

ENGLISH SCHEMES OF ARRANGEMENT
(pursuant to section 425 of the Companies Act 1985)

BETWEEN

**HIH CASUALTY AND GENERAL INSURANCE
LIMITED (in provisional liquidation)**
ACN 008 482 291;

**FAI GENERAL INSURANCE COMPANY
LIMITED (in provisional liquidation)**
ACN 000 327 855;

**WORLD MARINE & GENERAL INSURANCES
PTY LIMITED (in provisional liquidation)**
ACN 000 093 112;

**FAI INSURANCES LIMITED (in provisional
liquidation) ACN 004 304 545;**

and their respective

SCHEME CREDITORS

(as defined in the schemes of arrangement)

CONTENTS

CLAUSE	PAGE
A. PRELIMINARY	1
1. DEFINITIONS.....	1
2. INTERPRETATION.....	11
B. THE ENGLISH SCHEME	13
3. INDEPENDENT SCHEMES	13
4. PARTIES OTHER THAN EACH ENGLISH SCHEME COMPANY AND THE SCHEME CREDITORS.....	13
5. PURPOSE OF THE ENGLISH SCHEME.....	13
6. APPLICATION OF THE ENGLISH SCHEME	14
7. EFFECTIVE DATE.....	14
8. SECURITY AND TRUSTS	14
9. AFFAIRS OF EACH ENGLISH SCHEME COMPANY AND THE WINDING UP OF EACH ENGLISH SCHEME COMPANY	14
10. BANKING AND INVESTMENT.....	15
C. ACKNOWLEDGED CREDITOR CLAIMS AND ESTABLISHED SCHEME CLAIMS	16
11. ACKNOWLEDGED CREDITOR CLAIMS	16
12. ESTABLISHED SCHEME CLAIMS	16
13. SET-OFF.....	17
14. LLOYD'S	18
15. REPRESENTATIVES	18
16. CURRENCY OF LIABILITY	19
D. RUN-OFF PERIOD	20
17. MAKING AND AGREEMENT OF ACKNOWLEDGED CREDITOR CLAIMS	20
18. STAY OF PROCEEDINGS	20
19. INTEREST.....	21
20. CURRENT POLICIES	21
21. NOTICE OF LITIGATION	21
22. NOTICE OF DETERMINATION OF COMMON LIABILITY	21
23. THRESHOLD OFFER	22
E. ESTIMATION PERIOD.....	24

24.	ESTIMATION DATE	24
25.	ESTIMATION	24
26.	DETERMINATION AFTER ESTIMATION DATE.....	25
F.	SCHEME CLAIM ADJUDICATION.....	27
27.	SCHEME CLAIM ADJUDICATION.....	27
G.	PROCEEDINGS AND ENFORCEMENT	30
28.	PROCEEDINGS	30
29.	ENFORCEMENT OF LIABILITIES	30
H.	APPLICATION OF THE SCHEME ASSETS.....	32
30.	ENGLISH SCHEME ASSETS.....	32
I.	PAYMENTS	34
31.	COMPUTATION OF THE ENGLISH PAYMENT PERCENTAGES	34
32.	PAYMENTS TO SCHEME CREDITORS	35
33.	METHOD OF PAYMENT	37
34.	UNCLAIMED PAYMENTS	39
J.	THE ENGLISH SCHEME ADMINISTRATORS	40
35.	QUALIFICATION, APPOINTMENT AND RESIGNATION.....	40
36.	GENERAL FUNCTIONS AND POWERS.....	40
37.	SPECIFIC FUNCTIONS AND POWERS	41
38.	EXERCISE OF FUNCTIONS AND POWERS	45
K.	THE SCHEME ADJUDICATORS	47
39.	APPOINTMENT	47
L.	PROVISIONS COMMON TO OFFICE HOLDERS	48
40.	RESPONSIBILITY AND INDEMNITY	48
M.	THE ENGLISH CREDITORS' COMMITTEE	50
41.	CONSTITUTION OF THE ENGLISH CREDITORS' COMMITTEE.....	50
42.	MEMBERSHIP OF THE ENGLISH CREDITORS' COMMITTEE	50
43.	PROCEDURE OF THE ENGLISH CREDITORS' COMMITTEE	51
44.	INFORMATION.....	52
45.	FUNCTIONS	52
46.	DUTIES	54
47.	RESPONSIBILITIES AND INDEMNITY	54
48.	VALIDATION OF ACTS	55
49.	EXPENSES.....	55

50.	NO ENGLISH CREDITORS' COMMITTEE ACTING	55
N.	MEETINGS OF SCHEME CREDITORS.....	57
51.	MEETINGS	57
52.	CONVENING OF MEETINGS	57
53.	NOTICE OF MEETINGS.....	57
54.	PROCEDURE AT THE CREDITORS' MEETING	58
55.	VALUATION OF LIABILITIES FOR THE PURPOSES OF MEETINGS	58
O.	DURATION OF THE ENGLISH SCHEME	60
56.	TERMINATION EVENTS	60
P.	GENERAL ENGLISH SCHEME PROVISIONS	62
57.	COSTS	62
58.	ENGLISH SCHEME COMPANIES	63
59.	ECONOMIC AND MONETARY UNION	63
60.	MODIFICATION OF THE ENGLISH SCHEME	63
61.	NOTICE TO ENGLISH SCHEME COMPANY AND ENGLISH SCHEME ADMINISTRATORS	64
62.	NOTICE TO SCHEME CREDITORS	64
63.	NOTICE BY PUBLICATION.....	65
64.	DATE OF NOTICE	65
65.	GOVERNING LAW AND JURISDICTION	66
	ANNEX 1 NOTICE OF ESTIMATION DATE.....	1
	ANNEX 2 NOTICE OF LITIGATION	1
	THE FSCS SCHEDULE.....	1

A. PRELIMINARY

1. DEFINITIONS

1.1 In The English 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;

Appeal Court the Court of Appeal of England and Wales, or the House of Lords as applicable;

ASIC the Australian Securities and Investments Commission;

Australian Court the Supreme Court of New South Wales;

Australian Dollar and AUD the lawful currency from time to time of Australia;

Australian 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 an English Scheme Company and in the case of each English Scheme Company, any such other person or persons who may be appointed as liquidators by the Australian Court;

Australian Provisional Liquidators Anthony Gregory McGrath and Alexander Robert Mackay Macintosh in their capacity as joint provisional liquidators of each English Scheme Company appointed by the Australian Court;

Australian Scheme Administrators the scheme administrators appointed from time to time under The Australian Scheme;

Bankruptcy Act *Bankruptcy Act 1966* of the Commonwealth of Australia;

Business Day a day other than a Saturday or Sunday or a public

	holiday in New South Wales;
<i>Business Hours</i>	between the hours of 9.00am and 5.00pm on a Business Day;
<i>Co-Insurer</i>	any insurer or reinsurer other than an English Scheme Company;
<i>Co-Insurer Liability Amount</i>	the amount which is calculated in accordance with clause 22.4
<i>Common Liability</i>	any liability arising under a contract (of insurance, reinsurance or retrocession) made between an English Scheme Company, one or more Scheme Creditors and one or more Co-Insurers such that the rights and liabilities of the English Scheme Company and the Co-Insurers are co-ordinate, whether they are joint, several or differing in quantum;
<i>Companies Act</i>	Companies Act 1985 of England and Wales;
<i>Contract of Reinsurance</i>	a contract of reinsurance within the meaning of section 562A of the Corporations Act under which an English Scheme Company is insured;
<i>Controlled HIH Company</i>	any body corporate which is a related entity of any English Scheme Company and to which one or more of the Liquidators or English Provisional Liquidators have been appointed, or are subsequently appointed, as liquidators or provisional liquidators;
<i>Corporations Act</i>	<i>Corporations Act 2001</i> of the Commonwealth of Australia;
<i>Council</i>	the Council of Lloyd's constituted by section 3 of Lloyd's Act 1982 of England and Wales;
<i>Default Judgment</i>	an order, judgment, decision or award of a court or tribunal of competent jurisdiction which is obtained or entered against an English Scheme Company by virtue only of an English Scheme Company, or another party to a Proceeding, having omitted to take a procedural, interlocutory or intermediary step in such Proceeding;
<i>Delegate</i>	any person to whom the English Scheme Administrators may delegate any of their functions

	and powers under clause 37.1(q);
<i>De Minimis Amount</i>	means such amount determined in accordance with clause 32.1;
<i>Designated Representative</i>	a person designated in accordance with clause 41.3(b) to act as an English Creditors' Committee Member;
<i>Effective Date</i>	the date on which The English Scheme becomes effective in accordance with clause 7;
<i>Employee</i>	any partner in the same firm as an English Scheme Administrator or an Australian 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 English Scheme Administrators or Australian Scheme Administrators in connection with the conduct of their functions and powers under The English Scheme;
<i>EMU</i>	Economic and Monetary Union as contemplated in the Treaty on European Union;
<i>EMU Legislation</i>	legislative measures of the European Council for the introduction of, changeover to or operation of the Euro;
<i>English Court</i>	the High Court of Justice of England and Wales;
<i>English Creditors' Committee</i>	a creditors' committee established pursuant to Part M in respect of an English Scheme Company;
<i>English Creditors' Committee Member</i>	a member of the English Creditors' Committee;
<i>English Explanatory Statement</i>	the statement dated 10 February 2006 (and the appendices thereto) explaining the effect of the English Scheme, in compliance with sections 425 and 426 of the Companies Act;
<i>English Payment Percentages</i>	in relation to Established Scheme Claims, the payment percentages of such Established Scheme Claims which are payable by an English Scheme Company under The English Scheme from time to time as set under clause 32;
<i>English Provisional</i>	Anthony James McMahon, Thomas Alexander

<i>Liquidators</i>	Riddell and John Mitchell Wardrop, in their capacity as joint provisional liquidators of HIH C&G, FAI General, WMG and FAI Insurances appointed by the English Court and in the case of each such English Scheme Company, such other person or persons who may be appointed provisional liquidators in England;
<i>English Scheme Administrators</i>	in the first instance, John Mitchell Wardrop, Thomas Alexander Riddell and Anthony James McMahon in their capacity as administrators of The English Scheme whilst they hold that office and such other persons as may be appointed as English Scheme Administrators in accordance with The English Scheme;
<i>English Scheme Assets</i>	any asset of an English Scheme Company whether actual, prospective or contingent that is situated in the United Kingdom, as at the Record Date, determined in accordance with English law, together with any other asset (not being an asset in Australia, as determined by Australian law) which formed part of the regulatory asset base of the English branch business of the English Scheme Company as at the Record Date;
<i>English Scheme Company</i>	except where the context otherwise requires or as expressly provided, each of HIH C&G, FAI Insurances, FAI General and WMG separately;
<i>Entry Date</i>	in respect of the currency of any member state of the European Union which is not a Participating Member State at the date of The English Scheme, the date on which such member state's currency is converted into the Euro in accordance with EMU Legislation;
<i>Established Scheme Claim</i>	a Liability of an English Scheme Company which has become agreed or determined to be an Established Scheme Claim under The English Scheme;
<i>Estimation Date</i>	the date determined to be the Estimation Date under clause 24;
<i>Estimation Period</i>	the period from the Estimation Date to the Termination Date;
<i>Euro</i>	the single currency of Participating Member States

	of the European Union;
<i>Euro Unit</i>	the currency unit of the Euro;
<i>European former national currency unit</i>	the unit of currency (other than a Euro unit) of a Participating Member State;
<i>External Administrators</i>	the English Provisional Liquidators, the Australian Liquidators and the English Scheme Administrators;
<i>FAI General</i>	FAI General Insurance Company Limited (In Liquidation) ACN 000 327 855, incorporated in Australia;
<i>FAI Insurances</i>	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;
<i>Final Claim Form for Estimation</i>	a notice to be given in accordance with clause 25.1(b);
<i>Final Co-Insurer Judgment</i>	an order, judgment, decision or award of a court or tribunal of competent jurisdiction referred to in clause 22.1(a);
<i>Final Order</i>	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 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;
<i>Final Settlement</i>	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);
<i>FSCS</i>	the Financial Services Compensation Scheme Limited (as further identified in the FSCS Schedule to The English Scheme);
<i>FSCS Schedule</i>	the schedule to The English Scheme entitled “FSCS Schedule”;

<i>HIH C&G</i>	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;
<i>HIH Website</i>	the information displayed via the internet at the URL http://www.hih.com.au ;
<i>Insolvency Act</i>	Insolvency Act 1986 of England and Wales;
<i>Insolvency Rules</i>	Insolvency Rules 1986, made pursuant to the Insolvency Act;
<i>Insurance Act</i>	<i>Insurance Act 1973</i> of the Commonwealth of Australia, as in force on the Record Date;
<i>Insurance Contract</i>	a contract of insurance, but not including a Contract of Reinsurance (or retrocession), in respect of a liability entered into, by or on behalf of an English Scheme Company as insurer, or under which an English Scheme Company has assumed any liability as insurer, before the Record Date;
<i>Insurance Liability</i>	an Established Scheme Claim that is a Liability arising under an Insurance Contract;
<i>Liability</i>	any debt payable by, and all claims against, an English Scheme Company (present or future, actual or contingent, due or to become due, ascertained or sounding only in damages) being debts or claims in any jurisdiction the circumstances giving rise to which occurred before or on the Record Date;
<i>Lloyd's</i>	the society incorporated by Lloyd's Act 1871 of England and Wales by the name of Lloyd's of One Lime Street, London EC3M 7HA;
<i>Lloyd's Syndicate</i>	a member or group of members underwriting insurance business at Lloyd's to which a syndicate number is assigned by the Council;
<i>Lloyd's Syndicate Member</i>	an underwriting member underwriting insurance business as a member of a Lloyd's Syndicate;
<i>Managing Agent</i>	an underwriting agent which carries on underwriting for a Lloyd's Syndicate Member;
<i>Nominated Representative</i>	a person nominated by an English Creditors' Committee Member in accordance with clause 43

	to act as its representative on the English Creditors' Committee;
<i>Notice by Publication</i>	notice in accordance with clause 63;
<i>Notice of Determination of Common Liability</i>	notice given in accordance with clause 22.1;
<i>Notice of Estimation Date</i>	notice to be given in accordance with clause 24.3 in the form of Annexure 1;
<i>Notice of Litigation</i>	notice to be given in accordance with clause 21 and in the form attached at Annexure 2;
<i>Notified Liability</i>	Liability notified to an English Scheme Company as a Liability pursuant to a Final Claim Form for Estimation in accordance with clause 25.1(b);
<i>Office Holder</i>	any person in his or her capacity as an English Scheme Administrator, or a Delegate or a Scheme Adjudicator and the Australian Scheme Administrators;
<i>Participating Member State</i>	at any time, each state participating in EMU at such time;
<i>Payment Date</i>	a date for payment set in accordance with clause 32;
<i>Pre-Scheme Costs</i>	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 English 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 English Scheme;
<i>Proceeding</i>	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;
<i>Property</i>	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;
<i>Quarter End Date</i>	31 March, 30 June, 30 September or 31 December in each year during the period of The English Scheme;
<i>Record Date</i>	27 August 2001;
<i>Registrar of Companies</i>	the Registrar or other officer performing under the Companies Act the duty of registration of companies, including a deputy registrar;
<i>Relevant Rate of Exchange</i>	such rate as may reasonably be determined by the English Scheme Company for the purchase of such currency at close of business in the UK on the Quarter End Date nearest the payment run or such other date as is required by The English Scheme;
<i>Representative</i>	a person determined to be a Representative in accordance with clause 15.1;
<i>Review Date</i>	such date at least once in each calendar year as the English Scheme Company may from time to time, in consultation with the English Creditors' Committee, in their absolute discretion decide;
<i>Run-off Period</i>	means the period from the Effective Date to the Estimation Date;
<i>Scheme Adjudicator</i>	such person or persons who are appointed to be Scheme Adjudicators pursuant to clause 39;
<i>Scheme Costs</i>	the costs, charges, expenses, disbursements and remuneration referred to in clause 30.1(a);
<i>Scheme Creditor</i>	a creditor of an English 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;
<i>Scheme Meetings</i>	a meeting of Scheme Creditors of an English Scheme Company pursuant to an order of the English Court to consider and, if thought appropriate, agree to The English Scheme;
<i>Section 562A(4) Order</i>	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 an English Scheme Company anywhere in the world, established to secure payment of any Liability by an English Scheme Company;

Set-off

any set-off on which a Scheme Creditor may rely on under clause 13.1 or an English 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:

- (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);

<i>Sterling</i>	the lawful currency from time to time of the United Kingdom;
<i>Termination Date</i>	the day upon which The English Scheme terminates in relation to an English Scheme Company in accordance with clause 56;
<i>The Australian Scheme</i>	a scheme of arrangement under section 411 of the Corporations Act, in relation to each English Scheme Company;
<i>The English Scheme</i>	this scheme of arrangement in its present form (which includes the FSCS Schedule) as it applies to an English Scheme Company subject to any modification, term or condition which the English Court may think fit to approve or impose;
<i>Threshold Amount</i>	an amount being not more than AUD 2,000 determined by the English Scheme Company with the approval of the English Creditors' Committee, to be a threshold amount for the purpose of clause 23.1;
<i>Threshold Offer</i>	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);
<i>Treaty on European Union</i>	means 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;
<i>United Kingdom or UK</i>	United Kingdom of Great Britain and Northern Ireland;
<i>US Bankruptcy Code</i>	Title 11 of the United States Code;
<i>US Court</i>	the United States Bankruptcy Court for the Southern District of New York or any other United States Court which may be exercising jurisdiction over any English Scheme Company under the US

Bankruptcy Code;

US Dollars

the lawful currency of the United States of America;

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 English Scheme are inserted for convenience of reference only and do not affect the interpretation of The English Scheme.

2.2 In The English 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 English Scheme;
- (b) references to (or to any specified provision of) The English Scheme shall be construed as references to The English 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 English 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 English 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 ENGLISH SCHEME

3. INDEPENDENT SCHEMES

3.1 The English Scheme applies to an English Scheme Company independently of any other English Scheme Company.

4. PARTIES OTHER THAN EACH ENGLISH SCHEME COMPANY AND THE SCHEME CREDITORS

4.1 Each of John Mitchell Wardrop, Anthony James McMahon and Thomas Alexander Riddell have given and have not withdrawn their consent to act as an English Scheme Administrator.

4.2 The English Provisional Liquidators are bound by The English 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 English Scheme.

4.3 The FSCS (as statutory successor to the Policyholders Protection Board) will undertake to the English Court to be bound by The English Scheme, under which it is to make certain payments to Protected Policyholders (as defined in the FSCS Schedule) in accordance with The English Scheme on terms contained in the FSCS Schedule.

5. PURPOSE OF THE ENGLISH SCHEME

5.1 The purpose of The English Scheme is:

- (a) to complement The Australian Scheme and provide for the distribution of the English Scheme Assets in accordance with English law;
- (b) subject to certain restrictions on the commencement or continuing of any Proceeding against any English Scheme Company, to enable the Liabilities of an English Scheme Company to be established and ascertained;
- (c) to provide for a more cost-efficient and expeditious distribution of the English Scheme Assets to Scheme Creditors than would be available pursuant to the winding up of each English Scheme Company without The English Scheme;
- (d) to provide for payments by an English Scheme Company to those Scheme Creditors whose Liabilities have from time to time become Established Scheme Claims; and
- (e) to provide for a final Estimation Date for the making of claims against each English Scheme Company and for an estimation procedure.

6. APPLICATION OF THE ENGLISH SCHEME

- 6.1 The English Scheme shall apply to all Liabilities of each English Scheme Company.
- 6.2 The Scheme Creditors accept their rights under The English Scheme in lieu of their entitlements to prove in, and receive a dividend from, the winding up of each English Scheme Company.

7. EFFECTIVE DATE

- 7.1 The English Scheme shall be effective in respect of an English Scheme Company when the last of the following occurs:
- (a) an office copy of an Order of the English Court sanctioning The English Scheme in respect of that English Scheme Company shall have been delivered for registration to the Registrar of Companies as required by section 425(3) of the Companies Act; and
 - (b) an office copy of an Australian Court Order made in respect of that English Scheme Company has been lodged with ASIC in accordance with ASIC in accordance with sections 411 and 412 of the Corporation Act.
- 7.2 If The English Scheme does not become effective for any one or more English Scheme Company that shall not, of itself, prevent The English Scheme from becoming effective in respect of any other English Scheme Company.

8. SECURITY AND TRUSTS

- 8.1 Nothing in The English Scheme shall affect the right of any person to take any lawful action to enforce:
- (a) any Security over the Property of an English Scheme Company; and
 - (b) any trust created (expressly, by implication or by operation of law) in respect of an English Scheme Company and of which the person is a beneficiary, if such trust was created before the Effective Date and such trust is recognised under English law as applying to the English Scheme Assets.
- 8.2 Nothing in The English Scheme shall affect the right of each English 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 an English Scheme Company.

9. AFFAIRS OF EACH ENGLISH SCHEME COMPANY AND THE WINDING UP OF EACH ENGLISH SCHEME COMPANY

- 9.1 To the fullest extent permissible at law, the English Scheme Administrators shall manage, control and administer the English Scheme Assets and affairs of

the English Scheme Company, insofar as they relate to The English Scheme or the English Scheme Assets.

- 9.2 Subject to the provisions of The English Scheme, the English Provisional Liquidators shall, as soon as reasonably practicable, make available to the English Scheme Administrators for the purposes of The English Scheme, all Property of each English Scheme Company held by or controlled by them and shall make available to the English Scheme Administrators any further Property of each English Scheme Company which subsequently comes into their possession.
- 9.3 The English Scheme Administrators shall pay to, or as requested by, the English Provisional Liquidators the amounts referred to in clauses 57.1 and 57.2(b).

10. BANKING AND INVESTMENT

- 10.1 The English Scheme Administrators shall keep separate the English Scheme Assets held by them in respect of each English Scheme Company.
- 10.2 The English Scheme Administrators shall maintain records for each English Scheme Company of the English Scheme Assets held by them sufficient to allow the English Payment Percentages to be determined in respect of each English Scheme Company.
- 10.3 The English Scheme Administrators shall invest any English Scheme Assets in the form of money held by an English Scheme Company or the English Scheme Administrators in accordance with the investment policy to be formulated by the English Scheme Administrators from time to time in consultation with the English 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 an English Scheme Company which is:

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

11.2 The agreement, establishment or determination of an Acknowledged Creditor Claim under clause 11.1 shall not affect the priority of payments under The English Scheme. Without limiting the generality of the foregoing, a Section 562A(4) Order that an amount received by an English Scheme Company shall be applied in the manner specified in the Section 562A(4) Order shall not have that effect under The English Scheme.

12. ESTABLISHED SCHEME CLAIMS

12.1 An Established Scheme Claim shall be:

- (a) the amount of an Acknowledged Creditor Claim:
 - (i) after the English Scheme Company 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
 - (ii) which is notified by an English Scheme Company or a Scheme Adjudicator to the Scheme Creditor to be:
 - (A) an Established Scheme Claim under The English Scheme; or
 - (B) an Established Scheme Claim as defined under The Australian Scheme.

12.2 For the avoidance of doubt, a Section 562A(4) Order shall not of itself give rise to an Established Scheme Claim.

12.3 An English Scheme Company may notify an English 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 English Scheme.

12.4 The English Scheme Company 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 an English Scheme Company upon which it could have relied if that English Scheme Company were being wound up in Australia and the order that the English Scheme Company be wound up had been made on the Record Date.

13.2 An English Scheme Company may rely on any right of set off against a Liability upon which it could have relied if that English Scheme Company were being wound up in Australia and the order that the English 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 English Scheme Company or Scheme Adjudicator (as the case may be) shall allow a reduction for an estimate made by that person of the value of any amounts to which the English Scheme Company may be or become entitled from the English Scheme Creditor, which for any reason do not bear a certain value.

13.4 For the avoidance of doubt:

- (a) no Liability that has been assigned to a person after the Record Date or that was assigned to a person prior to that date but after the person had notice of the fact that the English Scheme Company was insolvent may be applied in extinguishing or reducing any liability of that person to an English Scheme Company;
- (b) no liability of a Scheme Creditor to an English 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 an English 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 an English 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 an English Scheme

Company, the balance shall be payable to an English 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 English Scheme Company in respect of any Liability referable to that syndicate. The English Scheme Company shall make any payment under The English 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 an English Scheme Company, they shall be treated as a single debtor of that English Scheme Company in respect of the sum due referable to that Lloyd's Syndicate and the English Scheme Company 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 English 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 English Scheme Company shall, in its absolute discretion, be entitled also to apply clause 14.2 in any case where, based on evidence produced to the English Scheme Company on behalf of the relevant Lloyd's Syndicates, the English Scheme Company considers 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 English Scheme Company shall, in conjunction with the holders of lineslips, binders or agencies, use reasonable endeavours to split these covers to their principal level. The English Scheme Company may, in its 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 English Scheme Company may, in its absolute discretion, treat:

- (a) a Representative as fully authorised to represent the Scheme Creditor concerned for all purposes in connection with The English 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 English Scheme Company shall accept from the Representative any payment owed to an English Scheme Company by the principal(s) of the Representative and may make any payment owed to the principal(s) under The English 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 an English 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 English Scheme Company 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 relevant English Scheme Company (which agreement must be in writing and must refer to this clause 18.1) and subject to the provisions of section 130(2) of the Insolvency Act or section 471B of the Corporations Act, institute or continue any Proceeding in any jurisdiction against an English 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 6 months after giving a Notice of Determination of Common Liability.
- 18.2 Subject to compliance with clause 18.1 by the Scheme Creditor, the English Provisional Liquidators and the English Scheme Company will not object to any application under the provisions of section 130(2) of the Insolvency Act or section 471B of the Corporations Act for leave to commence or continue with a Proceeding.
- 18.3 An English 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 English 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 English Scheme Company may have in effecting a stay of any Proceeding against it.
- 18.4 If a Scheme Creditor institutes or continues any Proceeding in breach of clause 18.1, the Scheme Creditor is deemed to have consented to any application by an English Scheme Company to obtain an order staying any such Proceedings and the Scheme Creditor shall be liable for any costs, charges and expenses incurred by an English Scheme Company 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 an English Scheme Company except Admissible Interest.

20. CURRENT POLICIES

- 20.1 Despite any other provision of The English Scheme, the Liability of an English 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 an English Scheme Company in respect of any Liability, or any part of a Liability, which is not either agreed or determined by the English Scheme Company to be an Acknowledged Creditor Claim.

- 21.2 A Notice of Litigation in respect of any Liability must be given to an English Scheme Company in the form of Annexure 2.

- 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 an English Scheme Company pursuant to the terms of any contract between an English Scheme Company and the Scheme Creditor, together with such other supporting information and documentation as the English Scheme Company shall reasonably require.

- 21.4 After receipt of a Notice of Litigation, an English 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 an English Scheme Company, giving the English 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 re-argument, 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 English Scheme Company may, at any time during the Run-off Period, determine that it 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). An English Scheme Company 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 English Scheme Company may only determine to make a Threshold Offer with the approval of the English 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 English 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 English Scheme will end and the Estimation Period in The English Scheme will begin on the Estimation Date.
- 24.2 The Estimation Date shall be the “Estimation Date” as that term is defined in The Australian Scheme. That “Estimation Date” will be seven years after the date that The Australian Scheme becomes effective, unless another date that must be a date not earlier than five years or later than nine years after the date that The Australian Scheme becomes effective is fixed in advance by:
- (a) an ordinary resolution of the creditors' committee appointed under The Australian Scheme; and
 - (b) a Special Resolution of the scheme creditors under The Australian Scheme.
- 24.3 The English Scheme Company, shall ensure that within 180 days of, but not less than 90 days prior to the Estimation Date:
- (a) each known Scheme Creditor is sent a Notice of Estimation Date in the form of Annexure 1;
 - (b) each known Scheme Creditor is sent a Final Claim Form for Estimation; and
 - (c) Notice by Publication is given.

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 an English Scheme Company so as to reach the English Scheme Company, on or before the date 3 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 English Scheme which has not been determined by the Estimation Date.
- 25.2 Subject to clauses 25.3 and 25.4, and without affecting any rights that any Scheme Creditor may otherwise have under section 1321 of the Corporations Act, no Scheme Creditor shall, after the Estimation Date, without the prior written agreement of the relevant English Scheme Company (which agreement

must be in writing and refer to this clause 25.2), institute or continue any Proceeding in any jurisdiction against an English Scheme Company to establish the existence or amount of a Liability.

- 25.3 After the Estimation Date, a Scheme Creditor may continue any Proceeding commenced during the Run-off Period in accordance with clause 18.1.
- 25.4 An English 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 English 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 English Scheme Company may have in effecting a stay of any Proceeding against it.
- 25.5 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 an English Scheme Company to obtain an order staying those Proceedings and the Scheme Creditor shall be liable for any costs, charges and expenses incurred by or on behalf of the English Scheme Company.

26. DETERMINATION AFTER ESTIMATION DATE

- 26.1 After the Estimation Date, unless Clause 26.3 applies, the English Scheme Company shall determine whether any Notified Liability ought to give rise to an Established Scheme Claim within 3 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 English Scheme Company shall notify each Scheme Creditor in writing:
- (a) if it accepts, in full or in part, that its Notified Liability ought to give rise to an Established Scheme Claim under clause 26.1; and
 - (b) the amount of the Notified Liability not so accepted by English Scheme Company.
- 26.3 Where the English Scheme Company has given notice to any Scheme Creditor under The Australian Scheme:
- (a) of the value it has accepted as an “Established Scheme Claim” (as that term is defined in The Australian Scheme) in respect of a Notified Liability; or
 - (b) that it does not accept a Notified Liability ought to give rise to an Established Scheme Claim,

the Notified Liability in question, shall be deemed to be rejected or accepted by the English Scheme Company as an Established Scheme Claim to the value, if any, notified under The Australian Scheme.

26.4 If, within the period of 3 months from the issue by the English Scheme Company of written notice of its determination in accordance with clause 26.2 or 26.3, the English Scheme Company and the Scheme Creditor have reached agreement about the value that ought to be accepted or deemed to be accepted by the English Scheme Company as an Established Scheme Claim under The English Scheme (or The Australian Scheme, as the case may be), that value shall be an Established Scheme Claim. Otherwise the English Scheme Company shall immediately refer for determination to one or more of the Scheme Adjudicators the question of whether the Notified Liability ought to give rise to an Established Scheme Claim and the value of that Established Scheme Claim.

F. SCHEME CLAIM ADJUDICATION

27. SCHEME CLAIM ADJUDICATION

- 27.1 This clause 27 shall apply when an English Scheme Company has referred to one or more of the Scheme Adjudicators for determination after the Estimation Date whether a Notified Liability ought to give rise to an Established Scheme Claim and the value of that Established Scheme Claim. For the avoidance of doubt, a Scheme Adjudicator that has been appointed under The Australian Scheme may adjudicate Notified Liabilities under The English Scheme (apart from any reference made under paragraph 2.2.3 of the FSCS Schedule) and Established Scheme Claims under The Australian Scheme shall automatically become Established Scheme Claims under The English Scheme.
- 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 the English 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 English 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 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, the English 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 or 26.3, as applicable and any accompanying documents available to the English Scheme Company in connection with those matters.
- 27.5 The Scheme Adjudicator shall have access to all of an English Scheme Company's records and information in the possession or under the control of the English Scheme Company (other than documents subject to legal professional privilege), which the Scheme Adjudicator considers are 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 an English 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 English Scheme Company determines, 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 English Scheme Company of such conflict and of all circumstances relating to such conflict. Unless the Scheme Creditor and the English Scheme Company 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 English Scheme Company 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 English 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 40, the Scheme Adjudicator may direct that the payment of his or her remuneration, charges and expenses be made by an English Scheme Company or the Scheme Creditor concerned.
- 27.12 If the Scheme Adjudicator directs that any such remuneration, costs, charges and expenses be paid by an English Scheme Company, the same shall forthwith be paid in full by the English Scheme Company out of the assets of the English 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 English Scheme Company determines, after such direction.
- 27.14 If the Scheme Creditor does not make payment, in whole or in part, in accordance with clause 27.13, an English 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 English Scheme Company; and the extent, if any, to which it is entitled to any payment pursuant to clause 32 shall be reduced accordingly. In any case where the Scheme Creditor is not entitled to receive a payment pursuant to The English Scheme, or is found to owe any money to one or more English 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 English Scheme, the amount concerned or such excess shall be treated as a debt owed by the Scheme Creditor to the English Scheme Company and payable forthwith.

- 27.15 If no certificate shall have been given by the Scheme Adjudicator in accordance with clause 27.10, then the English Scheme Company 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 give rise to an Acknowledged Creditor Claim except with the agreement of the relevant English Scheme Company.
- 28.2 Nothing in The English 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 130(2) of the Insolvency Act or section 471B of the Corporations Act.
- 28.3 Nothing in The English Scheme shall preclude each English Scheme Company from commencing or continuing any Proceeding against a Scheme Creditor.
- 28.4 Where an English Scheme Company commences or continues any Proceeding against a Scheme Creditor, the Scheme Creditor may assert or prosecute a Liability against that English 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 an English 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, an English Scheme Company shall not be deemed to be continuing any proceeding commenced prior to the Effective Date in which an English Scheme Company is not actively prosecuting its claim.

29. ENFORCEMENT OF LIABILITIES

- 29.1 Except to the extent that an English Scheme Company has failed to perform any obligation to make a payment to a Scheme Creditor under the provisions of The English Scheme, no Scheme Creditor shall be entitled to take any proceeding against an English Scheme Company or its Property in any jurisdiction whatsoever for the purpose of enforcing payment of
- (a) any Liability; or
 - (b) any part of any Liability from the English Scheme Assets.

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 an English Scheme Company obtaining an order staying that proceeding and the Scheme Creditor shall be liable for any costs, charges and expenses incurred by or on behalf of the English Scheme Company.

H. APPLICATION OF THE SCHEME ASSETS

30. ENGLISH SCHEME ASSETS

30.1 Subject to clause 30.4, English Scheme Assets are to be applied by the English Scheme Company in the following order:

- (a) first, in payment of such English Scheme Costs that are costs and expenses incurred by the External Administrators as are fairly apportioned by the English Scheme Company to be paid from those assets;
- (b) second, preferential debts, within the meaning of section 386 of the Insolvency Act; and
- (c) third, subject to clause 30.2, in payment of all Established Scheme Claims, with claims ranking at full amounts without any deduction for other distributions received, pro rata.

30.2 Any Scheme Creditor that would otherwise be entitled to receive payment under clause 30.1 in respect of any Liability and receives or is entitled to receive any payment under The Australian Scheme or from assets of the English Scheme Company other than in accordance with The English Scheme, in respect of that same Liability, shall not be entitled to any such payment under clause 30.1 until such time as all of the Scheme Creditors have received, in aggregate under The English Scheme and The Australian Scheme, the same percentage payment as the first mentioned Scheme Creditor has received under The Australian Scheme or otherwise.

30.3 Any assets remaining after the application of clause 30.1, will be applied in the following order:

- (a) first, in accordance with clauses 32.10 and 32.11; and
- (b) secondly, to be paid to the English Provisional Liquidators.

30.4 If at any time, in respect of any English Scheme Company:

- (a) an Appeal Court orders, directs or declares, on any appeal arising out of the order dated 24 October 2005 of Mr Justice David Richards (“the **Order**”), that either:
 - (i) the English Scheme Assets are to be remitted to the Australian Liquidators for distribution in accordance with Australian law, including in particular section 562A of the Corporation Act and section 116 of the Insurance Act; or
 - (ii) the English Scheme Company, English Scheme Administrators or the English Provisional Liquidators or any future liquidators appointed by the English Court are to apply the provisions of

Australian law, including in particular section 562A of the Corporations Act and section 116 of the Insurance Act in making any distribution; and

- (b) there is no avenue of appeal against the Appeal Court's order open to any party or the time limit for any appeal against the Appeal Court's order has expired;

then in respect of that English Scheme Company, clause 30.1(b) and (c) will not apply to the distribution of the English Scheme Assets and the provisions of Part H – Application of the Assets of the Scheme Companies of The Australian Scheme shall apply *mutatis mutandis* (including any relevant definitions and any other consequential provisions of The Australian Scheme) as though they were set out in place of clause 30.1(b) and (c).

30.5 If, having regard to any decision of an Appeal Court arising out of the order, the English Scheme Administrators conclude that clause 30.4 does not apply and that a distribution under clause 30.1 would not in substance reflect the distribution of the English Assets that would occur absent The English Scheme, then the English Scheme Administrators shall, at their discretion:

- (a) adjust any future distributions or payments so that, in so far only as the English Scheme Assets then available permit them to do so, the relevant Scheme Creditor receives only such distributions or payments as reflect the decision of the Appeal Court; and/or
- (b) apply to the Court for leave to convene a creditors meeting in order to amend The English Scheme to comply with the order of the Appeal Court; or
- (c) terminate The English Scheme with a view to the English Scheme Company continuing to run-off in provisional liquidation.

30.6 If an appeal to an Appeal Court has been commenced against the order, then unless:

- (a) the appeal has been discontinued;
- (b) there is a substantive order of an Appeal Court from which there is no avenue of further appeal; or
- (c) there is a substantive order of an Appeal Court in respect of which the time limit for any appeal has expired without a further appeal;

the English Scheme Administrators shall have the discretion to suspend distributions under The English Scheme pending the outcome of such an appeal.

I. PAYMENTS

31. COMPUTATION OF THE ENGLISH PAYMENT PERCENTAGES

- 31.1 The English Scheme Company may from time to time, in consultation with the Australian Scheme Administrators, set the English Payment Percentages in respect of Payments out of English Scheme Assets in accordance with Part H.
- 31.2 As soon as practicable after each Review Date, the English Scheme Company shall consider whether any initial English Payment Percentages should be set, and if so, the amount of any initial English Payment Percentages or whether, if an initial English Payment Percentage (or a revised English Payment Percentage) has been set, whether the English Payment Percentages should be revised and a new English Payment Percentage set in respect of any of the Payments out of English Scheme Assets in accordance with Part H.
- 31.3 The English Scheme Company shall not set, or increase, English Payment Percentages unless they consider, on the basis of the information and advice referred to in clause 31.5, that the English Scheme Assets (having regard to the distributions set out in Part H) will be sufficient to enable an English Scheme Company to comply with the provisions of clause 33 (by reference to English Payment Percentages at that rate) in relation to all Liabilities of an English Scheme Company which have become, or which that English Scheme Company considers may become, Established Scheme Claims after the Review Date concerned.
- 31.4 If on considering the current English Payment Percentages, the relevant English Scheme Company shall consider that there are not sufficient English Scheme Assets for such English Payment Percentages to be set at that level and for the provisions of clauses 23 and clause 32 to be complied with, they shall reduce such English Payment Percentages to such level as they consider appropriate.
- 31.5 For the purpose of setting the English Payment Percentages as at a particular Review Date, the English Scheme Company shall obtain and consider such financial or actuarial information and advice as it, following consultation with the English Creditors' Committee, shall consider appropriate.
- 31.6 Any amount payable to a Scheme Creditor under The English 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 other currency:
- (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 English Scheme Company 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 English Scheme Company 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 English Scheme Company in paying the amount in that currency.

31.7 For the purpose of clause 31.6, where a Scheme Creditor has Established Scheme Claims which were incurred in more than one currency the English Scheme Company 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 English 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 31.6.

32. PAYMENTS TO SCHEME CREDITORS

32.1 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 English Scheme Company may determine from time to time, with the approval of the English Creditors' Committee, unless the payment is the final payment to a Scheme Creditor.

32.2 The English Scheme Company may determine that any payment under The English Scheme of less than the De Minimis Amount shall not be sent to a Scheme Creditor.

32.3 Any amount so withheld under clause 32.2 shall be paid to a Scheme Creditor at such time as the aggregate of sums owed to that Scheme Creditor under The English Scheme and The Australian Scheme exceed the De Minimis Amount.

32.4 The English Scheme Company shall, in consultation with the English Creditors' Committee, set such Payment Dates as are required for the purposes of making the payments to be made pursuant to this clause 32.

32.5 After it is determined that a Liability is an Established Scheme Claim, an English 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 English Payment Percentages of such Established Scheme Claim; and
 - (b) following an increase in the English Payment Percentages under clause 31, pay to the Scheme Creditor concerned a further amount, as adjusted by Part H, equal to the difference between (A) the English Payment Percentages (as increased) of such Established Scheme Claim and (B) the amount of such Established Scheme Claim which has previously been discharged by an English Scheme Company or is treated as having been discharged under clauses 32.3 or 33.
- 32.6 For the avoidance of doubt, clause 32.5 does not apply to any Threshold Offer or to De Minimis Amounts.
- 32.7 The English Scheme Company shall in respect of any payment in respect of an Established Scheme Claim determine the amount payable out of the English Scheme Assets in accordance with Part H. Upon any further payment being made in respect of that Established Scheme Claim, the English Scheme Company shall recalculate the amount payable out of the English Scheme Assets as necessary to give effect to Part H and may adjust the amounts paid or payable from such English Scheme Assets as appropriate. If at any time it appears that an English Scheme Company has made payments (including distributions under The Australian Scheme) 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 English Scheme Company 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.
- 32.8 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 English Scheme.
- 32.9 If all Liabilities of an English 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 English Scheme Assets are not sufficient to pay such interest in full.
- 32.10 If the Liabilities and interest referred to in clause 32.9 have been paid in full, an English 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 date on which The Australian Scheme became effective or the date on which the liability of an English Scheme Company in respect of the relevant Liability became an Acknowledged Creditor Claim up to the date of payment of the Liability.
- 32.11 The amount of such additional interest shall not exceed the surplus assets of an English Scheme Company after adequate provision has been made for all other Liabilities of an English 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.
- 32.12 An English Scheme Company shall suspend payments under clause 32.5 for such period (not exceeding six months) as it considers appropriate if information becomes available to it about an English Scheme Company as a result of which it requires to consider whether or not to set reduced English Payment Percentages. As soon as practicable during, and in any event at the end of, such period, the English Scheme Company shall set reduced English Payment Percentages or conclude that the English Payment Percentages need not be reduced and thereupon the suspension of payments shall be lifted.
- 32.13 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 winding-up in England and Wales of an English 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 English Scheme Company shall adjust any future distributions or payments so that, in so far only as the English 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 English Scheme Company.

33. METHOD OF PAYMENT

- 33.1 Payments to a Scheme Creditor under The English Scheme may be made, in the absolute discretion of the English Scheme Company:
- (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 an English Scheme Company;

- (b) by telegraphic transfer to such bank account as the Scheme Creditor concerned may from time to time notify to an English Scheme Company; or
 - (c) in such other manner as the English Scheme Company 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.
- 33.2 Payment under or pursuant to The English 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.
- 33.3 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 an English Scheme Company, 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 an English Scheme Company, as the result of such action. The extent, if any, to which it is entitled to any payment under The English Scheme shall be reduced accordingly.
- 33.4 For the purpose of clause 33.3, the gross value of any such Property, benefit or advantage obtained by a Scheme Creditor shall be conclusively determined by the English Scheme Company and, without limitation, may include such amount as the English Scheme Company may consider to be appropriate by way of interest or costs, charges or expenses incurred by an English 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 English 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 period from the date of the advance distribution until the date of payment.
- 33.5 At the time of making any payment to a Scheme Creditor the English Scheme Company shall provide to the Scheme Creditor a statement which records the Established Scheme Claims of the Scheme Creditor and the English Payment Percentages that has been applied where applicable, the statement shall also specify the fund or funds from which the payment has been made and relevant English Payment Percentages for each fund from which the payment was made.

34. UNCLAIMED PAYMENTS

- 34.1 Payments made pursuant to clause 32 after the Estimation Date must be debited against the bank accounts of an English Scheme Company within 6 months of the payment being made.
- 34.2 Any English Scheme Assets representing payments which have not been debited in accordance with clause 34.1 will be paid by the English Scheme Company to the English Provisional Liquidators to be dealt with by them.

J. THE ENGLISH SCHEME ADMINISTRATORS

35. QUALIFICATION, APPOINTMENT AND RESIGNATION

35.1 There shall be appointed two or more English Scheme Administrators having the rights, powers and duties conferred upon them by The English Scheme.

35.2 An English Scheme Administrator shall:

- (a) be a qualified individual pursuant to the provisions of section 230 of the Insolvency Act;
- (b) be appointed to administer The English Scheme; and
- (c) give and not withdraw his or her consent to act as an English Scheme Administrator;

35.3 The initial English Scheme Administrators shall be Thomas Alexander Riddell and John Mitchell Wardrop.

35.4 An English Scheme Administrator shall cease to be an English Scheme Administrator if:

- (a) he or she resigns by giving not less than six months (or such shorter period as the English Creditors' Committee may agree) notice in writing to an English Scheme Company and to the English Creditors' Committee; or
- (b) removed pursuant to clause 45.2; 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 230 of the Insolvency Act.

36. GENERAL FUNCTIONS AND POWERS

36.1 The English Scheme Administrators shall have the power, to the fullest extent permissible at law, to:

- (a) manage, control and administer the English Scheme Assets and affairs of the English Scheme Company for the purposes of implementing The English Scheme;
- (b) realise the English Scheme Assets and apply them for the benefit of the Scheme Creditors in accordance with The English Scheme; and
- (c) supervise and ensure the carrying out of The English Scheme, and for these purposes shall:

- (i) have power in the name and on behalf of an English Scheme Company to manage the affairs and Property of an English Scheme Company; and
 - (ii) without prejudice to the generality of the foregoing, have the powers specified in clause 37.
- 36.2 The functions and powers of the English Scheme Administrators under The English Scheme may be performed and exercised jointly or severally and any act required to be done by the English Scheme Administrators pursuant to The English Scheme may be done by all or any one or more of them.
- 36.3 Any function of or power conferred on an English Scheme Company or its officers other than the English Provisional 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 English Scheme Administrators of their functions and powers in relation to an English Scheme Company shall not be exercisable except with the consent of the English Scheme Administrators, which may be given either generally or in relation to particular cases.
- 36.4 Without prejudice to their obligations to Scheme Creditors, the English Scheme Administrators shall also have the power to:
 - (a) co-operate, work with and generally assist the Australian Scheme Administrators with regard to any aspect of The English Scheme as well as The Australian Scheme, to the extent that the English Scheme Administrators deem appropriate. This power includes but is not limited to the provision of financial information along with the books and records of the English Scheme Company; and
 - (b) delegate to the extent that the English Scheme Administrators deem appropriate any administrative aspect of The English Scheme (including the handling of claims evaluation and computation) to the Australian Scheme Administrators. For the avoidance of doubt, should the English Scheme Administrators delegate any aspect of The English Scheme to the Australian Scheme Administrators, the English Scheme Administrators retain the ultimate discretion concerning any aspect of The English Scheme that has been delegated to the Australian Scheme Administrators.

37. SPECIFIC FUNCTIONS AND POWERS

- 37.1 Subject to the provisions of The English Scheme, in carrying out their functions and powers under The English Scheme, the English Scheme Administrators shall be entitled:
 - (a) to co-operate with the Australian Scheme Administrators and delegate to them such of their functions under The English Scheme, as they consider appropriate;

- (b) to agree or determine Liabilities for the purposes of determining Acknowledged Creditor Claims pursuant to The English Scheme;
- (c) 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;
- (d) to manage, process, collect and do all such other things as are necessary for the collection of reinsurance due to an English Scheme Company in the name of the English Scheme Company;
- (e) to take possession of, collect and get in all the Property and assets (of whatever nature) to which an English 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;
- (f) to have full access at all times to all books, papers and other documents of an English 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 English Scheme;
- (g) to do all things which may be necessary or expedient for the protection of an English Scheme Company's assets or of any assets that appear to belong to the English Scheme Company;
- (h) to open, maintain and operate such bank accounts as they think fit and to close such bank accounts;
- (i) to apply to the courts in any jurisdiction including to obtain recognition of or to enforce The English Scheme or to bring, commence or defend any Proceeding in the name of and on behalf of an English Scheme Company;
- (j) to bring or defend any action or other legal proceedings in the name and on behalf of an English Scheme Company or otherwise;
- (k) on behalf of an English Scheme Company, to enter into, vary or terminate arrangements with an agent for the provision of such services to the English Scheme Company as it may require for the run off of its insurance business (including agreeing and adjusting any Liability);
- (l) 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 English Scheme;
- (m) to appoint one or more Scheme Adjudicators;

- (n) to do all acts and to execute in the name of and on behalf of an English Scheme Company any deed contract, transfer, instrument, bill of a charge, receipt or other document and to use the English Scheme Company's seal;
- (o) in the name and on behalf of an English Scheme Company, to rank and claim in the bankruptcy, insolvency, sequestration, liquidation or other similar or analogous proceedings of any person indebted to the English 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;
- (p) 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 an English Scheme Company;
- (q) without prejudice to other powers, to delegate to any person (being, a partner in the same firm as an English Scheme Administrator) qualified to act as mentioned in clause 35 and approved by the English Creditors' Committee for the purposes of this clause 37.1(q), all or any of the functions, powers, rights, authorities and discretions conferred upon the English Scheme Administrators under The English Scheme and from time to time to revoke any such delegation;
- (r) to the extent that the Court has jurisdiction, to apply or to cause an English Scheme Company to apply, to the Court in relation to any particular matter arising in the implementation of The English Scheme;
- (s) 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 English Scheme or to implementing a new scheme of arrangement between an English Scheme Company and the Scheme Creditors concerned;
- (t) to convene and attend meetings of the English Creditors' Committee and to attend meetings of any creditors' committee established under The Australian Scheme;
- (u) to consult with the English Creditors' Committee pursuant to clause 42.4 about the appointment of, and to appoint pursuant to clause 50.2;
- (v) to enter into, on behalf of an English Scheme Company, contracts of insurance protecting an English Scheme Company or its directors, officers, employees or agents against risks incurred in the run off of an English Scheme Company's business;
- (w) arrange for the issue or creation of new Security or trusts or other instruments over any of the assets of an English Scheme Company;

- (i) to replace existing Security or trusts; or
 - (ii) to secure liabilities incurred after the Record Date;
- (x) on behalf of an English 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 an English Scheme Company to that Scheme Creditor is discharged in full in consideration of payment made by the English Scheme Company; or
 - (ii) all or part of the Liability of an English Scheme Company to that Scheme Creditor becomes an Established Scheme Claim otherwise than as established in accordance with clause 26.4; or
 - (iii) all or part of the Liability of an English 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 English Payment Percentages, calculated as if that subordinated Liability were an Established Scheme Claim) that the English Scheme Administrators think fit;
- (y) enter into arrangements with any of the reinsurers of an English Scheme Company for the discharge of any of such reinsurer's liabilities to the English Scheme Company under contracts of reinsurance or retrocession in consideration for payment to the English Scheme Company.
- (z) to enter into contractual arrangements with Scheme Creditors under which the total liability of an English Scheme Company to the relevant Scheme Creditor in relation to some or all of the Insurance Contracts between an English Scheme Company and the Scheme Creditor shall:
- (i) be discharged in full in consideration for a cash payment by an English 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.
- (aa) to be remunerated out of the Property of an English 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 English Scheme Costs;
- (bb) to do all other things incidental to the exercise of the functions and powers referred to in this clause 37 and in clause 36;

- (cc) to do all other things which the English Scheme Administrators consider necessary or desirable for the purpose of giving effect to or carrying out The English Scheme; and
- (dd) without limiting the generality of the above:
 - (i) to enter into any agreement with the FSCS which the English Scheme Administrators think fit; or
 - (ii) to enter into any agreement with an English Scheme Company for the purpose of agreeing the allocation of costs and proceeds relating to the funding of damages recovery claims undertaken by the English Provisional Liquidators.

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

37.3 The report referred to in clause 37.2 may, at the discretion of the English Scheme Administrators, be presented:

- (a) as a joint report by the English Scheme Administrators and the Australian Scheme Administrators on the operation of The English Scheme and The Australian Scheme; or
- (b) as a supplement to a report by the Australian Scheme Administrators on The Australian Scheme.

38. EXERCISE OF FUNCTIONS AND POWERS

38.1 In carrying out their functions and exercising their powers under The English Scheme, the English Scheme Administrators:

- (a) must, in the administration of the English Scheme Assets and their distribution among the Scheme Creditors, have regard to any directions given by resolution of the English 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 English Creditors' Committee on any matter material to The English Scheme.
- 38.2 Notwithstanding the provisions of clauses 36 and 38.1 and subject to clause 38.3, the Company or English Scheme Administrators shall not, without the approval of the English Creditors' Committee concerned:
- (a) compromise a debt to an English Scheme Company if the amount claimed by an English Scheme Company is more than AUD 300,000 or its equivalent in any other currency (or such higher amount as is approved by resolution of the English Creditors' Committee);
 - (b) set or revise the English Payment Percentages;
 - (c) enter into any agreement with an English Scheme Company for the purpose of agreeing the allocation of costs and proceeds relating to the funding of damages recovery claims undertaken by the English Provisional Liquidators;
 - (d) compromise a debt to an English Scheme Company owed by a Controlled HIH Company or a liability of an English Scheme Company to a Controlled HIH Company;
 - (e) determine the Threshold Amount or the amount or a percentage payable by an English Scheme Company in respect of Threshold Offer pursuant to clause 23.1;
 - (f) appoint a Scheme Adjudicator; or
 - (g) determine the De Minimis Amount pursuant to clause 32.1(b).
- 38.3 The consent of the English Creditors' Committee shall not be required where the Australian Scheme Administrators, with the consent of the creditors' committee appointed under The Australian Scheme:
- (a) compromise a debt to an English Scheme Company if the amount claimed by an English Scheme Company is more than AUD 300,000 or its equivalent in any other currency (or such higher amount as is approved by resolution of the English Creditors' Committee);
 - (b) compromise a debt to an English Scheme Company owed by a Controlled HIH Company or a liability of an English Scheme Company to a Controlled HIH Company;
 - (c) appoint a Scheme Adjudicator; or
 - (d) determine the De Minimis Amount pursuant to clause 32.1(b).

K. THE SCHEME ADJUDICATORS

39. APPOINTMENT

- 39.1 One or more Scheme Adjudicators shall be appointed by the English Scheme Company in accordance with the terms of The Australian Scheme.
- 39.2 For the avoidance of doubt, a Scheme Adjudicator appointed under The Australian Scheme may adjudicate Notified Liabilities under The English Scheme and Established Scheme Claims under The Australian Scheme shall automatically become Established Scheme Claims under The English Scheme.
- 39.3 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.
- 39.4 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.

L. PROVISIONS COMMON TO OFFICE HOLDERS

40. RESPONSIBILITY AND INDEMNITY

- 40.1 In carrying out their functions and exercising their powers under The English Scheme, the Office Holders shall act bona fide and with due care and diligence.
- 40.2 The English 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 English Scheme for the purpose of ensuring that The English Scheme is operated in accordance with its terms.
- 40.3 Subject to any 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.
- 40.4 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.
- 40.5 Each Office Holder (in that capacity) and each Employee shall be entitled to an indemnity out of the assets of an English 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 English 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 English Scheme in accordance with its terms.
- 40.6 Each such person entitled to an indemnity in accordance with clause 40.5 shall be entitled to an indemnity out of the assets of an English 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 an English Scheme Company.

40.7 An English Scheme Company may, with the approval of the English 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 an English Scheme Company would be obliged to indemnify that person in accordance with clauses 40.5 and 40.6; and
- (b) pay costs incurred by any such person as is referred to in clause 40.6 in defending proceedings of the nature described in clause 40.6.

M. THE ENGLISH CREDITORS' COMMITTEE

41. CONSTITUTION OF THE ENGLISH CREDITORS' COMMITTEE

41.1 There shall be an English Creditors' Committee for each English Scheme Company for the purposes described in The English Scheme.

41.2 The English Creditors' Committee shall consist of a minimum of 2 members and a maximum of 10 members in respect of each English Scheme Company.

41.3 Any person who is:

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

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

41.4 The Australian Scheme Administrators shall be entitled to attend meetings of the English Creditors' Committee as observers, but shall have no right to vote at such meetings.

42. MEMBERSHIP OF THE ENGLISH CREDITORS' COMMITTEE

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

42.2 With the agreement of the English Scheme Company, the English Creditors' Committee may by at least two-thirds of the members present request the English Scheme Company to convene a meeting of Scheme Creditors of an English Scheme Company to consider a Special Resolution to remove any member of the English 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 English Creditors' Committee to act as a member of the English Creditors' Committee shall not be affected.

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

- (a) ceases to be, or is found never to have been, a Scheme Creditor of the relevant English 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 English Creditors' Committee in writing that such member has ceased to be their Designated Representative;

- (c) resigns by notice in writing addressed to the English Creditors' Committee;
- (d) dies, becomes bankrupt, mentally disordered or becomes disqualified from acting as a company director under the laws of Australia, the United Kingdom, the USA or any other country;
- (e) is removed from office pursuant to clause 42.2.

42.4 Subject to clause 41 the English Creditors' Committee may with the agreement of the English Scheme Company resolve to appoint any eligible person to be a member either to fill a vacancy or as an additional member.

43. PROCEDURE OF THE ENGLISH CREDITORS' COMMITTEE

43.1 Each member of the English Creditors' Committee which is not an individual must, by notice in writing to the English Creditors' Committee, nominate a person as a Nominated Representative to represent that member at meetings of the English 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 English Creditors' Committee.

43.2 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, the United Kingdom, the USA or any other country.

43.3 Save as otherwise specifically provided in The English Scheme:

- (a) the English Creditors' Committee by agreement with the English Scheme Company and subject to The English Scheme, may determine all administrative matters relevant to the operation of the English 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 English 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 English Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting;
- (d) meetings shall be chaired by an English Scheme Administrator who shall be entitled to address the meeting but not be entitled to vote;

- (e) if so requested by the English Creditors' Committee, an English Scheme Administrator (or his or her representative) shall absent himself or herself from such part of a meeting of the English Creditors' Committee as the English Creditors' Committee may specify; and
- (f) meetings of the English Creditors' Committees of the English Scheme Companies may be held concurrently if each of the English Creditors' Committees so resolve.

43.4 Meetings of the English Creditors' Committee shall be convened by the English Scheme Company when requested in writing by at least three members of the English Creditors' Committee or if the English Scheme Company otherwise considers it appropriate.

43.5 Proper minutes shall be kept of all proceedings of the English Creditors' Committee and such minutes shall at all reasonable times be open to inspection by (subject to clause 44.2) any English Creditors' Committee Member. The English Scheme Company shall prepare and keep a record of such minutes.

43.6 A resolution in writing signed by a majority in number of the members of the English Creditors' Committee for the time being (or their Nominated Representatives) shall be as valid and effective as if passed at a meeting of the English Creditors' Committee duly convened and held.

44. INFORMATION

44.1 To assist in the performance of the functions and duties of the English Creditors' Committee the English Scheme Company shall give to the English Creditors' Committee all such information as they reasonably require concerning the affairs of the relevant English Scheme Company or the operation of The English Scheme.

44.2 The English Scheme Company shall not be obliged to disclose any confidential information relating to an English Scheme Company to a member of the English 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 English Scheme Company (other than a general conflict arising as a result of the status of the member of the English Creditors' Committee (or his or her appointor) as a creditor of the English Scheme Company).

45. FUNCTIONS

45.1 The English Creditors' Committee shall monitor the carrying out of The English Scheme and assist the English Scheme Administrators in the exercise of their functions under The English Scheme.

45.2 The English Creditors' Committee may by a resolution of the English Creditors' Committee at any time call upon the English Scheme Company to convene a meeting of Scheme Creditors to:

- (a) put a Special Resolution for the removal of the English Scheme Administrator, and the Scheme Creditors may, at such a meeting, remove an English Scheme Administrator;
- (b) put a resolution to appoint any person qualified to act under clause 35.2 to be an English Scheme Administrator, and the Scheme Creditors may, at such a meeting, appoint such a person to be an English Scheme Administrator.

Any such resolution of the English Creditors' Committee, pursuant to clause 45.2(a) above, shall not be considered unless such English Scheme Administrator has been given:

- (i) at least twenty eight days' notice of the proposed resolution of the English Creditors' Committee and of the reasons why the resolution is to be put to the English Creditors' Committee; and
- (ii) has been given a reasonable opportunity to make representations at the meeting of the English Creditors' Committee at which the resolution is proposed.

45.3 If an English Scheme Administrator ceases to hold office, unless an appointment is made pursuant to clause 45.2, the English Creditors' Committee may appoint any person qualified to act under clause 35.2 to be an English Scheme Administrator.

45.4 The appointment of an English Scheme Administrator pursuant to clause 45.2 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 an English Scheme Administrator.

45.5 The English 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 English Scheme Administrators from time to time.

45.6 The English Creditors' Committee shall, so far as it is able, ensure that there is an English Scheme Administrator in office at all times.

45.7 The English Creditors' Committee shall have the functions referred to in clause 46.2 and the other functions specifically referred to in The English Scheme.

46. DUTIES

- 46.1 Each member of the English Creditors' Committee and each Nominated Representative shall, in performing their functions as such in relation to an English Scheme Company, act bona fide in the interests of the Scheme Creditors as a whole.
- 46.2 No English Creditors' Committee Member or Nominated Representative shall act as an English 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 English Scheme.
- 46.3 Each English 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 an English 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 English Creditors' Committee (or their Designated Representative's responsibilities and functions).
- 46.4 Each Nominated Representative may report to the appointing English Creditors' Committee Member, and each Designated Representative may report to the appointing Scheme Creditors, about the proceedings of the English Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of an English Scheme Company to those persons who need to know it in connection with the performance of the English Creditors' Committee Member's responsibilities as a member of the English 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 an English Scheme Company (other than a general conflict arising as the result of the status of the English Creditors' Committee Member, or his or her appointors, as creditors of the English Scheme Company).

47. RESPONSIBILITIES AND INDEMNITY

- 47.1 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 English Creditors' Committee Member or Nominated Representative in accordance with and to implement the provisions of The English Scheme.
- 47.2 No English Creditors' Committee Member or Nominated Representative will be liable for any loss unless attributable to that person's breach of duty, breach of trust, fraud or dishonesty.

47.3 Each English 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 an English 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 47.1.

48. VALIDATION OF ACTS

48.1 All acts done by the English Creditors' Committee or any meeting of the English Creditors' Committee or any person acting as an English 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.

49. EXPENSES

49.1 Each English Creditors' Committee Member and Nominated Representative shall be entitled to be reimbursed by an English Scheme Company for their reasonable expenses of attending meetings of the English 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 English Creditors' Committee be limited to the cost of attendance by such means.

50. NO ENGLISH CREDITORS' COMMITTEE ACTING

50.1 If at any time there are fewer than the minimum number of members of the English Creditors' Committee then the English Creditors' Committee may continue to exercise all its functions under The English Scheme (other than in accordance with clause 45.2) for a period of twenty eight days.

50.2 If after such period of twenty eight days there remains fewer than the minimum number of members, the English Scheme Company shall, within a further fourteen days, appoint such additional members as are required to obtain the minimum number.

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

50.4 If there is no English Creditors' Committee acting, including because the minimum number of members is not obtained in accordance with this clause 50 then, for so long as that is the case, the English Creditors' Committee shall not exercise any functions or have any powers under The English Scheme and the following provisions shall apply:

- (a) the English Scheme Company shall use all reasonable endeavours to find and appoint members of the English Creditors' Committee so as to obtain the minimum number;
- (b) an English Scheme Administrator may resign by giving notice at a meeting of the Scheme Creditors;
- (c) a new English Scheme Administrator may be appointed in place of the resigning English Scheme Administrator by Special Resolution at a meeting of the Scheme Creditors;
- (d) an English Scheme Administrator may be removed, and a new English 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 English Scheme Administrators shall be payable at the same rate at which it had last been set by the English Creditors' Committee unless and until varied by the Scheme Creditors;
- (f) anything the English 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 English Creditors' Committee shall be satisfied by a resolution at a meeting of Scheme Creditors giving such consent, approval or agreement.

50.5 If the minimum number of members is obtained in accordance with clause 50.4(a), the full powers and functions of the English Creditors' Committee under The English Scheme will be restored.

N. MEETINGS OF SCHEME CREDITORS

51. MEETINGS

- 51.1 The provisions of this Part N do not apply to the Scheme Meetings.
- 51.2 All meetings of Scheme Creditors will be held in Sydney, Australia at a place to be specified in accordance with clause 53.4(a).
- 51.3 Meetings of Scheme Creditors may be held jointly with meetings of “Scheme Creditors” (as that term is defined in The Australian Scheme) under The Australian Scheme, though voting must take place separately.

52. CONVENING OF MEETINGS

- 52.1 The English Scheme Company shall convene a meeting of Scheme Creditors:
- (a) at any time and for such purpose as they think fit;
 - (b) subject to clause 42.2 when required by a resolution of the English Creditors’ Committee for such purpose as it thinks fit;
 - (c) in respect of HIH C&G or FAI General, when required by notice by any fifty Scheme Creditors of an English Scheme Company concerned who have Liabilities against an English Scheme Company concerned of an aggregate value in excess of AUD 100 million for such purpose as they think fit;
 - (d) in respect of the other English Scheme Companies, when required by notice by any five Scheme Creditors of an English Scheme Company concerned who have Liabilities against an English Scheme Company concerned of an aggregate value in excess of AUD 1 million for such purpose as they think fit; and
 - (e) if a meeting of creditors has been convened or is to be convened under The Australian Scheme.
- 52.2 A notice in accordance with clauses 52.1(c) and (d) must be in writing signed by the relevant Scheme Creditors or on their behalf and deposited at the registered office of an English Scheme Company, and shall require the English Scheme Company 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.

53. NOTICE OF MEETINGS

- 53.1 Notice of a meeting of Scheme Creditors shall be given to all Scheme Creditors by Notice by Publication. Such notices may be given jointly with notice of a meeting of “Scheme Creditors” (as that term is defined in The Australian Scheme) under The Australian Scheme.

- 53.2 At least 28 days' notice shall be given of a meeting of Scheme Creditors.
- 53.3 The English Scheme Company 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 an English Scheme Company and the operation of The English Scheme during the period since the last such report was prepared (or, for the first meeting, since the Effective Date).
- 53.4 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.
- 53.5 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.

54. PROCEDURE AT THE CREDITORS' MEETING

- 54.1 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.
- 54.2 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 English Scheme Company may approve and must be lodged at the place specified in the notice of meeting for the lodging of proxies not less than forty eight hours before the meeting (or adjourned meeting) at which it is to be used.
- 54.3 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 English Scheme Company and the English Creditors' Committee agree a smaller number.
- 54.4 A meeting of Scheme Creditors shall be chaired by an English Scheme Administrator (if appropriate, jointly with an Australian Scheme Administrator) or his or her nominated representative.

55. VALUATION OF LIABILITIES FOR THE PURPOSES OF MEETINGS

- 55.1 The value of any Liability for any of the purposes referred to in clauses 52, 54 and 55 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 55.2.
- 55.2 The value of a Liability for the purposes of 55.1(b) shall be the amount of the just estimate of its value made by the English Scheme Company 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.
- 55.3 The English Scheme Company may require that the Scheme Creditor provide such particulars of the Liability as the English Scheme Administrators or Australian Scheme Administrators may require.
- 55.4 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 English Scheme Company at close of business (Sydney time) on the last preceding Quarter End Date.

O. DURATION OF THE ENGLISH SCHEME

56. TERMINATION EVENTS

56.1 The English Scheme shall terminate:

- (a) 12 months after the final Payment Date;
- (b) if all the Liabilities of an English Scheme Company (including liabilities arising pursuant to clauses 32.9 and 32.10) have been discharged in full; or
- (c) by resolution of the English Scheme Administrators, after consultation with the English Creditors' Committee.

56.2 The termination of The English Scheme shall not affect any right or obligation which shall have arisen under The English Scheme as a result of any act or omission which took place prior to the termination of The English Scheme including, without limitation, any right to an indemnity out of the assets of an English 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 English Scheme.

56.3 Upon the termination of The English Scheme the provisions of this clause and the following clauses shall continue in full force and effect:

- (a) clause 1 – Definitions;
- (b) clause 2 – Interpretation;
- (c) clause 46 – Duties;
- (d) clause 47 – Responsibilities and Indemnity;
- (e) clause 48 – Validation of Acts;
- (f) clause 56 – Termination Events;
- (g) clause 57 – Costs;
- (h) clause 62 – Notice to Scheme Creditors;
- (i) clause 63 – Notice by Publication;
- (j) clause 64 – Date of Notice; and
- (k) clause 65 – Governing law and jurisdiction.

56.4 As soon as practicable following termination, the English Scheme Company shall cause notices stating that The English Scheme has terminated to be placed in such newspapers as the English Scheme Company considers

appropriate for one day a week for four consecutive weeks following such termination and shall forthwith post such notice on the HHH Website for a period of 6 months.

P. GENERAL ENGLISH SCHEME PROVISIONS

57. COSTS

57.1 As soon as practicable after the Effective Date the English Scheme Company shall pay out of the English Scheme Assets:

- (a) all outstanding Pre-Scheme Costs; and
- (b) insofar as they do not fall within clause 57.1(a), all outstanding debts and claims of the External Administrators (including, without limitation, all such expenses as are payable to the Australian Liquidators or the English Provisional Liquidators out of the English Scheme Assets) which are payable by the English Scheme Company to the External Administrators pursuant to:
 - (i) the provisions of rule 4.30 of the Insolvency Rules; 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 an English Scheme Company.

57.2 There shall be paid in full out of the English Scheme Assets:

- (a) all costs, charges, expenses, remuneration and disbursements incurred by the English Scheme Administrators in the course of carrying out The English Scheme;
- (b) all costs, charges, expenses, remuneration and disbursements incurred by the English Provisional Liquidators after the Effective Date;
- (c) the expenses payable under clause 49;
- (d) any sum which an English Scheme Company or the English Scheme Administrators are obliged to pay by reason of the obligations imposed by The English Scheme; and
- (e) notwithstanding that The English Scheme shall have terminated in relation to an English Scheme Company, the costs of placing the notices required by clause 56.

57.3 The English Scheme Costs, including the remuneration of the English Scheme Administrators, may be paid out of the English Scheme Assets as they are incurred and without prior approval of the English Creditors' Committee provided that any such payment in respect of the remuneration of the English Scheme Administrators is subsequently ratified by the English Creditors' Committee in accordance with clause 45.5 at the next meeting of the English 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 English Scheme Administrators' remuneration is not so ratified, the amount of the payment that is not ratified shall be repaid by the English Scheme Administrators. Nothing in this clause shall prevent the English Scheme Administrators from seeking approval pursuant to clause 45.5 including in relation to any amount required to be repaid pursuant to this clause.

57.4 For the purpose of implementing The English Scheme, all costs, charges, expenses, remuneration and disbursements incurred by an English Scheme Company or the English Provisional Liquidators on or after the Record Date and up to the Effective Date shall be apportioned and paid from the English Scheme Assets in accordance with Part H.

58. ENGLISH SCHEME COMPANIES

58.1 Any reference in The English Scheme to action taken or to be taken by an English Scheme Company or the English Scheme Companies collectively shall also refer, unless the context requires otherwise, such action taken by the English Scheme Administrators or the Australian Scheme Administrators on their behalf.

59. ECONOMIC AND MONETARY UNION

59.1 Clause 59.2 (Redenomination and Alternative Currencies) is effective provided that, if and to the extent that clause 59.2 relates to any state (or the currency of such state) which was not a Participating Member State at the date of The English Scheme, clause 31.6 shall come into effect in relation to such state (and the currency of such state) on and from the Entry Date.

59.2 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, an English Scheme Company shall be entitled to pay amounts in respect of such Established Scheme Claim in the Euro Unit.

60. MODIFICATION OF THE ENGLISH SCHEME

60.1 Each English Scheme Company may at any hearing to approve or to sanction The English Scheme, consent on behalf of all affected parties to any modification of The English Scheme or any terms or conditions which the Court may think fit to approve or impose.

60.2 An English Scheme Company shall not consent (unless the FSCS agrees) to any modification, term or condition referred to in clause 60.1 that relates to clause 4.3 or to any provision in the FSCS Schedule.

61. NOTICE TO ENGLISH SCHEME COMPANY AND ENGLISH SCHEME ADMINISTRATORS

61.1 Any notice to be given to the English Scheme Administrators or an English Scheme Company under or in relation to The English Scheme shall be given in writing. Notice may be given by:

- (a) hand delivery;
- (b) pre-paid post;
- (c) facsimile transmission;
- (d) e-mail;
- (e) notice to the Australian Scheme Administrators; or
- (f) such other method as may be determined by the English Scheme Administrators.

61.2 Notice to be given to the English Scheme Administrators or an English Scheme Company is to be given:

- (a) in respect of a Notice of Litigation in relation to business written with the former Australian branches, to CMGL at the address specified in Appendix 1 of the English Explanatory Statement;
- (b) in relation to business written with the former UK branches, to Omni at the address specified in Appendix 1 to the English Explanatory Statement; or
- (c) in respect of any other notice:
 - (i) the English Scheme Administrators, KPMG LLP, 8 Salisbury Square London EC4Y 8BB (or at such other address as the English Scheme Administrators may notify to Scheme Creditors for the purpose of this clause) or by telefax to an English Scheme Company; or
 - (ii) to the Australian Scheme Administrators or such other address as the English Scheme Administrators may notify to Scheme Creditors for the purpose of this clause.

62. NOTICE TO SCHEME CREDITORS

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

- (a) hand delivery;

- (b) pre-paid post;
- (c) facsimile transmission; or
- (d) e-mail.

63. NOTICE BY PUBLICATION

63.1 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.

64. DATE OF NOTICE

64.1 Notice by an English Scheme Company or the English 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.

64.2 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.

64.3 The date of giving notice to the English Scheme Administrators or an English Scheme Company shall be the date the notice is received by the English Scheme Administrators.

65. GOVERNING LAW AND JURISDICTION

65.1 The English Scheme shall be governed by, and construed in accordance with, the law in force from time to time in England and Wales.

65.2 The Scheme Creditors 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 English Explanatory Statement or any provision of The English Scheme, or out of any action taken or omitted to be taken under The English Scheme or in connection with the administration of The English Scheme.

65.3 The Scheme Creditors irrevocably submit to the jurisdiction of the English Court provided, however, that nothing in this clause 65 shall affect the validity of other provisions determining governing law and jurisdiction as between an English Scheme Company and any of the Scheme Creditors, whether contained in any contract or otherwise.

Dated [•]

ANNEX 1 NOTICE OF ESTIMATION DATE

In relation to:

- (1) HIH CASUALTY AND GENERAL INSURANCE LIMITED (in liquidation)
ACN 008 482 291
- (2) FAI GENERAL INSURANCE COMPANY LIMITED (in liquidation) ACN
000 327 855
- (3) WORLD MARINE & GENERAL INSURANCES PTY LIMITED (in
liquidation) ACN 000 093 112
- (4) FAI INSURANCES LIMITED (in liquidation) ACN 004 304 545

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

[Estimation Date]

Clause 25 of The English Scheme provides:

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 an English Scheme Company so as to reach the English Scheme Company, on or before the date 3 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 English 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 Companies on request, or available on the HIH website.

For a copy of The English Scheme document contact the Scheme Companies in Australia or the UK (addresses noted below) or visit www.hih.com.au

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

[contact details]

ANNEX 2 NOTICE OF LITIGATION

(pursuant to clause 21 of the English Schemes)

To: [Scheme Company]

Attention: []

From: []

Date: []

SCHEMES OF ARRANGEMENT (pursuant to section 425 of the Companies Act 1985 and section 411 of the Corporations Act 2001) between [English Scheme Company] (In Liquidation) and its respective Scheme Creditors.

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

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

THE LIABILITY PARTICULARISED IN THIS NOTICE RELATES TO THE FOLLOWING SCHEME COMPANY: [ENGLISH 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 ENGLISH SCHEME COMPANY, WHICH REFLECTS THE CORRECT POSITION.

.....

As a Scheme Creditor of [English 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 English Scheme Company pursuant to the terms of the contract between the English Scheme Company and the Scheme Creditor, together with such other supporting information and documentation as the English Scheme Company shall reasonably require.

SERVICE ON THE ENGLISH SCHEME COMPANY 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.

THE FSCS SCHEDULE

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 English 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 English Scheme, as the same is from time to time set under clause 31;
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 English 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 English 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 English 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 English 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 English 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 under The English Scheme in the Run-Off Period, 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 English 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 English 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 32.5(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 other 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 32.12, 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 32.5 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 English Scheme the FSCS shall be entitled to have regard both to its obligations under The English Scheme and to its responsibilities otherwise than under The English 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 English 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 32.12 (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 32.5 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 32.5(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 59), 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 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 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 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 English 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 English 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 English 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 English 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 English Scheme, including in particular paragraphs 1.2.6 and 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 English 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 English 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 English 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 English 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 English 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 English 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 English 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 English 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 English 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 English 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 English 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 English 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 English 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 32.5, give notice of such payment to the FSCS to the

extent required by the FSCS in order to fulfil its obligations under The English 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:

- (a) 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
- (b) 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 English Scheme in favour of the FSCS is duly and effectively made and given full effect.

1.6 The FSCS and continuation of The English Scheme in liquidation

1.6.1 If an English Authorised Scheme Company becomes subject to a Liquidation Event and The English Scheme continues in full force and effect, then the FSCS shall continue to make payments by reference to the terms of The English 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 English 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 32.5(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 English 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 (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 English Scheme in relation to that policy and references in The English 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 English Scheme does not terminate in accordance with clause 56.1, the FSCS shall continue to be bound by The English 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 payment 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 English 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 Protection 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 English 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 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 English Schemes.

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 English Scheme as set out in Part F, provided that the FSCS shall be entitled to make its out submissions to any Scheme Adjudicator.

2.2.4 The FSCS shall be entitled to receive Payment Percentages as if an FSCS Amount had been an Established Scheme Claim under The English Scheme. Each English Authorised Scheme Company shall make payments to the FSCS as appropriate and in accordance with the terms of The English Scheme. The relevant English Authorised Scheme Company's liability under The English 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 English 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 English Scheme and this Schedule, subject to the provisions of this paragraph 2. Paragraph 2 shall as amended, survive termination of The English 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 English 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 English 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 English 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 English Scheme, no Scheme Creditor shall be entitled to make any claim against the FSCS under the Policyholders Protection Act, The English Scheme or any other applicable law, rule or regulation, whether before or after the termination of The English Scheme and notwithstanding a Liquidation Event, otherwise than in respect of a Protected Liability and only then in accordance with the Scheme and paragraph 1 of this Schedule, as amended, (if at all) in any given circumstances, by this paragraph 2. Nothing in The English 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 English 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 English 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 English Scheme. The terms of this Schedule will survive any termination of The English 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 English 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 English 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 English 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 English 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 English 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 English 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 65, this Schedule and any other provisions of The English Scheme insofar as they relate to the construction extent or application of this Schedule the obligations of FSCS under The English 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 English 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 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 English Scheme (insofar as they relate to the FSCS or the Policyholder Protection Act, including Appendix 6 and 7 to the Explanatory Statement).

3.1.3 Each Scheme Creditor, the FSCS, each English Authorised Scheme Company, the Scheme Administrators and Scheme Adjudicators irrevocably 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.