitute a Priority Claim and any costs order made in respect of the Proceedings against a Scheme Company (or the Scheme Administrators) shall be a Liability under The Australian Scheme but shall not be a Priority Claim, unless the court or tribunal determining the Proceeding orders otherwise (and has the jurisdiction and power to make such an order).
- 18.5 A Scheme Company may rely on the provisions of this clause 18 in order to defend and prevent the continuation or commencement of any Proceeding against that Scheme Company as contemplated by clause 18.1. For the avoidance of doubt, the rights under this clause 18 are in addition to any other rights each Scheme Company may have in effecting a stay of any Proceeding against it.
- 18.6 If a Scheme Creditor institutes or continues any Proceeding in breach of clause 18.1, the Scheme Creditor consents to any application by a Scheme Company or the Scheme Administrators to obtain an order staying any such Proceedings and the Scheme Creditor shall be liable for any costs, charges and expenses incurred by a Scheme Company or the Scheme Administrators in relation to any such Proceeding and any application for an order to stay that Proceeding.
- ### **19. Interest**
- 19.1 There shall not be included as part of an Established Scheme Claim any interest liability of a Scheme Company except Admissible Interest.

20. **Current Policies**

20.1 Despite any other provision of The Australian Scheme, the Liability of a Scheme Company in relation to that part of the policy period of a policy which had not expired by the Record Date shall, subject to the terms of the policy, include liability in respect of any loss insured under the policy occurring after the Record Date but before the expiry or cancellation of the policy.

21. **Notice of Litigation**

21.1 During the Run-off Period, a Scheme Creditor may give a Notice of Litigation to a Scheme Company in respect of any Liability, or any part of a Liability, which is not either agreed with the Scheme Administrators or determined by the Scheme Administrators to be an Acknowledged Creditor Claim.

21.2 A Notice of Litigation in respect of any Liability must be given to a Scheme Company in the form of Annexure 4.

21.3 A Notice of Litigation in respect of a Liability must:

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

21.4 After receipt of a Notice of Litigation, a Scheme Company shall use its reasonable endeavours to reach agreement with the Scheme Creditor as to the proper amount of each Liability concerned before the expiration of six months from the date of the Notice of Litigation.

22. **Notice of Determination of Common Liability**

22.1 In relation to any Common Liability, a Scheme Creditor shall give a Notice of Determination of Common Liability to a Scheme Company, giving the Scheme Company notice of:

- (a) the giving of an order, judgment, decision or award of a court or tribunal of competent jurisdiction, which is final and conclusive in relation to the merits of a Common Liability (and which is not subject to any appeal, request for reargument, rehearing, reconsideration, or similar relief) in respect of;
- (b) a Final Settlement being reached with; or
- (c) all proceedings:
 - (i) being stayed or restrained by operation of law in respect of; or
 - (ii) having resulted in a default judgment in favour of the Scheme Creditor against such Co-Insurers, in respect of;

a Co-Insurer, or where there is more than one Co-Insurer, the majority in value of Co-Insurers.

22.2 The majority in value of Co-Insurers shall be calculated by reference to the amount of the total of the percentile participation of the Co-Insurers in respect of the Common Liability and shall mean more than 50% of the amount of the total percentile participation of the Co-Insurers in respect of the Common Liability.

22.3 The Notice of Determination of Common Liability shall give details of the quantum of the liability of each of the Co-Insurers the subject of any occurrence referred to in clause 22.1.

23. **Threshold Offer**

23.1 The Scheme Administrators may, at any time during the Run-off Period, determine that a Scheme Company shall make a Threshold Offer to each Scheme Creditor, whose Established Scheme Claims in total are equal to or less than the Threshold Amount (or an equivalent amount in any other currency calculated using the Relevant Rate of Exchange on the most recent Review Date). A Scheme Administrator must advise a Scheme Creditor at the time of making a Threshold Offer that the consequence of the acceptance of the Threshold Offer will be the loss of the opportunity of the Scheme Creditor to make any further claims or receive further distributions in respect of the Established Scheme Claims the subject of the Threshold Offer.

23.2 If a Threshold Offer is accepted by the Scheme Creditor, that Scheme Creditor shall have no other entitlement in respect of the Established Scheme Claim or Established Scheme Claims the subject of such a Threshold Offer.

23.3 The Scheme Administrators may only determine to make a Threshold Offer with the approval of the Creditors' Committee, and, in the case of a Threshold Offer to a Protected Policyholder (as defined in the FSCS Schedule), with the prior approval of the FSCS.

23.4 The payment of the amount of an accepted Threshold Offer shall be made from such of the Scheme Assets from which the Established Scheme Claim the subject of the accepted Threshold Offer of the Scheme Creditor would have otherwise been paid but for this clause 23.

23.5 The Scheme Creditor shall be deemed to accept the offer by debiting or otherwise accepting the payment offered within six months of the payment being offered.

E. ESTIMATION PERIOD

24. Estimation Date

24.1 The Run-off Period in The Australian Scheme will end and the Estimation Period in The Australian Scheme will begin on the Estimation Date.

24.2 The Estimation Date shall be:

- (a) if no other date is fixed pursuant to clause 24.2(b), seven years after the Effective Date; or
- (b) the date fixed in advance by ordinary resolution of the Creditors' Committee and a Special Resolution of the Scheme Creditors, which must be a date not earlier than five years or later than nine years after the Effective Date.

24.3 The Scheme Administrators shall, within 180 days of, but not less than 90 days prior to, the Estimation Date:

- (a) send to each known Scheme Creditor a Notice of Estimation Date in the form of Annexure 2;
- (b) send to each known Scheme Creditor a Final Claim Form for Estimation; and
- (c) give Notice by Publication.

25. Estimation

25.1 No Scheme Creditor shall be entitled to have any Liability determined to be an Acknowledged Creditor Claim unless:

- (a) prior to the Estimation Date, it has already been determined to be an Acknowledged Creditor Claim in accordance with clause 11;
- (b) a Final Claim Form for Estimation is completed by the Scheme Creditor detailing each of its Liabilities and returned to a Scheme Company so as to reach the Scheme Company, on or before the date three months after the Estimation Date; or
- (c) prior to the Estimation Date, a Proceeding has been commenced in relation to the Liability in accordance with The Australian Scheme which has not been determined by the Estimation Date.

25.2 Subject to clause 25.3 and clause 25.4, and without affecting any rights which any Scheme Creditor may otherwise have under section 1321 of the Corporations Act, after the Estimation Date, no Scheme Creditor shall, without the prior written agreement of the Scheme Administrators (which agreement must be in writing and refer to this clause 25.2), institute or continue any Proceeding in any jurisdiction against a Scheme Company to establish the existence or amount of a Liability.

25.3 Clause 25.2 does not apply to a Section 562A(4) Application.

25.4 After the Estimation Date, a Scheme Creditor may continue any Proceeding commenced during the Run-off Period in accordance with clause 18.1 or 18.2.

25.5 A Scheme Company may rely on the provisions of this clause 25 in order to defend and prevent the continuation or commencement of any Proceeding against that Scheme Company as contemplated by

clause 25.2. For the avoidance of doubt, the rights under this clause 25 are in addition to any other rights each Scheme Company may have in effecting a stay of any Proceeding against it.

25.6 If a Scheme Creditor institutes or continues any Proceeding in breach of clause 25.2, the Scheme Creditor is deemed to provide its consent to the entitlement of a Scheme Company to obtain an order staying those Proceedings and the Scheme Creditor shall be liable for any costs, charges and expenses incurred by the Scheme Company or the Scheme Administrators.

26. Determination after Estimation Date

26.1 After the Estimation Date, the Scheme Administrators shall determine whether any Notified Liability gives rise to an Established Scheme Claim within three months after the final date for the submission of a Final Claim Form for Estimation in accordance with clause 25.1(b).

26.2 The Scheme Administrators shall notify each Scheme Creditor in writing:

(a) if they do not accept, in full or in part, that their Notified Liability gives rise to an Established Scheme Claim under clause 26.1; and

(b) the amount of the Notified Liability not so accepted by the Scheme Administrators.

26.3 If, after the period of a further three months from the issue by the Scheme Administrators of written notice of their determination in accordance with clause 26.2, the Scheme Administrators and the Scheme Creditor have not reached agreement about whether any part of the claim specified in the Final Claim Form for Estimation gives rise to an Established Scheme Claim under The Australian Scheme, the Scheme Administrators shall immediately refer for determination to one or more of the Scheme Adjudicators the amount of the Established Scheme Claim.

F. SCHEME CLAIM ADJUDICATION

27. Scheme Claim Adjudication

- 27.1 This clause 27 shall apply when the Scheme Administrators have referred to one or more of the Scheme Adjudicators for determination after the Estimation Date whether a Notified Liability gives rise to an Established Scheme Claim and the value of that Established Scheme Claim.
- 27.2 The Scheme Adjudicator shall determine the value of the Established Scheme Claim concerned on the basis of any submissions made by the Scheme Creditor and any Scheme Company. The Scheme Adjudicator shall act as an expert and not as an arbitrator.
- 27.3 The amount of a determination of a Scheme Adjudicator shall, subject to any mathematical or other manifest error and insofar as the law allows, be binding on the Scheme Administrators, each Scheme Company and the Scheme Creditor as the amount of the Established Scheme Claim. The Scheme Adjudicator is not required to give reasons for his or her determination unless requested to do so by the Scheme Administrator or the Scheme Creditor within 30 days of the determination. Every Scheme Creditor is entitled to appeal the decision of a Scheme Adjudicator under section 1321 of the Corporations Act but otherwise, and so far as the law permits, there shall be no right of appeal from such a determination. A Scheme Creditor's right of appeal under section 1321 of the Corporations Act is not restricted to any mathematical or other manifest error with regard to the amount determined by the Scheme Adjudicator.
- 27.4 Where the matters in clause 27.1 are referred to the Scheme Adjudicator for determination, a Scheme Company will provide to the Scheme Adjudicator a copy of any Final Claim Form for Estimation, the notice referred to in clause 26.2 and any accompanying documents available to the Scheme Company in connection with those matters.
- 27.5 The Scheme Adjudicator shall have access to all of a Scheme Company's records and information in the possession or under the control of the Scheme Company (other than documents subject to legal professional privilege), which the Scheme Adjudicator considers is needed to resolve the dispute concerning the matters referred to in clause 27.1.
- 27.6 The Scheme Adjudicator shall be entitled to provide for such provisions and prescribe such procedures as in his or her absolute discretion are considered appropriate for the purposes of making a determination in connection with any matters referred to the Scheme Adjudicator.
- 27.7 The Scheme Adjudicator shall be entitled to:
- (a) call for such evidence in relation to matters referred to him or her as may be required from the Scheme Creditor or a Scheme Company; and
 - (b) consult with such advisers, including legal advisers, actuaries and experts as are considered appropriate by the Scheme Adjudicator.
- 27.8 If, after the expiry of 30 days, or such other time as the Scheme Administrators determine, from the giving of a notice calling for any evidence pursuant to clause 27.7(a), none has been provided, the Scheme Adjudicator shall be entitled to make such determination as he or she sees fit on the basis of the information available.
- 27.9 If a conflict of interest arises in respect of any matter referred to a Scheme Adjudicator, the Scheme Adjudicator will immediately notify the Scheme Creditor and the Scheme Administrators of such conflict and of all circumstances relating to such conflict. Unless the Scheme Creditor and the

Scheme Administrators agree in writing to permit the Scheme Adjudicator to act and the Scheme Adjudicator is willing to act, the matter will be referred by the Scheme Administrators to a different Scheme Adjudicator for adjudication.

- 27.10 On any matters being referred to a Scheme Adjudicator for determination in accordance with this clause 27, the Scheme Adjudicator shall certify in writing to the Scheme Administrators, a Scheme Company and the Scheme Creditor, before the expiration of six months from the date on which such matters were referred, the amount of the Established Scheme Claim, taking into account any Security and any Set-off. Such a certificate provided by a Scheme Adjudicator shall also contain a note that the Scheme Creditor has a right of appeal under section 1321 of the Corporations Act.
- 27.11 Subject to clause 46, the Scheme Adjudicator may direct that the payment of his or her remuneration, charges and expenses be made by a Scheme Company or the Scheme Creditor or the Scheme Creditors concerned.
- 27.12 If the Scheme Adjudicator directs that any such remuneration, costs, charges and expenses be paid by a Scheme Company, the same shall forthwith be paid in full by the Scheme Company out of the assets of the Scheme Company as a Scheme Cost.
- 27.13 If the Scheme Adjudicator directs that any such remuneration, costs, charges and expenses be payable by a Scheme Creditor, the Scheme Creditor shall pay the same in full within 60 days, or such period as the Scheme Administrators determine, after such direction.
- 27.14 If the Scheme Creditor does not make payment, in whole or in part, in accordance with clause 27.13, a Scheme Company shall forthwith pay any unpaid balance thereof in full. In any such case, the Scheme Creditor shall be treated as having received on account of all Established Scheme Claims an amount equal to the unpaid balance so paid by the Scheme Company; and the extent, if any, to which it is entitled to any payment pursuant to clause 38 shall be reduced accordingly. In any case where the Scheme Creditor is not entitled to receive a payment pursuant to The Australian Scheme, or is found to owe any money to one or more Scheme Company following the application of Set-off, or the amount of such remuneration, costs and expenses exceeds the Scheme Creditors entitlement to a payment under The Australian Scheme, the amount concerned or such excess shall be treated as a debt owed by the Scheme Creditor to the Scheme Company.
- 27.15 If no certificate shall have been given by the Scheme Adjudicator in accordance with clause 27.10, then the Scheme Administrators may appoint a replacement Scheme Adjudicator or extend the time within which the Scheme Adjudicator is to provide a certificate.

G. PROCEEDINGS AND ENFORCEMENT

28. Proceedings

- 28.1 If, and to the extent that a Scheme Creditor obtains an order, judgment, decision or award of a court or tribunal relating to a Liability, in contravention of clause 18.1 or clause 25.2, such order, judgment, decision or award shall not be an Acknowledged Creditor Claim except with the agreement of the Scheme Administrators.
- 28.2 Nothing in The Australian Scheme shall preclude a Scheme Creditor from continuing any Proceeding commenced or continued before the Effective Date in accordance with leave granted to commence or continue with the Proceeding under section 471B of the Corporations Act.
- 28.3 Nothing in The Australian Scheme shall preclude each Scheme Company from commencing or continuing any proceeding against a Scheme Creditor.
- 28.4 Notwithstanding clauses 18.1 and 25.2, and without derogating from section 471B of the Corporations Act, where a Scheme Company commences or continues any proceeding against a Scheme Creditor, the Scheme Creditor may assert or prosecute a Liability against that Scheme Company in that proceeding (whether by way of claim or counterclaim) so long as:
- (a) the Liability arises out of the same transaction or occurrence that is the subject matter of a Scheme Company's claim in that proceeding; and
 - (b) the adjudication of the Liability does not require the presence of third parties over whom the court or tribunal in question cannot acquire jurisdiction.
- 28.5 For the purposes of this clause 28, a Scheme Company shall not be deemed to be continuing any proceeding commenced prior to the Effective Date in which a Scheme Company is not actively prosecuting its claim.

29. Enforcement of Liabilities

- 29.1 Except to the extent that a Scheme Company has failed to perform any obligation to make a payment to a Scheme Creditor under the provisions of The Australian Scheme, no Scheme Creditor shall be entitled to take any proceeding against a Scheme Company or its Property whatsoever for the purpose of enforcing payment of any Liability or any part thereof from the Scheme Assets which the Scheme Administrators are obliged to distribute.
- 29.2 If a Scheme Creditor institutes or continues any proceeding in breach of clause 29.1, the Scheme Creditor is deemed to provide its consent to a Scheme Company obtaining an order staying that proceeding and the Scheme Creditor shall be liable for any costs, charges and expenses incurred by the Scheme Company or the Scheme Administrators.

H. APPLICATION OF THE ASSETS OF THE SCHEME COMPANIES

30. General

30.1 Nothing in The Australian Scheme affects the operation of the State Cut-through Legislation.

30.2 A Scheme Creditor shall not be entitled to receive a distribution under The Australian Scheme in relation to an Established Scheme Claim to the extent that such Scheme Creditor has in respect of that Established Scheme Claim received a distribution, or obtained any payment not made by the Scheme Administrators under The Australian Scheme.

31. Reinsurance Assets that are Assets in Australia

31.1 Assets in Australia that are Reinsurance Assets are to be applied by the Scheme Administrators as follows:

- (a) Reinsurance Assets that are Assets in Australia and are the subject of a Section 562A(4) Order and have been paid to the Liquidators under clause 9.7, or are otherwise held by the Liquidators, are to be applied in accordance with the Section 562A(4) Order; and
- (b) in relation to Reinsurance Assets that are Assets in Australia and are not the subject of a Section 562A(4) Order:
 - (i) first, in payment of each Scheme Cost which is an expense of the External Administrators of or incidental to getting in each of such Reinsurance Assets; and
 - (ii) secondly, in payment of Insurance Liabilities which are Liabilities in Australia, with such Established Scheme Claims ranking at residual amounts after deducting any payments received under a Section 562A(4) Order, pro rata.

31.2 Any Assets in Australia that are Reinsurance Assets remaining after the application of this clause 31 will be included in the assets to be distributed in accordance with clause 33.

32. Reinsurance Assets that are not Assets in Australia

32.1 Scheme Assets that are Reinsurance Assets but are not Assets in Australia are to be applied by the Scheme Administrators as follows:

- (a) such Reinsurance Assets that are the subject of a Section 562A(4) Order and have been paid to the Liquidators under clause 9.7, or are otherwise held by the Liquidators, are to be applied in accordance with the Section 562A(4) Order; and
- (b) in relation to such Reinsurance Assets which are not the subject of a Section 562A(4) Order:
 - (i) first, in payment of each Scheme Cost which is an expense of the External Administrators of or incidental to getting in each of such Reinsurance Assets;
 - (ii) secondly, in payment of Insurance Liabilities which are not Liabilities in Australia, with such Established Scheme Claims ranking at residual amounts after deducting any payments received under a Section 562A(4) Order, pro rata until the same payment percentage with respect to the Insurance Liabilities referred to in clause 31.1(b)(ii) has been achieved; and

- (iii) thirdly, in payment of Insurance Liabilities, with such Established Scheme Claims ranking at residual amounts after deducting any payments received under a Section 562A(4) Order, pro rata.

32.2 Any Scheme Assets that are Reinsurance Assets but are not Assets in Australia remaining after the application of this clause 32 will be included in the assets to be distributed in accordance with clause 34.

33. **Non-Reinsurance Assets in Australia**

33.1 Assets in Australia that are not distributed in accordance with clause 31.1 are to be applied by the Scheme Administrators in the following order:

- (a) first, in payment of any Established Scheme Claim or Scheme Cost that is a Priority Claim, and to the extent that such a priority comprises:
 - (i) a Scheme Cost incurred by the External Administrators, they are to be such Scheme Costs incurred by the External Administrators as are fairly apportioned by the Scheme Administrators to be paid from those assets; and
 - (ii) an Established Scheme Claim, such claim must be a Liability in Australia; and
- (b) secondly, in payment of all Liabilities in Australia, with such Established Scheme Claims ranking at residual amounts after the deduction of any amounts received in accordance with clauses 31 or 32 or pursuant to any Section 562A(4) Order, pro rata.

33.2 For the purposes of this clause 33:

- (a) payments of Priority Claims shall be made in accordance with the order of priorities given in sections 556 and 562 of the Corporations Act; and
- (b) Priority Claims of a class referred to in the order of priorities as set out in clause 33.2(a) and Established Scheme Claims shall rank equally between themselves and must be paid in full, unless the Property of the Scheme Company is insufficient to meet them, in which case they must be paid proportionately.

33.3 Any assets remaining after the application of this clause 33 will be included in the assets to be distributed in accordance with clause 34.

34. **Non-Reinsurance Assets which are not Assets in Australia**

34.1 Scheme Assets that are not assets which are distributed in accordance with clauses 31.1, 32.1, 33.1 or 35.1 are to be applied by the Scheme Administrators in the following order:

- (a) first, in payment of any Established Scheme Claim or Scheme Cost that is a Priority Claim, including Scheme Costs incurred by the External Administrators which are not paid under clauses 31, 32, 33 or 35;
- (b) secondly, in payment of all Established Scheme Claims other than Liabilities in Australia, with such Established Scheme Claims ranking at residual amounts after the deduction of any prior amounts received in accordance with clause 32 or any Section 562A(4) Order, until the same percentage payment made in respect to the Liabilities in clause 33.1(b) has been achieved, pro rata; and

- (c) thirdly, in payment of all Established Scheme Claims, with such Established Scheme Claims ranking at residual amounts after the deduction of any amounts received in accordance with clauses 31 and 32 or pursuant to any Section 562A(4) Order, pro rata.

34.2 For the purposes of this clause 34:

- (a) payments of Priority Claims shall be made in accordance with the order of priorities given in sections 556 and 562 of the Corporations Act; and
- (b) Priority Claims of a class referred to in the order of priorities as set out in clause 34.2(a) and Established Scheme Claims shall rank equally between themselves and must be paid in full, unless the property of the company is insufficient to meet them, in which case they must be paid proportionately.

34.3 Any assets remaining after the application of this clause 34 will be applied in the following order:

- (a) first, in accordance with clauses 38.10 and 38.11; and
- (b) secondly, to be paid to the Liquidators.

35. **US Trust Fund Assets**

35.1 US Trust Fund Assets which are made available to the Scheme Administrators, are to be applied by the Scheme Administrators in the following order:

- (a) first, in payment of the reasonable and necessary expenses of the External Administrators in realising the US Trust Fund Assets and making payments from the US Trust Fund Assets; and
- (b) secondly, in payment of the Established Scheme Claims of American Policyholders (who are beneficiaries of the US Trust Fund Assets) with claims ranking at full value without any deduction for other amounts received under The Australian Scheme, pro rata, provided that no such American Policyholder shall receive any payment under this clause 35.1(b) until all other such American Policyholders have received the same percentage payment as the first mentioned American Policyholder has received as a result of distributions under clauses 31 to 34 or from any distributions not made by the Scheme Administrations under The Australian Scheme.

35.2 Any Scheme Creditor receiving payments in relation to an Established Scheme Claim under this clause 35 will only receive distributions under any of clauses 31 to 34 in relation to such Established Scheme Claim to the extent that the total entitlements in respect of that Established Scheme Claim under those clauses exceeds the total distribution to that Scheme Creditor out of the US Trust Fund Assets.

35.3 Any Scheme Creditor receiving payments in relation to an Established Scheme Claim out of the US Trust Fund Assets otherwise than pursuant to a distribution under The Australian Scheme will only receive distributions under any of clauses 31 and 34 in relation to such Established Scheme Claim to the extent that the total entitlements in respect of that Established Scheme Claim under those clauses exceeds the total distribution to that Scheme Creditor out of the US Trust Fund Assets.

35.4 Such amounts remaining after being applied in accordance with this clause 35 will be included in the assets to be distributed in accordance with clause 34.

I. PAYMENTS

36. Payment of Priority Claims

36.1 A Scheme Company shall pay all Priority Claims, but nothing herein shall oblige it to pay any such amount at any time before the date on which such amount would, apart from The Australian Scheme, otherwise have become due and payable.

37. Computation of the Payment Percentages

37.1 The Scheme Administrators may from time to time set the Payment Percentages in respect of the Payments out of the Scheme Assets in accordance with Part H.

37.2 As soon as practicable after each Review Date, the Scheme Administrators shall consider whether any initial Payment Percentages should be set, and if so, the amount of any initial Payment Percentages or whether, if an initial Payment Percentage (or a revised Payment Percentage) has been set, whether the Payment Percentages should be revised and a new Payment Percentage set in respect of any of the Payments out of Scheme Assets in accordance with Part H.

37.3 The Scheme Administrators shall not set, or increase, Payment Percentages unless they consider, on the basis of the information and advice referred to in clause 37.5, that the Scheme Assets (having regard to the distributions set out in Part H) will be sufficient to enable a Scheme Company to comply with the provisions of clause 38 (by reference to Payment Percentages at that rate) in relation to all Liabilities of a Scheme Company which have become, or which the Scheme Administrators consider may become, Established Scheme Claims after the Review Date concerned.

37.4 If, on considering the current Payment Percentages, the Scheme Administrators shall consider that there are insufficient Scheme Assets for such Payment Percentages to be set at that level and for the provisions of clauses 23 and clause 38 to be complied with, they shall reduce such Payment Percentages to such level as they consider appropriate.

37.5 For the purpose of setting the Payment Percentages as at a particular Review Date, the Scheme Administrators shall obtain and consider such financial or actuarial information and advice as the Scheme Administrators, following consultation with the Creditors' Committee, shall consider appropriate including information in relation to any Section 562A(4) Application which has been notified to the Scheme Administrators.

37.6 Any amount payable to a Scheme Creditor under The Australian Scheme in respect of an Established Scheme Claim which was incurred in Australian Dollars, US Dollars, Sterling, or Euros or a European former national currency unit shall be paid in Australian Dollars, US Dollars, Sterling or Euros as the case may be. In respect of any amount which was incurred in any currency other than Australian Dollars, US Dollars, Sterling or Euros or a European former national currency unit:

- (a) the amount shall be converted to, and paid in, Australian Dollars, US Dollars, Sterling or Euros at the Relevant Rate of Exchange on the most recent Review Date at the discretion of the Scheme Administrators or in accordance with the written request of the Scheme Creditor made prior to the most recent Review Date; or
- (b) if the Scheme Creditor so requests in writing prior to the most recent Review Date, the Scheme Administrators shall pay the amount in the currency in which the relevant Established Scheme Claim was incurred but shall deduct from the amount to be paid the costs (including bank fees and charges incurred to convert funds into that currency) incurred by the Scheme Administrators in paying the amount in that currency.

37.7 For the purpose of clause 37.6, where a Scheme Creditor has Established Scheme Claims which were incurred in more than one currency, the Scheme Administrators shall determine the dominant currency for the Established Scheme Claims of that Scheme Creditor being the currency in which the largest proportion of the Established Scheme Claims and the Scheme Administrators' estimate of the Liabilities which have not at the time of payment been determined to be Established Scheme Claims were incurred (using the Relevant Rate of Exchange on the most recent Review Date). All amounts in respect of Established Scheme Claims which were not incurred in the dominant currency shall be converted in to the dominant currency at the Relevant Rate of Exchange on the most recent Review Date and paid in accordance with clause 37.6.

38. **Payments to Scheme Creditors**

38.1 The De Minimis Amount shall be:

- (a) such amount from time to time as is prescribed for the purposes of section 140(9) of the Bankruptcy Act or its equivalent in any other currency from time to time; or
- (b) such greater amount as the Scheme Administrators may determine from time to time, with the approval of the Creditors' Committee, unless the payment is the final payment to a Scheme Creditor.

38.2 The Scheme Administrators may determine that any payment under The Australian Scheme of less than the De Minimis Amount shall not be sent to a Scheme Creditor.

38.3 Any amount so withheld under clause 38.2 shall be paid to a Scheme Creditor at such time as the aggregate of sums owed to that Scheme Creditor under The Australian Scheme exceed the De Minimis Amount.

38.4 The Scheme Administrators shall, in consultation with the Creditors' Committee, set such Payment Dates as are required for the purposes of making the payments to be made pursuant to this clause 38.

38.5 Prior to making any payment out of the Scheme Assets of an amount in respect of a liability under an Insurance Contract received by the Scheme Company under a facultative or fronting Contract of Reinsurance, the Scheme Administrators must give to any Scheme Creditor in relation to whose Liability under an Insurance Contract such amount was received not less than 60 days notice in writing specifying:

- (a) the amount received;
- (b) that the amount has been received in relation to the Liability of the Scheme Creditor under a facultative or fronting Contract of Reinsurance, as the case may be; and
- (c) that the Scheme Administrators propose to make payment pursuant to The Australian Scheme of the amount received unless a Section 562A(4) Application is made in relation to the amount.

38.6 After it is determined that a Liability is an Established Scheme Claim, a Scheme Company shall, within three months after the next Payment Date:

- (a) pay to the Scheme Creditor concerned an amount, as adjusted by Part H, equal to the then current Payment Percentages of such Established Scheme Claim; and
- (b) following an increase in the Payment Percentages under clause 37, pay to the Scheme Creditor concerned a further amount, as adjusted by Part H, equal to the difference

between (A) the Payment Percentages (as increased) of such Established Scheme Claim and (B) the amount of such Established Scheme Claim which has previously been discharged by a Scheme Company or is treated as having been discharged under clauses 38.3 or 39.

- 38.7 For the avoidance of doubt, clause 38.6 does not apply to any Threshold Offer or to De Minimis Amounts.
- 38.8 The Scheme Administrators shall, in respect of any payment in respect of an Established Scheme Claim, determine the amount payable out of the Scheme Assets in accordance with Part H. Upon any further payment being made in respect of that Established Scheme Claim, the Scheme Administrators shall recalculate the amount payable out of the Scheme Assets as necessary to give effect to Part H and may adjust the amounts paid or payable from such Scheme Assets as appropriate. If, at any time it appears that the Scheme Administrators have made payments on the basis of an estimate which turns out to be inaccurate or otherwise requires adjustment and, as a result, a particular Scheme Creditor has received, under one or more previous payments, an amount in excess of what the Scheme Creditor should have received, the Scheme Administrators shall be entitled to make appropriate adjustment by way of deduction from any subsequent payment to which the Scheme Creditor becomes entitled, irrespective of whether the payment is in respect of the same Established Scheme Claim and irrespective of the clause in Part H under which the subsequent payment is made.
- 38.9 Part H shall apply irrespective of the order in which payments are actually made to Scheme Creditors. Accordingly, each payment to a Scheme Creditor (other than the final payment and excepting payments in respect of a Threshold Amount or a De Minimis Amount) shall (irrespective of the Established Scheme Claim in respect of which it is paid or the source of the payment) be a payment on account of the total actual entitlement of the Scheme Creditor pursuant to the provisions of Part H and The Australian Scheme.
- 38.10 If all Liabilities of a Scheme Company shall have become Established Scheme Claims and been paid in full, the liabilities for interest referred to in clause 19, other than Admissible Interest, shall then become payable, pro rata if the Scheme Assets are not sufficient to pay such interest in full.
- 38.11 If the Liabilities and interest referred to in clause 38.10 have been paid in full, a Scheme Company shall pay additional interest in respect of each such Liability:
- (a) at the amount as may be from time to time prescribed pursuant to the Corporations Act on the unpaid amount of such Liability from time to time; and
 - (b) to be calculated on a daily basis from the later of the Effective Date or the date on which the liability of a Scheme Company in respect of the relevant Liability became an Acknowledged Creditor Claim up to the date of payment of the Liability.
- 38.12 The amount of such additional interest shall not exceed the surplus assets of a Scheme Company after adequate provision has been made for all other Liabilities of a Scheme Company (otherwise than in respect of share capital) in existence at the time of payment of such additional interest. The amount of additional interest payable in respect of each such Liability shall, if necessary, be reduced pro rata accordingly.
- 38.13 The Scheme Administrators shall suspend payments under clause 38.6 for such period (not exceeding six months) as they consider appropriate if information becomes available to them about a Scheme Company as a result of which they require to consider whether or not to set reduced Payment Percentages. As soon as practicable during, and in any event at the end of such period, the

Scheme Administrators shall set reduced Payment Percentages or conclude that the Payment Percentages need not be reduced and thereupon the suspension of payments shall be lifted.

38.14 Where, as a result of a change in law or a new interpretation by a court of the law, in either case which would affect the entitlement of a Scheme Creditor in a liquidation of a Scheme Company, which commenced on the Record Date, a Scheme Creditor has received a payment to which it is not entitled by reason of that change in law or interpretation, or has failed to receive a payment to which it would have been entitled having regard to that change in law or interpretation, the Scheme Administrators shall adjust any future distributions or payments so that, in so far only as the Scheme Assets then available permit them to do so, the relevant Scheme Creditor receives a payment in accordance with its entitlements in accordance with the law, taking account of that change in law or interpretation. Any such adjustment will not disturb any distributions already made by the Scheme Administrators.

39. **Method of Payment**

39.1 Payments to a Scheme Creditor under The Australian Scheme may be made, in the absolute discretion of the Scheme Administrators:

- (a) by cheque in favour of the Scheme Creditor concerned or as such Scheme Creditor may direct and sent through the post at the risk of such Scheme Creditor to the last known address of such Scheme Creditor or to such other address as such Scheme Creditor may from time to time notify to a Scheme Company;
- (b) by telegraphic transfer to such bank account as the Scheme Creditor concerned may from time to time notify to a Scheme Company; or
- (c) in such other manner as the Scheme Administrators may from time to time determine. The cost of using any such other manner shall be an expense of the Scheme Creditor concerned and deducted from the relevant payments.

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

39.3 If any Scheme Creditor takes any action after the Effective Date which is prohibited by clause 18.1 or clause 25.2 in any jurisdiction, it shall, without prejudice to any other rights of any of a Scheme Company and the Scheme Administrators, be treated as having received an advance payment on account of its Liability equal to the amount or gross value of any money, Property, benefit or advantage obtained by it at the expense of a Scheme Company, as the result of such action. The extent, if any, to which it is entitled to any payment under The Australian Scheme shall be reduced accordingly.

39.4 For the purpose of clause 39.3, the gross value of any such Property, benefit or advantage obtained by a Scheme Creditor shall be conclusively determined by the Scheme Administrators and, without limitation, may include such amount as the Scheme Administrators may consider to be appropriate by way of interest or costs, charges or expenses incurred by a Scheme Company as a consequence of the relevant Scheme Creditor acting in a manner prohibited by clause 18.1 or clause 25.2. If any amount so treated as an advance distribution to a Scheme Creditor exceeds its entitlement from time to time under The Australian Scheme in respect of its Liability, the balance shall be repaid immediately, failing which interest shall accrue on the balance at the rate prescribed for the purposes

of section 563B of the Corporations Act for the period from the date of the advance distribution until the date of payment.

39.5 At the time of making any payment to a Scheme Creditor, the Scheme Administrators shall provide to the Scheme Creditor a statement which records the Established Scheme Claims of the Scheme Creditor, the fund or funds from which the payment has been made and relevant Payment Percentages for each fund from which the payment was made.

40. **Unclaimed Payments**

40.1 Payments made pursuant to clause 39 after the Estimation Date must be debited against the bank accounts of a Scheme Company within six months of the payment being made.

40.2 Any Scheme Assets representing payments which have not been debited in accordance with clause 40.1 will be paid by the Scheme Administrators to the Liquidators to be dealt with by them consistently with the Corporations Act.

J. THE SCHEME ADMINISTRATORS

41. Qualification, Appointment and Resignation

- 41.1 There shall be appointed two or more Scheme Administrators having the rights, powers and duties conferred upon them by The Australian Scheme.
- 41.2 A Scheme Administrator shall:
- (a) be a qualified individual pursuant to the provisions of section 411(7) of the Corporations Act;
 - (b) be appointed to administer The Australian Scheme;
 - (c) give and not withdraw his or her consent to act as a Scheme Administrator; and
 - (d) have executed and delivered to the Scheme Company a deed in the form of Annexure 1.
- 41.3 The initial Scheme Administrators shall be Anthony Gregory McGrath and Christopher John Honey.
- 41.4 A Scheme Administrator shall cease to be a Scheme Administrator if:
- (a) he or she resigns by giving not less than six months (or such shorter period as the Creditors' Committee may agree) notice in writing to a Scheme Company and to the Creditors' Committee; or
 - (b) removed pursuant to clause 52.2; or
 - (c) he or she dies or becomes bankrupt or mentally disordered; or
 - (d) he or she becomes disqualified pursuant to the provisions of section 411(7) of the Corporations Act.

42. General Functions and Powers

- 42.1 The Scheme Administrators shall have the power, to the fullest extent permissible at law, to:
- (a) manage, control and administer the Property, Scheme Assets and affairs of a Scheme Company for the purposes of implementing The Australian Scheme;
 - (b) realise the Scheme Assets of a Scheme Company and apply them for the benefit of the Scheme Creditors in accordance with The Australian Scheme;
 - (c) supervise and ensure the carrying out of The Australian Scheme, and for these purposes shall:
 - (i) have power in the name and on behalf of a Scheme Company to manage the affairs and property of a Scheme Company; and
 - (ii) without prejudice to the generality of the foregoing, have the powers specified in clause 43.

- 42.2 The functions and powers of the Scheme Administrators under The Australian Scheme may be performed and exercised jointly or severally and any act required to be done by the Scheme Administrators pursuant to The Australian Scheme may be done by all or any one or more of them.
- 42.3 Any function of or power conferred on a Scheme Company or its officers other than the Liquidators, whether by statute or by its memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the Scheme Administrators of their functions and powers in relation to a Scheme Company, shall not be exercisable except with the consent of the Scheme Administrators, which may be given either generally or in relation to particular cases.
43. **Specific Functions and Powers**
- 43.1 Subject to the provisions of The Australian Scheme, in carrying out their functions and powers under The Australian Scheme, the Scheme Administrators shall be entitled:
- (a) to agree or determine Liabilities for the purposes of determining Acknowledged Creditor Claims pursuant to The Australian Scheme;
 - (b) to give notice of an Established Scheme Claim in respect of the amount of an Acknowledged Creditor Claim and, for that purpose, to take account of any Security which the Scheme Creditor holds in respect of the Acknowledged Creditor Claim and any Set-off;
 - (c) to manage, process, collect and do all such other things as are necessary for the collection of reinsurance due to a Scheme Company in the name of the Scheme Company;
 - (d) to take possession of, collect and get in all the Property and assets (of whatever nature) to which a Scheme Company is or appears to be entitled and to do all such things as may be necessary for the realisation of any such Property or assets, including to sell or otherwise dispose of, in any manner, all or any part of such Property or assets;
 - (e) to have full access at all times to all books, papers and other documents of a Scheme Company, and to have access to and to receive all such information as they may require in relation to its affairs. Such books, papers and other documents and information may be disclosed if it is considered such disclosure would assist in the implementation of The Australian Scheme;
 - (f) to do all things which may be necessary or expedient for the protection of a Scheme Company's assets or of any assets that appear to belong to the Scheme Company;
 - (g) to open, maintain and operate such bank accounts as they think fit and to close such bank accounts;
 - (h) to apply to the courts in any jurisdiction, including to obtain recognition of or to enforce The Australian Scheme or to bring, commence or defend any Proceeding in the name of and on behalf of a Scheme Company;
 - (i) to bring or defend any action or other legal proceedings in the name and on behalf of a Scheme Company or otherwise;
 - (j) on behalf of a Scheme Company, to enter into, vary or terminate arrangements with an agent for the provision of such services to the Scheme Company as it may require for the run-off of its insurance business (including agreeing and adjusting any Liability);

- (k) to employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents or service providers in connection with the conduct of their functions and powers under The Australian Scheme;
- (l) to appoint one or more Scheme Adjudicators;
- (m) to do all acts and to execute in the name of and on behalf of a Scheme Company any deed contract, transfer, instrument, bill of a charge, receipt or other document and to use the Scheme Company's seal;
- (n) in the name and on behalf of a Scheme Company, to rank and claim in the bankruptcy, insolvency, sequestration, liquidation or other similar or analogous proceedings of any person indebted to the Scheme Company in any jurisdiction and to receive dividends and to accede to trust deeds, compromises and arrangements in relation to the creditors of any such person;
- (o) to borrow and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received by a Scheme Company;
- (p) to delegate to any person (being, a partner in the same firm as a Scheme Administrator) qualified to act as mentioned in clause 41.2 and approved by the Creditors' Committee for the purposes of this clause 43.1(p), all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under The Australian Scheme and from time to time to revoke any such delegation;
- (q) to the extent that the Court has jurisdiction, to apply or to cause a Scheme Company to apply, to the Court in relation to any particular matter arising in the implementation of The Australian Scheme;
- (r) to propose, where they consider it to be in the interests of Scheme Creditors as a whole, in relation to one or more classes of Scheme Creditor a further scheme of arrangement, with a view either to amending the provisions of The Australian Scheme or to implementing a new scheme of arrangement between a Scheme Company and the Scheme Creditors concerned;
- (s) to convene and attend meetings of the Creditors' Committee (subject to the provisions of clause 50.3(e));
- (t) to consult with the Creditors Committee pursuant to clause 49.4 about the appointment of, and to appoint pursuant to clause 57.2 and clause 57.4(a), additional members of the Creditors' Committee;
- (u) to enter into, on behalf of a Scheme Company, contracts of insurance protecting a Scheme Company or its directors, officers, employees or agents against risks incurred in the run-off of a Scheme Company's business;
- (v) to arrange for the issue or creation of new Security or trusts or other instruments over any of the assets of a Scheme Company:
 - (i) to replace existing Security or trusts; or
 - (ii) to secure liabilities incurred after the Record Date;

- (w) on behalf of a Scheme Company to negotiate, compromise, waive, settle or enter into arrangements with a Scheme Creditor under which:
 - (i) all or part of a Liability of a Scheme Company to that Scheme Creditor is discharged in full in consideration of payment made by the Scheme Company; or
 - (ii) all or part of the Liability of a Scheme Company to that Scheme Creditor becomes an Established Scheme Claim otherwise than as established in accordance with clause 26.3; or
 - (iii) all or part of the Liability of a Scheme Company to that Scheme Creditor is valued and converted into a Liability subordinated to an Established Scheme Claim on any terms (including the payment of an amount higher than the current Payment Percentages, calculated as if that subordinated Liability were an Established Scheme Claim) that the Scheme Administrators think fit;
- (x) to enter into arrangements with any of the reinsurers of a Scheme Company for the discharge of any of such reinsurer's liabilities to the Scheme Company under contracts of reinsurance or retrocession in consideration for payment to the Scheme Company;
- (y) to enter into contractual arrangements with Scheme Creditors under which the total liability of a Scheme Company to the relevant Scheme Creditor in relation to some or all of the Insurance Contracts between a Scheme Company and the Scheme Creditor shall:
 - (i) be discharged in full in consideration for a cash payment by a Scheme Company; or
 - (ii) become an Established Scheme Claim otherwise than in the normal course and on the basis that no further claims may be made under the relevant Insurance Contracts,
- (z) to be remunerated out of the Property of a Scheme Company for the performance and exercise of their powers, rights, duties and functions and for all expenses properly incurred by them in each case as Scheme Costs;
- (aa) to do all other things incidental to the exercise of the functions and powers referred to in this clause 43 and in clause 42;
- (bb) to do all other things which the Scheme Administrators consider necessary or desirable for the purpose of giving effect to or carrying out The Australian Scheme;
- (cc) without limiting the generality of the above, to enter into any agreement with a Scheme Company for the purpose of agreeing the allocation of costs and proceeds relating to the funding of damages recovery claims undertaken by the Liquidators;
- (dd) to cooperate with the UK Provisional Liquidators, or any scheme administrators appointed in the United Kingdom, including for the purposes of administering and giving effect to The Australian Scheme.

43.2 Within three months after each anniversary of the date being either 31 December or 30 June, at the discretion of the Scheme Administrators, after The Australian Scheme becomes effective, the Scheme Administrators shall report to the Scheme Creditors on the progress of The Australian Scheme, including details of the remuneration paid to the Office Holders, since the date of the last such report. The Scheme Administrators shall:

- (a) publish the report on the HIH Website;
- (b) provide a copy of the report to any Scheme Creditor on receipt of a written request to do so; and
- (c) give Notice by Publication to the Scheme Creditors that such a report is so available.

44. **Exercise of Functions and Powers**

44.1 In carrying out their functions and exercising their powers under The Australian Scheme, the Scheme Administrators:

- (a) must, in the administration of the Property of a Scheme Company and in the distribution of the Property among the Scheme Creditors, have regard to any directions given by resolution of the Creditors' Committee but are not obliged to comply with any such directions; and
- (b) shall consult with, and take account of the views expressed by, the Creditors' Committee on any matter material to The Australian Scheme.

44.2 Notwithstanding the provisions of clauses 42 and 43, the Scheme Administrators shall not, without the approval of the Creditors' Committee concerned:

- (a) compromise a debt to a Scheme Company if the amount claimed by a Scheme Company is more than AUD300,000 or its equivalent in any other currency (or such higher amount as is approved by resolution of the Creditors' Committee);
- (b) set or revise the Payment Percentages;
- (c) enter into any agreement with a Scheme Company for the purpose of agreeing the allocation of costs and proceeds relating to the funding of damages recovery claims undertaken by the Liquidators;
- (d) compromise a debt to a Scheme Company owed by a Controlled HIH Company or a liability of a Scheme Company to a Controlled HIH Company;
- (e) determine the Threshold Amount or the amount or a percentage payable by a Scheme Company in respect of Threshold Offer pursuant to clause 23.1;
- (f) convene a meeting of Scheme Creditors to consider a Special Resolution to fix the Estimation Date under clause 24.2(b);
- (g) appoint a Scheme Adjudicator; or
- (h) determine the De Minimis amount pursuant to clause 38.1(b).

K. THE SCHEME ADJUDICATORS

45. Appointment

- 45.1 The Scheme Administrators shall, with the approval of the Creditors' Committee, appoint one or more Scheme Adjudicators.
- 45.2 The initial Scheme Adjudicators shall be appointed prior to notice being given in accordance with clause 24.3. Additional Scheme Adjudicators may be appointed at any time thereafter.
- 45.3 If the Scheme Administrators consider that a Scheme Adjudicator is not adequately performing or capable of performing his or her duties, generally or in respect of any matter or matters referred for determination, the Scheme Administrators may, with the approval of the Creditors' Committee concerned, remove the Scheme Adjudicator generally or in respect of any matters referred. Any matters referred to the Scheme Adjudicator will, upon such removal, be referred to an alternate Scheme Adjudicator for determination and the time periods for the purposes of clause 27.10 shall run from the date of the referral to the alternate Scheme Adjudicator.
- 45.4 A Scheme Adjudicator shall:
- (a) be an individual who is a qualified actuary in either Australia, the United Kingdom or the United States;
 - (b) be an individual who is qualified, in the reasonable opinion of the Scheme Administrators, to discharge the function of a Scheme Adjudicator under The Australian Scheme; and
 - (c) enter into a deed in the form of Annexure 3.

References herein to the Scheme Adjudicator shall be construed as referring to such one or more of the Scheme Adjudicators as are carrying out or are appointed to carry out the functions of Scheme Adjudicator in relation to any particular matter.

46. Functions and Powers and Rights

- 46.1 The Scheme Adjudicators shall be responsible for the adjudication and determination of Liabilities referred to them under clause 27 and shall have the powers, rights, duties and functions conferred upon them by The Australian Scheme for such purposes.
- 46.2 Each Scheme Adjudicator shall be paid such amount of remuneration for the exercise and performance of his powers, rights, duties and functions under The Australian Scheme as is agreed beforehand in writing between the Scheme Adjudicator and the Scheme Administrators. For the avoidance of doubt, the remuneration, costs, charges and expenses referred to in clause 27.12 are deemed to be Scheme Costs and are governed by the provisions relating to the Scheme Costs.
- 46.3 In the event of the removal of a Scheme Adjudicator, he or she shall be entitled to remuneration for the exercise and performance of his powers, rights, duties and functions under The Australian Scheme and to the costs, charges and expenses incurred in connection with the provision of documents or information at a Scheme Company' request after his or her removal.

L. PROVISIONS COMMON TO OFFICE HOLDERS

47. Responsibility and Indemnity

- 47.1 The Australian Scheme shall be administered by the Scheme Administrators and the Scheme Adjudicators according to the respective powers and functions assigned to them by the provisions of The Australian Scheme and, in carrying out their functions and exercising their powers under The Australian Scheme, the Office Holders shall act *bona fide* and with due care and diligence.
- 47.2 The Scheme Administrators and any Delegate shall carry out their functions and exercise their powers in the interests of Scheme Creditors as a whole, and shall use their powers under The Australian Scheme for the purpose of ensuring that The Australian Scheme is operated in accordance with its terms.
- 47.3 Subject to the right of appeal under section 1321 of the Corporations Act and so far as the law permits, a Scheme Creditor shall not be entitled to challenge the validity of any act done by, or omitted to be done by, or the exercise of any power by the Office Holders or any Employee.
- 47.4 No Office Holder or Employee shall be liable for any loss or liability, including any liability incurred by the Office Holder or Employee arising out of or in connection with making or having made a payment to a Scheme Creditor to which the Scheme Creditor is not entitled only by reason of a change in law including a new interpretation by a court of the law after the making of the payment, unless such a loss or liability is attributable to his or her own negligence, breach of duty, breach of trust, fraud or dishonesty.
- 47.5 Subject to the Corporations Act, each Office Holder (in that capacity) and each Employee shall be entitled to an indemnity out of the assets of a Scheme Company against:
- (a) all actions, claims, proceedings and demands brought or made against such Office Holder or Employee in respect of any act done or omitted to be done by such Office Holder or Employee in good faith without negligence, breach of duty, breach of trust, fraud or dishonesty in the course of implementing The Australian Scheme in accordance with its terms; and
 - (b) all expenses and liabilities properly incurred by such Office Holder or Employee in carrying out his or her functions and powers (or the functions for which such Employee is employed by the Office Holders) in the course of implementing The Australian Scheme in accordance with its terms.
- 47.6 Each such person entitled to an indemnity in accordance with clause 47.5 shall be entitled to an indemnity out of the assets of a Scheme Company:
- (a) against any liability incurred by him or her in defending any proceedings, whether civil or criminal, in respect of any negligence, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his or her favour or in which he or she is acquitted; or
 - (b) in connection with any application in any such proceedings in which relief is granted to him or her by a court from liability for negligence, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of a Scheme Company.
- 47.7 Subject to the Corporations Act, a Scheme Company may, with the approval of the Creditors' Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase and maintain for such person, insurance against any liability in respect of which a Scheme Company would be obliged to indemnify that person in accordance with clauses 47.5 and 47.6; and
- (b) pay costs incurred by any such person as is referred to in clause 47.6 in defending proceedings of the nature described in clause 47.6.

M. THE CREDITORS' COMMITTEE

48. Constitution of the Creditors' Committee

48.1 There shall be a Creditors' Committee for each Scheme Company for the purposes described in The Australian Scheme.

48.2 The Creditors' Committee shall consist of:

- (a) in respect of FAI General, HIH C&G and CIC, a minimum of 8 members and a maximum of 16 members; and
- (b) in respect of any other Scheme Company, a minimum of 2 members and a maximum of 10 members.

48.3 Any person who is:

- (a) a Scheme Creditor; or
- (b) designated by notice in writing to the Scheme Administrators by any two or more Scheme Creditors to act as a member of the Creditors' Committee as their Designated Representative,

shall be eligible for appointment as a member of the Creditors' Committee.

49. Membership of the Creditors' Committee

49.1 The initial Creditors' Committee shall consist of those persons resolved to be members of the Creditors' Committee, by the Scheme Creditors at a Scheme Meeting.

49.2 With the agreement of the Scheme Administrators, the Creditors' Committee may, by at least two-thirds of the members present, request the Scheme Administrators to convene a meeting of Scheme Creditors of a Scheme Company to consider a Special Resolution to remove any member of the Creditors' Committee from office. Upon such a Special Resolution being passed, that person will automatically be removed from office. Until such Special Resolution is considered by the meeting of Scheme Creditors, the power of the member of the Creditors' Committee to act as a member of the Creditors' Committee shall not be affected.

49.3 A member shall cease to be a member of the Creditors' Committee if the member:

- (a) ceases to be, or is found never to have been, a Scheme Creditor of the relevant Scheme Company;
- (b) is a Designated Representative of two or more Scheme Creditors, and ceases to represent at least two Scheme Creditors, including as a result of persons represented ceasing to be, or being found never to have been, Scheme Creditors and/or as a result of persons represented notifying the Creditors' Committee in writing that such member has ceased to be their Designated Representative;
- (c) resigns by notice in writing addressed to the Creditors' Committee;
- (d) dies, becomes bankrupt, mentally disordered or becomes disqualified from acting as a director under the laws of Australia, the United Kingdom, the USA or any other country; or

(e) is removed from office pursuant to clause 49.2.

49.4 Subject to clause 48, the Creditors' Committee may, with the agreement of the Scheme Administrators, resolve to appoint any eligible person to be a member either to fill a vacancy or as an additional member.

49.5 The UK Provisional Liquidators, or any schemes administrators appointed in the United Kingdom in respect of a Scheme Company, shall be entitled to attend the meetings of the Creditors' Committee of that Scheme Company (though they are not entitled to attend during discussion of any matter in respect of which they may have any conflict of interest or duty).

50. Procedure of the Creditors' Committee

50.1 Each member of the Creditors' Committee which is not an individual must, by notice in writing to the Creditors' Committee, nominate a person as a Nominated Representative to represent that member at meetings of the Creditors' Committee. Any person entitled to appoint a Nominated Representative may from time to time revoke that appointment and appoint another person to act as a Nominated Representative as a replacement by notice in writing to the Creditors' Committee.

50.2 The appointment of a Nominated Representative shall terminate automatically if the Nominated Representative dies, becomes bankrupt, mentally disordered or becomes disqualified from acting as a director under the laws of Australia or any other country.

50.3 Save as otherwise specifically provided in The Australian Scheme:

- (a) the Creditors' Committee, by agreement with the Scheme Administrators and subject to The Australian Scheme, may determine all administrative matters relevant to the operation of the Creditors' Committee, including in relation to its meetings, the frequency, means for giving notice, quorum, location and means of attendance;
- (b) each member of the Creditors' Committee shall have one vote, provided that a Nominated Representative shall have one vote for each member represented, including in its capacity as a member;
- (c) except as otherwise provided in The Australian Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting;
- (d) meetings shall be chaired by a Scheme Administrator who shall be entitled to address the meeting but not be entitled to vote;
- (e) if so requested by the Creditors' Committee, a Scheme Administrator (or his or her representative) and any person entitled to attend the meetings in accordance with clause 49.5, shall absent himself or herself from such part of a meeting of the Creditors' Committee as the Creditors' Committee may specify; and
- (f) meetings of the Creditors' Committee of the Scheme Companies may be held concurrently if each of the Creditors' Committee so resolve.

50.4 Meetings of the Creditors' Committee shall be convened by the Scheme Administrators when requested in writing by at least three members of the Creditors' Committee, or if the Scheme Administrators otherwise consider it appropriate.

- 50.5 Proper minutes shall be kept of all proceedings of the Creditors' Committee and such minutes shall at all reasonable times be open to inspection by (subject to clause 51.2) any Creditors' Committee Member. The Scheme Administrators shall prepare and keep a record of such minutes.
- 50.6 A resolution in writing signed by a majority in number of the members of the Creditors' Committee for the time being (or their Nominated Representatives) shall be as valid and effective as if passed at a meeting of the Creditors' Committee duly convened and held.

51. Information

- 51.1 To assist in the performance of the functions and duties of the Creditors' Committee, the Scheme Administrators shall give to the Creditors' Committee all such information as they reasonably require concerning the affairs of the relevant Scheme Company or the operation of The Australian Scheme.
- 51.2 The Scheme Administrators shall not be obliged to disclose any confidential information relating to a Scheme Company to a member of the Creditors' Committee if the information relates to any matter where such member (and, where such member is a Designated Representative, its appointors) has an interest in conflict with that Scheme Company (other than a general conflict arising as a result of the status of the member of the Creditors' Committee, or his or her appointor, as a creditor of the Scheme Company).

52. Functions

- 52.1 The Creditors' Committee shall monitor the carrying out of The Australian Scheme and assist the Scheme Administrators in the exercise of their functions under The Australian Scheme.
- 52.2 The Creditors' Committee may, by a resolution of the Creditors' Committee, at any time call upon a Scheme Administrator to convene a meeting of Scheme Creditors to:
- (a) put a Special Resolution for the removal of the Scheme Administrator, and the Scheme Creditors may, at such a meeting, remove a Scheme Administrator;
 - (b) put a resolution to appoint any person qualified to act under clause 41.2 to be a Scheme Administrator, and the Scheme Creditors may, at such a meeting, appoint such a person to be a Scheme Administrator.

Any such resolution of the Creditors' Committee, pursuant to clause 52.2(a) above, shall not be considered unless such Scheme Administrator has been given:

- (i) at least 28 days' notice of the proposed resolution of the Creditors' Committee and of the reasons why the resolution is to be put to the Creditors' Committee; and
 - (ii) has been given a reasonable opportunity to make representations at the meeting of the Creditors' Committee at which the resolution is proposed.
- 52.3 If a Scheme Administrator ceases to hold office, unless an appointment is made pursuant to clause 52.2, the Creditors' Committee may appoint any person qualified to act under clause 41.2 to be a Scheme Administrator.
- 52.4 The appointment of a Scheme Administrator pursuant to clause 52.3 must be ratified by resolution of the next meeting of Scheme Creditors. Until such resolution is put to the meeting of Scheme Creditors, the appointee shall have full power to act as a Scheme Administrator.

- 52.5 The Creditors' Committee shall consider and, if thought fit, approve or ratify (such approval or ratification not to be unreasonably withheld or delayed) the remuneration of the Scheme Administrators from time to time.
- 52.6 The Creditors' Committee shall, so far as it is able, ensure that there is a Scheme Administrator in office at all times.
- 52.7 The Creditors' Committee shall have the functions referred to in clause 44.2 and the other functions specifically referred to in The Australian Scheme.

53. **Duties**

- 53.1 Each member of the Creditors' Committee and each Nominated Representative shall, in performing their functions as such in relation to a Scheme Company, act *bona fide* in the interests of the Scheme Creditors as a whole.
- 53.2 No Creditors' Committee Member or Nominated Representative shall act as a Creditors' Committee Member or Nominated Representative in relation to any matter in respect of which he or she has a conflict or a potential conflict of interest in performing his functions under The Australian Scheme.
- 53.3 Each Creditors' Committee Member and Nominated Representative shall preserve, and shall procure that its officers, employees and professional advisers shall preserve, and where such member is a Designated Representative shall procure that the appointors and their officers, employees and professional advisers shall preserve, the confidentiality of all confidential information received by a Creditors' Committee Member or Nominated Representative in that capacity and shall use such information only for the purposes of their performing their responsibilities and functions in relation to the Creditors' Committee (or their Designated Representative's responsibilities and functions).
- 53.4 Each Nominated Representative may report to the appointing Creditors' Committee Member, and each Designated Representative may report to the appointing Scheme Creditors about the proceedings of the Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of a Scheme Company to those persons who need to know it in connection with the performance of the Creditors' Committee Member's responsibilities as a member of the Creditors' Committee provided that such information does not to his or its knowledge (after due enquiry) relate to any matter where any such appointor has an interest in conflict with a Scheme Company (other than a general conflict arising as the result of the status of the Creditors' Committee Member, or his or her appointors, as creditors of the Scheme Company).

54. **Responsibilities and Indemnity**

- 54.1 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by, or the exercise in good faith and with due care of any power conferred upon any Creditors' Committee Member or Nominated Representative, in accordance with and to implement the provisions of The Australian Scheme.
- 54.2 No Creditors' Committee Member or Nominated Representative will be liable for any loss unless attributable to that person's breach of duty, breach or trust, fraud or dishonesty.
- 54.3 Subject to the Corporations Act, each Creditors' Committee Member and Nominated Representative (in each case in their capacity as such) shall be entitled to an indemnity out of the assets of a Scheme Company against all actions, claims, proceedings and demands brought or made against it or him or her in respect of any act done or omitted to be done in accordance with clause 54.1.

55. Validation of Acts

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

56. Expenses

56.1 Each Creditors' Committee Member and Nominated Representative shall be entitled to be reimbursed by a Scheme Company for their reasonable expenses of attending meetings of the Creditors' Committee. If the meeting may reasonably be attended by telephone or similar form of communication equipment, the amount of the expenses to be reimbursed may, by resolution of the Creditors' Committee, be limited to the cost of attendance by such means.

57. No Creditors' Committee Acting

57.1 If at any time there are fewer than the minimum number of members of the Creditors' Committee, then the Creditors' Committee may continue to exercise all its functions under The Australian Scheme (other than in accordance with clause 52.2) for a period of 28 days.

57.2 If after such period of 28 days there remains fewer than the minimum number of members, the Scheme Administrators shall, within a further 14 days, appoint such additional members as are required to obtain the minimum number.

57.3 Any member appointed by the Scheme Administrators will be liable to be removed as a member of the Creditors' Committee at any time without notice if the Creditors' Committee (excluding any such appointees) appoints a Scheme Creditor to fill the vacancy which had been filled by such appointee.

57.4 If there is no Creditors' Committee acting, including because the minimum number of members is not obtained in accordance with this clause 57 then, for so long as that is the case, the Creditors' Committee shall not exercise any functions or have any powers under The Australian Scheme and the following provisions shall apply:

- (a) the Scheme Administrators shall use all reasonable endeavours to find and appoint members of the Creditors' Committee so as to obtain the minimum number;
- (b) a Scheme Administrator may resign under clause 41.4(a) by giving notice at a meeting of the Scheme Creditors;
- (c) a new Scheme Administrator may be appointed in place of the resigning Scheme Administrator by Special Resolution at a meeting of the Scheme Creditors;
- (d) a Scheme Administrator may be removed, and a new Scheme Administrator may be appointed in his place, only by a Special Resolution at a meeting of the Scheme Creditors;
- (e) the remuneration of the Scheme Administrators shall be payable at the same rate at which it had last been set by the Creditors' Committee unless and until varied by the Scheme Creditors;
- (f) anything the Creditors' Committee could have done, the Scheme Creditors can do by resolution at a meeting of Scheme Creditors; and

- (g) the requirements for obtaining the consent, approval or agreement of the Creditors' Committee shall be satisfied by a resolution at a meeting of Scheme Creditors giving such consent, approval or agreement.

57.5 If the minimum number of members is obtained in accordance with clause 57.4(a), the full powers and functions of the Creditors' Committee under The Australian Scheme will be restored.

N. MEETINGS OF SCHEME CREDITORS

58. Meetings

58.1 The provisions of this Part N do not apply to the Scheme Meetings.

58.2 All meetings of Scheme Creditors will be held in Sydney at a place to be specified in accordance with clause 60.4(a).

59. Convening of Meetings

59.1 The Scheme Administrators shall convene a meeting of Scheme Creditors:

- (a) at any time and for such purpose as they think fit;
- (b) subject to clause 49.2 when required by a resolution of Creditors' Committee for such purpose as it thinks fit;
- (c) in respect of HIH C&G, FAI General or CIC, when required by notice by any 50 Scheme Creditors of a Scheme Company concerned who have Liabilities against a Scheme Company concerned of an aggregate value in excess of AUD100 million for such purpose as they think fit; and
- (d) in respect of the other Scheme Companies, when required by notice by any five Scheme Creditors of a Scheme Company concerned who have Liabilities against a Scheme Company concerned of an aggregate value in excess of AUD1 million for such purpose as they think fit.

59.2 A notice in accordance with clauses 59.1(c) and (d) must be in writing signed by the relevant Scheme Creditors or on their behalf and deposited at the registered office of a Scheme Company, and shall require the Scheme Administrators to convene a meeting of Scheme Creditors for the purpose specified. The notice must specify the purpose for which the meeting is required and the text of any resolution to be proposed.

60. Notice of Meetings

60.1 Notice of a meeting of Scheme Creditors shall be given to all Scheme Creditors by Notice by Publication.

60.2 At least 28 days' notice shall be given of a meeting of Scheme Creditors.

60.3 The Scheme Administrators shall make available to Scheme Creditors, free of charge, and shall table at the meeting, a copy of a report on the conduct of the affairs of a Scheme Company and the operation of The Australian Scheme during the period since the last such report was prepared (or for the first meeting, since the Effective Date).

60.4 The notice of meeting shall specify:

- (a) the place and time of the meeting; and
- (b) the place from which a copy of any Report to Creditors can be obtained by Scheme Creditors prior to the meeting.

60.5 No resolution may be proposed or passed at a meeting of Scheme Creditors unless the notice of the meeting sets out the text of each resolution, or an adequate summary thereof.

61. Procedure at the Creditors' Meeting

61.1 A resolution put to a meeting of Scheme Creditors shall be effective only if it is approved by a majority in number of Scheme Creditors and majority in value of the Scheme Creditors present and voting either in person or by proxy at the meeting.

61.2 Every Scheme Creditor entitled to vote shall have the right to appoint any person as proxy to attend and vote instead of the Scheme Creditor. The instrument appointing a proxy may be in any form which the Scheme Administrators may approve and must be lodged at the place specified in the notice of meeting for the lodging of proxies not less than 48 hours before the meeting (or adjourned meeting) at which it is to be used.

61.3 No business shall be transacted at any meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Two Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum, unless the Scheme Administrators and the Creditors' Committee agree a smaller number.

61.4 A meeting of Scheme Creditors shall be chaired by a Scheme Administrator or his or her nominated representative.

62. Valuation of Liabilities for the Purposes of Meetings

62.1 The value of any Liability for any of the purposes referred to in clauses 59, 61 and 62 shall be:

- (a) in the case of a Liability which has become an Established Scheme Claim, the amount of the Liability so established; and
- (b) in the case of any other Liability, the amount estimated as the value of such Liability in accordance with clause 62.2.

62.2 The value of a Liability for the purposes of 62.1(b) shall be the amount of the just estimate of its value made by the Scheme Administrators, provided that a Scheme Creditor is only entitled to vote in respect of the balance, if any, of the amount of any Liability after deducting the amount secured by any Security unless the Scheme Creditor surrenders the Security and after allowing for the application of any Set-off.

62.3 The Scheme Administrators may require that the Scheme Creditor provide such particulars of the Liability as the Scheme Administrators may require.

62.4 For the purposes of ascertaining whether or not the requisite percentage for the convening of any meeting of Scheme Creditors or the requisite majority at any meeting of Scheme Creditors has been obtained, the amount of each Liability which is incurred in a currency other than Australian Dollars shall be converted into Australian Dollars at the mid-market rate for Australian Dollars quoted by the Reserve Bank of Australia, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators at close of business (Sydney time) on the last preceding Quarter End Date.

O. DURATION OF THE AUSTRALIAN SCHEME

63. Termination Events

63.1 The Australian Scheme shall terminate:

- (a) 12 months after the final Payment Date; or
- (b) if all the Liabilities of a Scheme Company (including liabilities arising pursuant to clauses 38.10 and 38.11) have been discharged in full.

63.2 The termination of The Australian Scheme shall not affect any right or obligation which shall have arisen under The Australian Scheme as a result of any act or omission which took place prior to the termination of The Australian Scheme including, without limitation, any right to an indemnity out of the assets of a Scheme Company as a result of an act or omission which took place, or as a result of liabilities or expenses which were incurred, prior to the termination of The Australian Scheme.

63.3 Upon the termination of The Australian Scheme the provisions of this clause and clauses 1, 2, 47, 53, 54, 55, 63, 64, 68, 69, 70 and 71 shall continue in full force and effect.

63.4 As soon as practicable following termination, the Scheme Administrators shall cause notices stating that The Australian Scheme has terminated to be placed in such newspapers as the Scheme Administrators consider appropriate for one day a week for four consecutive weeks following such termination and shall forthwith post such notice on the HIH Website for a period of six months.

P. GENERAL SCHEME PROVISIONS

64. Costs

- 64.1 As soon as practicable after the Effective Date, the Scheme Administrators shall pay out of the Scheme Assets:
- (a) all outstanding Pre-Scheme Costs; and
 - (b) insofar as they do not fall within clause 64.1(a):
 - (i) all outstanding debts and claims of the External Administrators (including, without limitation, all such expenses as are payable to the Liquidators out of the Property of a Scheme Company) which are payable by the Scheme Company to the External Administrators pursuant to the provisions of s 556 of the Corporations Act; or
 - (ii) any equivalent costs, charges, expenses, and disbursements incurred by, and the remuneration of, the External Administrators to the extent that such costs, charges, expenses, disbursements and remuneration are referable to the affairs of a Scheme Company.
- 64.2 There shall be paid in full out of the Scheme Assets:
- (a) all costs, charges, expenses, remuneration and disbursements incurred by the Scheme Administrators in the course of carrying out The Australian Scheme;
 - (b) all costs, charges, expenses, remuneration and disbursements incurred by the Liquidators after the Effective Date;
 - (c) the expenses payable under clause 56;
 - (d) any sum which a Scheme Company or the Scheme Administrators are obliged to pay by reason of the obligations imposed by The Australian Scheme; and
 - (e) notwithstanding that The Australian Scheme shall have terminated in relation to a Scheme Company, the costs of placing the notices required by clause 63.4.
- 64.3 The Scheme Costs, including the remuneration of the Scheme Administrators, may be paid out of the Scheme Assets as they are incurred and without prior approval of the Creditors' Committee provided that any such payment in respect of the remuneration of the Scheme Administrators is subsequently ratified by the Creditors' Committee in accordance with clause 52.5 at the next meeting of the Creditors' Committee, which meeting must be convened within 12 months of such payment being made. In the event that any or all of such payment in respect of the Scheme Administrators' remuneration is not so ratified, the amount of the payment that is not ratified shall be repaid by the Scheme Administrators. Nothing in this clause shall prevent the Scheme Administrators from seeking approval pursuant to clause 52.5, including in relation to any amount required to be repaid pursuant to this clause.
- 64.4 For the purpose of implementing The Australian Scheme, all costs, charges, expenses, remuneration and disbursements incurred by a Scheme Company, Liquidators, or Australian Provisional Liquidators on or after the Record Date and up to the Effective Date shall be apportioned and paid from the Scheme Assets in accordance with Part H.

65. Economic and Monetary Union

- 65.1 Clause 65.2 (Redenomination and Alternative Currencies) is effective provided that, if and to the extent that clause 65.2 relates to any state (or the currency of such state) which was not a Participating Member State at the date of The Australian Scheme, clause 65.2 shall come into effect in relation to such state (and the currency of such state) on and from the Entry Date.
- 65.2 Each Established Scheme Claim denominated in a European former national currency unit shall be redenominated into the Euro Unit in accordance with EMU Legislation. To the extent, however, that EMU Legislation provides that an amount (which is (a) denominated either in the Euro or in the European former national currency unit of a Participating Member State and (b) payable within that Participating Member State by crediting an account of the creditor) can be paid by the debtor either in the Euro Unit or in the European former national currency unit, a Scheme Company shall be entitled to pay amounts in respect of such Established Scheme Claim in the Euro Unit.

66. Modification of The Australian Scheme

- 66.1 Each Scheme Company may, at any hearing to approve or to sanction The Australian Scheme, consent on behalf of all affected parties to any modification of The Australian Scheme or any terms or conditions which the Court may think fit to approve or impose.
- 66.2 A Scheme Company shall not consent (unless the FSCS agrees) to any modification, term or condition referred to in clause 66.1 that relates to clause 4.4 or to any provision in the FSCS Schedule.

67. Notice to Scheme Company and Scheme Administrators

- 67.1 Any notice to be given to the Scheme Administrators or a Scheme Company under or in relation to this Scheme shall be given in writing. Notice may be given by:
- (a) hand delivery;
 - (b) pre-paid post;
 - (c) facsimile transmission;
 - (d) email; or
 - (e) such other method as may be determined by the Scheme Administrators.
- 67.2 Notice to be given to the Scheme Administrators or a Scheme Company is to be given:
- (a) in respect of a Notice of Litigation or in relation to business written with the former Australian branches, to CMGL at the address specified in Annexure 1 to the Explanatory Statement;
 - (b) in relation to business written with the former UK branches, to Omni at the address specified in Annexure 1 to the Explanatory Statement;
 - (c) in respect of any other notice, the Scheme Administrators, McGrathNicol+Partners, Level 9, 10 Shelley Street, Sydney NSW 2000 Australia, fax number: +61 (02) 9338 2699 (or at such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this clause) or by telefax to a Scheme Company; or

- (d) such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this clause.

68. **Notice to Scheme Creditors**

68.1 Notices and any other written communications or documents to be given to Scheme Creditors pursuant to The Australian Scheme other than Notice by Publication may be given by:

- (a) hand delivery;
- (b) pre-paid post;
- (c) facsimile transmission; or
- (d) email.

69. **Notice by Publication**

69.1 Notice by Publication shall be given by:

- (a) publishing the notice:
 - (i) in the United Kingdom, in The Financial Times, Insurance Day and Lloyd's List;
 - (ii) in Australia, in The Australian and The Australian Financial Review; and
 - (iii) in the United States, in USA Today;

and in respect of each Notice by Publication a substitute publication will be chosen by the Scheme Administrators in the event that one of the nominated publications ceases to exist, is published in combination with another publication or is known by another name.

- (b) by causing the notice to be posted on the HIH Website, which notice shall remain posted until the event about which notice is given.

70. **Date of Notice**

70.1 Notice by the Scheme Administrators shall be deemed to have been given:

- (a) by pre-post, on the seventh day following the day on which it is posted;
- (b) by hand delivery, on the day of delivery if delivered during Business Hours at the place of delivery or if not during Business Hours, the next Business Day; or
- (c) by facsimile transmission, on the date of transmission if delivered during Business Hours at the place the facsimile is sent to or if not during Business Hours, the next Business Day.

70.2 Any Notice by Publication shall be deemed to have been given on the later of the date on which it is posted on the HIH Website or as the case may be, the latest date on which such advertisements appear.

70.3 The date of giving notice to the Scheme Administrators or a Scheme Company shall be the date the notice is received by the Scheme Administrators.

71. Governing Law and Jurisdiction

- 71.1 Subject to the FSCS Schedule, The Australian Scheme shall be governed by, and construed in accordance with, the law in force from time to time in New South Wales.
- 71.2 Subject to the FSCS Schedule, the Scheme Creditors hereby agree that the Australian Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of The Australian Scheme, or out of any action taken or omitted to be taken under The Australian Scheme or in connection with the administration of The Australian Scheme.
- 71.3 Subject to the FSCS Schedule, the Scheme Creditors irrevocably submit to the jurisdiction of the Australian Court provided, however, that nothing in this clause 71 shall affect the validity of other provisions determining governing law and jurisdiction as between a Scheme Company and any of the Scheme Creditors, whether contained in any contract or otherwise.

Dated

ANNEXURE 1

SCHEME ADMINISTRATOR DEED

HIH Casualty and General Insurance Limited
(In Liquidation) ACN 008 482 291

FAI General Insurance Company Limited
(In Liquidation) ACN 000 327 855

CIC Insurance Limited
(In Liquidation) ACN 004 078 880

World Marine & General Insurances Pty Limited
(In Liquidation) ACN 000 093 112

FAI Traders Insurance Company Pty Limited
(In Liquidation) ACN 000 177 177

FAI Reinsurances Pty Limited
(In Liquidation) ACN 004 401 138

FAI Insurances Limited
(In Liquidation) ACN 004 304 545

HIH Underwriting and Insurance (Australia) Pty Limited
(In Liquidation) ACN 004 906 110

Anthony Gregory McGrath

Christopher John Honey

and

[NAME OF SCHEME ADMINISTRATOR]

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DEED

DATE *[date]*

PARTIES

HIH Casualty and General Insurance Limited (In Liquidation) ACN 008 482 291 of Ernst and Young House, Level 3, 54 Marcus Clarke Street, Canberra, ACT 2600 (**HIH C&G**)

FAI General Insurance Company Limited (In Liquidation) ACN 000 327 855 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI General**)

CIC Insurance Limited (In Liquidation) ACN 004 078 880 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**CIC**)

World Marine & General Insurances Pty Limited (In Liquidation) ACN 000 093 112 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**WMG**);

FAI Traders Insurance Company Pty Limited (In Liquidation) ACN 000 177 177 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI Traders**);

FAI Reinsurances Pty Limited (In Liquidation) ACN 004 401 138 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI Reinsurances**)

FAI Insurances Limited (In Liquidation) ACN 004 304 545 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI Insurances**)

HIH Underwriting and Insurance (Australia) Pty Limited (In Liquidation) ACN 004 906 110 of Collins Tower, Level 30, 35 Collins Street, Melbourne, Victoria 3000 (**HIH U & I**);

Anthony Gregory McGrath of McGrathNicol+Partners, Level 9, 10 Shelley Street Sydney NSW 2000 Australia and Christopher John Honey of McGrathNicol+Partners, Level 9, 10 Shelley Street Sydney NSW 2000 Australia together in their capacity as liquidators of each Australian Company and any such other person or persons as may be appointed as liquidators by the Australian Court (the **Liquidators**); and

[NAME] of *[address]*(**Scheme Administrator**).

RECITALS

- A. Each Scheme Company and its creditors has entered into The Australian Scheme.
- B. The Liquidators are bound by the terms of The Australian Scheme.
- C. Pursuant to clause 41 of The Australian Scheme, the initial Scheme Administrators shall be Anthony Gregory Mcgrath and Christopher John Honey.
- D. The appointment of each Scheme Administrator is subject to the execution and delivery of this Deed.
- E. Each Scheme Company and the Scheme Administrator has agreed to enter into this Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

Definitions and interpretations for this document are the same as in The Australian Scheme.

2. CONSENT TO ACT AS SCHEME ADMINISTRATOR

The Scheme Administrator hereby consents to act as a Scheme Administrator under the terms and conditions of The Australian Scheme.

3. ACKNOWLEDGMENT OF THE LIQUIDATORS

The Liquidators acknowledge that the Scheme Administrator shall be responsible for the management, control and administration of The Australian Scheme pursuant to clause 42 of The Australian Scheme and shall have the powers, rights, duties and functions conferred on them by The Australian Scheme.

4. COVENANT BY SCHEME ADMINISTRATOR

The Scheme Administrator covenants for the benefit of each Scheme Company and each of its Scheme Creditors (even though such Scheme Creditors are not parties to the Deed) that he or she will be bound by the terms of The Australian Scheme as if he or she were a party to The Australian Scheme.

5. ACKNOWLEDGMENTS BY SCHEME ADMINISTRATOR

The Scheme Administrator acknowledges and agrees that:

- (a) the benefit of this Deed can be enforced directly by each Scheme Company and each Scheme Creditors against the Scheme Administrator; and
- (b) if the Creditors' Committee consider that the Scheme Administrator is not adequately performing his or her duties, the Creditors' Committee may, by Special Resolution, remove the Scheme Administrator pursuant to clause 52.2 of The Australian Scheme.

6. INDEMNITY

The Scheme Company hereby indemnifies and undertakes to keep indemnified the Scheme Administrator in accordance with clause 47 of The Australian Scheme.

7. AMENDMENT AND ASSIGNMENT

In respect to amendment and assignment:

- (a) this document can only be amended, supplemented, replaced or novated by another document signed by the parties; and
- (b) a party may only dispose of, declare a trust over or otherwise create an interest in its rights under this document with the consent of each other party.

8. **NOTICES**

Any notices to be given under this Deed will be in accordance with the notice provisions of The Australian Scheme.

9. **GENERAL**

9.1 **Governing law**

This document is governed by the law in force in the State of New South Wales, Australia.

9.2 **Giving effect to this document**

Subject to the terms of this document, each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

9.3 **Counterparts**

This document may be executed in counterparts.

EXECUTED as a deed.

EXECUTED by **HHI CASUALTY AND GENERAL INSURANCE LIMITED (IN LIQUIDATION)** ACN 008 482 291 acting by its liquidators as agents without personal liability:

Signature

Name

EXECUTED by **FAI GENERAL INSURANCE COMPANY LIMITED (IN LIQUIDATION)** ACN 000 327 855 acting by its liquidators as agents without personal liability:

Signature

Name

EXECUTED by **CIC INSURANCE LIMITED (IN LIQUIDATION)** ACN 004 078 880 acting by its liquidators as agents without personal liability:

Signature

Name

**EXECUTED by WORLD MARINE &
GENERAL INSURANCES PTY
LIMITED (IN LIQUIDATION)**
ACN 000 093 112 acting by its liquidators as
agents without personal liability:

Signature

Name

**EXECUTED by FAI TRADERS
INSURANCE COMPANY PTY
LIMITED (IN LIQUIDATION)** ACN 000
177 177 acting by its liquidators as agents
without personal liability:

Signature

Name

**EXECUTED by FAI REINSURANCES
PTY LIMITED (IN LIQUIDATION)**
ACN 004 401 138 acting by its liquidators as
agents without personal liability:

Signature

Name

**EXECUTED by FAI INSURANCES
LIMITED (IN LIQUIDATION)**

ACN 004 304 545 acting by its liquidators as
agents without personal liability:

Signature

Name

**EXECUTED by HIH UNDERWRITING
AND INSURANCE (AUSTRALIA) PTY
LIMITED (IN LIQUIDATION)**

ACN 004 906 110 acting by its liquidators as
agents without personal liability:

Signature

Name

**SIGNED, SEALED and DELIVERED by
ANTHONY GREGORY MCGRATH**
in the presence of:

Signature of party

Witness' Signature

Witness' Name

SIGNED, SEALED and DELIVERED by
CHRISTOPHER JOHN HONEY in the
presence of:

Signature of party

Witness' Signature

Witness' Name

SIGNED, SEALED and DELIVERED by
[NAME OF SCHEME
ADMINISTRATOR] in the presence of:

Signature of party

Witness' Signature

Witness' Name

ANNEXURE 2
NOTICE OF ESTIMATION DATE

In relation to:

HIH Casualty and General Insurance Limited (in liquidation) ACN 008 482 291

FAI General Insurance Company Limited (in liquidation) ACN 000 327 855

CIC Insurance Limited (in liquidation) ACN 004 078 880

World Marine & General Insurances Pty Limited (in liquidation) ACN 000 093 112

FAI Traders Insurance Company Pty Limited (in liquidation) ACN 000 177 177

FAI Reinsurances Pty Limited (in liquidation) ACN 004 401 138

FAI Insurances Limited (in liquidation) ACN 004 304 545

HIH Underwriting and Insurance (Australia) Pty Limited (in liquidation) ACN 004 906 110

Notice is given in accordance with clause 24 of The Australian Scheme of each of the companies noted above that the Estimation Date (as defined in The Australian Scheme) has been set at:

[Estimation Date]

Clause 25 of The Australian Scheme provides:

No Scheme Creditor shall be entitled to have any Liability determined to be an Acknowledged Creditor Claim unless:

- prior to the Estimation Date it has already been determined to be an Acknowledged Creditor Claim in accordance with clause 11;
- a Final Claim Form for Estimation is completed by the Scheme Creditor detailing each of its Liabilities and returned to the Scheme Company so as to reach the Scheme Company, on or before the date three months after the Estimation Date; or
- prior to the Estimation Date a Proceeding has been commenced in accordance with The Australian Scheme which has not been determined by the Estimation Date.

Scheme Creditors must submit their final Estimation of claims against the Scheme Companies by [Date], being three months after the Estimation Date. Scheme Creditors should note that if a claim has been agreed as an Acknowledged Creditor Claim there is no requirement to complete a Final Claim Form for Estimation for those specific claims, which are already accepted.

Estimates should be filed on claim forms attached to this notice as posted, or available direct from the Scheme Administrators on request, or available on the HIH website.

For a copy of The Australian Scheme document contact the Scheme Administrators (address noted below) or visit <http://www.hih.com.au>

The contact details for creditor's enquiries are as follows:

[contact details]

ANNEXURE 3

SCHEME ADJUDICATOR DEED

HIH Casualty and General Insurance Limited
(In Liquidation) ACN 008 482 291

FAI General Insurance Company Limited
(In Liquidation) ACN 000 327 855

CIC Insurance Limited
(In Liquidation) ACN 004 078 880

World Marine & General Insurances Pty Limited
(In Liquidation) ACN 000 093 112

FAI Traders Insurance Company Pty Limited
(In Liquidation) ACN 000 177 177

FAI Reinsurances Pty Limited
(In Liquidation) ACN 004 401 138

FAI Insurances Limited
(In Liquidation) ACN 004 304 545

HIH Underwriting and Insurance (Australia) Pty Limited
(In Liquidation) ACN 004 906 110

Anthony Gregory McGrath

Christopher John Honey

and

[NAME OF SCHEME ADJUDICATOR]

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DEED

DATE *[date]*

PARTIES

HIH Casualty and General Insurance Limited (In Liquidation) ACN 008 482 291 of Ernst and Young House, Level 3, 54 Marcus Clarke Street, Canberra, ACT 2600 (**HIH C&G**);

FAI General Insurance Company Limited (In Liquidation) ACN 000 327 855 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI General**);

CIC Insurance Limited (In Liquidation) ACN 004 078 880 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**CIC**);

World Marine & General Insurances Pty Limited (In Liquidation) ACN 000 093 112 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**WMG**);

FAI Traders Insurance Company Pty Limited (In Liquidation) ACN 000 177 177 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI Traders**);

FAI Reinsurances Pty Limited (In Liquidation) ACN 004 401 138 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI Reinsurances**);

FAI Insurances Limited (In Liquidation) ACN 004 304 545 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI Insurances**);

HIH Underwriting and Insurance (Australia) Pty Limited (In Liquidation) ACN 004 906 110 of Collins Tower, Level 30, 35 Collins Street, Melbourne, Victoria 3000 (**HIH U & I**);

Anthony Gregory McGrath of McGrathNicol+Partners, Level 9, 10 Shelley Street Sydney NSW 2000 Australia and Christopher John Honey of McGrathNicol+Partners, Level 9, 10 Shelley Street Sydney NSW 2000 Australia together in their capacity as Scheme Administrators of The Australian Scheme whilst they hold that office and such other persons as may be appointed as Scheme Administrators in accordance with The Australian Scheme (**Scheme Administrators**); and

[NAME] of *[address]*(**Scheme Adjudicator**).

RECITALS

- A. Each Scheme Company and its creditors have entered the Scheme of Arrangement.
- B. Pursuant to The Australian Scheme, the Scheme Administrators are to appoint one or more Scheme Adjudicators to be responsible for the adjudication and determination of Liabilities referred to them under clause 27 of The Australian Scheme.
- C. The appointment of a Scheme Adjudicator is subject to the execution and delivery of this Deed.
- D. Each Scheme Company, the Scheme Administrators and the Scheme Adjudicator have agreed to enter into this Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

Definitions and interpretations for this document are the same as in The Australian Scheme.

2. CONSENT TO ACT AS SCHEME ADJUDICATOR

The Scheme Adjudicator hereby consents to act as a Scheme Adjudicator under the terms and conditions of The Australian Scheme.

3. ACKNOWLEDGMENTS OF SCHEME ADMINISTRATORS

The Scheme Administrators acknowledge that:

- (a) the Scheme Adjudicators shall be responsible for the adjudication and determination of Liabilities referred to them under clause 27 of The Australian Scheme and shall have the powers, rights, duties and functions conferred upon them by The Australian Scheme;
- (b) each Scheme Adjudicator shall be paid for such remuneration for the exercise and performance of his or her powers, rights, duties and functions under The Australian Scheme as may be agreed beforehand in writing between the Scheme Adjudicator and the Scheme Administrators; and
- (c) in the event of a removal of a Scheme Adjudicator, he or she shall be entitled to remuneration for the exercise and performance of his powers, rights, duties and functions under The Australian Scheme and to the costs, charges and expenses incurred in connection with the provision of documents or information at the Scheme Company's request after his or her removal, as provided under The Australian Scheme.

4. COVENANT BY SCHEME ADJUDICATOR

The Scheme Adjudicator covenants for each Scheme Company and each of its Scheme Creditors (even though such Scheme Creditors are not parties to this Deed) that he or she will be bound by the terms of The Australian Scheme as if he or she were a party to The Australian Scheme.

5. ACKNOWLEDGMENTS BY SCHEME ADJUDICATOR

The Scheme Adjudicator acknowledges and agrees that:

- (a) the benefit of this Deed can be enforced directly by any one or more of the Scheme Administrators, Scheme Companies or any Scheme Creditor against the Scheme Adjudicator;
- (b) if the Scheme Administrators consider that the Scheme Adjudicator is not adequately performing his or her duties, the Scheme Administrators may, with the approval of the Creditors' Committee, remove the Scheme Adjudicator generally or in respect of any matters referred pursuant to the terms of The Australian Scheme; and
- (c) if no certificate is given by the Scheme Adjudicator in accordance with clause 27.10 of The Australian Scheme, then the Scheme Administrators may appoint a replacement

Scheme Adjudicator or extend the time within which the Scheme Adjudicator is to provide a certificate.

6. **INDEMNITY**

The Scheme Company hereby indemnifies and undertakes to keep indemnified the Scheme Adjudicator in accordance with clause 47 of The Australian Scheme.

7. **AMENDMENT AND ASSIGNMENT**

In respect to amendment and assignment:

- (a) this document can only be amended, supplemented, replaced or novated by another document signed by the parties; and
- (b) a party may only dispose of, declare a trust over or otherwise create an interest in its rights under this document with the consent of each other party.

8. **NOTICES**

Any notices to be given under this Deed will be in accordance with the notice provisions of The Australian Scheme.

9. **GENERAL**

9.1 **Governing law**

This document is governed by the law in force in the State of New South Wales, Australia.

9.2 **Giving effect to this document**

Subject to the terms of this document, each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

9.3 **Counterparts**

This document may be executed in counterparts.

EXECUTED as a deed.

EXECUTED by **HHI CASUALTY AND GENERAL INSURANCE LIMITED (IN LIQUIDATION)** ACN 008 482 291 acting by its liquidators as agents without personal liability:

Signature

Name

EXECUTED by **FAI GENERAL INSURANCE COMPANY LIMITED (IN LIQUIDATION)** ACN 000 327 855 acting by its liquidators as agents without personal liability:

Signature

Name

EXECUTED by **CIC INSURANCE LIMITED (IN LIQUIDATION)** ACN 004 078 880 acting by its liquidators as agents without personal liability:

Signature

Name

**EXECUTED by WORLD MARINE &
GENERAL INSURANCES PTY
LIMITED (IN LIQUIDATION)**
ACN 000 093 112 acting by its liquidators as
agents without personal liability:

Signature

Name

**EXECUTED by FAI TRADERS
INSURANCE COMPANY PTY
LIMITED (IN LIQUIDATION)**
ACN 000 177 177 acting by its liquidators as
agents without personal liability:

Signature

Name

**EXECUTED by FAI REINSURANCES
PTY LIMITED (IN LIQUIDATION)**
ACN 004 401 138 acting by its liquidators as
agents without personal liability:

Signature

Name

EXECUTED by FAI INSURANCES LIMITED (IN LIQUIDATION)
ACN 004 304 545 acting by its liquidators as agents without personal liability:

Signature

Name

Executed by **HIH UNDERWRITING AND INSURANCE (AUSTRALIA) PTY LIMITED (IN LIQUIDATION)**
ACN 004 906 110 acting by its liquidators as agents without personal liability:

Signature

Name

SIGNED, SEALED and DELIVERED by ANTHONY GREGORY MCGRATH
in the presence of:

Signature of party

Witness' Signature

Witness' Name

SIGNED, SEALED and DELIVERED by
CHRISTOPHER JOHN HONEY
in the presence of:

Signature of party

Witness' Signature

Witness' Name

SIGNED, SEALED and DELIVERED by
[NAME OF SCHEME ADJUDICATOR]
in the presence of:

Signature of party

Witness' Signature

Witness' Name

ANNEXURE 4

NOTICE OF LITIGATION

(pursuant to clause 21 of The Australian Schemes)

To: Scheme Administrators

Attention: []

From: []

Date: []

THE SCHEMES OF ARRANGEMENT (pursuant to section 411 of the Corporations Act 2001 and (where applicable) section 425 of the Companies Act 1985) between [specify the relevant Scheme Company from the following - HIH Casualty and General Insurance Limited (In Liquidation), FAI General Insurance Company Limited (In Liquidation), CIC Insurance Limited (In Liquidation), World Marine & General Insurances Pty Limited (In Liquidation), FAI Traders Insurance Company Pty Limited (In Liquidation), FAI Reinsurances Pty Limited (In Liquidation), FAI Insurances Limited (In Liquidation) and HIH Underwriting and Insurance (Australia) Pty Limited (In Liquidation)] and its respective Scheme Creditors.

Capitalised terms used in this notice have the same meaning as defined in The Australian Schemes unless defined otherwise.

THIS NOTICE OF LITIGATION IS SUBMITTED TO THE SCHEME ADMINISTRATORS IN ACCORDANCE WITH CLAUSE 21 OF THE AUSTRALIAN SCHEME AND IN RESPECT OF THE LIABILITY PARTICULARISED BELOW.

THE LIABILITY PARTICULARISED IN THIS NOTICE RELATES TO THE FOLLOWING SCHEME COMPANY: [SPECIFY THE NAME OF THE RELEVANT SCHEME COMPANY]

THE DETAILS OF THE LIABILITY TO WHICH THIS NOTICE REFERS, ARE:

The date the Liability arose: [insert date]

Liability arises as a result of [specify the facts that are relied upon to establish the Liability] (**NB:** please state whether by contract or otherwise and whether of insurance, reinsurance, retrocession or otherwise):

Quantum of Liability (if reasonably calculable): [insert]

Other material information (if necessary): [insert]

COPIES OF THE FOLLOWING DOCUMENTS ARE PROVIDED WITH THIS NOTICE (FOR EXAMPLE CONTRACTS, ORDERS, JUDGMENTS, DECISIONS RELEVANT TO THE LIABILITY):

CONTACT DETAILS OF THE SCHEME CREDITOR PROVIDING THIS NOTICE ARE AS FOLLOWS: [INSERT]

Name:

Contact Address:

Contact Telephone:

Contact e-mail address (as described in the instructions below):

THE SCHEME CREDITOR STATES THAT THE INFORMATION CONTAINED IN THIS NOTICE IS TRUE AND CORRECT, TO THE BEST OF HIS OR HER KNOWLEDGE. HOWEVER, IF THE SCHEME CREDITOR BECOMES AWARE AT ANY TIME PRIOR TO THE LIABILITY BECOMING AN ACKNOWLEDGED CREDITOR CLAIM THAT THE INFORMATION CONTAINED IN THIS NOTICE IS NOT TRUE AND CORRECT, THEN THE SCHEME CREDITOR UNDERTAKES TO GIVE AN AMENDED NOTICE TO THE SCHEME ADMINISTRATORS, WHICH REFLECTS THE CORRECT POSITION.

.....
As a Scheme Creditor of [name of Scheme Company]

INSTRUCTIONS FOR COMPLETING AND TRANSMITTING THIS FORM:

A NOTICE OF LITIGATION IN RESPECT OF A LIABILITY MUST:

include fully particularised details of how and when the Liability arose, of the contract (whether of insurance, reinsurance, retrocession or otherwise) pursuant to which the Liability arose (where applicable), and of the quantum of the Liability (if reasonably calculable); and

attach legible copies of all contracts, orders, judgments, decisions and awards which are relevant to the Liability, and of all other items required to be provided to the Scheme Company pursuant to the terms of the contract between the Scheme Company and the Scheme Creditor, together with such other supporting information and documentation as the Scheme Administrators shall reasonably require.

SERVICE ON THE SCHEME ADMINISTRATORS OF THIS NOTICE OF LIABILITY IS TO BE GIVEN TO OMNI, CMGL OR WHERE DIRECTED.

WHERE THERE IS INSUFFICIENT ROOM PROVIDED IN THIS NOTICE, PLEASE ATTACH THE RELEVANT INFORMATION BY WAY OF ANNEXURES TO THIS NOTICE.

ANNEXURE 5

FSCS DEED

HIH Casualty and General Insurance Limited
(In Liquidation) ACN 008 482 291

FAI General Insurance Company Limited
(In Liquidation) ACN 000 327 855

FAI Insurances Limited
(In Liquidation) ACN 004 304 545

Anthony Gregory McGrath

Christopher John Honey

and

FINANCIAL SERVICES COMPENSATION SCHEME LIMITED
(Company Number 03943048)

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DEED

DATE [date]

PARTIES

HIH Casualty and General Insurance Limited (In Liquidation) ACN 008 482 291 of Ernst and Young House, Level 3, 54 Marcus Clarke Street, Canberra, ACT 2600 (**HIH C&G**);

FAI General Insurance Company Limited (In Liquidation) ACN 000 327 855 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI General**);

FAI Insurances Limited (In Liquidation) ACN 004 304 545 of AMP Centre, Level 22, 50 Bridge Street, Sydney, NSW 2000 (**FAI Insurances**);

Anthony Gregory McGrath and Christopher John Honey of McGrathNicol+Partners, Level 9, 10 Shelley Street Sydney NSW 2000 together in their capacity as liquidators of each Scheme Company which is a party to this deed and in capacity as Scheme Administrators of each Australian Scheme and any such other person or persons as may be appointed as Scheme Administrators by the Australian Court (**Scheme Administrators**); and

Financial Services Compensation Scheme Limited (Company Number 03943048) of 7th Floor, Lloyds Chambers, 1 Portsoken Street, London E1 8BN(**FSCS**).

RECITALS

- A. Each Australian Scheme has been approved at the requisite meetings of creditors and an application for sanction of each Scheme has been made to the Court.
- B. Pursuant to clause 4.4 of each Australian Scheme, FSCS has agreed to make certain payments to Protected Policyholders (as defined in the FSCS Schedule) in accordance with each Australian Scheme on terms contained in the FSCS Schedule upon each Scheme becoming binding on Scheme Creditors.
- C. The FSCS will subject to this Deed taking effect be bound by and entitled to rights and benefits in each Australian Scheme by the execution of this Deed.
- D. Each Scheme Company which is a party to this deed, the Scheme Administrators and the FSCS have agreed to enter into this Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

Definitions and interpretations for this document are the same as in The Australian Scheme.

2. OPERATION OF DEED

This deed is conditional upon the Australian Court approving each of the Australian Schemes in the form approved by the FSCS.

3. **COVENANT BY FSCS**

The FSCS covenants for the benefit of each Scheme Company which is a party to this deed and each of its Protected Creditors (even though such Protected Creditors are not parties to the Deed) that it will be bound by the terms of The Australian Scheme as if it were a party to The Australian Scheme.

4. **COVENANT BY SCHEME COMPANIES AND SCHEME ADMINISTRATORS**

Each Scheme Company which is a party to this deed and each Scheme Administrator acknowledges that they are bound by the terms of their respective Australian Scheme as such terms apply to FSCS.

5. **ACKNOWLEDGMENTS BY FSCS**

The FSCS acknowledges and agrees that the terms of this Deed and each Australian Scheme can be enforced directly by each Scheme Company which is a party to this deed and each Protected Creditor against FSCS.

6. **ACKNOWLEDGEMENT BY SCHEME COMPANIES AND SCHEME ADMINISTRATORS**

For the avoidance of doubt, the Scheme Administrators and each Scheme Company which is a party to this deed acknowledge and agree that the terms of this Deed and each Australian Scheme can be enforced directly by FSCS against them.

7. **AMENDMENT**

This document can only be amended, supplemented, replaced or novated by another document signed by the parties.

8. **NOTICES**

Any notices to be given under this Deed will be governed by and to be given in accordance with the notice provisions of each of The Australian Schemes as if the FSCS were a Scheme Creditor at 7th Floor, Lloyds Chambers, 1 Portsoken Street, London E1 8BN.

9. **GENERAL**

9.1 **Governing law**

This document is governed by the law in force in the State of New South Wales, Australia.

9.2 **Counterparts**

This document may be executed in counterparts.

EXECUTED as a deed.

EXECUTED by **HIH CASUALTY AND GENERAL INSURANCE LIMITED (IN LIQUIDATION)** ACN 008 482 291 acting by its liquidators as agents without personal liability:

Signature

Name

EXECUTED by **FAI GENERAL INSURANCE COMPANY LIMITED (IN LIQUIDATION)** ACN 000 327 855 acting by its liquidators as agents without personal liability:

Signature

Name

EXECUTED by **FAI INSURANCES LIMITED (IN LIQUIDATION)**
ACN 004 304 545 acting by its liquidators as
agents without personal liability:

Signature

Name

SIGNED, SEALED and **DELIVERED** by
ANTHONY GREGORY MCGRATH
in the presence of:

Signature of party

Witness' Signature

Witness' Name

SIGNED, SEALED and DELIVERED by
CHRISTOPHER JOHN HONEY in the
presence of:

Signature of party

Witness' Signature

Witness' Name

**SIGNED as a DEED and DELIVERED on
behalf of FINANCIAL SERVICES
COMPENSATION LIMITED** by persons
who are acting under the authority of that
company

Signature

Signature

Name (Director/Secretary)

Name (Director)

Important Note

This schedule relates to certain Scheme Claims in respect of which policyholders of the English Authorised Scheme Companies may be entitled to protection from the FSCS. Compensation from FSCS under The Australian Scheme is, subject to its terms, only payable to policyholders of the English Authorised Scheme Companies whose policies were United Kingdom policies (within the meaning of the Policyholders Protection Act 1975 (UK)) at the Record Date and who would otherwise qualify for protection under that Act if those companies had gone into liquidation at the Record Date.

THE FSCS SCHEDULE

PAYMENTS TO PROTECTED POLICYHOLDERS OF THE ENGLISH AUTHORISED SCHEME COMPANIES

Definitions

In this Schedule, unless the context otherwise requires or otherwise expressly provides, the following expressions shall bear the meaning set opposite them:

Accepted Protected Liability	a liability of an English Authorised Scheme Company to a Scheme Creditor if and when the FSCS has agreed under paragraph 2.1.1 that such liability would be a Protected Liability if it became an Established Scheme Claim in the Run-Off Period and which, having been submitted as a Notified Liability on or before the day three months after the Estimation Date, does not become a Protected Liability before that date;
Capped Sterling Equivalent	shall have the meaning given to such expression in paragraph 1.2.3;
English Authorised Scheme Company	except where the context otherwise requires or as expressly provided, each of HIH C&G, FAI General or FAI Insurances separately;
English Court	High Court of Justice of England and Wales;
FSCS	Financial Services Compensation Scheme Limited (company number 03943048), established pursuant to Part XV of FSMA and including any statutory successor of it;
FSCS Amount	shall have the meaning given in paragraph 2.2.1;
FSMA	Financial Services and Markets Act 2000 and, if the context so permits, any applicable rules of the FSCS made pursuant to Section 213 of the FSMA;

IBNR	a Scheme Claim in respect of a liability which, at the Estimation Date, has been incurred but has not been reported by the Scheme Creditor;
Insolvency Act	Insolvency Act 1986 of England and Wales;
Insolvency Rules	Insolvency Rules 1986, made pursuant to the Insolvency Act;
Liquidation Event	an order by the English Court to wind up compulsorily an English Authorised Scheme Company or an administration order by the English Court in relation to the English Authorised Scheme Company or the commencement of a creditors' voluntary liquidation in respect of an English Authorised Scheme Company (both pursuant to the Insolvency Act and the Insolvency Rules);
Non-Euro Amount	a currency other than Euro;
Non-Sterling Amount	shall have the meaning given to such expression in paragraph 1.2.3;
Payment Percentage	in relation to an Established Scheme Claim, the applicable percentage of such Established Scheme Claim which is payable by an English Authorised Scheme Company from time to time under The Australian Scheme, as the same is from time to time set under clause 37;
Policyholders Protection Act	Policyholders Protection Act 1975 of the United Kingdom as amended and in force on the Record Date (but incorporating also any amendment made after that date, which has or have effect in relation to a company which was a company in liquidation on or before that date);
Protected Agreed Liability	a Scheme Claim where liability and quantum have been agreed by or on behalf of an English Authorised Scheme Company but which has not, as at the Estimation Date, become an Established Scheme Claim and which, if it had become an Established Scheme Claim under The Australian Scheme in the Run-Off Period, would have become a Protected Liability;
Protected IBNR	IBNR which, if it had become an Established Scheme Claim under The Australian Scheme in the Run-Off Period, would have become a Protected Liability;
Protected Liability	any Established Scheme Claim in respect of which and to the extent to which the FSCS would owe a duty under sections 6 to 8 of the Policyholders Protection Act if (in the absence of The Australian Scheme and notwithstanding the

repeal of that Act) the relevant English Authorised Scheme Company were a "company in liquidation" and the Record Date were the "beginning of the liquidation", in each case within the meaning of the Policyholders Protection Act and references in those sections to the amount of any liability were references to the amount as established in the case of an Established Scheme Claim in accordance with The Australian Scheme (and, for the avoidance of doubt but without limitation, where such a duty would be owed under that Act in respect of a liability towards a "private policyholder" or under the terms of a "United Kingdom policy", as those expressions are respectively defined in that Act, or a liability of some other description, only an Established Scheme Claim which is also such a liability shall be capable of qualifying as a Protected Liability), provided that for the avoidance of doubt a Protected Liability shall not include any liability which has been assigned to the FSCS pursuant to The Australian Scheme or otherwise;

Protected Outstanding Loss	any liability which is a Scheme Claim and which, at the Estimation Date, has been notified by a Scheme Creditor to an English Authorised Scheme Company but which has not, at that date, become an Established Scheme Claim and which, if it had become an Established Scheme Claim, would have become a Protected Liability;
Protected Percentage	in relation to a Protected Liability, that percentage of such Protected Liability which the FSCS would have a duty to pay under sections 6 to 8 of the Policyholders Protection Act;
Protected Policyholder	in relation to a Protected Liability, any Scheme Creditor to whom an English Authorised Scheme Company owes that Protected Liability and who, in addition, is eligible for protection under section 16(9) of the Policyholders Protection Act;
Run-off Agent	Omni Whittington Insurance Services Limited or such other run-off agent in the United Kingdom of any English Authorised Scheme Company appointed by the Scheme Administrators and notified to the FSCS;
Specified Exchange Rate	shall have the meaning given to such expression in paragraph 1.2.3.

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

- a) references to clauses and parts are to be construed as references to the clauses and the parts respectively of The Australian Scheme and references to paragraphs are to be construed as references to the paragraphs of this Schedule; and
- b) unless otherwise defined, capitalised terms have the meaning given to them in The Australian Scheme.

1. RUN-OFF PERIOD

1.1 Payments by the FSCS

1.1.1 Subject to the following provisions of this Schedule, the FSCS shall pay to each Protected Policyholder in respect of each Protected Liability owed to him an amount equal to:

- (a) the Protected Percentage of that Protected Liability; less
- (b) the aggregate of:
 - (i) whichever is the greater of the total amount already paid, or treated as having been paid, by the English Authorised Scheme Company concerned in respect of that Protected Liability pursuant to the Payment Percentages and the total amount payable in respect of that Protected Liability pursuant to the Payment Percentages in force at the time when the FSCS makes its payment (both amounts may be adjusted in accordance with Part H);
 - (ii) the amount of any Admissible Interest paid or payable at that time pursuant to clause 19, save to the extent that it arises under the terms of the relevant policy; and
 - (iii) the amount of any payment previously made by the FSCS or the Policyholders Protection Board pursuant to section 15, or any other provision of the Policyholders Protection Act in respect of that Protected Liability.

1.1.2 Payment under paragraph 1.1.1 in respect of a Protected Liability shall be made as soon as reasonably practicable following whichever is the later of:

- (a) the date on which the English Authorised Scheme Company concerned notifies the FSCS that the liability is an Established Scheme Claim;
- (b) the date on which the FSCS agrees or it is otherwise determined (so as to bind the FSCS) that the Established Scheme Claim concerned is a Protected Liability;
- (c) if there is a Payment Percentage which is in excess of zero, the date of payment by the English Authorised Scheme Company concerned of all

amounts payable in respect of the Protected Liability under clause 38.6(a) including any adjustments thereto as required by Part H;

- (d) if there is no Payment Percentage, or if the Payment Percentage is zero, the date which is sixty days after the Effective Date; and
- (e) in any case where it appears to the FSCS that the funds available to it fall short of what it requires to make the payment in question and to meet its responsibilities, the date on which it appears to the FSCS that its funds are adequate for those purposes;

and, if at any time payments have been suspended under clause 38.13, such payment under paragraph 1.1.1 in respect of a Protected Liability (other than a Protected Liability in respect of which the period for payment under clause 38.6 shall have expired on or prior to the date on which payments are suspended without payment having been made by the relevant English Authorised Scheme Company) shall be made as soon as reasonably practicable following whichever is the later of the dates referred to in this paragraph 1.1.2(a), (b), (d) or (e) in relation to the liability in question.

1.2 Limitations on the FSCS's obligations

1.2.1 Any obligation of the FSCS to a Protected Policyholder under this Schedule in respect of a Protected Liability shall be subject to the same conditions, limitations, qualifications and other provisions (mutatis mutandis) contained or referred to in, or capable of being imposed under, sections 9, 13(1) to (3) and 14 of the Policyholders Protection Act (and, for the avoidance of doubt, so that for the purposes of section 13(3) in its application to The Australian Scheme the FSCS shall be entitled to have regard both to its obligations under The Australian Scheme and to its responsibilities otherwise than under The Australian Scheme) as the duty which the FSCS would have had under sections 6 to 8 of that Act to secure the making of a payment to any policyholder or any other person in respect of that Protected Liability if the relevant English Authorised Scheme Company were a company in liquidation (as defined in the Policyholders Protection Act).

1.2.2 Any obligation of the FSCS to make a payment under paragraph 1.1.1 in respect of a Protected Liability shall:

- (a) be conditional on that liability being one in respect of which a Payment Percentage is payable under The Australian Scheme;
- (b) if there is a Payment Percentage which is in excess of zero and save during any period when payments have been suspended under clause 38.13 (other than where the Protected Liability in question is one in respect of which the period for payment by the relevant English Authorised Scheme Company under clause 38.6 shall have expired on or prior to the date on which payments are suspended without payment having been made by the relevant English Authorised Scheme Company), be conditional on payment by the relevant English Authorised Scheme Company of all amounts payable in respect of that Protected Liability under clause 38.6(a) or paragraph 1.6.1(c) before the time

when the payment by the FSCS falls, or would but for this paragraph 1.2.2 fall to be made; and

- (c) unless the FSCS otherwise consents in any case, be conditional on the Protected Policyholder being entitled and able to assign to the FSCS all the rights and claims mentioned in paragraph 1.3.1 (subject to the proviso in paragraph 1.3.6), as originally arising and free from any lien, charge, prior assignment, equity, encumbrance or other third party right.

1.2.3

- (a) Any sum payable in respect of any Protected Liability by the FSCS under this Schedule in a currency other than Sterling (the "Non-Sterling Amount") shall not exceed its Capped Sterling Equivalent.
- (b) For the purpose of paragraph 1.2.3(a) the "Capped Sterling Equivalent" in relation to any Non-Sterling Amount means the amount in the currency in which such Non-Sterling Amount is denominated, determined by:
 - (i) converting the Non-Sterling Amount into Sterling at the Specified Exchange Rate; and
 - (ii) converting the Sterling amount obtained from (i) above into the currency in which the Non-Sterling Amount is denominated at the exchange rate prevailing on the Business Day (the "Relevant Date") falling immediately prior to the date of payment under paragraph 1.1.1 in respect of the relevant Protected Liability.
- (c) For the purpose of this paragraph 1.2.3:
 - (i) the "Specified Exchange Rate" shall be twelve and a half per cent below the exchange rate into Sterling for the currency in which the Non-Sterling Amount is denominated prevailing on the Effective Date;
 - (ii) the exchange rate prevailing on the Effective Date shall be taken, in relation to any currency, as the average daily exchange rate over the period three months prior to the Effective Date, taken from the rates published on each Business Day during that period in the Financial Times or, if on any such Business Day no such rate is published in the Financial Times in respect of that currency, as the mid-market rate for that currency on such date quoted by Lloyds TSB Bank plc, or if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and the FSCS;
 - (iii) the exchange rate prevailing on the Relevant Date shall be taken, in relation to any currency, as the exchange rate for that date published in the Financial Times or, if no such rate is published in the Financial Times for that date in respect of that currency, as the mid-market rate for that currency on the Relevant Date quoted by Lloyds TSB Bank plc, or, if no such rate is so published or quoted, such rate as may

reasonably be determined by the Scheme Administrators and the FSCS;

- (iv) (without prejudice to clause 65), if the Euro replaces Sterling as the lawful currency of the United Kingdom for the time being, the preceding provisions of this paragraph 1.2.3 shall thereafter have effect as if references to Sterling were references to the Euro and references to the Non-Sterling Amount were references to the Non-Euro Amount.

1.2.4

- (a) Subject to paragraph 1.2.4(b), the FSCS shall not have any greater obligation under The Australian Scheme in respect of any Scheme Creditor or liability of any English Authorised Scheme Company than it would have had (and neither Scheme Creditors nor the relevant English Authorised Scheme Company shall have any different or greater relief or remedy against the FSCS than they or it would have had) if that English Authorised Scheme Company had been a company in liquidation (as defined in the Policyholders Protection Act), the beginning of the liquidation (as so defined) had been the Record Date, and the payment to be made by the FSCS in respect of each Protected Liability had been reduced by the amounts referred to in paragraph 1.1.1(b); and no right of, or condition imposed by, the FSCS under The Australian Scheme in relation to any Scheme Creditor shall be limited or restricted by virtue of any obligation of the FSCS to that Scheme Creditor under The Australian Scheme being less than the obligation which the FSCS would have had to it if the relevant English Authorised Scheme Company had been a company in liquidation (as so defined).
- (b) For the purpose of paragraph 1.2.4(a) it shall be assumed that:
 - (i) the currency of payment by the FSCS in respect of any liability (and where that currency is not Sterling, its rate of exchange) would be the same on a liquidation of the relevant English Authorised Scheme Company as under The Australian Scheme (including for these purposes the exchange rate limit set out in paragraph 1.2.3); and
 - (ii) the amount of any liability of an English Authorised Scheme Company in liquidation would be as established in the case of an Established Scheme Claim in accordance with The Australian Scheme.

1.2.5 For the avoidance of doubt, the FSCS:

- (a) shall not be liable in respect of any interest liability of an English Authorised Scheme Company to a Protected Policyholder which does not constitute Admissible Interest and only then to the extent that such Admissible Interest falls within the definition of Protected Liability; and
- (b) without prejudice to paragraphs 1.2.1 and 1.2.4, shall not have:

- (i) any greater obligation under The Australian Scheme by virtue of any amount of any security, letter of credit, trust fund, guarantee, guarantee fund or deposit (or any other amount falling to be taken into account under clause 12.1(a) or any amount payable to or capable of being claimed by a Protected Policyholder arising under any State Cut-Through Legislation) being taken into account in the calculation of any Established Scheme Claim than it would have had if that amount (as well as the amounts referred to in paragraph 1.1.1(b)) had been treated under section 14(1) of the Policyholders Protection Act (taken together with Section 14(7), if applicable) as reducing any sum which would have been payable by it in respect of the liability concerned if an English Authorised Scheme Company had been a company in liquidation (as defined in that Act) and the beginning of the liquidation (as so defined) had been on the Record Date;
- (ii) any obligation towards any person who has paid or is liable to pay any such amount as is described in paragraph 1.2.5(b)(i);
- (iii) any greater obligation under The Australian Scheme by virtue of any such amount as is described in paragraph 1.2.5(b)(i) not being taken into account in the calculation of any Established Scheme Claim than it would have had if that amount had been so taken into account;

and any amount which the FSCS would otherwise be obliged to pay under paragraph 1.1.1 shall be reduced accordingly; provided that the FSCS may in any case falling within (i) or (iii) above elect at its discretion to pay the whole or any part of any such reduction. Any such payment by it shall be without prejudice to its rights under any other provision of The Australian Scheme, including in particular paragraphs 1.2.6, 1.2.7 and 1.3.1 (and for the purposes of paragraph 1.3.1 any such payment shall be treated as a payment pursuant to paragraph 1.1) and may be made subject to such terms and conditions as the FSCS thinks fit; and

- (c) if an English Authorised Scheme Company is subject to a Liquidation Event after the Record Date (whether or not The Australian Scheme continues in effect), the FSCS shall not have any obligation in respect of any policyholder or liability of that English Authorised Scheme Company which it would not have had, or greater than it would have had, if the Liquidation Event had occurred on the Record Date; and if by virtue of an English Authorised Scheme Company being subject to a Liquidation Event after the Record Date the FSCS would, or would but for this paragraph, be required to pay any amount to or on behalf of a policyholder in respect of a liability of that English Authorised Scheme Company which it would not or could not have been required to pay if the Liquidation Event had occurred on the Record Date, then, subject to paragraph 1.6.5, the liability shall for all purposes be treated as not being a liability under the terms of a policy, but as being a liability only under The Australian Scheme (and admissible for proof in the liquidation as such).

1.2.6 Without prejudice to paragraphs 1.2.1, 1.2.4 and 1.2.5:

- (a) if when calculating the amount payable to a Scheme Creditor in respect of any Scheme Claim which is a Protected Liability, any such amount as is described in paragraph 1.2.5(b)(i) is not taken into account; and
- (b) an English Authorised Scheme Company or the relevant Scheme Creditor receives or becomes entitled to receive any sum in respect of or referable to that liability (whether or not such sum forms part of a greater amount the balance of which is not referable to that liability) from such source as is described in paragraph 1.2.5(b)(i);

the relevant English Authorised Scheme Company or the relevant Scheme Creditor (as the case may be) shall, subject to the discharge therefrom of any prior ranking encumbrances, equities or interests, as soon as reasonably practicable after receipt, pay the sum to the FSCS; and pending such payment shall hold that sum (or, as the case may be, its entitlement to receive the same) on trust absolutely for the FSCS.

1.2.7 The FSCS shall not have an obligation to make a payment in respect of an Established Scheme Claim if it appears to the FSCS that such a payment would result in a benefit being conferred on either:

- (a) any person who was a member of the relevant English Authorised Scheme Company at the Record Date; or
- (b) any person who had any responsibility for or who may have profited from the circumstances giving rise to the financial difficulties of the relevant English Authorised Scheme Company;

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

1.2.8 For the avoidance of doubt:

- (a) references in paragraphs 1.2.5 and 1.2.6 to any amount which falls to be taken into account in the calculation of any Established Scheme Claim include references to any such amount whether paid or payable;
- (b) nothing in The Australian Scheme shall require the FSCS to make any payment to a Protected Policyholder if he does not wish to claim it; and
- (c) nothing in The Australian Scheme shall require the FSCS to make any payment in respect of a liability which does not qualify for any Payment Percentage payable under The Australian Scheme.

1.3 Assignments to the FSCS

1.3.1 Immediately upon any payment being made by the FSCS pursuant to this Schedule in respect of a Protected Liability, there shall automatically be assigned to the FSCS absolutely, without any further act or document:

- (a) all rights of the Protected Policyholder in respect of that Protected Liability (including in respect of the debt or claim constituted by or arising out of or relating to that Protected Liability) under or in respect of the policy relating to that Protected Liability and The Australian Scheme or under or in respect of section 562A(4) of the Corporations Act or a Section 562A(4) Order;
- (b) any rights and claims such Protected Policyholder may have in respect of payments made by him by way of premiums under the policy relating to that Protected Liability; and
- (c) without prejudice and subject to paragraph 1.2.5(b), any rights and claims such Protected Policyholder may have against any other persons in respect of any event giving rise to that Protected Liability (other than another insurer which has insured the Protected Policyholder in respect of the same event, but without prejudice to the application of this paragraph 1.3.1 in relation to any Protected Liability to which the event has also given rise) or by reference to or in connection with the policy relating to that Protected Liability;

whether, in any such case, those rights or claims arise under or in respect of the policy relating to that Protected Liability, under or in respect of The Australian Scheme, by virtue of any trust or legislation (primary or subordinate) or otherwise howsoever, and whatever the nature of those rights or claims. If, before making a payment pursuant to paragraph 1.1, in any particular case the FSCS in its absolute discretion determines that the terms of the assignment of rights and claims which would otherwise apply under paragraph 1.3.1(c) should be varied in that case, subject to the consent of the Protected Policyholder concerned to the variation, paragraph 1.3.1(c) shall have effect as if those terms of assignment as so varied applied in that case. If any question arises as to the identification of any Protected Liability, or as to whether any payment has been made by the FSCS in respect of that liability, or as to whether that liability is or is not the subject of an assignment to the FSCS under this paragraph 1.3.1, a certificate from the FSCS that it has made a payment in respect of that liability shall be binding and conclusive on all persons for the purpose of determining any such matter. Without prejudice to the provisions of paragraph 1.3.5, the FSCS shall provide to the relevant English Authorised Scheme Company such information relating to the date and amount of payments it makes in respect of Protected Liabilities as such English Authorised Scheme Company may from time to time reasonably request.

1.3.2 Following a payment by the FSCS pursuant to this Schedule and without prejudice to the generality of any assignment pursuant to the provisions of this Schedule, the FSCS shall have a right to payment by the relevant English Authorised Scheme Company, of all sums subsequently due or payable in respect of the Protected Liability to which the payment by the FSCS or the assignment relates or in respect of

any other of the rights and claims so assigned, whether those sums are due and payable under The Australian Scheme or under or in respect of the policy to which the Protected Liability relates, and accordingly, once the FSCS has notified any one of the relevant English Authorised Scheme Company, the Scheme Administrators or the Run-off Agent that payment has been made in respect of a Protected Liability or an assignment has been effected:

- (a) the relevant English Authorised Scheme Company shall treat the FSCS as the Scheme Creditor in respect of the Protected Liability to the exclusion of any other person and shall, for the avoidance of doubt, treat the FSCS as having an Acknowledged Creditor Claim for the purposes of clauses 11 and 25 in respect of each such Protected Liability;
- (b) the FSCS shall be admitted as a creditor in respect of such sums on any winding-up or administration of the relevant English Authorised Scheme Company (insofar as such liquidation or administration is outside, and not subject to the continuing provisions of, The Australian Scheme); and
- (c) the receipt of the FSCS shall constitute a valid discharge of the relevant English Authorised Scheme Company in respect of such sums;

and so that the relevant English Authorised Scheme Company shall not remain under or incur any liability with respect to any Protected Policyholder by reason of having paid any such sums to the FSCS.

1.3.3 Without prejudice to paragraph 1.3.1, a Protected Policyholder to whom a payment is made pursuant to paragraph 1.1 shall do such acts and things and execute such deeds and documents, and in particular such forms of assignment, transfer or assurance as the FSCS may from time to time request to vest in it fully and effectively all rights and claims of that Protected Policyholder against or in respect of the relevant English Authorised Scheme Company or other persons or section 562A(4) of the Corporations Act under or in respect of the Protected Liability to which such payment relates, or to perfect or evidence the vesting in it of the same. Each Protected Policyholder hereby irrevocably and unconditionally appoints the chairman of the FSCS for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such acts and things and execute such deeds and documents as may be required to give effect to this paragraph 1.3.3, if such Protected Policyholder fails to comply promptly with his obligations hereunder. Without prejudice to paragraph 1.3.1, if and to the extent that any interest in any such right or claim of a Protected Policyholder as falls to be assigned to the FSCS under that paragraph upon any payment being made does not for any reason immediately vest fully and effectively in the FSCS, the same shall be held by the Protected Policyholder on trust absolutely for the FSCS until it does so vest (whether pursuant to that paragraph or the preceding provisions of this paragraph or otherwise); and until then references in paragraph 1.3.2 to an assignment pursuant to this Schedule shall be construed, in relation to that Protected Liability, as references to a trust pursuant to this paragraph 1.3.3.

1.3.4 Without prejudice to paragraph 1.3.1, any obligation of the FSCS to make a payment to a Protected Policyholder under paragraph 1.1 in respect of a Protected

Liability shall, if the FSCS so elects, be conditional on there first being assigned to it, in such form as it may request, all such rights and claims as are mentioned in paragraph 1.3.1(a) to (c) (but as if the references there to Protected Policyholder or to Protected Liability were references to the Protected Policyholder or Protected Liability in respect of whom or which the election is made) or such of those rights and claims as the FSCS may determine. Where any such obligation is so conditional, paragraph 1.1.2 shall apply as if after paragraph 1.1.2(e) there were added: "; and (f) the date when the condition imposed under paragraph 1.3.4 is satisfied"; and the word "and" were deleted from the end of paragraph 1.1.2(d); and the reference to the later of the dates referred to in paragraph 1.1.2(a), (b), (d) or (e) were deleted and replaced by a reference to the later of the dates referred to in paragraph 1.1.2(a), (b), (d), (e) or (f).

1.3.5 Paragraph 1.3.1 and paragraph 1.3.2 shall be deemed to constitute for all purposes express notice in writing to the relevant English Authorised Scheme Company of all assignments effected pursuant to its provisions and relating to liabilities of such English Authorised Scheme Company.

1.3.6 For the avoidance of doubt (and without prejudice to clause 12.1(a)), rights and claims to which paragraph 1.3.1 applies include all rights and claims which a Protected Policyholder may have in respect of a Protected Liability to any payment out of, interest in, or recourse to or otherwise by virtue of, any such letter of credit, trust funds, guarantees, guarantee fund and deposits as are referred to in paragraph 1.2.5(b)(i) or in respect of any other amount falling to be taken into account under clause 12.1(a), provided that if a Protected Policyholder has any right under a letter of credit, trust fund, guarantee, guarantee fund or deposit as is described in paragraph 1.2.5(b)(i), or in respect of any other amount falling to be taken into account under clause 12.1(a) then such right shall not be assigned to the FSCS to the extent that its being taken into account in calculating the FSCS's payment in respect of a Protected Liability under The Australian Scheme results in a reduction in the amount which would otherwise have been payable by the FSCS in respect of that Protected Liability under The Australian Scheme (except that if and to the extent that it is determined in any Proceeding (or the effect of a determination in any Proceeding is) that this proviso causes, or would but for this exception cause, the assignment of such right or any other right to be invalid or unenforceable, the proviso shall not have effect).

1.3.7 If, prior to the effective date, the Policyholders Protection Board or the FSCS exercised its discretion under Section 15 of the Policyholders Protection Act and paid to or on behalf of a Protected Policyholder an amount equal to the Protected Percentage of the Protected Liability but failed to obtain an assignment of all or any of that Protected Policyholder's rights and claims in respect of that Protected Liability or obtained an assignment or purported assignment of all or any thereof which was in any respect defective or ineffective on the Effective Date there shall be automatically assigned to the FSCS absolutely, without any further act or document all such rights and claims as are mentioned in paragraph 1.3.1 (as if references therein to that Protected Liability were references to the Protected Liabilities mentioned in this paragraph 1.3.7).

1.4 Information to be provided to the FSCS

1.4.1 Without prejudice at Section 219 and 221 of the FSMA, during and after The Australian Scheme and until the relevant English Authorised Scheme Company is dissolved, each English Authorised Scheme Company and the Scheme Administrators shall promptly provide the FSCS with all such information in their respective possession or under their respective control or the control of their respective agents as the FSCS may from time to time request in order to establish whether (or the extent to which) any Established Scheme Claim is, or any Liability of an English Authorised Scheme Company may become, a Protected Liability or whether (or the extent to which) a Scheme Creditor is a Protected Policyholder or otherwise for the purpose of enabling or assisting the FSCS to perform its obligations or exercise its rights under The Australian Scheme or generally to carry out its powers, functions or responsibilities at any time. Where the FSCS requests copies of documents it shall pay the reasonable photocopying costs of providing them. Such English Authorised Scheme Company or as the case may be the Scheme Administrators shall, so far as it or they are able, authorise and instruct any third party with any such information to disclose it to the FSCS. Without prejudice to Section 219 and 221 of the Financial Services and Markets Act, an English Authorised Scheme Company's and the Scheme Administrators' obligations set out in this paragraph 1.4.1 shall not extend to any information which the English Authorised Scheme Company concerned, or as the case may be the Scheme Administrators, are under a legal duty not to disclose, but neither an English Authorised Scheme Company nor the Scheme Administrators shall, without the prior written consent of the FSCS, enter into any agreement or incur any obligation which precludes or restricts disclosure to the FSCS of any such information as is reasonably capable of being the subject matter of a request under this paragraph 1.4.1.

1.4.2 Without prejudice at Section 219 and 221 of the FSMA, subject to receiving reasonable notice in any case, each English Authorised Scheme Company shall, for the purpose referred to in paragraph 1.4.1, permit (and, so far as it is able, authorise and instruct its agents to permit) any person authorised by the FSCS to have access to, and to be provided with copies of, all or any of the books and records of such English Authorised Scheme Company and, insofar as they relate to such English Authorised Scheme Company, of such agents, during normal business hours. Without prejudice to Section 219 and 221 of the Financial Services and Markets Act, such obligation shall not extend to any such information which such English Authorised Scheme Company or any such agent is under a legal duty not to disclose. The FSCS shall pay the reasonable photocopying costs of providing such copies.

1.4.3 Without limitation to paragraph 1.4.1, an English Authorised Scheme Company shall, as soon as reasonably practicable after payment of any amount to a Scheme Creditor under clause 38.6, give notice of such payment to the FSCS to the extent required by the FSCS in order to fulfil its obligations under The Australian Scheme.

1.5 The FSCS's rights against an English Authorised Scheme Company in respect of any assignment to it of the rights of a Protected Policyholder

For the avoidance of doubt and without prejudice to paragraphs 1.1 to 1.3, each English Authorised Scheme Company agrees with the FSCS that any assignment by any Protected Policyholder of all or any rights whatsoever of the Protected Policyholder against such English Authorised Scheme Company, including without limitation an automatic assignment under paragraph 1.3.1, shall be valid and binding on such English Authorised Scheme Company, and, once the FSCS has notified any one of the relevant English Authorised Scheme Company, the Scheme Administrators or the Run-off Agent that payment has been made in respect of a Protected Liability or an assignment has been effected:

- (i) the FSCS may take actions and proceedings in the name of such Protected Policyholder and exercise all his rights against an English Authorised Scheme Company, including without limitation his rights, prior to such assignment, against an English Authorised Scheme Company; and
- (ii) each English Authorised Scheme Company shall take any steps reasonably requested by the FSCS to ensure that any assignment under, or which falls to be made under The Australian Scheme in favour of the FSCS is duly and effectively made and given full effect.

1.6 The FSCS and continuation of The Australian Scheme in liquidation

1.6.1 If an English Authorised Scheme Company becomes subject to a Liquidation Event and The Australian Scheme continues in full force and effect, then the FSCS shall continue to make payments by reference to the terms of The Australian Scheme and this Schedule and the Policyholders Protection Act in relation to each Protected Liability to which this paragraph 1.6.1 applies:

- (a) there shall automatically be assigned to the FSCS absolutely, without any further act or document and before any payment has been made by the FSCS in respect of that Protected Liability, all such rights and claims as are mentioned in paragraph 1.3.1(a) to (c) (but as if, in any case to which this paragraph 1.6 applies, the references there to Protected Policyholder or to Protected Liability were references to the Protected Policyholder or Protected Liability in respect of whom or which this paragraph 1.6 applies);
- (b) in consequence of such assignment, the provisions of this Schedule shall apply with the following modifications:
 - (i) paragraph 1.1.1 shall apply as if
 - (A) for the words "each Protected Liability owed to him" there were substituted the words "each Protected Liability which, but for paragraph 1.6.1(a) and/or paragraph 1.3.2, would be owed to him"; and
 - (B) paragraph 1.1.1(b)(i) referred only to so much of the amount there mentioned (including any amount paid to the policyholder pursuant to paragraph 1.6.1(c)) as is not paid to the FSCS,

- (ii) paragraphs 1.2.1, 1.2.4(a), 1.2.5(b)(i) and 1.7.4 shall apply as if the reference to a company in liquidation were references to a company in liquidation outside, and not subject to the continuing provisions of, The Australian Scheme;
 - (iii) paragraph 1.2.2 shall apply as if, for the words "the Protected Policyholder being entitled and able to assign" there were substituted the words "there having been assigned";
 - (iv) paragraph 1.3.1 shall not apply insofar as it is rendered redundant by paragraph 1.6.1(a) and if any question arises as to the identification of any Protected Liability, or as to whether any payment has been made by the FSCS in respect of that liability, or as to whether that liability is or is not the subject of an assignment to the FSCS under paragraph 1.6.1(a), a certificate from the FSCS as to any such matter shall be binding and conclusive on all persons for the purpose of determining the same;
 - (v) paragraph 1.3.2 shall apply as if for the words from the beginning up to and including "the provisions of this Schedule" there were substituted the words "In the case of each Protected Liability to which paragraph 1.6 applies and without prejudice to the generality of any assignment pursuant to the provisions of paragraph 1.6";
 - (vi) paragraphs 1.3.3 and 1.3.4 shall apply as if the references to paragraph 1.3.1 were references to paragraph 1.3.1 or paragraph 1.6.1 and as if after the words "upon any payment being made" in paragraph 1.3.3 there were inserted the words "or upon any Protected Liability first becoming an Established Scheme Claim (as the case may be)";
 - (vii) paragraph 1.3.5 shall apply as if for the words "Paragraph 1.3.1" there were substituted the words "Each of paragraphs 1.3.1 and 1.6.1";
 - (viii) paragraph 1.3.6 shall apply as if the reference to rights and claims to which paragraph 1.3.1 applies included rights and claims to which paragraph 1.6.1 applies by reference to paragraph 1.3.1;
 - (ix) paragraph 1.5 shall apply as if the reference to paragraphs 1.1 to 1.3 were a reference to paragraphs 1.1 to 1.3 and 1.6, and the reference to an automatic assignment under paragraph 1.3.1 were a reference to an automatic assignment under paragraph 1.3.1 or 1.6;
- (c) if at the time when the automatic assignment under this paragraph 1.6.1 takes effect in relation to a Protected Liability no Payment Percentage has been paid (or treated as having been paid) by the relevant English Authorised Scheme Company to or on behalf of the Protected Policyholder concerned, any initial amount payable by such English Authorised Scheme Company under clause 38.6(a) in respect of that Protected Liability shall be paid by it as the agent of the FSCS (which authorises and instructs it to do so) to or on behalf

of the Protected Policyholder directly (and shall accordingly be treated as an amount falling within paragraphs 1.1.1(b)(i) and 1.6.1(b)(i)(B) above for the purpose of calculating any amount payable by the FSCS in respect of that Protected Liability), but all subsequent payments by such English Authorised Scheme Company in respect of that Protected Liability shall in accordance with the provisions of this Schedule (as modified by this paragraph 1.6) be paid to the FSCS;

- (d) if an English Authorised Scheme Company fails to pay any initial amount payable by it in respect of a Protected Liability in accordance with paragraph (c) above, the Protected Policyholder shall have the right (in addition and without prejudice to the FSCS's own right by virtue of the automatic assignment under this paragraph 1.6.1) to require such English Authorised Scheme Company to pay that amount, and to take any Proceeding or step against such English Authorised Scheme Company (at the Protected Policyholder's own cost and expense) for the purpose of enforcing payment; and
- (e) for the avoidance of doubt, the references to the Protected Policyholder in paragraphs (c) and (d) above shall be construed (and, following an automatic assignment under this paragraph 1.6.1, references to a Protected Policyholder in paragraphs 1.1 to 1.5, as modified by paragraph 1.6.1(b), shall, as between that person and the FSCS, be construed) as references to the person from whom the automatic assignment is taken.

1.6.2 Subject to paragraph 1.6.3, paragraph 1.6.1 applies to each Protected Liability in respect of which the rights and claims mentioned in paragraph 1.3.1(a) to (c) have not prior to the Liquidation Event been assigned to the FSCS.

1.6.3 Paragraph 1.6.1 shall not apply to any Protected Liability in respect of which the FSCS elects to disapply it.

1.6.4 The time at which the automatic assignment under paragraph 1.6.1 shall take effect in relation to any Protected Liability shall be the time at which it first becomes an Established Scheme Claim.

1.6.5 If the FSCS so elects in respect of any liability which, but for this paragraph 1.6.5, would be treated by virtue of paragraph 1.2.5(c) as not being a liability under the terms of a policy:

- (a) the liability shall be treated as a liability under the terms of a policy;
- (b) there shall automatically be assigned to the FSCS absolutely, without any further act or document, all such rights and claims as are mentioned in paragraph 1.3.1(a) to (c) (but as if the references there to Protected Liability and Protected Policyholder were to that liability and the policyholder in respect of it);
- (c) notwithstanding that the liability is not a Protected Liability, the FSCS shall pay to the policyholder (or such other person as the FSCS may determine) all

sums received by the FSCS from relevant English Authorised Scheme Company in respect of that liability; and

- (d) the FSCS shall have no obligation or responsibility to pay any other sum in respect of that liability.

1.7 Other provisions applicable to the FSCS

1.7.1 References in this Schedule to the FSCS paying or making payment of any sum include references to the FSCS securing the payment of that sum; and references to the securing of payment in sections 9, 13 and 14 of the Policyholders Protection Act, as they apply by virtue of paragraph 1.2.1 to the obligations of the FSCS under this Schedule, shall be construed accordingly.

1.7.2 A payment by the FSCS under The Australian Scheme shall not operate to reduce or discharge any liability of any English Authorised Scheme Company or any part of such liability.

1.7.3 Without prejudice to any other rights and remedies which the FSCS may have, any person receiving a payment under paragraph 1.1.1 in respect of a liability who has knowingly provided false, misleading or incomplete information to the FSCS in support of an application for that payment shall be bound on demand to repay to the FSCS all such amounts as have been paid by the FSCS in respect of that liability, together with interest at eight per cent per annum (or such higher rate of interest as may be from time to time be prescribed pursuant to section 17 of the Judgments Act 1838 (UK) (or such other rate as a court of competent jurisdiction may specify for the purpose of this paragraph 1.7.3)) calculated on a daily basis from the date of payment to the date of repayment.

1.7.4 Where, in relation to any policy, the FSCS would be required or entitled under the Policyholders Protection Act to make a payment to any person other than, or instead of, the policyholder, if the relevant English Authorised Scheme Company were in liquidation, the FSCS may similarly perform any obligation to make a payment under The Australian Scheme in relation to that policy and references in The Australian Scheme to any payment to a Protected Policyholder shall be construed accordingly as including payment to such a person (as well as, for the avoidance of doubt, any person, whether or not a policyholder, to whom payment may be made by the FSCS in discharge or satisfaction of any payment obligation to the Protected Policyholder, or to whom payment may otherwise be made by the FSCS for or on behalf of the Protected Policyholder).

1.7.5 At any time prior to its payment obligation in relation to a Protected Policyholder under paragraph 1.1 having arisen, the FSCS may elect to make a payment to or on behalf of a Protected Policyholder in respect of a Protected Liability on such terms (including terms requiring repayment and terms as to assignment of rights in respect of the Protected Liability) and on such conditions as the FSCS thinks fit.

1.7.6 If an English Authorised Scheme Company shall become subject to a Liquidation Event and for so long as The Australian Scheme does not terminate in accordance with clause 63.1, the FSCS shall continue to be bound by The Australian Scheme.

2. ESTIMATION PERIOD

2.1 Accepted Protected Liabilities

2.1.1 All Scheme Creditors who consider that the whole or part of any Liability stated in their Final Claim Form for Estimation completed by them under clause 25.1(b) consists of a Protected Agreed Liability and/or a Protected Outstanding Loss and/or Protected IBNR, shall state this on the Final Claim Form for Estimation to be submitted to the Scheme Administrators on or before the day three months after the Estimation Date in accordance with clause 25.1(b). Such Final Claim Form for Estimation will be referred to the FSCS (for which purpose such Scheme Creditors hereby consent to such referral). The FSCS may in its sole discretion agree, in whole or in part, that a relevant Notified Liability is a Protected Agreed Liability and/or a Protected Outstanding Loss and/or Protected IBNR (as the case may be) in which case such liabilities will become Accepted Protected Liabilities. Such agreement of the FSCS shall be given solely for the purpose of calculating the FSCS Amount and shall not be binding on the FSCS for determining the eligibility and/or amount of any claim for compensation by a Protected Policyholder in respect of a Protected Liability under the Policyholders Protection Act and/or this Schedule or otherwise. To the extent that the FSCS so agrees, so that such a Notified Liability is an Accepted Protected Liability, the provisions of Parts E, F and I shall have no application to such Notified Liability (so that the relevant Scheme Creditor shall not have any entitlement to payments from the English Authorised Scheme Company concerned in respect of such Accepted Protected Liability) and such Notified Liability will instead be treated in accordance with this paragraph 2. In the event that the FSCS does not agree that the whole or any part of such Notified Liability is a Protected Agreed Liability or a Protected Outstanding Loss or Protected IBNR (as the case may be) and has so notified the relevant English Authorised Scheme Company, then notice will be given by such English Authorised Scheme Company to the relevant Scheme Creditor of such determination. Any such whole or part of a Notified Liability that is so determined not to be a Protected Agreed Liability or a Protected Outstanding Loss or Protected IBNR (as the case may be) will then be dealt with in accordance with Parts E, F and I.

2.1.2 In the event that:

- (a) the FSCS is unable to agree with the Scheme Creditor whether the whole or any part of a Notified Liability is made up of Protected Agreed Liabilities or Protected Outstanding Losses and/or Protected IBNR, then the Scheme Administrators may, at their discretion (but subject to the last sentence of paragraph 2.1.1), reach an agreement with the FSCS and the Scheme Creditor as to how such Notified Liability should be dealt with. Such agreement may include the manner in which sums may be paid under the terms of The Australian Scheme, and any appropriate reservation of rights as between the FSCS and the Scheme Creditor. This may include the way in which the Scheme Creditor either will give credit to the FSCS for any amounts received by the Scheme Creditor from an English Authorised Scheme Company in respect of that liability should it subsequently be a liability which is eligible for protection under the Policyholders Act or will not receive any payment from an English Authorised Scheme Company in respect of any such Notified Liability (or part thereof); and

- (b) the FSCS determines or it is otherwise so determined (so as to bind the FSCS), in relation to an Accepted Protected Liability which becomes an actual present liability owed to the Scheme Creditor under The Australian Scheme, that such liability is not in fact protected under the Policyholders Protection Act, then the provisions of this paragraph 2.1.2(b) shall apply in relation to that liability. The FSCS shall pay that part of the distributions it receives under paragraph 2.2.4 that it has received to such Accepted Protected Liability to or on behalf of the relevant Scheme Creditor, together with interest from the respective distribution dates to the date of payment.

2.1.3 If in the Scheme Administrators' reasonable opinion, a Scheme Creditor has not, but should have, stated on its Final Claim Form for Estimation that any Notified Liability consists of a Protected Agreed Liability and/or Protected Outstanding Loss and/or a Protected IBNR as required by paragraph 2.1.1, the Scheme Administrators shall refer the matter to the FSCS together with the relevant Final Claim Form for Estimation (for which purpose the Scheme Creditor hereby consents to such referral). If, after consideration of such Final Claim Form for Estimation and any other relevant circumstances the FSCS are of the opinion that the Scheme Creditor appears, on the basis of the information available, to be a policyholder eligible for protection under the Policyholders Protection Act in relation to all or part of its Notified Liability on the assumption that its claim if and when maturing would be a Protected Liability, the FSCS shall give notice of this fact to the Scheme Administrators who shall, in turn, give such notice to the Scheme Creditor, together with a requirement for the Scheme Creditor to show good cause as to its unprotected status which is reasonably satisfactory to the Scheme Administrators and the FSCS. Thereafter:

- (a) if at that stage the Scheme Creditor agrees to the amendment of its Final Claim Form for Estimation in respect of the relevant liability to indicate that the Notified Liability consists of a Protected Agreed Liability and/or a Protected Outstanding Loss and/or Protected IBNR, it shall be dealt with as if it had originally so indicated its protected status on its Final Claim Form for Estimation in accordance with paragraph 2.1.1;
- (b) if the Scheme Creditor shows good cause why it does not believe that it would be eligible for protection under the Policyholders Protection Act, it shall be dealt with in accordance with Parts E, F and I;
- (c) in the absence of showing good cause as referred to in (b) above, the Scheme Creditor shall be dealt with in accordance with Parts E, F and I. Prior to receiving any distribution under Part I unless otherwise agreed by the FSCS, the Scheme Creditor shall confirm in a legally binding form satisfactory to the FSCS that it is not a Protected Policyholder in relation to the relevant liability concerned and that it irrevocably waives any rights or entitlement it may have against the FSCS in relation to that liability.

2.2 The FSCS Amount

2.2.1 The Scheme Administrators shall make an initial calculation of the FSCS Amount for each English Authorised Scheme Company and notify the FSCS of each FSCS Amount. Each FSCS Amount shall be based on and be no less than the value

of all Notified Liabilities which are Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR and all other Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR of the relevant English Authorised Scheme Company including those which the Scheme Administrators are aware of from the books and records of the relevant English Authorised Scheme Company in respect of which the relevant Scheme Creditors have not returned or are treated as not having returned Final Claim Form for Estimation in accordance with The Australian Scheme.

2.2.2 The Scheme Administrators will give full and complete details in support of their calculation of the FSCS Amount at the request of the FSCS. The Scheme Administrators shall deal promptly with any queries raised by the FSCS as to the calculation and on the details provided pursuant to this paragraph. The FSCS shall not be entitled to request information or raise further queries after 2 months from receipt by it of the full and complete details from the Scheme Administrators of the calculation of each FSCS Amount.

2.2.3 The Scheme Administrators shall act reasonably and in good faith when seeking to agree an FSCS Amount with the FSCS. If, after the period of 4 months from receipt by the FSCS of the notice by the Scheme Administrators of the calculation of an FSCS Amount, the Scheme Administrators and the FSCS have not reached agreement as to that FSCS Amount, the Scheme Administrators shall immediately refer the matter to one or more of the Scheme Adjudicators with a request for a determination (at no cost to the FSCS) as to the FSCS Amount pursuant to the terms of The Australian Scheme as set out in Part F provided that the FSCS shall be entitled to make its own submissions to any Scheme Adjudicator.

2.2.4 The FSCS shall be entitled to receive Payment Percentages as if the FSCS Amount had been an Established Scheme Claim under The Australian Scheme. Each English Authorised Scheme Company shall make payments to the FSCS as appropriate and in accordance with the terms of The Australian Scheme. The relevant English Authorised Scheme Company's liability under The Australian Scheme to make payment to the FSCS in respect of any Protected Agreed Liability, Protected Outstanding Loss and Protected IBNR shall be fixed at the amounts payable in respect of the FSCS Amount under The Australian Scheme. The payments shall be in an amount equal to the Payment Percentages calculated on the FSCS Amount and after taking into account any amounts previously paid so as to avoid double counting.

2.2.5 No payment shall be made by any English Authorised Scheme Company to the FSCS under paragraph 2.2.4 in respect of any Protected Agreed Liability, Protected Outstanding Loss and/or Protected IBNR which, being a Notified Liability submitted to the Scheme Administrators in accordance with clause 25.1(b), becomes a Protected Liability established under paragraph 1 of this Schedule prior to the date as at which the Scheme Administrators calculate the FSCS Amount or which becomes a Protected Liability before the day three months after the Estimation Date. In such cases the respective rights and obligations of the relevant English Authorised Scheme Company, the Protected Policyholder and the FSCS shall be determined in accordance with paragraph 1 of this Schedule, notwithstanding that such Notified Liability may have become an Accepted Protected Liability in accordance with paragraph 2.1.1.

2.3 Payment by the FSCS

2.3.1 In consideration of the payment to be made by an English Authorised Scheme Company to the FSCS as provided for in paragraph 2.2.4:

- (a) the FSCS agrees to pay to each Scheme Creditor the Protected Percentage of any Protected Liability, if and to the extent in respect of that Protected Liability, the Scheme Creditor becomes a Protected Policyholder in respect of any such liability. The obligation of the FSCS shall apply only in respect of any Protected Agreed Liability, Protected Outstanding Loss and Protected IBNR for which, by the terms of this paragraph 2, the Scheme Creditor is not entitled to any payment from the relevant English Authorised Scheme Company. Such payment will be made by the FSCS in accordance with and subject to the provisions of The Australian Scheme and this Schedule, subject to the provisions of this paragraph 2. Paragraph 2 shall, as amended, survive termination of The Australian Scheme or Liquidation Event; and
- (b) the Scheme Creditor agrees that in respect of any such liabilities referred to in paragraph 2.3.1(a) above, the Scheme Creditor shall have no further claim for payment under The Australian Scheme or in any liquidation or administration against the relevant English Authorised Scheme Company and consents to the treatment of such claim in accordance with this paragraph 2.

2.3.2 Such payment, as is referred to in paragraph 2.3.1(a), will be made in each case (and notwithstanding anything to the contrary in paragraph 1.1.2) by the FSCS as soon as practicable (but may at the discretion of the FSCS be made at any time after the Accepted Protected Liability has matured into a Protected Liability) following whichever is the later of the date on which:

- (a) the English Authorised Scheme Company concerned notifies the FSCS that the Accepted Protected Liability is an Established Scheme Claim;
- (b) the FSCS agrees or it is otherwise determined (so as to bind the FSCS) that such Accepted Protected Liability is a Protected Liability (before or after termination of The Australian Scheme, whether or not there shall be a Liquidation Event in respect of an English Authorised Scheme Company) or (where an English Authorised Scheme Company is a co-insurer under the policy giving rise to the claim) that the lead co-insurer has properly approved the claim and that there are in the opinion of the FSCS no circumstances that could result in the relevant English Authorised Scheme Company or the FSCS forming a different view on the merits and/or liability and/or quantum of the claim;
- (c) the FSCS first receives a Payment Percentage in relation to the FSCS Amount; and
- (d) it appears to the FSCS that its funds are then adequate to make the payment in question and to meet its responsibilities where previously, the FSCS considered that it did not have sufficient funds for those purposes.

Nothing in this paragraph 2.3.2 shall alter the treatment (including the amount and timing of any payment by an English Authorised Scheme Company and the FSCS to a Protected Policyholder) under paragraph 1 of this Schedule of any Protected Agreed Liability, Protected Outstanding Loss and/or Protected IBNR which, having been a Notified Liability submitted on or before the day three months after the Estimation Date becomes a Protected Liability under The Australian Scheme and this Schedule before that date (notwithstanding that such Notified Liability shall have become an Accepted Protected Liability in accordance with paragraph 2.1.1). Save as otherwise amended by paragraph 2, the terms of paragraph 1 shall continue to apply to Scheme Creditors, each English Authorised Scheme Company, and the FSCS.

2.3.3 Notwithstanding any other provision of The Australian Scheme, no Scheme Creditor shall be entitled to make any claim against the FSCS under the Policyholders Protection Act, The Australian Scheme or any other applicable law, rule or regulation, whether before or after the termination of The Australian Scheme and notwithstanding a Liquidation Event, otherwise than in respect of a Protected Liability and only then in accordance with The Australian Scheme and paragraph 1 of this Schedule, as amended, (if at all) in any given circumstances, by this paragraph 2. Nothing in The Australian Scheme shall prevent a Protected Policyholder from claiming an entitlement from the FSCS and being paid a Protected Percentage in respect of a Protected Liability, subject to the provisions of The Australian Scheme and paragraph 1 of this Schedule (as amended by this paragraph 2) notwithstanding that such Protected Policyholder is not entitled to receive a Payment Percentage or any other amount referred to in Part I from an English Authorised Scheme Company by virtue of this paragraph 2. Any Established Scheme Claim established in respect of an English Authorised Scheme Company under Parts E and F shall not bind the FSCS (either as to liability or quantum) in determining the existence or amount of any claim made against it by a Protected Policyholder in respect of a Protected Liability so that the provisions of The Australian Scheme and paragraph 1 of this Schedule (as amended by this paragraph 2) shall apply to the establishment of an Established Scheme Claim. Further, nothing in this paragraph 2 shall entitle a Scheme Creditor to any payment under Part I from an English Authorised Scheme Company which it is not otherwise entitled to under The Australian Scheme. The terms of this Schedule will survive any termination of The Australian Scheme or the occurrence of a Liquidation Event in respect of an English Authorised Scheme Company.

2.3.4 The FSCS shall have no obligation to make any payments to a Protected Policyholder or a Scheme Creditor generally otherwise than on the basis of, and in accordance with and to the extent of its duties and obligations under the Policyholder Protection Act. Without prejudice to the payment obligation of the FSCS in paragraph 2.1.2(b), no Scheme Creditor, in respect of any Accepted Protected Liability, shall be entitled to any payment from the FSCS in respect of a Protected Liability which may have been ascribed a value for the purpose of calculating the FSCS Amount. The FSCS shall not, for the purposes of assessing eligibility under The Australian Scheme or the Policyholders Protection Act, or whether an Accepted Protected Liability is a Protected Liability, be bound by any information as to that claim and the Scheme Creditor accepts that estimates of preferential claims under policies are not eligible for protection by the FSCS unless and until any such claim matures into a present obligation of an English Authorised Scheme Company and

otherwise becomes a Protected Liability. An estimate of a claim in respect of an Accepted Protected Liability, whether by an English Authorised Scheme Company or any liquidator or administrator appointed to it, shall not and does not constitute an actual liability of the relevant English Authorised Scheme Company under a policy.

2.3.5 Subject to paragraph 2.2.4, in the case of any Protected Agreed Liability, Protected Outstanding Loss and Protected IBNR in respect of which a Scheme Creditor does receive a payment under The Australian Scheme from an English Authorised Scheme Company, any assignment by a Protected Policyholder to the FSCS as is referred to in paragraph 1.3 (which shall be a condition of a Protected Policyholder receiving the Protected Percentage in respect of their Protected Liability (less any amounts referred to in paragraph 1.1.1(b))) shall only (and in respect of entitlement to payments from the relevant English Authorised Scheme Company only) entitle the FSCS, as Scheme Creditor, by virtue of such assignment to any payment under The Australian Scheme which remains to be paid by the relevant English Authorised Scheme Company at the date of such assignment and shall be calculated by reference to the amount of that assigned Protected Liability.

2.3.6 Until the termination of The Australian Scheme, the relevant English Authorised Scheme Company and the Scheme Administrators shall (subject to the penultimate sentence of paragraph 2.3.3) continue to comply with their claims handling responsibilities, duties and obligations insofar as is necessary for establishing a Protected Policyholder's Established Scheme Claim for the purpose of the FSCS being satisfied as to whether such Established Scheme Claim is a Protected Liability. After termination of The Australian Scheme such matters may be dealt with in the discretion of the FSCS to the extent it thinks fit. The FSCS shall, from the termination of The Australian Scheme, arrange for such responsibilities, duties and obligations to be complied with for the purpose of being satisfied as to the existence and question of Protected Liabilities.

3. GOVERNING LAW AND JURISDICTION

3.1.1 Notwithstanding clause 71, this Schedule and any other provisions of The Australian Scheme insofar as they relate to the construction extent or application of this Schedule the obligations of FSCS under The Australian Scheme or the Policyholders Protection Act shall be governed by, and construed in accordance with, the law in force from time to time in England and Wales and neither an English Authorised Scheme Company, a Scheme Administrator or a Scheme Adjudicator shall be entitled to commence any proceedings or make any application to the English Court concerning the interpretation or construction of any provision of the Policyholders Protection Act whether as such or as it applies to the obligation of FSCS under or otherwise incorporated into The Australian Scheme, unless FSCS in its absolute discretion consents.

3.1.2 Without prejudice to paragraph 3.1.1, each Scheme Creditor, the FSCS, each English Authorised Scheme Company, the Scheme Administrators and the Scheme Adjudicators hereby agree that the English 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 provisions of this Schedule, or out of any action taken or omitted to be

taken under this Schedule or in connection with the administration of this Schedule, or out of the Explanatory Statement or The Australian Scheme (insofar as they relate to the FSCS or the Policyholder Protection Act, including Appendix 10 and 11 to the Explanatory Statement).

3.1.3 Each Scheme Creditor, the FSCS, each English Authorised Scheme Company, the Scheme Administrators and the Scheme Adjudicators irrecoverably submit to the jurisdiction of the English Court provided however, that nothing in this paragraph 3.1.3 shall affect the validity of other provisions determining governing law and jurisdiction as between the English Authorised Scheme Company and any of the Scheme Creditors, whether contained in a contract or otherwise.