

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.  
IT CONTAINS EXTENSIVE AND DETAILED INFORMATION AND SHOULD BE READ IN ITS ENTIRETY. IF YOU ARE IN ANY DOUBT AS TO THE ACTION WHICH YOU SHOULD TAKE YOU SHOULD CONSULT YOUR INSURANCE BROKER OR OTHER PROFESSIONAL ADVISER WITHOUT DELAY. IN AN ENDEAVOUR TO ENSURE THAT INSURANCE BROKERS ARE IN A POSITION TO ADVISE THEIR CLIENTS, A COPY OF THIS DOCUMENT HAS BEEN SENT TO ALL BROKERS KNOWN TO HAVE PLACED BUSINESS WITH OR ON BEHALF OF THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED.**

## **SCHEME OF ARRANGEMENT**

**PURSUANT TO SECTION 425 OF THE COMPANIES ACT 1985**

**BETWEEN**

### **THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED AND ITS SCHEME CREDITORS**

**(AS DEFINED IN THE SCHEME OF ARRANGEMENT)**

THE ACTION REQUIRED TO BE TAKEN BY YOU IS SET OUT ON PAGES VIII AND IX. WHETHER OR NOT YOU INTEND TO BE PRESENT AT THE RELEVANT MEETING OF SCHEME CREDITORS (AS DEFINED IN THE SCHEME OF ARRANGEMENT) TO CONSIDER THE SCHEME OF ARRANGEMENT YOU ARE ASKED TO COMPLETE AND RETURN AS SOON AS POSSIBLE THE PROXY FORM ENCLOSED WITH THIS DOCUMENT IN ACCORDANCE WITH THE INSTRUCTIONS SET OUT THEREIN.

THE MEETING TO CONSIDER THE SCHEME OF ARRANGEMENT FOR:

1. E&A POOL CREDITORS WILL BE HELD ON 4 DECEMBER 2001 AT 11 AM AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY
2. GENERAL CREDITORS WILL BE HELD ON 4 DECEMBER 2001 AT 11.15 AM OR AS SOON THEREAFTER AS THE MEETING OF E&A POOL CREDITORS HAS CONCLUDED AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY
3. E&A POOL PARTICIPANTS WILL BE HELD ON 4 DECEMBER 2001 AT 11.30 AM OR AS SOON THEREAFTER AS THE MEETING OF GENERAL CREDITORS HAS CONCLUDED AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY
4. OBERON POOL CREDITORS WILL BE HELD ON 4 DECEMBER 2001 AT 11.45 AM OR AS SOON THEREAFTER AS THE MEETING OF E&A POOL PARTICIPANTS HAS CONCLUDED AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY.

[THIS PAGE LEFT BLANK INTENTIONALLY]

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.  
IT CONTAINS EXTENSIVE AND DETAILED INFORMATION AND SHOULD BE READ IN ITS ENTIRETY. IF YOU ARE IN ANY DOUBT AS TO THE ACTION WHICH YOU SHOULD TAKE YOU SHOULD CONSULT YOUR INSURANCE BROKER OR OTHER PROFESSIONAL ADVISER WITHOUT DELAY. IN AN ENDEAVOUR TO ENSURE THAT INSURANCE BROKERS ARE IN A POSITION TO ADVISE THEIR CLIENTS, A COPY OF THIS DOCUMENT HAS BEEN SENT TO ALL BROKERS KNOWN TO HAVE PLACED BUSINESS WITH OR ON BEHALF OF THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED.**

## **SCHEME OF ARRANGEMENT**

**PURSUANT TO SECTION 425 OF THE COMPANIES ACT 1985**

**BETWEEN**

## **THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED AND ITS SCHEME CREDITORS**

**(AS DEFINED IN THE SCHEME OF ARRANGEMENT)**

THE ACTION REQUIRED TO BE TAKEN BY YOU IS SET OUT ON PAGES VIII AND IX. WHETHER OR NOT YOU INTEND TO BE PRESENT AT THE RELEVANT MEETING OF SCHEME CREDITORS (AS DEFINED IN THE SCHEME OF ARRANGEMENT) TO CONSIDER THE SCHEME OF ARRANGEMENT YOU ARE ASKED TO COMPLETE AND RETURN AS SOON AS POSSIBLE THE PROXY FORM ENCLOSED WITH THIS DOCUMENT IN ACCORDANCE WITH THE INSTRUCTIONS SET OUT THEREIN.

THE MEETING TO CONSIDER THE SCHEME OF ARRANGEMENT FOR:

1. E&A POOL CREDITORS WILL BE HELD ON 4 DECEMBER 2001 AT 11 AM AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY
2. GENERAL CREDITORS WILL BE HELD ON 4 DECEMBER 2001 AT 11.15 AM OR AS SOON THEREAFTER AS THE MEETING OF E&A POOL CREDITORS HAS CONCLUDED AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY
3. E&A POOL PARTICIPANTS WILL BE HELD ON 4 DECEMBER 2001 AT 11.30 AM OR AS SOON THEREAFTER AS THE MEETING OF GENERAL CREDITORS HAS CONCLUDED AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY
4. OBERON POOL CREDITORS WILL BE HELD ON 4 DECEMBER 2001 AT 11.45 AM OR AS SOON THEREAFTER AS THE MEETING OF E&A POOL PARTICIPANTS HAS CONCLUDED AT THE CHARTERED INSURANCE INSTITUTE, 20 ALDERMANBURY, LONDON EC2V 7HY.

[THIS PAGE LEFT BLANK INTENTIONALLY]

# Contents

	Page
The Joint Provisional Liquidators and their Advisers	iii
Important Notice to Scheme Creditors	iv
Synopsis	v
Background	v
Why Have You Been Sent This Document?	v
What Is A Scheme Of Arrangement?	v
How Will The Scheme Work?	v
Key Scheme Milestones	vii
ACTION REQUIRED	viii
The Meetings Of Creditors	viii
Valuing Votes	ix
Documents Available For Inspection	ix
Part I	1
EXPLANATORY STATEMENT	1
Preamble	2
SECTION I: GENERAL BACKGROUND INFORMATION	3
Background Of The Company	3
Steps Taken By The Joint Provisional Liquidators	3
Financial Position	4
Why Vote For The Scheme?	4
What Are The Alternative Solutions?	5
How Does The Proposed Scheme Affect The Company's Creditors?	8
The Informal Creditors' Committee	9
SECTION II: SUMMARY OF MAIN SCHEME PROVISIONS	10
Effective Date And Application Of The Scheme	10
Enforcement Of Scheme Claims	10
Interest	10
Set-Off	11
Foreign Currency Conversion	11
Scheme Expenses And Payment Of Scheme Expenses	11
Broker Funding	11
The Creditors' Fund	12
The Annual Actuarial Review	13
Investment	13
Secured Liabilities	13
Determination Of Agreed Liabilities, Agreed Percentages And Admitted Claims	13
Payment Of Admitted Claims And Agreed Percentages	15
Unclaimed Dividends Or Distributions	16
Commutations And Settlements	16
The Joint Scheme Administrators	16
The Scheme Adjudicator And The Dispute Resolution Procedure	16
The Creditors' Committee	17
Meetings Of Scheme Creditors	17
Termination Of The Scheme	18
Effect Of An insolvency Proceeding	18
Indemnity, Board Functions And Scheme Creditor's Co-Operation	18
Other Provisions	18

	Page
Part 2 – the Scheme	19
Part 3 – Appendices	77

# The Joint Provisional Liquidators and their Advisers

## **The Joint Provisional Liquidators**

Mr Philip Singer  
Mr Nigel Rackham  
PricewaterhouseCoopers  
Plumtree Court  
London EC4A 4HT  
United Kingdom

Telephone: + 44 (0) 20 7583 5000

Facsimile: + 44 (0) 20 7212 6316

## **Advisers to the Joint Provisional Liquidators**

### **Reporting Accountants**

PricewaterhouseCoopers  
Southwark Towers  
32 London Bridge Street  
London WC2N 6NN

### **Legal Advisers – UK**

DLA  
3 Noble Street  
London EC2V 7EE

### **Legal Advisers – US**

Chadbourne & Parke  
30 Rockefeller Plaza  
New York NY 10112  
USA

## Important Notice to Scheme Creditors

This document has been prepared in connection with a proposed Scheme of Arrangement pursuant to Section 425 of the Companies Act 1985 between The Insurance Corporation of Singapore (UK) Limited (“the Company”) and its Scheme Creditors (as defined in the Scheme).

Other than the report and the accounts of the Company for the year ended 31 December 2000 and the actuarial report in relation to the English & American Underwriting Pools prepared by KPMG the information contained in this document has been prepared by Philip John Singer and Douglas Nigel Rackham in their capacity as Joint Provisional Liquidators of the Company. In preparing the Scheme, the Joint Provisional Liquidators have relied upon information obtained from the Company’s records and although the Joint Provisional Liquidators have no reason to doubt the accuracy of that information, they are unable to warrant and represent that it, or any information prepared by a third party, is accurate. The statements contained in this document are made as at 19 October 2001 and reflect the circumstances existing and the information of which the Joint Provisional Liquidators were aware at that time.

Nothing in this document shall constitute any admission of fact or liability on the part of the Company with respect to any asset to which it may be entitled or any claim against it. The Joint Provisional Liquidators have not authorised any person to make any representations concerning the Scheme which are inconsistent with the statements contained herein and if such representations are made they may not be relied upon as having been so authorised.

The summary of the principal provisions of the Scheme and related matters contained therein is qualified in its entirety by reference to the Scheme itself, the full text of which is set out in Part II of this document.

None of the members of the informal creditors’ committee referred to at page 9 of the Explanatory Statement is responsible for any statement of opinion or fact contained in this document.

None of the contents of the Scheme Document (as defined in the Scheme) are intended to constitute advice given to Scheme Creditors. Scheme Creditors should take their own advice from professional advisers before taking any action in connection with the Scheme.

# SYNOPSIS

## Background

The Company is an insurance company incorporated in England in 1980. It ceased underwriting in 1991 and went into run-off. At an EGM duly convened and held on 8 October 1993, the Company's members passed a resolution for the winding up of the Company. A winding up petition was presented on 14 October 1993 when Philip J Singer and Christopher J Hughes (then partners in the UK firm of Coopers & Lybrand) were appointed Joint Provisional Liquidators by the High Court of Justice of England and Wales ("the Court") to manage the Company's affairs for the benefit of all its creditors and to consider the best way of effecting a return to them. On 29 December 2000 Christopher Hughes' appointment was terminated and he was replaced by David Andrew Vaughan. He in turn ceased to hold office on 31 July 2001 and was replaced by Douglas Nigel Rackham. The scheme of arrangement proposed in this document ("the Scheme") is designed to enable the Company to make the largest possible return to its Scheme Creditors (as defined in the Scheme) as soon as possible.

## Why Have You Been Sent This Document?

A copy of this document has been sent, in most cases, to those parties in respect of whom the Company's records indicate that the Company may be responsible for some or all of their insurance or reinsurance cover, or because they might otherwise have a claim against the Company under an insurance or reinsurance contract. However, receipt of this document does not of itself mean that you are a creditor or potential creditor of the Company or that you will be affected by the Scheme. You may wish to ask your insurance broker, who should have received a copy of this document, for further details of your involvement with the Company.

## What Is A Scheme Of Arrangement?

A scheme of arrangement is a compromise or arrangement between a company and some or all of its creditors governed by section 425 of the Companies Act 1985. A scheme becomes binding on those creditors affected by it (irrespective of whether they received notice of the scheme, voted for or against the proposals or did not vote at all) when:

- a majority in number, representing 75% in value of each class of those creditors entitled to do so, vote in person or by proxy in favour of the scheme at a specially convened meeting; and
- the Court subsequently makes an order approving the scheme; and
- an office copy of that order is delivered to the Registrar of Companies of England and Wales for registration.

## How Will The Scheme Work?

The following summary is designed to provide you with a brief synopsis of the key features of the proposed scheme of arrangement. It should not be seen as a substitute for reading the Scheme itself and taking independent advice on it. Capitalised terms below are as defined in the Scheme.

- This is a reserving scheme of arrangement.
- The creditors can broadly be categorised as:
  - Oberon Pool Creditors, whose claims arise as a result of the Company having participated as an underwriter in the Oberon Pool;
  - E&A Pool Participants, being the eight Participants in the E&A Pools whose claims constitute the majority by value of the Company's liabilities;
  - E&A Pool Creditors, being cedants to the E&A Pools and the remaining participants in the E&A Pools; and
  - General Creditors, being creditors who do not fall within any of the above three categories.

- A proportion of the Company's assets will be set aside to form the Creditors' Fund, from which the claims of E&A Pool Creditors and General Creditors should be paid IN FULL in the normal course by the E&A Pool Manager. The fund will be capitalised on a prudent basis, allowing a margin for potential deterioration. In establishing the value of the assets to be set aside to form the Creditors' Fund no account will be taken of actual or potential set-off.
- An actuarial review of the Company's liabilities arising out of its participation in the E&A Pools will be carried out annually. If it appears that the solvency margin of the Creditors' Fund has fallen below a certain level, full set-off based on the rules which would apply in a liquidation will be applied before E&A Pool Creditors and General Creditors are paid. In the unlikely event that deterioration in reserves is such that even on a net basis the Creditors' Fund is insufficient to pay those creditors in full then they will only receive a dividend in respect of their claims.
- Oberon Pool Creditors will be paid IN FULL by St Paul Re in the normal course.
- E&A Pool Participants will be paid a share, calculated in accordance with a formula set out in the Scheme, of the Company's General Assets, after payment of, among other things, Scheme Expenses.
- The Scheme allows for commutations in full and final settlement of one or more of a creditor's Scheme Claims, or of all of the Liabilities owed to a particular creditor, subject to certain restrictions.
- The Scheme incorporates a bar on Proceedings by Scheme Creditors against the Company, except in certain circumstances. In general the Company will follow any settlements agreed with the rest of the participants in the E&A Pools.

A more detailed explanation of the key provisions of the Scheme is given in section 2 of the Explanatory Statement at pages 10 to 18.

## Key Scheme Milestones

Set out below are the key dates under the proposed Scheme and an outline of the broad conduct of the Scheme:

Joint Provisional Liquidators appointed	14 October 1993
Scheme date (date of this document)	19 October 2001
Date for return of forms of proxy	30 November 2001
Creditors Meetings	4 December 2001
Hearing of the Petition to sanction the Scheme	14 January 2002 *
Effective Date	16 January 2002 *
Estimated date of first distribution	18 February 2002 *

\* Estimated date

# Action Required

## The Meetings Of Creditors

If you are a **Scheme Creditor** as defined in the **Scheme** at page 29, you will be entitled to attend and vote at one of the meetings of creditors to consider and, if thought fit, approve the **Scheme**. A notice convening the meetings of creditors is set out at Appendix 1 to this document. The meetings are scheduled to take place on 4 December 2001. You may either attend the meeting relevant to you in person or you may vote by proxy. The **Joint Provisional Liquidators** and the informal creditors' committee, whose members are listed at page 9, recommend that you vote in favour of the **Scheme**.

Enclosed with this document you will find the following documents:

- A form of proxy for your meeting of creditors. You should insert your estimated net claim figure in the proxy form. If you believe you require a proxy form for another meeting of creditors please contact PricewaterhouseCoopers;
- A Claims Table for completion by creditors whose claims against the **Company** arise out of insurance or reinsurance contracts; and
- A summary statement of net creditor balances for **E&A Pool Creditors** as at September 2001.

The summary statement of net creditor balances for **E&A Pool Creditors'** is provided for reference only. If you are in agreement with the figure on this statement you may insert it as the estimated net claim figure on the proxy form. If you do not wish to use the amount(s) on the statement then complete the Claims Table for Voting Purposes, following the instructions provided with it. The summary statement will not be used for **Distribution** or dividend calculations and is not binding on either the **Company** or on you. If there is a discrepancy between an **E&A Pool Creditors'** estimated net claim and those amounts on the summary statement, please contact PRO Insurance Solutions Limited (kevin\_mcatee@pro-ltd.co.uk) and additional information regarding the calculation of the summary statement will be provided.

**Scheme Creditors** should complete the form of proxy in accordance with the instructions set out on it, providing supporting information for their calculation of their estimated net claim.

The estimated net claim figure in the form of proxy will only be used for voting purposes. It will not be used for **Distribution** or dividend calculations and is not binding either on the **Company** or on you.

The forms of proxy contain a section dealing with the appointment of a proxy which you should complete if you wish to appoint a proxy to attend the meeting for you. Appointing a proxy will not prevent you from attending and voting in person at the meeting if you wish to do so. However, your proxy will not be entitled to vote if you vote in person. Instructions for completing the forms of proxy are set out on them.

Even if you do not wish to appoint a proxy to attend the meeting in your place, you are requested to complete the form of proxy in accordance with the instructions set out on it and return it to the **Company** as soon as possible, and in any event by close of business on Friday 30 November 2001, to the address shown on the form. If for any reason this cannot be done, forms of proxy may be handed in at the registration desk at the meeting, prior to its commencement. Forms of proxy may also be returned by fax, but where possible the original copy should be sent to the **Company** to be received at the address shown on the form by close of business on Friday 30 November 2001, or handed in at the registration desk at the meeting, prior to its commencement.

**Please read the instructions carefully before completing your form of proxy. Failure to complete the form of proxy in accordance with these instructions may result in your vote being disallowed.**

Creditors are also requested to submit in writing nominations for membership of the **Creditors' Committee**, having first confirmed with their nominee that he/she/it consents to act. Nominees may be individuals, companies, unincorporated associations or partnerships. In order to ensure that the **Creditors' Committee** represents the interests of **Scheme Creditors**, **Committee Members** must be **Scheme Creditors**. If elected, a **Committee Member** who is not an individual will appoint an individual to attend meetings of the **Creditors' Committee** as its **Nominated Representative**. The vote on membership of the **Creditors' Committee** will take place at the meetings of creditors to vote on the **Scheme**. Nominations must be received by close of business on 30 November 2001.

If you wish to vote on the question of membership of the **Creditors' Committee**, you must either attend the meeting of creditors relevant to you in person, or complete the section of the proxy form authorising your proxy to vote on this point at his discretion. It will not be possible to instruct your proxy to vote for a particular nominee, since nominations can be made until two working days before the meetings of creditors to vote on the **Scheme**, and the final list of nominees will therefore only be available at the meetings.

### **Valuing Votes**

For the purpose of valuing votes all claims will be converted, where necessary, into **US Dollars** at the mid-market rate of exchange quoted by the Royal Bank of Scotland plc at close of business on 3 December 2001. The amount of a claim admitted for voting purposes does not constitute an admission of the existence or amount of any liability of the **Company** and will not bind the **Joint Scheme Administrators**, the **Company**, or **Scheme Creditors**.

The value of a claim for voting purposes will be taken net of any applicable **Security**, set-off or cross claim.

The Chairman of the meeting of creditors to consider and vote on the **Scheme** may, for voting purposes only, reject a claim in whole or in part, if he considers that it does not constitute a fair and reasonable assessment of the sums owed to the relevant creditor by the **Company**. The chairman's decision is final and binding. He will, however, advise the creditor of his decision, prior to the meeting where possible, and in any event, afterwards.

The **Joint Provisional Liquidators** have been advised that particulars as to estimates of the amount of any future claims furnished by a creditor for voting purposes may not be protected by privilege under English or United States law and may be discoverable by a third party with a claim against the creditor in any action or proceedings to which the creditor may be party. However, each creditor should consult his own legal adviser as to the consequences of furnishing such particulars in the event of any litigation in which he may be, or may become, involved.

### **Documents Available For Inspection**

The documents listed in Appendix 2 are available for inspection between the hours of 10am and 4pm on any **Working Day** until 4pm on 3 December 2001 at the following locations:

PricewaterhouseCoopers, Plumtree Court, London EC4A 4HT (ref PC240/NR)

DLA, 3 Noble Street, London, EC2V 7EE (Ref EB/NM)

[THIS PAGE LEFT BLANK INTENTIONALLY]

## **PART I**

# **EXPLANATORY STATEMENT**

**(In Compliance with Section 426 of the Companies Act 1985)**

**in relation to a**

## **SCHEME OF ARRANGEMENT**

**between**

**THE INSURANCE CORPORATION OF  
SINGAPORE (UK) LIMITED**

**and its**

## **SCHEME CREDITORS**

(as defined in the Scheme of Arrangement)

## Preamble

Terms which have been defined in the **Scheme** at pages 23 to 30 are indicated in **bold** type in both the **Scheme** and this **Explanatory Statement**.

The purpose of this **Explanatory Statement** and the Appendices to the **Scheme Document** is to:

- provide background information in relation to the **Company** and its recent history;
- explain the advantages and disadvantages of the proposed **Scheme** and of the other courses of action which are available to the **Company**; and
- explain some of the detailed provisions of the **Scheme**;

in order to allow creditors to reach an informed decision on whether to vote in favour of the **Scheme** at the forthcoming creditors meeting.

The first two bullet points above are dealt with in section 1 of the **Explanatory Statement**. Section 2 of the **Explanatory Statement** summarises and explains the effect of some of the provisions of the **Scheme**. This summary is a guide and should not be relied on in place of reading the **Scheme** provisions themselves. The full **Scheme** begins at page 19 of this document.

Extracts of each statutory provision referred to in the **Scheme** are printed at the back of this document, at Appendices 3 to 5.

## Section I: General background information

### Background Of The **Company**

The **Company** was incorporated on 6 October 1980 as a private limited company under the Companies Acts 1948 to 1976. The principal object for which the **Company** was established was to carry on all kinds of insurance business, and any other objects stated in the Memorandum of Association of the **Company**.

The nominal capital of the **Company** is £10,000,000 divided into 10,000,000 shares of £1 each. The issued capital, which is fully paid up or credited as paid up, amounts to £5,000,000.

The **Company** participated in three underwriting pools managed by English & American Underwriting Agency Limited (defined in the Scheme as the **E&A Pools**). The classes of business underwritten by these pools were aviation, marine and non-marine, with each pool underwriting one of these classes. The **Company** participated in all three pools, as both a policy stamp member (whose name appeared in the stamp applied to a policy) and a net stamp member in the non-marine and aviation pools, and as a net stamp member only in the marine pool.

In addition, the **Company** accepted reinsurance business through two other underwriting pools, namely the Transglobe Re Pool and the **Oberon Pool**. However, the great majority of the **Company's** liabilities arise through membership of the **E&A Pools**. The **Joint Provisional Liquidators** estimate that, after allowing for available set-off, participants in the **E&A Pools** constitute about 80% by value of the **Company's** creditors.

The **Company** ceased underwriting on 31 December 1991 and went into run-off. In the latter half of 1993, the **Company's** accounts revealed that its financial position had become uncertain. The **Company's** auditors did not feel able to confirm whether provisions for future claims were adequate. In addition, one of the other participants in the **E&A Pools**, English & American Insurance Company Limited, had become insolvent. This meant that the collection of reinsurance was likely to be subject to considerable delays.

At an Extraordinary General Meeting duly convened and held on 8 October 1993, the **Company's** Members passed a resolution for the winding-up of the **Company** pursuant to Section 122(1)(a) of the Insolvency Act 1986 and a winding-up petition was presented to the Court on 14 October 1993. The **Company's** members also passed a resolution to apply for the appointment of provisional liquidators in relation to the **Company** and that application was also made on 14 October 1993.

### Steps Taken By The **Joint Provisional Liquidators**

Since their appointment, the **Joint Provisional Liquidators** have been investigating the **Company's** affairs in order to determine the course of action which will provide the **Company's** creditors with the best return in the shortest time.

Initially, the **Joint Provisional Liquidators** hoped to deal with the **Company's** liabilities by commuting the claims of the other participants in the **E&A Pools** and running off all other claims to extinction. Unfortunately, by the end of 1994, it became evident that it was not going to be possible to achieve the agreement of the other participants to such proposals.

Subsequently, the **Joint Provisional Liquidators** investigated the alternative courses of action which might be open to the **Company's** creditors which included the possibility of implementing a debt-for-equity arrangement, or a scheme of arrangement under Section 425 of the Companies Act 1985. In order to be in a position accurately to weigh up the comparative advantages and disadvantages of such alternatives, the **Joint Provisional Liquidators** undertook detailed

The Insurance Corporation of Singapore (UK) Limited

investigations of the **E&A Pools**, the Transglobe Re Pool and the **Oberon Pool**, in order to establish the true extent of the **Company's** liabilities and assets, and to identify any principle areas of concern and major issues which would need to be resolved.

Having consulted the **Company's** major creditors, in terms of value ("the Major Creditors"), and the informal creditors' committee (as to which see page 9 below), the **Joint Provisional Liquidators** decided to prepare a scheme of arrangement pursuant to which the liabilities of the whole of the non-marine **E&A Pool**, rather than just the **Company's** liabilities arising from that pool, would be crystallised using an actuarial methodology. This was an extremely complex and novel proposal, which took considerable time to formulate. The input of the informal creditors' committee and of the Major Creditors was sought at every stage in order to ensure that the proposals reflected their requirements, and that they were content for the **Joint Provisional Liquidators** to continue developing the proposals. However, early in 1998, it became clear that one participant in particular was not willing to support the proposals and that, without its support, those proposals were unlikely to be financially viable. As a result, the **Joint Provisional Liquidators**, with the support of the **Company's** informal creditors' committee, began to formulate the **Scheme** which deals with the **Company's** liabilities alone. Finalisation of the **Scheme** was delayed while the results of a legal appeal in another matter were awaited in relation to an issue concerning the correct identification of classes of creditors in schemes of arrangement which was fundamental to the preparation and sanctioning of a scheme of this type.

In addition, the **Joint Provisional Liquidators** have successfully negotiated a commutation agreement in relation to the **Company's** liabilities as an underwriting member of the Transglobe Re Pool. Pursuant to that commutation agreement the **Company** is to be released and discharged from all its actual and potential liabilities in relation to its participation in the Transglobe Re pool as a reinsurer of companies who fronted business written by that pool. The commutation was agreed with the approval of the informal creditors' committee. The **Joint Provisional Liquidators** concluded that the commutation was in the interests of the **Company** and all its creditors because it avoids the administration costs which would have been incurred in dealing with claims arising out of the **Company's** participation in the Transglobe Re pool and collecting related reinsurances.

The **Joint Provisional Liquidators** have taken steps to obtain an injunction under section 304 of the United States Bankruptcy Code to ensure recognition of the **Scheme** by courts in the United States. They expect that a preliminary injunction will have been obtained by the date of dispatch of the **Scheme Document** to creditors. A copy of the injunction, if granted, will be available for inspection along with the other documents listed in Appendix 2 at the addresses set out on page xi under the heading "Documents Available for Inspection".

A receipts and payments account showing the sums collected by the **Joint Provisional Liquidators** and the sums disbursed by them during the period 14 October 1993 to 31 July 2001 is at Appendix 6.

### Financial Position

The financial position of the **Company** is set out in the audited financial statements for the financial year ended 31 December 2000 at Appendix 7. The deficit is shown as £ 7,818,485.

The financial report at Appendix 8 and the actuarial report at Appendix 9 give further financial information in relation to the **Company**.

### Why Vote For The Scheme?

The **Joint Provisional Liquidators** have a duty to recommend a course of action for effecting a return to creditors which is in the interests of the body of creditors. They believe that a scheme has substantial advantages over the alternative courses of action. They estimate that creditors as a whole will receive more if the **Scheme** is approved than under any other option. The **Scheme** also has the support of the informal committee of creditors which was consulted by the **Joint**

The Insurance Corporation of Singapore (UK) Limited

**Provisional Liquidators** during the preparation of the proposals. The members of the committee are listed at page 9. The advantages and disadvantages of the alternative solutions available are discussed below.

### What Are The Alternative Solutions?

As the **Company** cannot meet its obligations to creditors in full and recapitalisation and refinancing are not available, the alternatives available to the **Company** are:

1. Liquidation (compulsory or voluntary);
2. An informal arrangement or compromise with creditors;
3. A company voluntary arrangement; or
4. A scheme of arrangement.

The following paragraphs summarise the arguments for and against each of these alternatives.

#### 1) Liquidation in the absence of a scheme of arrangement

Advantages of such a liquidation include:

- Liquidator's remedies: A liquidator has powers under the **Insolvency Act** to attack certain transactions, for example, the transfer of a company's property for less than its true value, where this would lead to recoveries being made for the company's creditors. However, the **Joint Provisional Liquidators** have carried out a brief review of the **Company's** records and business and have found no evidence of a material transaction which could be so attacked by a liquidator.
- Protection of assets: The **Company's** assets would be protected against attachment proceedings by creditors.

Disadvantages of such a liquidation include:

- Cost and investment return: The cost of liquidation is likely to exceed that of the **Scheme**, because a liquidator would be obliged to deposit sums collected by him in the Insolvency Services Account ("the ISA"). The ISA is administered by the Department of Trade and Industry ("DTI") which levies charges on realisations deposited in, and on distributions from, the ISA on a sliding scale. The DTI also levies a charge of 0.625% on all investments made by a liquidator. In any event, a liquidator is only able to invest funds in a limited range of investments which may well not produce as great a return as would be available in general investment markets. As a result, a liquidator would be more likely to leave the funds in the ISA to earn interest, rather than incurring the cost of making investments which are unlikely to produce a higher return. The rate of interest payable on funds held in the ISA (which only applies to sums over £2,000) is only 3.5% per annum. In a compulsory liquidation, on the assumption that cash is collected in accordance with projections, and paid out according to projections, and based on the charges currently applicable, the cost to the **Company** of the ISA regime could total some £400,000. ISA fees in respect of realisations would be capped at £12,500 in a creditors' voluntary liquidation, according to the current rules. However, in both types of liquidation the Company would incur the hidden cost of loss of investment income, as a result of the limited range of investments available. It is estimated that lost investment income could amount to £1.3 million. The figure is calculated on the light of circumstances prevailing as at 3 October 2001 and is necessarily susceptible to variation as a result of changes in interest rates.
- Mandatory currency conversion: Conversion of claims of all currencies into pounds sterling is mandatory in a liquidation, at the exchange rate applicable at the date of the winding-up order. As the majority of the contractual liabilities of the **Company** and its reinsurance recoveries are in **US Dollars**, creditors and the **Company** would be exposed to the risk of adverse currency movements which, over the period of a liquidation, could be significant.

The Insurance Corporation of Singapore (UK) Limited

## 2) Informal Compromises

In the case of a reinsurance company, this would usually be achieved by way of individual commutations with creditors.

There are no material advantages in dealing with a company's whole book of business in this way.

Disadvantages include:

- Lack of equal treatment: The amount paid to each creditor would probably depend on separate negotiations which are unlikely to produce the same level of payment for each creditor. There is also the risk that there will be insufficient funds to offer subsequent creditors commutations at the same rate as those reached in early settlements, unless the whole process was carried out very slowly and over a long period. Although the **Joint Scheme Administrators** have power in the **Scheme** to commute claims, the sum paid to a **Scheme Creditor** pursuant to such an arrangement cannot exceed the estimated value of that **Scheme Creditor's** likely entitlement under the **Scheme** in respect of the relevant claim. These provisions are designed to ensure, as far as possible, that such creditors do not receive a greater advantage under the **Scheme** than other **Scheme Creditors**.
- No protection of assets: The **Company's** assets would not be protected against attachment or execution by those creditors who have not agreed to commutation.
- Cost: The costs of dealing with all creditors in this way would be prohibitive and render the mechanism impracticable.

## 3) Company Voluntary Arrangement

There are no material advantages in the **Company's** case. The nature of a proposed voluntary arrangement would be very similar to that proposed in the **Scheme**.

Disadvantages of a company voluntary arrangement are:

- Not binding: Until the relevant provisions of the Insolvency Act 2000 come into force, a company voluntary arrangement would not bind any creditors who did not receive notice of its proposals before the creditors' meeting to vote on it. This is a grave disadvantage for insolvent reinsurance companies where the identification of creditors and quantification of their claims can be very time consuming and difficult, and where there may be creditors who are unknown. Even once the provisions of the Insolvency Act 2000 have come into force the possibility of a challenge by a creditor who was not identified at the time of the meeting remains.
- No court sanction: the procedure lacks the safeguard for creditors of prior court approval.
- Limited protection of assets: The **Company's** assets would not be protected against attachment or execution by creditors not bound by the voluntary arrangement.
- Risk of lack of recognition in other jurisdictions: Whilst the **Joint Provisional Liquidators** are advised that they could apply for relief under S304 of the US Bankruptcy Code and thereby safeguard the **Company's** US reinsurance assets from erosion by US creditors' claims, application of the CVA process to insurance companies is new. Therefore it is less certain to succeed, in particular as the CVA process is not supervised by the courts. The process may also cost more than applying for such relief where a scheme has been implemented since, contrary to the position with schemes of arrangement, there is no established precedent for the grant of relief under S304 in the case of a CVA.
- Absence of class meetings: A further consideration for a CVA is that there is no provision for creditors to vote by class. The **Scheme** treats different groups of creditors differently and these different groups will each have to approve the **Scheme**. The **Joint Provisional Liquidators** believe that it is proper for any creditor believing his interests to be dissimilar to have the opportunity to object.

#### 4) Scheme of Arrangement

A scheme has the advantage of avoiding each of the disadvantages of other options listed above.

Advantages include:

- **Cost:** The **Scheme** is likely to be cheaper than a liquidation in the long run, principally because it is not necessary to pay money into the ISA, resulting in a saving of some £400,000 in ISA fees and charges which the **Joint Provisional Liquidators** estimate would arise over the lifetime of a liquidation. In addition, it is estimated that an increase in investment income of approximately £1.3 million could be achieved as a result of the fact that the **Joint Scheme Administrators** will not be restricted to investing the **Company's** money in the limited range of investments open to a liquidator.

A further cost saving which is particular to the **Scheme** arises from the fact that **E&A Pool Creditors** should be paid in full and that the process of applying set-off and paying those claims is to be administered in accordance with the usual practice of the **E&A Pools**. This means that existing systems can be used to administer payment whereas in a liquidation it would be necessary to create a ledger identifying liabilities owed to and by the **Company** at principal level, in order to apply set-off in accordance with the rules applying in a liquidation. The additional costs which would be incurred in creating such a ledger are estimated at £500,000. In the event that the claims of **E&A Pool Creditors** and **General Creditors** unexpectedly increase so that the **Creditors' Fund** is no longer adequate to meet those claims in full, set-off from that point will be applied in accordance with the liquidation rules and the costs of creating such a ledger will have to be incurred. However, given the basis on which the **Creditors' Fund** has been capitalised (as to which see page 12 below) it is most unlikely that this will happen.

Similarly, the need to create a principal to principal ledger for **Oberon Pool Creditors** is avoided, since they are to be paid in full by **St Paul Re** under the **Scheme**. While the implementation of the **Scheme** means that reinsurance recoveries applicable to **Liabilities** arising from **Oberon Pool** business will not be available to be split *pari passu* between all creditors, as would be the case in liquidation, it is estimated that the additional costs which would be incurred in quantifying **Liabilities** to **Oberon Pool Creditors** and collecting the related reinsurances outweigh any benefit which would be gained.

- **Flexibility:** A scheme can be crafted to suit the particular circumstances of the company. In this particular case the opportunity has been taken to use this flexibility to offer the majority of the creditors by number the opportunity of payment in full. Because of this, the costs of administering the **Scheme** will be lower than would otherwise be the case, which makes the **Scheme** attractive to the few creditors who will not be paid in full. The delays associated with the exercise of determining dividend payments are also avoided, at least until the **Dividend Trigger Date** (as to which see page 13 below). For the reasons given at page 12 below, it is most unlikely that the circumstances which would give rise to the **Dividend Trigger Date** will occur.
- **Binding:** The **Scheme** binds all creditors whether or not they received notice of its proposal and whether their claims have matured or are contingent or future claims.

Disadvantages of a scheme include:

- **Loss of liquidator's powers:** The statutory remedies available to a liquidator cannot be exercised by scheme administrators. This is unlikely to be of relevance in the **Company's** case, however, as the **Joint Provisional Liquidators** have found no evidence to suggest that the exercise of these powers would be necessary.

The Insurance Corporation of Singapore (UK) Limited

### How Does The Proposed **Scheme** Affect The **Company's** Creditors?

To the **Joint Provisional Liquidators'** knowledge, the claims of virtually all of the **Company's** creditors arise from reinsurance contracts entered into with the **Company**.

As far as the **Joint Provisional Liquidators** are aware, there are no preferential creditors as defined in the **Insolvency Act**. Nonetheless, the **Scheme** reflects the **Insolvency Act** provisions for dealing with such creditors, providing for them to be paid in full. Further, to the **Joint Provisional Liquidators'** knowledge, there are no non-insurance creditors ("**General Creditors**"), other than, possibly, some brokers with claims for brokerage and certain contingent claims of **St Paul Re**. The **Scheme** does, however, contain provisions for dealing with such claims.

The payment of certain of the **Company's Liabilities** is, in effect, "secured" by letters of credit or trust deposits established by the **Company** for the benefit of a particular insured or reinsured or group of insureds or reinsureds. The beneficiaries of such letters of credit or trust deposits are not "secured" creditors in a technical sense, although they may be secured in whole or in part in a commercial sense, in that their repayment, to the extent of the letters of credit or deposits, does not depend on the **Company's** ability to pay. The **Scheme** recognises the true commercial situation by treating such creditors as **Secured Creditors**. The **Scheme** provides for any such security rights that might exist to be protected, expressly preserving the rights of such **Secured Creditors** to realise their **Security**.

For the purposes of payment under the **Scheme**, the **Company's** actual and potential creditors have been divided into three main groups:

1. **Oberon Pool Creditors**, being creditors with claims resulting from insurance or reinsurance contracts entered into by them in the capacity of insured or reinsured with the **Oberon Pool**. These creditors are to be paid in full by **St Paul Re**.
2. Creditors falling into the following two categories:
  - (i) **E&A Pool Creditors**, being:
    - (a) creditors whose claims arise a result of their being insured or reinsured by the **E&A Pools** in which the **Company** participated as an underwriter (**External E&A Pool Creditors**) and
    - (b) certain companies (other than those listed in Appendix 11) who participated in the **E&A Pools** as underwriting members (**Internal E&A Pool Creditors**); and
  - (ii) **General Creditors**, being creditors with non-insurance claims, including brokers with claims for brokerage and **St Paul Re**, who may in certain circumstances submit a claim in respect of sums applied in set-off by reinsurers of the **Oberon Pool** against such reinsurers' obligations to that pool.

A proportion of the **Company's** assets (the **Creditors' Fund**) will be set aside to pay these creditors in full.

3. **E&A Pool Participants**, being certain companies (as listed in Appendix 11) whose claims against the **Company** arise out of their participation as an underwriting member of the **E&A Pools**. These creditors constitute the majority in value of the **Company's** creditors, and should be distinguished from the other underwriting members of the **E&A Pools** referred to at 2(i)(b) above who are described in the **Scheme** as **Internal E&A Pool Creditors**. Unlike the **Internal E&A Pool Creditors**, **E&A Pool Participants** will not be paid in full, but will share in the **Company's** assets, excluding the **Creditors' Fund** after payment of the costs of implementing and running the **Scheme**.

A more detailed explanation of how the claims are dealt with is contained in Section II of the **Explanatory Statement**. Flowcharts illustrating the process through which the claims of **E&A Pool Creditors** and **General Creditors** and those of **Oberon Pool Creditors** must pass in order to establish the **Distribution** to be made in respect of such claims under the **Scheme** are at Appendices 12 and 13.

The Insurance Corporation of Singapore (UK) Limited

### The Informal Creditors' Committee

An informal Creditors' Committee was established shortly after the appointment of Provisional Liquidators and currently comprises representatives of:

S R International Business Insurance Company Ltd

Brandywine Reinsurance Company (UK) Limited

English & American Insurance Company Limited

Nippon Insurance Company of Europe Limited

Oslo Reinsurance Company (UK) Limited.

Fuji International Insurance Company Limited

This committee has acted as a sounding board for the **Joint Provisional Liquidators** in the preparation of the **Scheme** and was consulted by the **Joint Provisional Liquidators** on the proposals for the **Company's** future.

The members of the committee, considering the proposals from the point of view of the **Company's** creditors as a whole, believe that the proposed **Scheme** is in the best interests of those creditors and have confirmed to the **Joint Provisional Liquidators** that they approve the **Scheme**.

Should the **Scheme** become effective, there will be a formal **Creditors' Committee**. The functions of that Committee are explained at page 17 of this document.

## Section II: Summary of Main Scheme Provisions

The **Scheme** is set out in part 2 of this document. The principal provisions of the **Scheme** and an explanation of their effect are summarised below.

### Effective Date And Application Of The Scheme

The **Scheme** comes into effect on the date of delivery of the office copy of the order of the **Court** sanctioning the **Scheme** to the Registrar of Companies (defined in the **Scheme** as the **Effective Date**). It applies to all **Liabilities**.

### Enforcement Of Scheme Claims

One of the main advantages of the **Scheme** is that all **Scheme Creditors**, whether or not they have notice of the proposals, will be bound by the **Scheme**.

In order to preserve the **Company's** assets for an equitable distribution among **Scheme Creditors**, the **Scheme** incorporates a bar on any steps or **Proceedings** by **Scheme Creditors** for the purpose of obtaining payment, or establishing the quantum, of any **Liability**, except in certain specified circumstances. If a **Scheme Creditor** were, notwithstanding the bar, to take such steps or **Proceedings**, any advantage obtained by him, together with any costs incurred by the **Company** in relation to such steps or **Proceedings**, would be set off against the amount of that **Scheme Creditor's** entitlement under the **Scheme** and to the extent that they exceed it, would become a debt due to the **Company**. The **Scheme** also provides that **Scheme Creditors** are deemed to acknowledge that where, notwithstanding the prohibition, a **Scheme Creditor** takes **Proceedings**, the **Joint Scheme Administrators** are entitled to obtain an Order in the relevant jurisdiction staying those **Proceedings** and providing for payment by the **Scheme Creditor** of costs incurred in relation to them by the **Joint Scheme Administrators** and/or the **Company**.

Notwithstanding the above, there are some circumstances in which the **Scheme** provides that **Proceedings** may be brought by the following categories of **Scheme Creditors**:

- **General Creditors:** For the purpose of determining the amount of the **Agreed Liability** in respect of a **Scheme Claim** which has not been agreed by the **Joint Scheme Administrators** within six months of that claim being notified. Such **Proceedings** may only be brought in the **Court**.
- **Oberon Pool Creditors:** For the purpose of establishing an **Oberon Pool Claim** where that claim cannot be agreed with **St Paul Re**.
- **St Paul Re:** For the purpose of establishing a claim where an **Oberon Pool Creditor** has assigned his claim to **St Paul Re**.

### Interest

The **Scheme** provides **Scheme Creditors** with substantially the same rights to receive pre-**Scheme** interest on **Scheme Claims** as would be available in a liquidation. The only exception relates to **E&A Pool Participants**, who will not receive interest. This is because, since **E&A Pool Participants'** entitlement under the **Scheme** is to receive a share of the **General Assets** remaining after payment of **Scheme Expenses**, an award of interest would not have any effect on the level of the **Distribution** paid to them.

### Set-Off

The provisions of the **Scheme** relating to set-off vary for each type of **Scheme Creditor**:

- **E&A Pool Creditors:** The **E&A Pool Manager** will continue to apply the usual commercial practice in respect of set-off in relation to **E&A Pool Creditors** since the **Scheme** authorises the **Company** and such creditors to exercise any rights of set-off which would normally be available to them outside of a liquidation. The **E&A Pool Manager** will continue to calculate net balances due to or from **Internal E&A Pool Creditors** in accordance with usual **E&A Pool procedures**. The **Scheme** does, however, provide that the **Joint Scheme Administrators** may elect to retain **Distributions** which would otherwise be paid to an **E&A Pool Creditor** under the **Scheme** as a reserve fund for payment of contingent or future balances which may or will become due to the **Company** from that creditor. After the **Dividend Trigger Date** (as to which see page 13 below) set-off will be effected on the basis which would apply in a liquidation. Among other things, this means that contingent and future **Liabilities** will be taken into account and that sums which become due to a **Scheme Creditor** after 14 October 1993, being the date when the **Company** presented its winding up petition, will not. This is to avoid a situation where debtors of the **Company** cancel or reduce their debts by taking assignments of claims against the **Company** and applying these in set-off.
- **General Creditors:** **General Creditors** will continue to be able to apply set-off in accordance with rules which would ordinarily apply to mutual liabilities arising between them and the **Company** outside of a formal insolvency. As from the **Dividend Trigger Date**, set-off will be effected on the basis which would apply in a liquidation.
- **E&A Pool Participants:** Any set-off will have been taken into account in the calculation of the **Current Balances** and **Reserves** by reference to which the percentage of **General Assets** to be paid to each **E&A Participant** will be calculated.
- **Oberon Pool Creditors:** Since **Oberon Pool Creditors** are being paid in full by **St Paul Re** under the **Scheme**, the **Scheme** contains no provisions for calculating set-off in the case of claims by such creditors. However, the **Scheme** does provide that brokers who have funded the claims of **Oberon Pool Creditors** are not entitled to set-off the funded amount against any liability they have to the **Company**, or to set-off any claim they may have against the **Company** pursuant to the broker funding provisions of the **Scheme** (as to which see below) against any liability they may have in respect of the **Oberon Pool**.

### Foreign Currency Conversion

In general, payments under the **Scheme** will be made in the currency of the claim concerned. Where set-off is to be applied in relation to balances which are in different currencies, in the case of **E&A Pool Creditors** and **General Creditors**, the **E&A Pool Manager** will determine the currency into which the balances are to be converted and the rate of exchange which will apply.

### Scheme Expenses And Payment Of Scheme Expenses

Certain expenses will be paid in full under the **Scheme**. A non-exhaustive list of such expenses is given in Clause 8 of the **Scheme**. They include the costs incurred in the preparation of the **Scheme** or any **Alternative Scheme** (as to which, see page 16 below), including any remuneration of the **Joint Provisional Liquidators** outstanding at the **Effective Date**, and administrative costs of running the **Scheme**.

### Broker Funding

Brokers who have funded premiums and claims payable by the **Company** will be able to claim for such amounts in the **Scheme**. However, in order to avoid the risk of the **Company** paying two claimants for the same debt, the broker will need to obtain a letter from the relevant **Scheme Creditor** confirming that it has accepted the payment from the broker in full and final settlement of its **Scheme Claim** for that amount and acknowledges the right of the broker to claim under the

The Insurance Corporation of Singapore (UK) Limited

**Scheme** for that sum. A **Scheme Claim** for a funded sum will not be admitted unless the **Joint Scheme Administrators** are satisfied that the **Company** has not already discharged that **Liability** to the original creditor, whether by way of actual transfer of funds or by allowing it to be applied in set-off. These provisions do not apply in the case of claims of **Oberon Pool Creditors** funded by brokers. Such claims must be submitted to **St Paul Re**.

### The Creditors' Fund

The **Scheme** provides that on the **Effective Date**, the **Joint Scheme Administrators** shall set aside a proportion of the **Company's** assets to form the **Creditors' Fund**, from which the **Scheme Claims** of **E&A Pool Creditors** and **General Creditors** will be paid. The value of the fund will be determined by reference to the **Current E&A Liability** (liabilities actually due in respect of **E&A Pool** business) plus the **Scheme Claims** of **General Creditors** due for payment and the **Joint Scheme Administrators'** estimate of their future and contingent claims, plus 123% of the **Scheme Actuary's** estimate of the **Future E&A Liability** (future and contingent liabilities in respect of **E&A Pool** business).

Shortly after establishing the **Creditors' Fund**, the **Joint Scheme Administrators** will transfer some of that fund to the **E&A Pool Manager**, for the purpose of paying **E&A Pool Creditors'** claims and any **Claims Expenses** during a certain period. The portion of the **Creditors' Fund** held by the **E&A Pool Manager** is the **Operating Fund**.

The **Scheme** imposes a duty on **Joint Scheme Administrators** to monitor the **Creditors' Fund** and ensure, as far as possible, that its value is maintained.

It is possible that the claims of **E&A Pool Creditors** will unexpectedly increase and the **Creditors' Fund** not be adequate to meet those claims in full. The likelihood of this occurring is reduced as:

- There is an in-built safety margin of 23% over and above the best estimate of future claims arising out of **E&A Pool** business. Because of the inherent stability of the underlying book of business, the **Scheme Actuary** estimates that this should be sufficient in 81% of circumstances.
- The reserves are not discounted for the time value of money, and the **Creditors' Fund** will benefit from investment income, so there is a further buffer for unexpected deterioration. Where the safety margin exceeds a certain level, the excess will be transferred to **General Assets**.
- The value of the **Creditors' Fund** has been calculated by reference to **E&A Pool Creditors'** and **General Creditors'** current and estimated future gross claims, taking no account of actual or potential set-off, whereas claims may be paid net of set-off. While the **Scheme** provides for a sum equivalent to any sum "gained" by the **Creditors' Fund** as a result of the application of set-off to be transferred out of the **Creditors' Fund** to **General Assets**, such transfers will cease with effect from the **Dividend Trigger Date**, thus increasing the value of the **Creditors' Fund**. The **Dividend Trigger Date** will only arise if the margin of assets over estimated total liabilities calculated on a gross basis falls below a certain point. From that date **E&A Pool Creditors** and **General Creditors** will only receive dividends in respect of their claims. Since dividends will be calculated by reference to the net claim after the application of set-off in accordance with the rules which would apply in a liquidation, however, the dividend which creditors will receive may well amount to 100% of their net claim.
- There are provisions permitting the **E&A Pool Participants** to top up the **Creditors' Fund** in the event of an actual or potential shortfall, although they are not obliged to do so. A further explanation of these provisions is given at page 13 below.

Notwithstanding the points made above, it is appropriate for the **Scheme** to cater for a potential deficiency in the **Creditors' Fund**. An explanation of the procedure for monitoring the level of liabilities and measuring this against the value of the **Creditors' Fund** follows.

### The Annual Actuarial Review

Every year, the **Scheme Actuary** will review the future liabilities of the **Company** in respect of **E&A Pool Creditors** and claims expenses arising in relation to **E&A Pool** business, and will re-calculate the **Future E&A Liability**. The **Scheme Actuary** will produce a report (defined in the **Scheme** as the **Annual Actuarial Report**) setting out the results of the review and the **Future E&A Liability**.

Following receipt of the **Annual Actuarial Report**, the **Joint Scheme Administrators** will value the **Creditors' Fund**, and will deduct from that valuation sums currently due in respect of **Liabilities** arising out of **E&A Pool** business and **Liabilities to General Creditors**, and their estimate of future **Liabilities to General Creditors**. If the balance remaining in the **Creditors' Fund** after these deductions amounts to less than 110% of the **Future E&A Liability** shown in the **Annual Actuarial Report**, the **Joint Scheme Administrators** will notify the **E&A Pool Participants** of this.

The **E&A Pool Participants** may choose to authorise a transfer from **General Assets** to the **Creditors' Fund** in these circumstances, (there is no automatic transfer) or to make a contribution to the **Creditors' Fund** themselves if **General Assets** are insufficient, but they are not obliged to do so. If the **E&A Pool Participants** fail to do either of these things within a certain period, **E&A Pool Creditors** and **General Creditors** will from that point (the **Dividend Trigger Date**) only receive a dividend in respect of their claims. The provisions relating to calculation and payment of dividends are set out at pages 50 to 53 below. Following the **Dividend Trigger Date**, set-off will be operated on the same basis as would apply in a liquidation.

The **Scheme** also provides for the possibility of an excess in the **Creditors' Fund**. Once the third **Annual Actuarial Report** has been submitted, which will occur after the **Scheme** has been in place for three years, the **Scheme** allows any excess which may have arisen in the **Creditors' Fund** due to increased investment income or a reduction in the **Future E&A Liability**, to be transferred to **General Assets**. This will only occur where the value of the **Creditors' Fund** is greater than the sum of the **Current E&A Liability**, current and estimated future **Liabilities to General Creditors** and 123% of the **Future E&A Liability** shown in the latest **Annual Actuarial Report**.

### Investment

One of the benefits of the **Scheme** is that it entitles the **Joint Scheme Administrators** to invest all of the **Company's** funds, with the exception of the **Creditors' Fund**, in whatever manner they determine to be most beneficial to the **Company** and its creditors. In the case of the **Creditors' Fund**, the investment policy must be agreed with the **Creditors' Committee**, but need not be as restrictive as that which would apply in a liquidation.

### Secured Liabilities

As mentioned above, the **Scheme** does not affect the rights of **Secured Creditors** to realise their **Security**, provided they do so in accordance with the terms of the relevant contract and the **Security** itself.

The **Scheme** incorporates provisions aimed at preventing **Secured Creditors** from obtaining an unfair advantage over other **Scheme Creditors**, by realising and retaining from their **Security** a sum greater than their **Scheme Claim**, or by applying the proceeds of realisation to **Scheme Claims** under contracts to which the **Security** was not intended to relate.

### Determination Of Agreed Liabilities, Agreed Percentages And Admitted Claims

#### 1) General Creditors

As soon as practicable after the **Effective Date**, the **Joint Scheme Administrators** will contact any **General Creditors** of whom they are then aware to request full details of their claims, together with supporting documentation. Within six months, the **Joint Scheme Administrators** will attempt to establish the **Agreed Liability** in respect of each **Scheme Claim** by agreement with the **General**

The Insurance Corporation of Singapore (UK) Limited

**Creditor.** As explained above, where such agreement has not been reached within six months, the relevant **General Creditor** is entitled to bring **Proceedings** to establish the amount of the **Agreed Liability**.

Once the amount of the **Agreed Liability** in respect of all of a **General Creditor's Scheme Claims** in respect of **Liabilities** which have fallen due for payment has been established, the **Joint Scheme Administrators** will determine the amount which, following the application of set-off, constitutes that **General Creditor's Admitted Claim**.

## 2) **E&A Pool Creditors**

The **Agreed Liability** in respect of **E&A Pool Creditors' Scheme Claims** will be established in one of the following ways:

- Where an **E&A Pool Creditor's** claim under a contract of insurance or reinsurance has been agreed by the **E&A Pool Manager** and, where necessary, those participants in the **E&A Pools** who are also liable in respect of the relevant claim, the **Agreed Liability** will be the amount determined by the **E&A Pool Manager** as being the **Company's** share of such agreed claim. A commutation or settlement dealt with in accordance with normal procedures by the **E&A Pool Manager** may constitute a claim agreed by the **E&A Pool Manager** for these purposes. Any dispute regarding the calculation of the **Company's** share will be referred to a **Scheme Adjudicator**.
- Where an **E&A Pool Creditor's** claim has been rejected by the **E&A Pool Manager** and/or the relevant participants on the **E&A Pools**, as mentioned above, that creditor is NOT entitled to bring **Proceedings** to establish liability and quantum in respect of that claim against the **Company**. However where **Proceedings** are brought against a majority by value of the other participants in the **E&A Pools** who reinsured the relevant **E&A Pool Creditor** in respect of the risk which is the subject of the claim, the **Agreed Liability** will be the amount of such proportion of the **Final Award** made in such **Proceedings** as is attributable to the **Company**. Any dispute regarding the calculation of the **Company's** share will be referred to a **Scheme Adjudicator** (an explanation of the role and powers of the **Scheme Adjudicator** is given at pages 16 and 17).
- Where an **E&A Pool Creditor's Scheme Claim** results from that creditor's participation as an underwriter in any of the **E&A Pools**, the **Agreed Liability** in respect of that claim will be the amount determined by the **E&A Pool Manager** as being due from the **Company** to the **E&A Pool Creditor** in respect of the relevant **Scheme Claim**.

## 3) **Oberon Pool Creditors**

For many years the **Company's** liabilities to **Oberon Pool Creditors** have been met by **St Paul Re**. It has been agreed with **St Paul Re** that such creditors should continue to apply to **St Paul Re** for payment of their claims. Subject to liability and quantum being agreed, **St Paul Re** will pay those claims in full. A copy of the **Deed** (with the exception of Schedule 2 to the **Deed**, which is a copy of the **Scheme**) entered into between the **Company** and **St Paul Re** pursuant to which **St Paul Re** undertakes to pay such claims is at Appendix 14. Creditors should note that, in the event of any conflict between the terms of that **Deed** and the terms of the **Scheme**, the **Deed** will take precedence. **St Paul Re** may make payment of a claim conditional on the **Oberon Pool Creditor** assigning its claims against the **Company** to **St Paul Re**. Any such assignment will be in the form of the draft attached at Appendix 15.

In order to give **Oberon Pool Creditors** additional comfort that **St Paul Re** will pay their claims, once agreed, the **Scheme** gives them the right to take **Proceedings** against **St Paul Re** in the name of the **Company** and at their own expense to enforce payment. In return for this, **Oberon Pool Creditors** are deemed to agree to indemnify the **Company** in respect of any costs award made against it in such **Proceedings**.

#### 4) E&A Pool Participants

As soon as practicable after the **Effective Date**, the **Joint Scheme Administrators** will calculate each **E&A Pool Participant's Agreed Percentage**, being the percentage which that **E&A Pool Participant's Current Balances and Reserves** constitutes of aggregate **Current Balances and Reserves**.

Each **E&A Pool Participant's Agreed Percentage** will be binding until such time as it is recalculated by the **Joint Scheme Administrators**, when the new **Agreed Percentage** will be binding.

The **Scheme** provides that the **Scheme Claims** of the **E&A Pool Participants** will be met by the payment of a **Distribution** from the **Available General Assets** which will be calculated by reference to each **E&A Pool Participant's Agreed Percentage**. The **Scheme** also contains "catch up" provisions which apply where an **E&A Pool Participant's Agreed Percentage** has been revised upwards, in order to attempt to ensure that the **E&A Pool Participant** has received the sum it would have received had the revised **Agreed Percentage** always applied. However, if an **E&A Pool Participant's Agreed Percentage** is reduced, that **E&A Pool Participant** is not obliged to refund the **Overpayment** made to it. This means that there will be insufficient funds available to ensure that each **E&A Pool Participant** whose **Agreed Percentage** has increased receives a "catch up" payment sufficiently large to bring the total **Distributions** made to it up to the correct level. The shortfall, which will be equal to the aggregate of the **Overpayments** made to **E&A Pool Participants**, will be borne by those **E&A Pool Participants** who have been underpaid (described in the scheme as having an **Outstanding Entitlement**) in the proportions which their **Outstanding Entitlements** bear to **Available General Assets**.

#### Payment Of Admitted Claims And Agreed Percentages

An **Admitted Claim** is a sum found to be due to a creditor after the application of set-off. The rules governing set-off under the **Scheme** are explained at page 11.

The **Admitted Claims** of **General Creditors** and **E&A Pool Creditors** will be paid in full by the **E&A Pool Manager** from the **Operating Fund**, until the **Dividend Trigger Date**. After that point, such creditors will be paid dividends on their claims calculated by the **Joint Scheme Administrators**. The circumstances giving rise to the **Dividend Trigger Date** are explained at page 13. For the reasons given at page 12, the **Joint Provisional Liquidators** consider it most unlikely that such circumstances will arise.

Before paying a dividend, the **Joint Scheme Administrators** will consider the assets available in the **Creditors' Fund**, make a prudent assessment of the **Liabilities** owed to **E&A Pool Creditors** and **General Creditors** and determine the **Available Distributable Amount**. The purpose of this assessment is to enable a dividend to be paid at the same rate on all such **Liabilities** as they are agreed and become **Admitted Claims**. No account shall be taken of any **Liabilities** that were settled prior to the **Dividend Trigger Date**. For the reasons given at page 12 above, it is quite possible that the dividend will be at the rate of 100%.

**Admitted Claims** in respect of **Preferential Liabilities** will continue to be paid in full even after a **Dividend Trigger Date** and will be paid in priority to the claims of other creditors.

**E&A Pool Participants** will be paid their **Agreed Percentage** of **Available General Assets** (being **General Assets** less both the costs of the **Scheme** and a provision for future costs), as soon as practicable following the **Effective Date**. Further payments will be made, subject to any adjustments required as a result of an increase or decrease in **Agreed Percentages**, at not more than yearly intervals after the **Effective Date**.

**Scheme Creditors** are deemed to accept payments of dividends or **Distributions** based solely on their **Admitted Claims** or **Agreed Liabilities** in full and final settlement of their right to receive dividends or **Distributions** under the **Scheme**.

The Insurance Corporation of Singapore (UK) Limited

### Unclaimed Dividends Or Distributions

In case any **Distributions** or dividend cheques are lost, funds representing unclaimed dividends and interest on them will be held on trust for two years from the termination of the **Scheme**. During that period, **Scheme Creditors** who have not cashed their **Distribution** or dividend cheques will still be able to obtain payment of those **Distributions** or dividends provided they can prove their entitlement. Any unclaimed balance at the end of two years will be transferred to the **E&A Pool Participants**.

### Commutations And Settlements

The **Scheme** provides that, subject to certain restrictions, the **Joint Scheme Administrators** have an absolute discretion to enter into agreements with **Scheme Creditors** in settlement or commutation of one or more, or all, of a **Scheme Creditor's Scheme Claims**. However, the **Joint Scheme Administrators** cannot agree to pay an amount to a **Scheme Creditor** which is more than the net present value of all payments which the **Joint Scheme Administrators** estimate he would be entitled to receive by way of **Distribution** or dividend pursuant to the **Scheme** in respect of such **Scheme Claim** or **Scheme Claims**. After the **Dividend Trigger Date**, where the amount to be paid pursuant to the commutation exceeds **US\$50,000**, or the equivalent calculated at the **Scheme Rate**, the prior approval of the **Creditor's Committee** must be sought.

### The Joint Scheme Administrators

The **Scheme** provides for the appointment of **Joint Scheme Administrators** who will be responsible for supervising the **Scheme**. The powers, duties, obligations, responsibilities and qualifications of the **Joint Scheme Administrators** and the provisions relating to their appointment and removal are set out at Clauses 28 to 34 of the **Scheme**.

The first **Joint Scheme Administrators** if the **Scheme** is approved are Douglas Nigel Rackham, and Mark Christopher Batten of PricewaterhouseCoopers. Their curricula vitae are at Appendix 16.

The **Joint Scheme Administrators** are given extensive powers under the **Scheme** and are required to act in good faith and with due care and diligence in the interests of **Scheme Creditors**. In order to protect the interests of **Scheme Creditors**, some of their powers cannot be exercised unless a reference is made to the **Creditors' Committee** for its approval.

Among their powers is the power, subject to the approval of the **Creditors' Committee**, to prepare and/or propose an **Alternative Scheme**, whether dealing with all the **Scheme Claims** of all **Scheme Creditors**, or only some of them. These provisions would come into play, for example, should it become practicable at a future date to implement proposals allowing for crystallisation of the liabilities of the **E&A Pools** as a whole. The **Scheme** also contains provisions allowing the **Joint Scheme Administrators** to transfer part or all of the **Company's Property** to be applied in accordance with the provisions of the **Alternative Scheme** or to apply **Property** for the purposes of such scheme themselves, once that scheme has become effective.

One or both of the **Joint Scheme Administrators** may be removed from office by a **Creditors' Resolution** passed at a meeting of **Scheme Creditors** called in accordance with the provisions of Clause 42 and 43 of the **Scheme**.

### The Scheme Adjudicator And The Dispute Resolution Procedure

A **Scheme Adjudicator** will be appointed in certain specified circumstances to deal with a dispute. Disputes which will be referred to the **Scheme Adjudicator** are disputes as to the **Joint Scheme Administrators'** valuation of contingent and future **Liabilities** and of any debt owed by a creditor to the **Company** for set-off purposes after the **Dividend Trigger Date**; disputes as to the **Company's** share of any claim against one of the **E&A Pools** which was the subject of a **Final Award**; disputes as to the amount of a liability due to the **Company** by a **General Creditor** or **E&A Pool Creditor** which has been applied in set-off against **Agreed Liability** of the **Company** to such creditor; and disputes as to the value of **Scheme Creditors'** claims both for the purpose of determining whether a meeting of creditors has been requisitioned by the correct majority of

**Scheme Creditors** and for voting purposes at such a meeting. For the avoidance of doubt these provisions do not apply to the meeting of creditors to vote on the **Scheme**. These are the only disputes which will be referred to the **Scheme Adjudicator**.

The qualifications, powers and duties of the **Scheme Adjudicator**, and the circumstances in which his appointment will be terminated are set out in Clauses 35 and 36. The procedure for dealing with disputes is set out in Clause 37. The procedure is designed to be expeditious, fair and cost effective. The decisions of the **Scheme Adjudicator** are, to the extent permitted by law, final and binding on the **Company** the **Scheme Creditor** concerned and all **Scheme Creditors**.

### The Creditors' Committee

The **Committee Members** will be elected at the meetings of creditors to vote on the **Scheme** from nominees submitted by creditors by close of business on 30 November 2001.

The constitution, powers, functions and duties and the regulation and calling of meetings of the **Creditors' Committee**, together with the necessary qualifications, and means of appointment and removal of **Committee Members**, are dealt with at Clauses 38 to 41 of the **Scheme**. The **Joint Scheme Administrators**, or a meeting of **Scheme Creditors** acting on a recommendation of the **Creditors' Committee**, may appoint **Committee Members**.

The role of the **Creditors' Committee** is to support and assist the **Joint Scheme Administrators** in the performance of their functions under the **Scheme**. Certain powers cannot be exercised by the **Joint Scheme Administrators** without prior reference to the **Creditors' Committee**. The **Creditors' Committee** also has the power to seek information from the **Joint Scheme Administrators**, one of whom will attend meetings of the **Creditors' Committee** to give any explanations or information required, with certain limitations.

In order to ensure that the **Creditors' Committee** represents the interests of **Scheme Creditors**, **Committee Members** must be **Scheme Creditors** and may lose office if they cease to be so, or if they become a **Net Debtor**. **Committee Members** who are bodies corporate or partnerships must, and **Committee Members** who are individuals may, appoint an individual (a "**Nominated Representative**") to act for them as a **Committee Member**. The appointment of a **Nominated Representative** will automatically terminate where the appointing **Committee Member** ceases to hold office.

For the protection of **Scheme Creditors**, **Committee Members** and their **Nominated Representatives** must act in good faith and in the interests of creditors as a whole, must preserve the confidentiality of information received in their capacity of **Committee Member** or **Nominated Representative** and may not act where they have a conflict of interest, unless the remaining **Committee Members**, with the agreement of the **Joint Scheme Administrators**, resolve that they should be permitted to do so.

### Meetings Of Scheme Creditors

The **Scheme** provisions relating to the calling and regulation of meetings of **Scheme Creditors** once the **Scheme** comes into effect, other than meetings to consider an **Alternative Scheme**, are set out at Clauses 42 to 46 of the **Scheme**.

The provisions incorporate safeguards to protect **Scheme Creditors'** interests. Written notice of meetings must be given to **Scheme Creditors** 28 days before they take place. In addition to the **Joint Scheme Administrators** and the **Creditors' Committee** having the power to convene meetings, 5 or more **Scheme Creditors** having **Scheme Claims** (or **Agreed Liabilities**, where these have been determined) amounting to not less than one fifth in value of all **Scheme Claims** and **Agreed Liabilities**, may require the **Joint Scheme Administrators** to do so.

A **Creditors' Resolution** is passed at a meeting which is quorate by a majority in number representing three fourths in value of those attending the meeting and entitled to do so voting in favour.

The powers of **Scheme Creditors** at meetings are set out in Clause 47 of the **Scheme**.

### Termination Of The Scheme

As explained above, the **Joint Scheme Administrators** have the power to cause the **Company** to propose an **Alternative Scheme** to **Scheme Creditors**, or any group of them. Where such **Alternative Scheme** applies only to some of the **Scheme Creditors**, but not to others, it is necessary for the **Scheme** to cease to apply to those creditors and their claims, while still continuing in full force and effect in relation to all other creditors. As well as containing provisions for termination of the **Scheme**, therefore, the **Scheme** also contains provisions terminating the **Scheme** partially, where an **Alternative Scheme**, relating to only some of the **Company's** creditors, is implemented.

The **Scheme** terminates completely on the later of the passing of a **Creditors' Resolution**, with the **Joint Scheme Administrators'** or the **Court's** agreement, that the **Scheme** should terminate; and the expiry of 182 days from publication of a notice calling for any party who believes they have a claim to submit it within 91 days. The notice will only be published where the **Joint Scheme Administrators** believe that no further claims are possible, and the **Scheme** will only terminate if no further claims have been submitted within 91 days of the date of publication of the notice.

The effects of termination and partial termination of the **Scheme** are set out in Clause 50 of the **Scheme**.

### Effect Of An Insolvency Proceeding

This section deals with the effect on the **Scheme** of liquidation of the **Company**, both where the **Scheme** has not terminated, and following termination.

Where liquidation occurs before termination of the **Scheme**, the **Scheme** continues in full force and effect.

### Indemnity, Board Functions And Scheme Creditor's Co-Operation

The **Scheme** protects the **Joint Scheme Administrators**, **Committee Members** and their **Nominated Representatives** and the **Scheme Actuary** against liability for any act carried out by them in good faith, in pursuance of their functions under the **Scheme** and prohibits **Scheme Creditors** from challenging such acts.

In addition they and the members of the **Board** are indemnified against legal costs incurred in defending proceedings arising out of the preparation and implementation of the **Scheme**.

Once the **Scheme** is in place, the **Board** ceases to have any executive power in relation to the **Company**, although directors are still subject to duties imposed on them by statute. The **Board** may request the **Joint Scheme Administrators** to provide information and to attend a **Board** meeting, provided the request is made in the course of the **Board** fulfilling its statutory duties.

**Scheme Creditors** have a duty to co-operate with, and render assistance to, the **Joint Scheme Administrators**.

### Other Provisions

Some general provisions dealing with service of notices under the **Scheme**, the **Joint Scheme Administrators'** discretion to extend deadlines laid down by the **Scheme**, and governing law, are set out at Clauses 56 to 58 of the **Scheme**.

## Part 2 – The Scheme

**IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT**

**NO. 6087 of 2001**

**IN THE MATTER OF THE INSURANCE CORPORATION  
OF SINGAPORE (UK) LIMITED  
and  
IN THE MATTER OF THE COMPANIES ACT 1985**

### **SCHEME OF ARRANGEMENT**

**between**

**THE INSURANCE CORPORATION OF  
SINGAPORE (UK) LIMITED**

**and its**

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

[THIS PAGE LEFT BLANK INTENTIONALLY]

# TABLE OF CONTENTS

Clause No	Heading	Page No
	PRELIMINARY	
1.	DEFINITION	23
	THE <b>SCHEME</b> – GENERAL	
2.	<b>EFFECTIVE DATE</b>	31
3.	APPLICATION OF THE <b>SCHEME</b>	31
4.	ENFORCEMENT OF <b>SCHEME CLAIMS</b>	31
5.	INTEREST	32
6.	SET-OFF	32
7.	FOREIGN CURRENCY CONVERSION	34
8.	<b>SCHEME EXPENSES</b>	35
9.	PAYMENT OF <b>SCHEME EXPENSES</b>	36
10.	BROKER FUNDING	37
	<b>COMPANY'S PROPERTY INVESTMENT AND CREDITOR'S FUND</b>	
11.	<b>PROPERTY OF THE COMPANY</b>	39
12.	THE <b>CREDITORS' FUND</b> AND THE <b>OPERATING FUND</b>	39
13.	THE <b>CREDITORS' FUND</b> AND SET-OFF	40
14.	THE <b>ANNUAL ACTUARIAL REVIEW</b>	40
15.	INVESTMENT	41
	<b>SECURED LIABILITIES</b>	
16.	<b>SECURED LIABILITIES</b>	43
	DETERMINATION OF <b>ADMITTED CLAIMS</b> AND <b>AGREED PERCENTAGES</b>	
17.	<b>GENERAL CREDITORS</b>	44
18.	<b>E&amp;A POOL CREDITORS</b>	46
19.	<b>OBERON POOL CREDITORS</b>	48
20.	<b>E&amp;A POOL PARTICIPANTS</b>	48
	PAYMENT OF <b>ADMITTED CLAIMS</b> <b>AGREED PERCENTAGES</b> AND <b>DIVIDENDS</b>	
21.	<b>GENERAL CREDITORS</b> AND <b>E&amp;A POOL CREDITORS</b>	50
22.	<b>E&amp;A POOL PARTICIPANTS</b>	50
23.	SETTING OF <b>DIVIDENDS</b>	51
24.	METHOD OF PAYMENT OF <b>DIVIDENDS</b> AND <b>DISTRIBUTIONS</b>	52
25.	UNCLAIMED <b>DIVIDENDS</b> OR <b>DISTRIBUTIONS</b>	52
26.	COMMUTATIONS AND SETTLEMENTS	53
27.	OTHER PROVISIONS	53
	THE <b>JOINT SCHEME ADMINISTRATORS</b>	
28.	THE <b>JOINT SCHEME ADMINISTRATORS</b>	54
29.	<b>JOINT SCHEME ADMINISTRATORS'</b> EXERCISE OF POWERS	54
30.	QUALIFICATIONS OF THE <b>JOINT SCHEME ADMINISTRATORS</b>	54
31.	RESIGNATION AND REMOVAL OF THE <b>JOINT SCHEME ADMINISTRATORS</b>	54
32.	GENERAL POWERS OF THE <b>JOINT SCHEME ADMINISTRATORS</b>	56
33.	SPECIFIC POWERS AND OBLIGATIONS OF THE <b>JOINT SCHEME ADMINISTRATORS</b>	56
34.	REINSURANCE PREMIUMS AND REINSURANCE COVER	59
	THE <b>SCHEME ADJUDICATOR</b> AND THE <b>DISPUTE RESOLUTION PROCEDURE</b>	
35.	THE <b>SCHEME ADJUDICATOR</b>	60

36.	SPECIFIC POWERS, DUTIES AND FUNCTIONS OF THE <b>SCHEME ADJUDICATOR</b>	61
37.	<b>DISPUTE RESOLUTION PROCEDURE</b>	61
	<b>THE CREDITORS' COMMITTEE</b>	
38.	CONSTITUTION OF THE <b>CREDITORS' COMMITTEE</b>	63
39.	FUNCTIONS OF THE <b>CREDITORS' COMMITTEE</b>	64
40.	INFORMATION TO BE GIVEN TO THE <b>CREDITORS' COMMITTEE</b>	64
41.	PROCEEDINGS OF THE <b>CREDITORS' COMMITTEE</b>	65
	<b>MEETINGS OF SCHEME CREDITORS</b>	
42.	MEETINGS OF <b>SCHEME CREDITORS</b>	67
43.	NOTICE OF MEETINGS OF <b>SCHEME CREDITORS</b>	68
44.	VOTING AT MEETINGS	68
45.	QUORUM REQUIRED FOR MEETINGS	69
46.	CHAIRMAN OF MEETINGS	69
47.	POWERS OF THE <b>SCHEME CREDITORS</b> IN GENERAL MEETING	69
	<b>TERMINATION OF THE SCHEME</b>	
48.	TERMINATION OF THE <b>SCHEME</b>	71
49.	PARTIAL TERMINATION OF THE <b>SCHEME</b>	72
50.	EFFECT OF TERMINATION OR PARTIAL TERMINATION OF THE <b>SCHEME</b>	72
	<b>EFFECT OF AN INSOLVENCY PROCEEDING</b>	
51.	EFFECT OF AN <b>INSOLVENCY PROCEEDING</b>	73
	<b>INDEMNITY, BOARD FUNCTIONS AND SCHEME CREDITORS' CO-OPERATION</b>	
52.	VALIDITY OF ACTS OF AND RESPONSIBILITY OF THE <b>JOINT SCHEME ADMINISTRATORS</b> AND THE <b>CREDITORS' COMMITTEE</b>	74
53.	INDEMNITIES AND VALIDATION	74
54.	FUNCTIONS OF THE <b>BOARD</b>	75
55.	<b>SCHEME CREDITORS</b> TO CO-OPERATE	75
56.	DISPATCH OF NOTICES AND OTHER WRITTEN COMMUNICATIONS AND DOCUMENTS	75
57.	EXTENSION AND CALCULATION OF DEADLINES	76
58.	GOVERNING LAW	76

# PRELIMINARY

## 1. Definitions

1.1 In this **Scheme**, unless inconsistent with the subject or context, the following words shall have the following meanings:

“ <b>Admitted Claim</b> ”	the net balance, if any, determined in accordance with Clauses 17.7 to 17.10 or 18.7 to 18.9, as the case may be, as being due to a <b>Scheme Creditor</b> in respect of his aggregate <b>Agreed Liabilities</b> following the application of set-off pursuant to Clause 6, and by reference to which the dividend or <b>Distribution</b> payable to that <b>Scheme Creditor</b> will be calculated;
“ <b>Agreed Liability</b> ”	the entire amount of a <b>Liability</b> the quantum of which has been established pursuant to Clauses 17.1 to 17.6 or 18.1 to 18.6, as applicable;
“ <b>Agreed Percentage</b> ”	in relation to each <b>E&amp;A Pool Participant</b> , the percentage by reference to which the amount of the <b>Distribution</b> to be made to that <b>E&amp;A Pool Participant</b> in accordance with the <b>Scheme</b> is determined, such percentage being calculated in accordance with Clause 20;
“ <b>Alternative Scheme</b> ”	a Scheme of Arrangement pursuant to Section 425 of the <b>Companies Act</b> , or any amendment, modification or re-enactment thereof, or pursuant to any successor statute or provision, or any analogous or similar mechanism for effecting a return to <b>Scheme Creditors</b> or any group of them, excluding, for the avoidance of doubt, the <b>Scheme</b> ;
“ <b>Annual Actuarial Report</b> ”	a report produced by the <b>Scheme Actuary</b> for the <b>Joint Scheme Administrators</b> pursuant to Clause 14.1, setting out the results of an <b>Annual Actuarial Review</b> ;
“ <b>Annual Actuarial Review</b> ”	the review of the <b>Company’s</b> liabilities to be carried out pursuant to Clause 14.1;
“ <b>Available Distributable Amount</b> ”	the amount determined in accordance with Clause 23.3;
“ <b>Available General Assets</b> ”	the amount of <b>General Assets</b> available for distribution to <b>E&amp;A Pool Participants</b> having made the payments and provisions referred to in Clause 22.1;
“ <b>Board</b> ”	the Board of Directors of the <b>Company</b> ;
“ <b>Committee Member</b> ”	a duly appointed member of the <b>Creditors’ Committee</b> ;
“ <b>Companies Act</b> ”	the Companies Act 1985, as amended and in force at the <b>Effective Date</b> ;
“ <b>Company Directors Disqualification Act</b> ”	the Company Directors Disqualification Act, 1986, as amended modified or re-enacted from time to time;
“ <b>Company</b> ”	The Insurance Corporation of Singapore (UK) Limited, Company Number 1520360;
“ <b>Court</b> ”	the High Court of Justice of England and Wales;

“ <b>Creditors’ Committee</b> ”	the Creditors’ Committee established pursuant to Clause 38.1;
“ <b>Creditors’ Fund</b> ”	the fund established pursuant to Clause 12.1 which shall include, for the avoidance of doubt, the <b>Operating Fund</b> ;
“ <b>Creditors’ Resolution</b> ”	a resolution passed in accordance with Clause 44 read with Clause 45;
“ <b>Current Balances</b> ”	<b>Liabilities</b> owed to <b>E&amp;A Pool Participants</b> and arising out of the <b>Company’s</b> participation as an underwriting member in the <b>E&amp;A Pools</b> , having taken account of any applicable set-off or cross claim, which are due for payment at the time calculation of <b>Agreed Percentages</b> pursuant to Clauses 20.1 and 20.2 takes place;
“ <b>Current E&amp;A Liability</b> ”	the amount of the <b>Company’s Liabilities</b> to <b>E&amp;A Pool Creditors</b> in respect of losses actually incurred by an <b>E&amp;A Pool Creditor</b> and reported to an <b>E&amp;A Pool</b> , or paid by <b>E&amp;A Pool Creditors</b> to their insureds or reinsureds, together with its liabilities in respect of <b>E&amp;A Claims Expenses</b> and in respect of brokerage arising out of <b>E&amp;A Pool</b> business in each case being actually due for payment;
“ <b>Deed</b> ”	The deed entered into between the <b>Company</b> and <b>St Paul Re</b> on 19 October 2001 pursuant to which <b>St Paul Re</b> agreed to deal with and, as appropriate, pay <b>Oberon Pool Claims</b> ;
“ <b>Deficit</b> ”	A shortfall in the <b>Creditors’ Fund</b> being an amount by which the value of the <b>Creditors’ Fund</b> as calculated by the <b>Joint Scheme Administrators</b> pursuant to Clause 14.2 less the aggregate of: (i) the <b>Current E&amp;A Liability</b> , (ii) the <b>Scheme Claims</b> of <b>General Creditors</b> in respect of <b>Liabilities</b> which are due for payment and (iii) the <b>Joint Scheme Administrators’</b> estimate of future and contingent <b>Liabilities</b> to <b>General Creditors</b> (in each case valued at the date as at which the <b>Future E&amp;A Liability</b> shown in the current <b>Annual Actuarial Report</b> was valued), falls below 110% of such <b>Future E&amp;A Liability</b> ;
“ <b>Disputed Scheme Claim</b> ”	a <b>Scheme Claim</b> in respect of which there is a dispute between the <b>Company</b> or the <b>Joint Scheme Administrators</b> and the relevant <b>Scheme Creditor</b> ;
“ <b>Dispute Resolution Procedure</b> ”	the procedure for the resolution of disputes set out in Clause 37;
“ <b>Distribution</b> ”	any payment to be made to a <b>Scheme Creditor</b> pursuant to the <b>Scheme</b> , excluding a distribution by way of dividend pursuant to Clause 23;
“ <b>Dividend Trigger Date</b> ”	the date following the expiry of 28 days from the <b>Joint Scheme Administrators</b> giving notice of a <b>Deficit</b> pursuant to Clause 14.3.3 where they have received no instruction in accordance with Clause 14.4.1 or payment in accordance with Clause 14.4.2;
“ <b>E&amp;A Claims Expenses</b> ”	expenses, being expenses ordinarily recoverable by a reinsured from its reinsurer according to usual market custom and practice, incurred in averting, minimising, or defending a claim under a policy underwritten by an <b>E&amp;A Pool</b> , or in pursuing salvages or recoveries in respect of that claim, by or on

	<p>behalf of an underwriting member of an <b>E&amp;A Pool</b> appearing in the stamp applied to that policy, including the fees of lawyers, loss adjusters or other advisers appointed by the <b>E&amp;A Pool Manager</b> to advise on or defend the claim, or to advise on or seek to make salvages or recoveries (including reinsurance recoveries) in respect of the claim, and any other reasonable costs and expenses directly referable to the claim;</p>
<b>“E&amp;A Pool Creditor”</b>	any <b>External E&amp;A Pool Creditor</b> and any <b>Internal E&amp;A Pool Creditor</b> ;
<b>“E&amp;A Pool Manager”</b>	the manager for the time being of the <b>E&amp;A Pools</b> or if there is no single manager, the person appointed by the <b>Joint Scheme Administrators</b> to manage the run-off of the <b>Company’s E&amp;A Pool</b> business;
<b>“E&amp;A Pool Participant”</b>	any <b>Scheme Creditor</b> who underwrote business as a participant in any one or more of the <b>E&amp;A Pools</b> and who is included in the list at Appendix 11 and any person who has acquired by reason of any transfer, assignment, sale or novation of debt or of right to receive payment or by reason of any reorganisation or reconstruction of companies the entire claim of such a <b>Scheme Creditor</b> against the <b>Company</b> under the <b>Scheme</b> ;
<b>“E&amp;A Pools”</b>	the marine, aviation and non-marine underwriting pools formerly managed by English & American Underwriting Agency Limited;
<b>“Effective Date”</b>	the date on which an office copy of the Order of the <b>Court</b> sanctioning the <b>Scheme</b> shall be delivered for registration to the Registrar of Companies of England and Wales;
<b>“Entitlement”</b>	the aggregate sum which an <b>E&amp;A Pool Participant</b> is entitled to have received by way of <b>Distribution</b> from <b>General Assets</b> , calculated by applying its <b>Agreed Percentage</b> to the aggregate of previous <b>Distributions</b> to <b>E&amp;A Pool Participants</b> and <b>Available General Assets</b> at the time of calculation;
<b>“Explanatory Statement”</b>	the Explanatory Statement provided in accordance with Section 426 of the <b>Companies Act</b> in relation to the <b>Scheme</b> ;
<b>“External E&amp;A Pool Creditor”</b>	any <b>Scheme Creditor</b> (excluding for the avoidance of doubt any <b>Internal E&amp;A Pool Creditor</b> and any <b>E&amp;A Pool Participant</b> ) whose <b>Scheme Claim</b> arises out of contracts of insurance, reinsurance or retrocession entered into by him in the capacity of insured, reinsured or reinsurer with the <b>E&amp;A Pools</b> or any of them, including any person who has acquired such a claim by reason of any transfer, assignment, sale or novation of debt or of right to receive payment or by reason of any reorganisation or reconstruction of companies. For the avoidance of doubt, such a <b>Scheme Creditor</b> shall be treated as an <b>External E&amp;A Pool Creditor</b> in respect of such <b>Scheme Claims</b> only and any reference to the <b>Scheme Claims</b> of an <b>External E&amp;A Pool Creditor</b> is to such <b>Scheme Claims</b> alone;
<b>“Final Award”</b>	any financial award made against the <b>Company</b> or against participants in the <b>E&amp;A Pools</b> in <b>Proceedings</b> which is either not appealed by it/them within the deadline for appeal laid down by the relevant rules of procedure or by the court or tribunal

concerned (including, for the avoidance of doubt, any extensions to such deadlines agreed between the parties to the **Proceedings** or granted by such court or tribunal), or which is made by a final appellate court or tribunal, and any sum agreed by or on behalf of the **Company** or by a majority in value of the participants in the **E&A Pools** against whom **Proceedings** are being brought pursuant to a negotiated settlement of such **Proceedings**. A majority in value of such participants shall be calculated by reference to their proportionate shares of liability in respect of the contract under which the claim which is the subject matter of the **Proceedings** arises;

- “**Future E&A Liability**” the amount of the **Scheme Actuary’s** best estimate of the **Company’s** gross ultimate liabilities to **E&A Pool Creditors** (excluding liabilities in respect of losses incurred by **E&A Pool Creditors** and reported to an **E&A Pool** or paid by **E&A Pool Creditors** to their insureds or reinsureds) and in respect of future **E&A Claims Expenses** and future brokerage arising in relation to **E&A Pool** business;
- “**General Assets**” the **Company’s** assets excluding the **Creditors’ Fund** and any assets which are comprised in **Security**;
- “**General Creditors**” **Scheme Creditors** whose claims arise otherwise than in their capacity as an **E&A Pool Creditor**, an **E&A Pool Participant**, or an **Oberon Pool Creditor**, including **Scheme Creditors** with **Scheme Claims** for **Preferential Liabilities**. For the avoidance of doubt, such **Scheme Creditors** shall be treated as **General Creditors** in respect of such claims only and references to the **Scheme Claims** of **General Creditors** are to such claims alone;
- “**Insolvency Act**” and “**Insolvency Rules**” the Insolvency Act 1986, and the Insolvency Rules 1986 as amended and in force at the **Effective Date**;
- “**Insolvency Proceeding**” the making of an order for the winding-up or administration of the **Company**, or the passing of a resolution for the voluntary winding-up of the **Company**, under the **Insolvency Act** or any amendment, modification or re-enactment thereof or the taking in relation to the **Company** of any analogous step in any analogous proceeding in any jurisdiction;
- “**Internal E&A Pool Creditor**” any **Scheme Creditor** whose **Scheme Claim** arises out of its participation as an underwriting member in the **E&A Pools**, or any of them, other than those **Scheme Creditors** listed in Appendix 11, including any person who has acquired such a claim by reason of any transfer, assignment, sale or novation of debt or of right to receive payment or by reason of any reorganisation or reconstruction of companies. For the avoidance of doubt, such a **Scheme Creditor** shall be treated as an **Internal E&A Pool Creditor** in respect of such **Scheme Claims** only, and any reference to the **Scheme Claims** of an **Internal E&A Pool Creditor** is to such **Scheme Claims** alone;
- “**Joint Provisional Liquidators**” Philip John Singer and Douglas Nigel Rackham;
- “**Joint Scheme Administrators**” the persons for the time being appointed as scheme administrators pursuant to the provisions of the **Scheme**;

<b>“Liability”</b>	<p>Any of the following:</p> <ul style="list-style-type: none"><li>(a) any debt or liability to which the <b>Company</b> is subject at the <b>Effective Date</b>;</li><li>(b) any debt or liability to which the <b>Company</b> may become subject after the <b>Effective Date</b> by reason of any obligation incurred before that date; and</li><li>(c) any interest claimable pursuant to Clause 5.</li></ul> <p>In relation to the above:</p> <ul style="list-style-type: none"><li>(i) it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion;</li><li>(ii) “liability” means (subject to (i) above) a liability to pay money or money’s worth, including any liability under any enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution;</li><li>(iii) in determining whether any liability in tort is a <b>Liability</b>, the <b>Company</b> is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued;</li><li>(iv) “debt” or “liability” does not include a debt or liability which would be statute barred at the <b>Petition Date</b> under English law or the law of any other jurisdiction which applies to the relevant debt or liability;</li><li>(v) for the avoidance of doubt <b>Liability</b> does not include a <b>Scheme Expense</b>;</li></ul>
<b>“Lloyd’s Syndicate”</b>	a group of underwriting members of <b>Lloyd’s</b> to which a number is assigned by the Council of <b>Lloyd’s</b> ;
<b>“Lloyd’s”</b>	the society incorporated by the Lloyd’s Act 1871 by the name of Lloyd’s and situated at One Lime Street, London EC3M 7HA;
<b>“Net Debt”</b>	any amount found to be due to the <b>Company</b> from a person claiming to be a creditor of the <b>Company</b> in respect of a <b>Liability</b> , following the application of set-off in accordance with Clause 6;
<b>“Net Debtor”</b>	any person liable to pay a <b>Net Debt</b> pursuant to Clause 6.6;
<b>“Nominated Representative”</b>	any individual nominated by a <b>Committee Member</b> from time to time to act as its representative for the purpose of attending meetings of the <b>Creditors’ Committee</b> ;
<b>“Oberon Pool Claim”</b>	that part of any claim against the <b>Oberon Pool</b> arising out of a contract of insurance, reinsurance or retrocession for which the <b>Company</b> is liable in its capacity as a former participant in the <b>Oberon Pool</b> whether such claim is being pursued by the relevant insured or reinsured, by any person who has acquired such claim by reason of any transfer, assignment, sale or novation of debt or of right to receive payment or by reason of any reorganisation or reconstruction of companies, or by a broker who has funded such claim on behalf of the <b>Company</b>

	where funding occurred at the written request of the <b>Company</b> or pursuant to a contractual obligation of the broker to the <b>Company</b> ;
<b>“Oberon Pool Creditor”</b>	any <b>Scheme Creditor</b> having an <b>Oberon Pool Claim</b> including any person who has acquired such a claim by reason of any transfer, assignment, sale or novation of debt or of right to receive payment or by reason of any reorganisation or reconstruction of companies and any broker who has funded a claim by an <b>Oberon Pool Creditor</b> , where the funding occurred at the written request of the <b>Company</b> or pursuant to a contractual obligation of the broker to the <b>Company</b> . For the avoidance of doubt, an <b>Oberon Pool Creditor</b> shall be treated as such in respect of <b>Oberon Pool Claims</b> only and any reference to the <b>Scheme Claims</b> of an <b>Oberon Pool Creditor</b> is to such claims alone;
<b>“Oberon Pool”</b>	the underwriting pool managed by Oberon Underwriters Limited from 1 January 1980 and operating in the London market;
<b>“Operating Expenses”</b>	the <b>Company’s</b> share of the costs and expenses incurred by the <b>E&amp;A Pool Manager</b> in running off the business of the <b>E&amp;A Pools</b> or, where there is no single manager, the costs and expenses of any person appointed by the <b>Joint Scheme Administrators</b> to manage the run off of the <b>Company’s E&amp;A Pool</b> business;
<b>“Operating Fund”</b>	the fund established pursuant to Clause 12.3 including sums transferred pursuant to Clause 12.5;
<b>“Outstanding Entitlement”</b>	any sum by which an <b>E&amp;A Pool Participant’s Entitlement</b> exceeds the aggregate of all <b>Distributions</b> made to it;
<b>“Overpayment”</b>	any sum by which the aggregate of all <b>Distributions</b> made to an <b>E&amp;A Pool Participant</b> exceeds that <b>E&amp;A Pool Participant’s Entitlement</b> ;
<b>“Petition Date”</b>	14 October 1993, being the date on which the winding-up petition was presented in respect of the <b>Company</b> ;
<b>“Post”</b>	first class post or air mail or a generally recognised commercial courier service;
<b>“Preferential Liability”</b>	any <b>Liability</b> which would have been preferential under Section 386 of the <b>Insolvency Act</b> if the <b>Company</b> were being wound up by the <b>Court</b> and the relevant date for the purposes of Schedule 6 of the <b>Insolvency Act</b> were 14 October 1993, being the date of the appointment of provisional liquidators over the <b>Company</b> ;
<b>“Proceedings”</b>	Any form of proceedings in any jurisdiction or forum including, without limitation, any demand, legal proceedings, arbitration, alternative dispute resolution, adjudication, mediation, seizure, distraint, forfeiture, re-entry, execution or enforcement of judgment or any step taken for the purpose of creating or enforcing a lien;
<b>“Property”</b>	all forms of property including money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“Reserves”	the <b>Company’s</b> provision for future <b>Liabilities</b> to <b>E&amp;A Pool Participants</b> arising out of the <b>Company’s</b> participation as an underwriting member in the <b>E&amp;A Pools</b> , for every year of account in which the <b>Company</b> participated, having taken account of any applicable set-off or cross claim in respect of estimated future liabilities of <b>E&amp;A Pool Participants</b> to the <b>Company</b> arising out of such participation;
“Scheme Accounts”	any bank accounts opened pursuant to Clause 33.1.10;
“Scheme Actuary”	the actuary or actuaries appointed by the <b>Joint Scheme Administrators</b> for the purpose of carrying out the <b>Annual Actuarial Review</b> ;
“Scheme Administrator”	where there is only one scheme administrator in office, that person, and all references to <b>Joint Scheme Administrators</b> herein shall be deemed to refer also to such <b>Scheme Administrator</b> ;
“Scheme Adjudicator”	any person appointed in accordance with the provisions of the <b>Scheme</b> to adjudicate on a dispute;
“Scheme Claim”	a claim against the <b>Company</b> for a <b>Liability</b> in respect of which the <b>Agreed Liability</b> has not yet been established;
“Scheme Creditor”	a person who is or claims to be a creditor of the <b>Company</b> in respect of a <b>Liability</b> , including any person treated as a principal creditor in accordance with Clause 33.1.12 and any group of persons treated as a single creditor pursuant to Clause 33.2, unless and until it is established to the satisfaction of the <b>Joint Scheme Administrators</b> that that person is not owed a <b>Liability</b> ;
“Scheme Document”	the document containing the terms of the <b>Scheme</b> and the <b>Explanatory Statement</b> together with the appendices thereto;
“Scheme Expenses”	the expenses referred to in Clause 8;
“Scheme Period”	the period from the <b>Effective Date</b> to the <b>Termination Date</b> ;
“Scheme Rate”	the rate of exchange for the relevant currency determined by the <b>E&amp;A Pool Manager</b> in consultation with the <b>Joint Scheme Administrators</b> ;
“Scheme”	the Scheme of Arrangement in the form herein contained together with any modification thereof or addition thereto approved or imposed by the <b>Court</b> ;
“Secured Creditor”	a creditor of the <b>Company</b> who holds <b>Security</b> in respect of a <b>Liability</b> ;
“Secured Liability”	that part of a <b>Liability</b> which is fully secured by a <b>Security</b> ;
“Security”	any letter of credit or deposit or reserve of funds or assets established by the <b>Company</b> to secure payment of any <b>Liability</b> ;
“St Paul Re”	St Paul Reinsurance Company Limited, company number 1460363;
“Statement”	the statement dispatched to a <b>General Creditor</b> pursuant to Clause 17.8 showing the amount of his <b>Admitted Claim</b> or <b>Net Debt</b> ;
“Surplus”	an excess of assets in the <b>Creditors’ Fund</b> , being an amount by which the value of the <b>Creditors’ Fund</b> as calculated by the <b>Joint Scheme Administrators</b> pursuant to Clause 14.2 less the

aggregate of: (i) the **Current E&A Liability** (ii) the **Scheme Claims** of **General Creditors** in respect of **Liabilities** which are due for payment and (iii) the **Joint Scheme Administrators'** estimate of future and contingent **Liabilities** to **General Creditors** (in each case valued at the date as at which the **Future E&A Liability** shown in the current **Annual Actuarial Report** was valued) exceeds 123% of such **Future E&A Liability**;

- “Termination Date”** the date on which the **Scheme** ceases to have effect in accordance with Clause 48;
- “Trustee”** a trustee of the balance remaining on the **Scheme Accounts** at the **Termination Date** appointed in accordance with Clause 25.2 of the **Scheme**;
- “US Dollar”** the Dollar in the currency of the United States of America;
- “Working Day”** any day other than Saturday, Sunday or any other day which is a public holiday.

1.2 In the **Scheme**:

- 1.2.1 references to Clauses are references to Clauses of the **Scheme** and references to Appendices are references to Appendices to the **Scheme Document**;
- 1.2.2 references to a person include a company, unincorporated association or partnership;
- 1.2.3 references to the date of a document, form, notice or report mean the date shown on such document, form notice or report as the date thereof;
- 1.2.4 references in the **Scheme**, other than in Clause 30.2, to PricewaterhouseCoopers shall be deemed to refer also to any predecessor or successor firm or business entity and any other firm or business entity from which a duly appointed **Joint Scheme Administrator** for the time being holding office practises;
- 1.2.5 references to **Working Days** are to **Working Days** in England unless otherwise indicated;
- 1.2.6 the singular includes the plural and vice versa, and masculine includes feminine;
- 1.2.7 headings are for ease of reference only and shall not affect the interpretation of the **Scheme**;
- 1.2.8 defined terms are indicated in bold type where they occur in headings to Clauses and in the text of Clauses.

## THE SCHEME – GENERAL

### 2. Effective Date

2.1 The **Scheme** shall come into operation on the **Effective Date**.

### 3. Application of the Scheme

3.1 The **Scheme** shall apply to all **Liabilities** of the **Company**.

### 4. Enforcement of Scheme Claims

4.1 Save as expressly provided for in Clause 4.2, and without prejudice to Clause 4.6, no **Scheme Creditor** shall be entitled to take or continue any step or do any act against or in respect of the **Company** or its **Property** or the **Joint Scheme Administrators** (including by way of any **Proceedings** or by enforcing **Security** otherwise than as provided for in Clause 16.1) after the **Effective Date** for the purpose of obtaining or securing payment, or establishing the existence or quantum, of any **Liability**.

4.2 Notwithstanding the provisions of Clause 4.1, **Proceedings** may be brought against the **Company** where:

4.2.1 the **Proceedings** are being brought by a **General Creditor** having a **Scheme Claim**, in respect of which neither the **E&A Pool Manager** nor the **Joint Scheme Administrators** have established the **Agreed Liability** within the period laid down by Clause 17.2, for the purpose of establishing the existence and/or quantum of the **Agreed Liability** in respect of that **Scheme Claim**; or

4.2.2 the **Proceedings** are being brought by an **Oberon Pool Creditor** in respect of whom **St Paul Re** has rejected an **Oberon Pool Claim** made under Clause 10.5 or Clause 19.2, or has failed to agree such claim within 6 months of being notified of it, for the purpose of establishing the existence and/or quantum of the **Liability** in relation to that **Oberon Pool Claim**; or

4.2.3 the **Proceedings** are being brought by **St Paul Re** in the name of an **Oberon Pool Creditor** by virtue of an assignment to **St Paul Re**, whether express or by operation of law, of the relevant **Oberon Pool Claim**, for the purpose of establishing the existence and/or quantum of the **Liability** in relation to that **Oberon Pool Claim**.

For the avoidance of doubt, nothing in this Clause 4.2 shall enable a **Scheme Creditor** or **St Paul Re** to bring **Proceedings** for the purpose of obtaining or securing payment of any **Liability**.

4.3 If any **Scheme Creditor** takes any action which is prohibited by Clause 4.1 after the **Effective Date**, he shall be deemed to have received on account of any dividend(s) or **Distribution** to which he would otherwise be entitled pursuant to the **Scheme** an advance payment under the **Scheme** equal to the amount or gross value of any money, property or advantage obtained by him at the expense of the **Company** as a result of such action, and the extent, if any, to which he is entitled to a payment from the **Company** shall be determined accordingly. **Scheme Creditors** shall be deemed to agree that in the event that the amount of any deemed receipt(s) on account of dividends or **Distributions** attributable to a **Scheme Creditor** exceed the total of all sums by way of dividend or **Distribution** which that **Scheme Creditor** would otherwise receive pursuant to the **Scheme**, he shall be treated as a debtor of the **Company** in respect of such excess.

- 4.4 For the purpose of Clause 4.3 the value of any money, property or advantage obtained as aforesaid shall be conclusively determined by the **Joint Scheme Administrators** and (without prejudice to the generality of the foregoing) may include such amount as the **Joint Scheme Administrators** may in their absolute discretion consider to be appropriate in respect of interest and costs, charges and expenses incurred by the **Company** or the **Joint Scheme Administrators** as a consequence of the action prohibited by Clause 4.1.
- 4.5 Each **Scheme Creditor** is deemed to acknowledge that if he takes **Proceedings** against the **Company** in breach of Clause 4.1, the **Joint Scheme Administrators** shall be entitled to obtain an order staying those **Proceedings** and providing for payment by the **Scheme Creditor** concerned of any costs charges and expenses incurred by the **Company** or the **Joint Scheme Administrators** as a result of those **Proceedings**.
- 4.6 For the avoidance of doubt, nothing in the **Scheme** shall preclude any **Secured Creditor** from enforcing its **Security**, provided that this is done strictly in accordance with the terms of the contract pursuant to which such **Security** was established and the terms (if any) of the **Security**. Enforcing a **Security** in any other circumstances shall constitute a step prohibited by Clause 4.1.
- 5. Interest**
- 5.1 Where a **Liability** owed by the **Company** to a **Scheme Creditor** other than an **E&A Pool Participant** bears interest, that interest shall form part of the **Liability** except in so far as it is payable in respect of any period after the **Effective Date**.
- 5.2 In the following circumstances, a **Scheme Claim**, other than the **Scheme Claim** of an **E&A Pool Participant**, may include interest on the **Liability** for a period before the **Effective Date** although not previously reserved for or agreed:
- 5.2.1 If the **Liability** is due by virtue of a written instrument, and payable at a certain time before the **Effective Date**, for the period from that time to the **Effective Date**;
- 5.2.2 If the **Liability** is due otherwise, and if before the **Effective Date**, a demand for payment of the **Liability** was made in writing by or on behalf of the **Scheme Creditor** and notice given that interest would be payable from the date of the demand to the date of payment, for the period from the date of the demand to the **Effective Date**.
- 5.3 The rate of interest payable under Clause 5.2.1 in respect of any **Liability** is 5% per annum and under Clause 5.2.2, is the said rate or the rate specified in the written demand for payment referred to in Clause 5.2.2, whichever shall be the lesser.
- 5.4 For the avoidance of doubt, the calculation of **E&A Pool Participants' Agreed Percentages** pursuant to Clauses 20.1 and 20.2 shall not take account of any sum which an **E&A Pool Participant** might otherwise be entitled to claim by way of interest.
- 6. Set-off**
- 6.1 Subject to the provisions of Clauses 6.2 and 6.4, the set-off of **E&A Pool Creditors' Agreed Liabilities** against liabilities owed by them to the **Company** shall be dealt with as follows:
- 6.1.1 the **Company** and **E&A Pool Creditors** shall be entitled to exercise any right of set-off in relation to **Agreed Liabilities** and liabilities owed by them to the **Company** which would be available to them in the absence of a liquidation of the **Company** pursuant to the **Insolvency Act** as amended, modified or re-enacted from time to time;

6.1.2 in the case of **External E&A Pool Creditors** where any such right is to be exercised it shall be exercised after the establishment of an **Agreed Liability** in respect of such a creditor's **Scheme Claim** pursuant to Clause 18.2, 18.3 or 18.4; and

6.1.3 in the case of **Internal E&A Pool Creditors**, from time to time and in any event at least once in the twelve month period following the end of the calendar quarter in which the **Effective Date** occurred and in every twelve month period thereafter, the **E&A Pool Manager** shall calculate mutual liabilities existing between the **Company** and **Internal E&A Pool Creditors** and shall take an account of mutual liabilities existing between the **Company** and each such **Internal E&A Pool Creditor**.

For the avoidance of doubt, only sums which have been established as being due to the **E&A Pool Creditor** pursuant to Clause 18 at the time when an account is taken by the **E&A Pool Manager** pursuant to Clause 6.1.2 or 6.1.3 shall be included in that account. Any **Net Debt** shall be payable by the **Net Debtor** to the **Company** forthwith.

- 6.2 Notwithstanding the provisions of Clause 6.1, the **Joint Scheme Administrators** shall have the right, at their absolute discretion, to elect in relation to any one or more **E&A Pool Creditor(s)**, or all of them to retain or, to instruct the **E&A Pool Manager** to retain such proportion of any **Distribution** to be made or dividend to be paid to an **E&A Pool Creditor** in respect of one or more **Agreed Liabilities** as a reserve fund for payment of future or contingent liabilities of that **E&A Pool Creditor** to the **Company** when they fall due.
- 6.3 Subject to the provisions of Clause 6.4 and Clause 10.3, the **Company** and **General Creditors** shall be entitled to exercise any right of set-off in relation to **Agreed Liabilities** of **General Creditors** and liabilities owed by them to the **Company** which would be available to them in the absence of a liquidation of the **Company** pursuant to the **Insolvency Act** as amended, modified or re-enacted from time to time. Set-off shall be applied after the **Agreed Liability** in respect of each of a **General Creditor's Scheme Claims** in respect of **Liabilities** other than those arising out of future **Liabilities** has been established in accordance with the provisions of the **Scheme**.
- 6.4 In the event that, following a review pursuant to Clause 14.2, the **Joint Scheme Administrators** determine that there is a **Deficit**, in the absence of a transfer from **General Assets** or a contribution by **E&A Pool Participants** to make good the **Deficit**, the provisions of Clauses 6.1 and 6.3, but not of Clause 6.2, shall cease to apply. The set-off of **E&A Pool Creditors' and General Creditors' Agreed Liabilities** against sums owed by such creditors to the **Company** shall thereafter be governed by Clauses 6.5, to 6.9.
- 6.5 Subject to Clause 10.3, where, before the **Effective Date**, there have been mutual credits, mutual debts or other mutual dealings between the **Company** and any **General Creditor** or **E&A Pool Creditor** making a **Scheme Claim**, an account shall be taken of what is due from the **Company** to that **General Creditor** or **E&A Pool Creditor** pursuant to the terms of the **Scheme** and what is due from that **General Creditor** or **E&A Pool Creditor** to the **Company** in respect of the mutual credits, debts or other dealings and the sums due from one party shall be set off against the sums due from the other.
- 6.6 The account referred to in Clause 6.5 shall be taken immediately prior to each calculation and payment of a dividend pursuant to Clause 23, and only the balance due from the **Company** (if any) shall thereafter constitute that **General Creditor's** or **E&A Pool Creditor's Admitted Claim** or **Net Debt**. **General Creditors, E&A Pool**

**Creditors** and **Net Debtors** shall be notified of the amount of their **Admitted Claim** or **Net Debt** as applicable by the **Joint Scheme Administrators**. Any **Net Debt** shall be paid by the **Net Debtor** to the **Joint Scheme Administrators** forthwith.

- 6.7 For the avoidance of doubt the account referred to in Clause 6.5 shall take account of contingent or future **Liabilities** but shall not take account of contingent or future sums which may become payable by the **General Creditor** or **E&A Pool Creditor** to the **Company**.
- 6.8 For the purposes of an account taken pursuant to Clause 6.5, the **Joint Scheme Administrators** shall notify the **General Creditor** or **E&A Pool Creditor**, as applicable, by notice in writing sent by **Post** of what they consider to be a just estimate of contingent and future **Liabilities** to such **General Creditor** or **E&A Pool Creditor**, and of the amount of any liability of such **General Creditor** or **E&A Pool Creditor** to be applied in set-off against the **Company's Liabilities** to such creditors and shall attempt to agree such estimate and such amount with the **General Creditor** or **E&A Pool Creditor**. The sums agreed between the parties as being a just estimate of such contingent and future **Liabilities** and/or as the amount of any liability due to the **Company** from such **General Creditor** or **E&A Pool Creditor** shall be binding on the **Company**, the **Joint Scheme Administrators**, the **E&A Pool Creditor** or **General Creditor** concerned and all **Scheme Creditors**. If agreement has not been reached within 3 months of the date of such notice, or if, before that time, the **Joint Scheme Administrators** conclude that the differences between the parties are such that it is not possible for any agreement to be reached, the **Joint Scheme Administrators** shall, subject to Clause 35.1, in consultation with the **Creditors' Committee** appoint a **Scheme Adjudicator** to deal with the dispute in accordance with the **Dispute Resolution Procedure**. The sum determined by the **Scheme Adjudicator** as being a just estimate of contingent and future **Liabilities** to the **E&A Pool Creditor** or **General Creditor** concerned and/or as the amount of any liability due to the **Company** from such **General Creditor** or **E&A Pool Creditor** shall be binding on the **Company**, the **Joint Scheme Administrators**, such **E&A Pool Creditor** or **General Creditor** and all **Scheme Creditors**. Following the determination of the just estimate of such contingent and future **Liabilities** or of the amount of any liability owed by such **E&A Pool Creditor** or **General Creditor** pursuant to this Clause 6.8, whether by agreement or following adjudication by the **Scheme Adjudicator**, a further account shall be taken for set-off purposes in accordance with the provisions of Clause 6.5 and 6.6.
- 6.9 Save as provided in Clause 10.3, sums due from the **Company** to a **General Creditor** or to an **E&A Pool Creditor** shall not be included in the account taken under Clause 6.5 where the sums have become due to the **Scheme Creditor** by reason of any transfer, assignment, sale or novation of debt or of right to receive payment, or by reason of any reorganisation or reconstruction of companies on a date after the **Petition Date**.

## 7. Foreign Currency Conversion

- 7.1 **Distributions** and dividends will be paid to **E&A Pool Creditors** and **General Creditors** in the currency in which the relevant **Liability** was incurred.
- 7.2 For the purposes of any account to be taken pursuant to Clauses 6.1 and 6.2, in the event that the sums to be included in the account were incurred in different currencies, the balances shall be converted, for the purposes of the account, into such currency and at such exchange rate as the **E&A Pool Manager** may in accordance with its normal practice determine.

- 7.3 For the purposes of any account to be taken pursuant to Clause 6.5, in the event that the sums to be included in the account were incurred in different currencies the smaller balance(s) shall be converted for the purposes of the account, into the currency of the larger or largest balance at the **Scheme Rate**.

## 8. Scheme Expenses

- 8.1 All costs, charges and expenses of and incidental to the **Scheme** and the performance by the **Joint Provisional Liquidators** of their functions pursuant to the order appointing them to the **Company** shall be **Scheme Expenses**, including, without prejudice to the generality of the foregoing:
- 8.1.1 any remuneration of the **Joint Provisional Liquidators** (calculated by reference to the work done by them and employees of PricewaterhouseCoopers under their control, to the time spent by them and on the basis of that firm's usual rates for the type of work involved) relating to the performance of their functions pursuant to the order appointing them to the **Company**, together with all costs, charges and expenses incurred by them including the fees and expenses of any third party service providers, outstanding at the **Effective Date** or incurred after the **Effective Date** in making any application to the **Court** in relation to the dismissal of the **Company's** winding-up petition, or the termination of their appointment, and their release, as provisional liquidators;
- 8.1.2 all costs, charges and expenses incurred by the **Company** and/or the **Joint Scheme Administrators** in connection with the negotiation and preparation of the **Scheme** and any **Alternative Scheme** prepared and/or submitted to **Scheme Creditors** pursuant to Clause 33.1.19 (including, but not limited to, all legal, accounting, actuarial, financial, run-off and other consultants' fees, expenses and other costs);
- 8.1.3 any court and filing fees and stamp or other duty or tax and any disbursements incurred in relation to the **Scheme**;
- 8.1.4 the costs of holding meetings of **Scheme Creditors** and any meetings of shareholders or directors convened to consider the **Scheme** and the costs of obtaining the sanction of the **Court** and registration of the **Scheme** at the Companies Registry of England and Wales;
- 8.1.5 all liabilities, expenses, costs and disbursements incurred by the **Company** and the **Joint Scheme Administrators** in the course of exercising or performing their respective powers, duties and functions under, or for the purpose of implementing, the **Scheme**;
- 8.1.6 the cost of remunerating the **Joint Scheme Administrators** and any of the **Joint Scheme Administrators'** partners and the partners and staff of all PricewaterhouseCoopers firms, associated firms, associations and companies and their successors or any of them in connection with the exercise and performance of the powers, duties and functions of the **Joint Scheme Administrators** under the **Scheme**. Such remuneration shall be calculated by reference to time spent at the usual rates of the relevant PricewaterhouseCoopers firm, associated firm, association or company for the type of work involved or on such other basis as may be agreed by the **Joint Scheme Administrators** with the **Creditors' Committee** from time to time;

- 8.1.7 the costs incurred in employing agents, professional advisers and any other third parties to advise or assist the **Joint Scheme Administrators** and their staff in connection with the exercise and performance of their powers, duties and functions as **Joint Scheme Administrators** or to carry out any task or tasks in connection with the **Scheme**;
- 8.1.8 the costs of holding meetings of **Scheme Creditors** and the **Creditors' Committee** in accordance with the **Scheme** and the reasonable out-of-pocket expenses of **Committee Members** or **Nominated Representatives** in attending meetings of the **Creditors' Committee** and any costs of preparing advertising and sending out notices and reports to be given by or to the **Creditors' Committee** or the **Scheme Creditors** under the **Scheme**;
- 8.1.9 subject to Clause 14.8, the costs of the **Scheme Actuary** incurred in carrying out the **Annual Actuarial Review** and preparing the **Annual Actuarial Report** provided that the basis on which such costs are to be incurred and, once incurred, the level of such costs shall have first been agreed by the **Joint Scheme Administrators**;
- 8.1.10 subject to Clause 9.2, the **Operating Expenses**, and any sums to be paid on account of **Operating Expenses** pursuant to Clause 33.1.3 provided that the basis on which such costs are to be incurred and the level of such costs shall first have been agreed by the **Joint Scheme Administrators**;
- 8.1.11 the fees of and the costs, charges and expenses incurred by the **Scheme Adjudicator** as agreed or authorised by the **Joint Scheme Administrators** pursuant to Clause 35.5, and subject to Clause 37.2.4, in connection with the exercise and performance of his powers, duties and functions under the **Scheme**;
- 8.1.12 any legal and other advisers' costs which the **Company** is liable to pay pursuant to the indemnity in Clause 53.1;
- 8.1.13 all tax, duties, administrative, licence, listing, audit, filing, registration, directors' and other fees, costs, and expenses incurred by the **Company** or by the **Joint Scheme Administrators** on behalf of the **Company** in connection with the **Scheme**.

## 9. Payment of Scheme Expenses

- 9.1 Subject to Clause 9.2, the **Company** shall pay all **Scheme Expenses** in full from **General Assets**.
- 9.2 In the event that the **Joint Scheme Administrators** calculate that the **Company's General Assets** will not be of sufficient value to enable it to pay current and future **Scheme Expenses** in full, the **Operating Expenses** (including, for the avoidance of doubt, any **Operating Expenses** outstanding at the date of such calculation) shall thenceforth be paid by the **E&A Pool Participants** in accordance with Clauses 9.3 and 9.4 and the costs of the **Scheme Actuary** incurred in carrying out the **Annual Actuarial Review** and preparing the **Annual Actuarial Report** shall thenceforth be paid by the **E&A Pool Participants** in accordance with Clause 14.8.
- 9.3 From time to time, following the calculation referred to in Clause 9.2, the **Joint Scheme Administrators** shall send by post to each **E&A Pool Participant** written notice of:
  - 9.3.1 the amount of **Operating Expenses** due for payment; and
  - 9.3.2 the percentage of **Operating Expenses** for which the relevant **E&A Pool Participant** is liable, such percentage being the relevant **E&A Pool Participant's** current **Agreed Percentage**; and

9.3.3 the resulting sum payable by the **E&A Pool Participant**.

Each **E&A Pool Participant** shall pay the amount indicated in the said notice as being due from him to the **Company** by cheque or telegraphic transfer within 14 **Working Days** of the date of such notice.

9.4 In the event that any **E&A Pool Participant** fails to pay his share of **Operating Expenses** in accordance with Clause 9.3, the remaining **E&A Pool Participants** shall, forthwith upon receiving a written request from the **Joint Scheme Administrators**, pay that **E&A Pool Participant's** share, such share to be split among them in the same proportions as the percentages shown in the notices sent to them pursuant to Clause 9.3 bear to each other.

## 10. Broker Funding

10.1 Subject to Clause 10.5, claims against the **Company** by insurance brokers in respect of amounts paid by them:

10.1.1 to a cedant in relation to sums due from the **Company** to that cedant; or

10.1.2 to a retrocessionaire in relation to sums due from the **Company** to that retrocessionaire;

will not be admitted as **Scheme Claims** unless either:

10.1.3 the said cedant or retrocessionaire shall have:

10.1.3.1 provided a letter to the broker confirming that he accepts the payment received from the broker in full and final settlement as between the **Company** and himself of his claim against the **Company** for the **Liability** in respect of which that payment was made, and acknowledges the broker's right to claim in respect of that **Liability** pursuant to the provisions of the **Scheme**, such letter to be in a form acceptable to the **Joint Scheme Administrators** and to be submitted to them by the broker in making his claim; and

10.1.3.2 established to the satisfaction of the **Joint Scheme Administrators** that the **Liability** in respect of which payment was made by the broker to the said cedant or retrocessionaire has not already been satisfied by the **Company**, whether by transfer of funds or by set-off against a liability owed by that cedant or retrocessionaire to the **Company**; or

10.1.4 the payment was made pursuant to a contractual obligation of the broker to the **Company** or at the written request of the **Company**.

10.2 Where a broker has paid amounts to the **Company** in respect of either:

10.2.1 sums due to the **Company** from a cedant; or

10.2.2 sums due to the **Company** from a retrocessionaire;

the **Joint Scheme Administrators** may in their absolute discretion provide such assistance to such broker in recovering such sums from the relevant principal as they deem appropriate including, without limitation, providing a letter of authority in similar terms to that described in Clause 10.1.3.1 or assigning the claim in respect of which such payment was made, provided that in providing such assistance the **Joint Scheme Administrators** shall have regard to the interests of **Scheme Creditors** as a whole.

- 10.3 Any sum in respect of which a broker is entitled to make, and is making, a claim pursuant to Clause 10.1 may not be included in any account taken for set-off purposes pursuant to Clause 6.5 between that broker and the **Company**, unless the funding occurred before the **Petition Date**.
- 10.4 Claims by brokers in respect of claims of **E&A Pool Creditors** or **General Creditors** against the **Company** which have been funded by them will, subject to the provisions of Clauses 10.1 and 10.3, be paid from the **Creditors' Fund** as if they were **Scheme Claims** of **E&A Pool Creditors** or **General Creditors**.
- 10.5 The provisions of Clauses 10.1 to 10.4 shall not apply to claims by brokers in respect of **Oberon Pool Claims** which have been funded by them. Brokers shall submit such claims to **St Paul Re** and shall accept payment from **St Paul Re** in settlement of such claims. Brokers are deemed to acknowledge that, in the event that such a claim is rejected by **St Paul Re**, it may not be pursued further against the **Company** otherwise than by way of **Proceedings** brought in accordance with Clause 4.2.2. A broker shall not be entitled to set off any **Oberon Pool Claim** funded by it against any liability it has to the **Company**.

# COMPANY'S PROPERTY INVESTMENT AND CREDITOR'S FUND

## 11. Property of the Company

The **Company** shall forthwith upon the **Effective Date** place under the control of the **Joint Scheme Administrators** all **Property** of the **Company** (including for the avoidance of doubt all funds held on its behalf or under its control) and they shall have power to get in any **Property** not placed under their control. For the avoidance of doubt the **Company** shall continue to be the beneficial and legal owner of such **Property**, and there shall be no transfer of title to such **Property** to the **Joint Scheme Administrators** by virtue of this Clause. The **Joint Scheme Administrators** shall realise the **Property** at such times and in such manner as they deem appropriate having regard to the requirements of the **Scheme**.

## 12. The Creditors' Fund and the Operating Fund

12.1 Upon the **Effective Date** the **Joint Scheme Administrators** shall set aside a proportion of the **Company's** assets to form a fund from which the **Admitted Claims** of **E&A Pool Creditors** and **General Creditors** will be paid in accordance with the provisions of the **Scheme**.

12.2 The value of the assets set aside to form the **Creditors' Fund** pursuant to Clause 12.1 shall be equal to the aggregate of:

12.2.1 the **Current E&A Liability**;

12.2.2 the **Scheme Claims** of **General Creditors** actually due for payment;

12.2.3 the **Joint Scheme Administrators'** estimate of the value of future and contingent **Scheme Claims** of **General Creditors**; and

12.2.4 123% of the **Future E&A Liability**.

12.3 As soon as practicable following completion of the steps referred to in Clause 12.1 the **Joint Scheme Administrators** shall transfer to the **E&A Pool Manager** from the **Creditors' Fund** a sum of money calculated in accordance with Clause 12.4 from which the **E&A Pool Manager** will pay the **Admitted Claims** of **E&A Pool Creditors** and of **General Creditors** and **E&A Claims Expenses**. The **Joint Scheme Administrators** shall instruct the **E&A Pool Manager** to hold such **Operating Fund** in a separate designated interest bearing deposit account in the name of the **Company**.

12.4 The sum transferred pursuant to Clause 12.3 to form the **Operating Fund** shall be such amount as the **Joint Scheme Administrators**, having consulted the **E&A Pool Manager** and the **Scheme Actuary**, and having taken account of any sums already held by the **E&A Pool Manager** on behalf of the **Company** for the purpose of paying such claims, consider sufficient to enable the **E&A Pool Manager** to pay the **Company's** share of valid claims against the **E&A Pools** by **E&A Pool Creditors** and of **E&A Claims Expenses** and the **Admitted Claims** of **General Creditors** established before the expiry of six months from the end of the calendar quarter in which the transfer of funds pursuant to Clause 12.3 is made.

12.5 Subject to Clauses 14.2 and 14.3, before the end of the second calendar quarter following the **Effective Date**, and of each subsequent calendar quarter, the **Joint Scheme Administrators** shall transfer from the **Creditors' Fund** to the **E&A Pool Manager** an amount which, in the **Joint Scheme Administrators'** view, having consulted with, and taken account of any sums already held by, the **E&A Pool**

**Manager**, is sufficient to enable the **E&A Pool Manager** to pay the **Admitted Claims** of **General Creditors** and the **Company's** share of valid claims against the **E&A Pools** by **E&A Pool Creditors** and of **E&A Claims Expenses** established before the expiry of 6 months following the end of the calendar quarter in which such transfer is made.

- 12.6 The **Joint Scheme Administrators** shall be entitled to authorise the **E&A Pool Manager** to transfer sums from the **Operating Fund** to any joint bank account held in the name of the **E&A Pool Manager** on trust for the participants in a particular **E&A Pool** from which the claims of **External E&A Pool Creditors** against the relevant **E&A Pool** are paid, provided that the basis of calculation of such sums shall first have been approved by the **Joint Scheme Administrators**.
- 12.7 The **Joint Scheme Administrators** shall monitor the **Creditors' Fund** and shall, as far as possible, ensure that the assets forming the **Creditors' Fund** are applied only in the payment of **Distributions** or dividends to **E&A Pool Creditors** and **General Creditors** and of **E&A Claims Expenses** and in the making of transfers pursuant to Clause 12.6, 13, 14.7 and 33.1.20.

### 13. The Creditors' Fund and Set-off

- 13.1 For the avoidance of doubt, sums recovered by the **Company** from its reinsurers in respect of its **Liabilities** to **E&A Pool Creditors** shall not form part of the **Creditors' Fund**. From time to time, and at least once in the twelve month period following the end of a calendar quarter in which the **Effective Date** occurred and in every twelve month period thereafter, the **E&A Pool Manager** shall calculate the aggregate sum which has been applied in set-off against **Agreed Liabilities** of **E&A Pool Creditors** during the period since the last such calculation (or, in the case of the first calculation of such sum, since the **Effective Date**) and shall notify the **Joint Scheme Administrators** of that sum. The **Joint Scheme Administrators** shall cause to be transferred from the **Creditors' Fund** to **General Assets** assets of an equivalent value to such sum, and such assets shall no longer form part of the **Creditors' Fund**.

### 14. The Annual Actuarial Review

- 14.1 On or before the first anniversary of the **Effective Date** and on each subsequent anniversary, the **Joint Scheme Administrators** shall instruct the **Scheme Actuary** to carry out an actuarial review of the **Company's Future E&A Liability** and to submit an **Annual Actuarial Report** on such liabilities to the **Joint Scheme Administrators**.
- 14.2 Following receipt of the **Annual Actuarial Report** prepared pursuant to Clause 14.1, the **Joint Scheme Administrators** shall review the value of the **Creditors' Fund**, and shall deduct from that value the aggregate of:
- 14.2.1 the **Current E&A Liability** and
  - 14.2.2 The value of all **Scheme Claims** of **General Creditors** in respect of **Liabilities** which have fallen due; and
  - 14.2.3 the **Joint Scheme Administrators'** estimate of the value of future and contingent **Liabilities** to **General Creditors**
- in each case valued at the date as at which the **Future E&A Liability** shown in such **Annual Actuarial Report** was calculated.
- 14.3 In the event that following completion of the steps referred to in clause 14.2 the **Joint Scheme Administrators** determine that there is a **Deficit**, the **Joint Scheme Administrators** shall forthwith:
- 14.3.1 instruct the **E&A Pool Manager** to cease to pay the **Admitted Claims** of **E&A Pool Creditors** and **General Creditors** on behalf of the **Company**; and

- 14.3.2 cease to make transfers to the **E&A Pool Manager** pursuant to Clause 12.5 and from the **Creditors' Fund** to **General Assets** pursuant to Clause 13; and
  - 14.3.3 notify the **E&A Pool Participants** in writing of the existence and amount of the **Deficit**.
  - 14.4 Within 28 days of receipt of the notice referred to in Clause 14.3.3 the **E&A Pool Participants** may:
    - 14.4.1 unanimously instruct the **Joint Scheme Administrators** to transfer assets of an equivalent value to the **Deficit** from **General Assets** to the **Creditors' Fund**; or
    - 14.4.2 where the **Joint Scheme Administrators** have notified them that, having provided for actual and future **Scheme Expenses**, there are insufficient **General Assets** remaining to make good the **Deficit**, pay the amount of the **Deficit** into the **Creditors' Fund** themselves, such payment being received within 28 days of the notice referred to in Clause 14.3.3.
  - 14.5 In the event that the **E&A Pool Participants** give the instructions referred to in Clause 14.4.1 or make a payment pursuant to Clause 14.4.2 the **Joint Scheme Administrators** shall withdraw the instruction referred to in Clause 14.3.1 and shall recommence transfers pursuant to Clauses 12.5 and 13.
  - 14.6 In the event that the **E&A Pool Participants** do not give the instructions referred to in Clause 14.4.1 or make a payment pursuant to Clause 14.4.2 within the time limit referred to in Clause 14.4 the **Joint Scheme Administrators** shall instruct the **E&A Pool Manager** to repay to the **Company** any balance remaining of the **Operating Fund** and **E&A Pool Creditors** and **General Creditors** shall thereafter be paid a dividend in respect of their **Admitted Claims** pursuant to Clauses 23 and 24.
  - 14.7 Following submission of the third **Annual Actuarial Report** to the **Joint Scheme Administrators** pursuant to Clause 14.1, and of each **Annual Actuarial Report** thereafter, in the event that the **Joint Scheme Administrators** determine that there is a **Surplus** they shall transfer assets of a value equal to the **Surplus** from the **Creditors' Fund** to **General Assets**.
  - 14.8 The **E&A Pool Participants** shall procure at their expense the continuation of the process of carrying out an **Annual Actuarial Review** of the **Company's** liabilities and preparing an **Annual Actuarial Report** pursuant to Clause 14.1 in the event that, in the opinion of the **Joint Scheme Administrators**, the **Company's** financial position deteriorates to such an extent that it no longer has the funds to meet the cost of such review and report. For the purpose of establishing whether the **Company's** position has so deteriorated, the funds available to the **Company** to meet such costs shall be calculated by reference to **General Assets** after providing for actual and future **Scheme Expenses** (excluding the cost of the **Annual Actuarial Review** and the **Annual Actuarial Report**), and any other **Liabilities** which, in the **Joint Scheme Administrators'** view, should be provided for.
- 15. Investment**
- 15.1 Subject to Clause 15.2, the **Joint Scheme Administrators** shall have the power during the **Scheme Period** to invest all or any of the monies for the time being held by the **Company** with full power from time to time to vary or alter any such investments having regard to the aims of the **Scheme** and the interests of the **Company** and the **Scheme Creditors** as a whole.
  - 15.2 The monies for the time being held by the **Company** other than the **Operating Fund**, shall be managed by the **Joint Scheme Administrators** in accordance with an investment policy to be agreed with the **Creditors' Committee**. For the avoidance of

doubt, the agreement of the majority in number of the **Committee Members** to an investment policy or any changes to it shall constitute sufficient authority for the **Joint Scheme Administrators** to implement such policy or such changes. In the absence of such agreement, the **Joint Scheme Administrators** shall not invest any such monies otherwise than by deposit at any clearing bank in the United Kingdom or in United Kingdom Treasury Bills or securities of any description issued by the government of the United Kingdom and registered by the Bank of England.

- 15.3 Interest earned on the **Creditors' Fund** shall accrue to and form part of that fund. The **Joint Scheme Administrators** shall monitor the **Creditors' Fund** and shall, as far as possible, ensure that the investment policy from time to time in force maintains the value of the assets forming the **Creditors' Fund** at or above the value which such assets had at the time the fund was established pursuant to Clause 12.1 less the value of payments made to **E&A Pool Creditors** and **General Creditors** pursuant to Clause 21 or Clause 23, payments made in respect of **E&A Claims Expenses**, any transfers to **General Assets** pursuant to Clauses 13 and 14.7, or any transfer pursuant to Clause 33.1.20 to the persons responsible for administering any **Alternative Scheme**.

## SECURED LIABILITIES

### 16. Secured Liabilities

- 16.1 A **Secured Creditor** may obtain payment by means of his **Security** at any time provided that this is done strictly in accordance with the terms of the contract pursuant to which such **Security** was established and the terms (if any) of the **Security** and any document governing the use of the **Security**, and provided the **Security** is applied in settlement of a **Liability** to which the **Secured Creditor** is contractually entitled to apply it.
- 16.2 After the **Dividend Trigger Date** the amount or value of any applicable unrealised **Security** shall be deducted from the **Agreed Liabilities** of **Secured Creditors** before an account is taken for set-off purposes pursuant to Clauses 6.1, or 6.5, and 6.6.
- 16.3 Any **Scheme Creditor** who shall obtain or receive payment by enforcing, drawing down or withdrawing any **Security** in an amount which exceeds either the **Liability** which is due to him in respect of the contract or contracts for which that **Security** was issued or established, or the amount which he is entitled, by virtue of the contract pursuant to which the **Security** was established and the terms (if any) of the **Security** and any document governing its use, to receive from that **Security** at the time when he receives or obtains payment, shall hold the amount of such excess on trust for the **Company** to apply the same in accordance with the terms of the **Scheme**, and shall pay the same forthwith to the **Joint Scheme Administrators** without set-off, deduction, retention, abatement or counterclaim.
- 16.4 Nothing in the **Scheme** shall affect the rights of the **Company** under any applicable law against any person in respect of any wrongful or excessive enforcement, drawdown or withdrawal of funds in respect of any **Security**.
- 16.5 Where all liabilities under all contracts in respect of which a **Secured Creditor** is entitled to apply his **Security** have been met, the **Scheme Creditor(s)** in whose favour such **Security** was established shall provide such co-operation and assistance as the **Joint Scheme Administrators** may require in order to obtain the release of the balance remaining of any funds deposited as, or as collateral in respect of, such **Security** to the **Joint Scheme Administrators**.

## DETERMINATION OF ADMITTED CLAIMS AND AGREED PERCENTAGES

### 17. General Creditors

- 17.1 The **Joint Scheme Administrators** shall, as soon as may be practicable following the **Effective Date**, notify all **General Creditors** of whose existence they are aware that the **Scheme** has come into effect and shall request such **General Creditors** to provide full details of their claims with supporting documentation to the **E&A Pool Manager**, such details and documentation to be provided within 28 days of such notification. In the case of claims in respect of contingent and future **Liabilities**, when those **Liabilities** fall due for payment, the **General Creditor** concerned shall inform the **E&A Pool Manager** of that fact by notice in writing.
- 17.2 The **E&A Pool Manager** shall, in consultation with the **Joint Scheme Administrators**, attempt to establish the **Agreed Liability** in respect of each of a **General Creditor's Scheme Claims** of which details have been submitted pursuant to Clause 17.1 and which relate to a **Liability** which has fallen due for payment, by agreement with the relevant **General Creditor**, within 6 months of the later of receipt of details of that creditor's claims in accordance with Clause 17.1 and the date of notification by the **General Creditor** concerned that the relevant **Liability** has fallen due for payment, as applicable.
- 17.3 Where the **Agreed Liability** in respect of a **Scheme Claim** for a **Liability** which has fallen due for payment has not been established by agreement within the period referred to in Clause 17.2, the relevant **General Creditor** shall be entitled to commence **Proceedings** to establish liability and/or quantum in respect of such **Scheme Claim**, but not, for the avoidance of doubt, to obtain or secure payment of it.
- 17.4 **General Creditors** are deemed to agree that where a **General Creditor** commences **Proceedings** pursuant to Clause 17.3 to establish the quantum of a **Scheme Claim** the **Agreed Liability** in respect of such **Scheme Claim** shall be equal to the amount of the **Final Award** made in respect of it, provided that where the sum established as being due as a result of such **Proceedings** whether by agreement or by the relevant court or tribunal in respect of the principal sum claimed is equal to or less than the amount at which the **E&A Pool Manager** and the **Joint Scheme Administrators** valued the **Agreed Liability** in respect of such **Scheme Claim** prior to commencement of the **Proceedings**, the **General Creditor** shall waive his claim for any sum awarded by way of costs or interest, which shall not be recoverable from the **Company**.
- 17.5 If **Proceedings** commenced pursuant to 17.3 establish liability but not quantum in relation to a **Scheme Claim**, the provisions of Clause 17.2 to 17.4 shall apply to the establishment of the **Agreed Liability** in respect of such **Scheme Claim**, except that the parties shall have 6 months from the date of the conclusion of such **Proceedings**, whether by judgment which is not appealed within the applicable deadline or which is given by a final appellate court or tribunal, or by a settlement being agreed by the parties, in which to attempt to establish the **Agreed Liability** by agreement pursuant to Clause 17.2.
- 17.6 The amount of the **Agreed Liability** as established by agreement with the **E&A Pool Manager** and the **Joint Scheme Administrators** pursuant to Clause 17.2, or by reference to a **Final Award** pursuant to Clause 17.4 shall be binding on the **Company**, the **Joint Scheme Administrators**, the **General Creditor** concerned and all **Scheme Creditors** as that **General Creditor's Agreed Liability**.

- 17.7 Following completion of the steps set out at Clause 17.1 to 17.6 in relation to the **Scheme Claims** of a **General Creditor**, not being **Scheme Claims** in respect of future or contingent **Liabilities**, the **E&A Pool Manager** shall determine the amount which, following the application of set-off pursuant to Clause 6, and subject to the final approval of the **Joint Scheme Administrators**, constitutes that **General Creditor's Admitted Claim** or **Net Debt** which shall be binding on the **Company**, the **Joint Scheme Administrators**, the **General Creditor** concerned and all **Scheme Creditors** as the amount of that **General Creditor's Admitted Claim** or **Net Debt**.
- 17.8 As soon as practicable following the determination of a **General Creditor's Admitted Claim** or **Net Debt** pursuant to Clause 17.7 the **E&A Pool Manager** shall send that **General Creditor** by **Post** a statement of the amount of his **Admitted Claim** or **Net Debt**, and of any liability owed by the **General Creditor** to the **Company** which has been applied in set-off. Each **General Creditor** shall be entitled to object to the value placed on any liability owed by him to the **Company** as shown in the **Statement**, such objection to be made by notice in writing sent by **Post** to the **Joint Scheme Administrators** and received by them within 28 days of the date of the **Statement**. If no such objection has been received by the **Joint Scheme Administrators** within such a period, the amount shown in the **Statement** as the **Admitted Claim** or **Net Debt** shall be binding on that **General Creditor**, the **Company**, the **Joint Scheme Administrators** and all **Scheme Creditors** as the amount of the **General Creditor's Admitted Claim** or **Net Debt**.
- 17.9 Following receipt of an objection made in accordance with Clause 17.8 the **Joint Scheme Administrators** shall attempt to agree the amount applied in set-off with the **Scheme Creditor** concerned. In the event that agreement has not been reached within 56 days of the date of the **Statement**, the **Joint Scheme Administrators** shall, subject to Clause 35.1, in consultation with the **Creditors' Committee** appoint a **Scheme Adjudicator** to deal with the dispute in accordance with the **Dispute Resolution Procedure**. The **Scheme Adjudicator's** decision as to the amount which should be applied in set-off against the **General Creditor's Agreed Liability** shall be final and binding on the **Company**, the **Joint Scheme Administrator**, the **General Creditor** and all **Scheme Creditors**. The **E&A Pool Manager** will, as soon as may be practicable following the decision of the **Scheme Adjudicator** determine the amount which, following deduction from the relevant **General Creditor's Agreed Liability** of the sum which the **Scheme Adjudicator** determined should be applied in set-off, constitutes that **General Creditor's Admitted Claim** or **Net Debt**, which shall be binding on the **Joint Scheme Administrators**, the **General Creditor** and all other **Scheme Creditors** as the amount of that **General Creditor's Admitted Claim** or **Net Debt**. Where agreement is reached as to the amount applied in set-off, the **E&A Pool Manager** shall, as soon as may be practicable following such agreement, determine the sum which following the deduction of such agreed amount, constitutes the **General Creditor's Admitted Claim** or **Net Debt**, which shall be binding on the **Company**, the **Joint Scheme Administrators**, the **E&A Pool Creditor** and all **Scheme Creditors** as the amount of that **General Creditor's Admitted Claim** or **Net Debt**.
- 17.10 In the event that, following a review carried out pursuant to Clause 14.2, the **Joint Scheme Administrators** determine that there is a **Deficit**, in the absence of any transfer from **General Assets** or any payment by the **E&A Pool Participants** sufficient to make good the **Deficit**, the **Admitted Claims** of **General Creditors** shall from that point onwards be determined by the **Joint Scheme Administrators**, and shall be such sum as they calculate is due to each such **General Creditor** following the application of set-off in accordance with Clauses 6.5 to 6.9. For the avoidance of doubt, Clauses 17.7 to 17.9 shall cease to apply, and disputes as to the value placed on any liability of the **General Creditor** to the **Company** for set-off purposes shall be dealt with in

accordance with the provisions of Clause 6.8. The amount of the **General Creditor's Admitted Claim** or **Net Debt** as calculated by the **Joint Scheme Administrators** pursuant to Clause 6.6 or following completion of the steps set out in Clause 6.8 if applicable shall be binding on the **Company**, the **Joint Scheme Administrators**, the **General Creditor** and all **Scheme Creditors** as the amount of that **General Creditor's Admitted Claim** or **Net Debt**.

#### 18. E&A Pool Creditors

18.1 For the purposes of this Clause 18, a majority in value of participants in the **E&A Pools** participating in a contract shall be calculated by reference to each participant's proportionate share of liability in respect of such contract.

18.2 Where liability in respect of an **External E&A Pool Creditor's** claim against an **E&A Pool**, has been established, (whether by agreement by or on behalf of the participants in the relevant **E&A Pool** (excluding the **Company**) who participated in or were reinsured under the contract pursuant to which the claim arises, or as a result of **Proceedings** brought against or binding on them) and the quantum of that claim has been agreed by or on behalf of such participants, the **Agreed Liability** in respect of such claim shall be the amount determined by the **E&A Pool Manager** as being the **Company's** share of such claim.

18.3 Where both liability and quantum in respect of an **External E&A Pool Creditor's** claim against an **E&A Pool**, have not been established or agreed as described in Clause 18.2, and the **External E&A Pool Creditor** brings **Proceedings** either:

18.3.1 against all or a majority in value of such of the other participants in the **E&A Pools** as also participated in or were reinsured under the contract pursuant to which the claim arises; or

18.3.2 by the outcome of which all or a majority in value of such participants has agreed to be bound;

the amount of the **Agreed Liability** in respect of the **Scheme Claim** for the **Company's** share of such claim shall be equal to the amount which the **E&A Pool Manager** calculates, on the basis of the **Final Award** made in such **Proceedings**, would be the **Company's** share of liability in respect of the relevant claim. For the avoidance of doubt, the **External E&A Pool Creditor** may not bring or continue **Proceedings** against the **Company**.

18.4 Where an **External E&A Pool Creditor** disputes the **E&A Pool Manager's** calculation of the **Company's** share of any claim against an **E&A Pool** established by agreement pursuant to Clause 18.2 or which was the subject of a **Final Award** in **Proceedings** as described in Clause 18.3, and the **Joint Scheme Administrators** consider that it will not be possible to reach agreement on the matters at issue, they shall, subject to Clause 35.1, in consultation with the **Creditors' Committee**, appoint a **Scheme Adjudicator** to deal with the dispute in accordance with the **Dispute Resolution Procedure** and the amount of the **Company's** liability in respect of such claim as established by such **Scheme Adjudicator** shall be binding on the **Joint Scheme Administrators**, the **Company** the **Scheme Creditor** concerned and all **Scheme Creditors** as the amount of the **Agreed Liability** in respect of the relevant **Scheme Claim**.

18.5 The **Agreed Liability** in respect of an **Internal E&A Pool Creditor's Scheme Claim**, shall be the sum which the **E&A Pool Manager** determines, in accordance with the procedure agreed from time to time with participants in the **E&A Pools** to be due from the **Company** to the **Internal E&A Pool Creditor** in respect of the relevant **Scheme Claim**.

- 18.6 The amount of the **Agreed Liability** in respect of an **E&A Pool Creditor's Scheme Claim** as established pursuant to Clauses 18.2 to 18.5, shall be binding on the **Company**, the **Joint Scheme Administrators**, the **E&A Pool Creditor** concerned and all **Scheme Creditors** as that **E&A Pool Creditor's Agreed Liability**.
- 18.7 The amount of the **Admitted Claim** or **Net Debt** in relation to an **E&A Pool Creditor** shall, subject to Clauses 18.8 and 18.9, be the sum which the **E&A Pool Manager** determines from time to time is due from the **Company** to or to the **Company** from that **E&A Pool Creditor** following the application of set-off in accordance with Clause 6 which shall be binding on the **Company**, the **Joint Scheme Administrators**, the **E&A Pool Creditor** concerned and all **Scheme Creditors** as that **E&A Pool Creditor's Admitted Claim** or **Net Debt**.
- 18.8 If the **E&A Pool Creditor** objects to the value placed on any liability owed by him to the **Company** in calculation of his **Admitted Claim** or **Net Debt** pursuant to Clause 18.7 by notice in writing received by the **E&A Pool Manager** within 28 days of that **E&A Pool Creditor** being notified of his **Admitted Claim** or **Net Debt**, the **E&A Pool Manager** shall attempt to agree the amount applied in set-off with the **E&A Pool Creditor**. If agreement is reached as to the amount applied in set-off, the **E&A Pool Manager** shall, as soon as may be practicable following such agreement, determine the sum which following deduction of such agreed amount constitutes the **E&A Pool Creditor's Admitted Claim** or **Net Debt**, which shall be binding on the **Company**, the **Joint Scheme Administrators**, the **E&A Pool Creditor** and all **Scheme Creditors** as the amount of that **E&A Pool Creditor's Admitted Claim** or **Net Debt**. If agreement has not been reached within 28 days of the date of the **E&A Pool Creditor's** written objection, the **E&A Pool Manager** shall notify the **Joint Scheme Administrators** of this and they shall in consultation with the **Creditors' Committee** appoint a **Scheme Adjudicator** to deal with the dispute in accordance with the **Dispute Resolution Procedure**. The **Scheme Adjudicator's** decision as to the amount which should be applied in set-off against the **E&A Pool Creditor's Agreed Liability** shall be final and binding on the **Company**, the **Joint Scheme Administrator**, the **E&A Pool Creditor** and all **Scheme Creditors**. The **E&A Pool Manager** will, as soon as may be practicable following the decision of the **Scheme Adjudicator** determine the amount which, following deduction from the relevant **E&A Pool Creditor's Agreed Liability** of the sum which the **Scheme Adjudicator** determined should be applied in set-off, constitutes that **E&A Pool Creditor's Admitted Claim** or **Net Debt**, which shall be binding on the **Joint Scheme Administrators** the **E&A Pool Creditor** and all **Scheme Creditors** as the amount of that **E&A Pool Creditor's Admitted Claim** or **Net Debt**.
- 18.9 In the event that, following a review carried out pursuant to Clause 14.2, the **Joint Scheme Administrators** determine that there is a **Deficit**, in the absence of any transfer from **General Assets** or any payment by the **E&A Pool Participants** sufficient to make good the **Deficit**, the **Admitted Claims** of **E&A Pool Creditors** shall from that point onwards be determined by the **Joint Scheme Administrators**, and shall be such sum as they calculate is due to each such **E&A Pool Creditor** following the application of set-off in accordance with Clauses 6.5 to 6.9. For the avoidance of doubt, Clauses 18.7 and 18.8 shall cease to apply, and disputes as to the value placed on any liability of the **General Creditor** to the **Company** for set-off purposes shall be dealt with in accordance with the provisions of Clause 6.8. The amount of the **E&A Pool Creditor's Admitted Claim** or **Net Debt** as calculated by the **Joint Scheme Administrators** pursuant to Clause 6.6 or following completion of the steps set out in Clause 6.8, if applicable, shall be binding on the **Company**, the **Joint Scheme Administrators**, the **E&A Pool Creditor** and all **Scheme Creditors** as the amount of that **E&A Pool Creditor's Admitted Claim** or **Net Debt**.

## 19. Oberon Pool Creditors

- 19.1 **Oberon Pool Creditors** shall submit all **Oberon Pool Claims** to **St Paul Re** and shall accept payment from **St Paul Re** in settlement of such claims.
- 19.2 Notwithstanding the provisions of Clause 19.1, an **Oberon Pool Creditor** may bring **Proceedings** against the **Company** in respect of an **Oberon Pool Claim** in the circumstances and for the purpose described in Clause 4.2.2, but not, for the avoidance of doubt, for the purpose of obtaining or securing payment by the **Company** of the **Liability** in relation to an **Oberon Pool Claim**.
- 19.3 If **St Paul Re** so requires, an **Oberon Pool Creditor** who has submitted a claim to **St Paul Re** pursuant to Clause 19.1 shall execute an assignment of that claim to **St Paul Re** in the form of the draft at Appendix 15. Such assignment shall take effect upon payment by **St Paul Re** of the amount due in respect of the relevant claim, as established by agreement between the parties or by a **Final Award** made in **Proceedings** brought pursuant to Clause 4.2.2, and having taken account of any applicable set-off.
- 19.4 In the event that, following the establishment of the sum due in respect of an **Oberon Pool Claim** by agreement between the relevant **Oberon Pool Creditor** and **St Paul Re** or by a **Final Award** in **Proceedings** brought pursuant to Clause 4.2.2 **St Paul Re** fails to pay the sum due to that **Oberon Pool Creditor**, that **Oberon Pool Creditor** shall be entitled to bring **Proceedings** against **St Paul Re** in the name of the **Company** to obtain payment of the sum due. All costs and expenses incurred in bringing such **Proceedings** shall be borne by such **Oberon Pool Creditor**, who shall indemnify and shall keep the **Company** fully and effectively indemnified against all claims, costs, demands, liabilities, actions and expenses of whatsoever nature and howsoever arising out of or in connection with such **Proceedings**.
- 19.5 For the avoidance of doubt all and any funds received by the **Company** from time to time under or pursuant to any contract of insurance, reinsurance or retrocession to which the **Company** is party by virtue of its being a former participant in the **Oberon Pool** shall be held on trust for **St Paul Re** and shall be transferred to **St Paul Re** as soon as practicable after receipt as cleared funds by the **Company**.
- 19.6 In the event of a conflict between the terms of the **Scheme** and the terms of the **Deed**, the **Deed** shall prevail.

## 20. E&A Pool Participants

- 20.1 As soon as practicable following the **Effective Date**, the **Joint Scheme Administrators**, in consultation with the **E&A Pool Manager**, shall calculate in relation to each **E&A Pool Participant** the percentage of the aggregate of **Current Balances** and **Reserves** which constitutes a **Liability** to that **E&A Pool Participant**. That percentage figure shall be that **E&A Pool Participant's Agreed Percentage**, and the **Joint Scheme Administrators** shall notify each **E&A Pool Participant** by **Post** of the amount of his **Agreed Percentage**.
- 20.2 From time to time following the **Effective Date**, but no later than each anniversary of the **Effective Date**, the **Joint Scheme Administrators** shall recalculate each **E&A Pool Participant's Agreed Percentage** in accordance with Clause 20.1, and shall notify each **E&A Pool Participant** by **Post** of the amount of his **Agreed Percentage**.
- 20.3 The amount of an **Agreed Percentage** as calculated in accordance with this Clause 20, shall be binding on the **E&A Pool Participant**, the **Joint Scheme Administrators**, the **Company** and all **Scheme Creditors** as that **E&A Pool Participant's Agreed Percentage** until such time as that **Agreed Percentage** is recalculated in accordance with Clause 20.2, at which time the recalculated **Agreed Percentage** shall be so binding.

20.4 The **Scheme Claims** of **E&A Pool Participants** will be met by payment of a **Distribution** from **General Assets** in accordance with Clause 22, calculated by reference to each **E&A Pool Participant's** current **Agreed Percentage**.

# PAYMENT OF ADMITTED CLAIMS , AGREED PERCENTAGES AND DIVIDENDS

## 21. General Creditors and E&A Pool Creditors

- 21.1 As soon as practicable following the determination of the **Admitted Claim** of a **General Creditor** or an **E&A Pool Creditor** pursuant to Clause 17.7, 17.8, 17.9, 17.10, 18.7, 18.8 or 18.9 as applicable, such **Admitted Claim** shall, subject to Clause 21.2, be paid in full from the **Operating Fund** by the **E&A Pool Manager**, in the currency in which the relevant **Liability** was incurred.
- 21.2 With effect from the **Dividend Trigger Date**, and subject to Clause 21.3 **E&A Pool Creditors** and **General Creditors** shall be entitled to receive a dividend only in respect of their **Admitted Claims**, calculated and paid in accordance with Clause 23.
- 21.3 After the **Dividend Trigger Date** **Admitted Claims** in respect of **Preferential Liabilities** shall, save as hereafter provided, continue to be paid in full in priority to the **Admitted Claims** of other **General Creditors** and **E&A Pool Creditors** and the **Joint Scheme Administrators** shall reserve such amounts as they in their sole discretion deem appropriate for future **Preferential Liabilities** before paying any dividends to other **General Creditors** and **E&A Pool Creditors** pursuant to Clause 23. In the event that assets remaining in the **Creditors' Fund** are insufficient to meet **Admitted Claims** for **Preferential Liabilities**, the **Joint Scheme Administrators** shall transfer from **General Assets** to the **Creditors' Fund** a sum sufficient to enable such **Admitted Claims** to be paid. Where the aggregate of the balances remaining in the **Creditors' Fund** and **General Assets** is insufficient to meet such **Admitted Claims** in full, such claims shall abate in equal proportions for the purposes of payment under the **Scheme** only.

## 22. E&A Pool Participants

- 22.1 Subject to Clause 22.2, as soon as practicable and thereafter at no greater than yearly intervals after the **Effective Date** the **Joint Scheme Administrators** shall cause to be paid to each **E&A Pool Participant** that **E&A Pool Participant's Agreed Percentage** of **General Assets**, having first paid or provided for **Scheme Expenses** and any other **Liabilities** for which the **Joint Scheme Administrators** consider provision should be made.
- 22.2 In the event that a recalculation of the **Agreed Percentages** pursuant to Clause 20.2 results in a change in the **Agreed Percentages** or any of them any subsequent **Distribution** made to **E&A Pool Participants** shall be calculated according to the procedure set out in Clause 22.3.
- 22.3 The **Joint Scheme Administrators** shall:
- 22.3.1 add the aggregate of all **Distributions** previously made to **E&A Pool Participants** to **Available General Assets**; and
  - 22.3.2 calculate each **E&A Pool Participant's Entitlement** by applying that **E&A Pool Participant's Agreed Percentage** to the figure arrived at following completion of the steps in Clause 22.3.1; and
  - 22.3.3 deduct from each **E&A Pool Participant's Entitlement** the total sum previously paid by way of **Distribution** to such **E&A Pool Participant**; and
  - 22.3.4 where it appears in the case of one or more **E&A Pool Participants** that the total sum previously paid by way of **Distribution** to such **E&A Pool Participant(s)** exceeds its or their **Entitlement**, calculate the aggregate of such **Overpayments** and deduct a proportion of such aggregate **Overpayment** from each **E&A Pool**

- Participant's Outstanding Entitlement**, if any, such proportion to be calculated by reference to the proportion which the **Agreed Percentages** of those **E&A Pool Participants** having **Outstanding Entitlements** bear to each other; and
- 22.3.5 where following completion of the steps in Clause 22.3.4 aggregate **Outstanding Entitlements** exceed **Available General Assets**, deduct a proportion of such excess from each **E&A Pool Participant's Outstanding Entitlement** less any deduction made pursuant to Clause 22.3.4 such proportion to be calculated by reference to the proportions which the **Agreed Percentages** of **E&A Pool Participants** having **Outstanding Entitlements** bear to each other; and
- 22.3.6 pay to each **E&A Pool Participant** its **Outstanding Entitlement** (if any) less any deduction made pursuant to Clause 22.3.4 and if applicable Clause 22.3.5.
- 22.4 For the avoidance of doubt, a deduction shall only be made from an **E&A Pool Participant's Outstanding Entitlement** pursuant to Clause 22.3.5 where the amount of such **Outstanding Entitlement**, less any deduction made pursuant to Clause 22.3.4, is a sum greater than zero. Reference in Clause 22.3.5 to the **Agreed Percentages** of **E&A Pool Participants** relate to the **Agreed Percentages** of those **E&A Pool Participants** only from which a deduction is to be made pursuant to that Clause.

### 23. Setting of Dividends

- 23.1 The provisions of Clauses 23.2 to 23.5 shall apply to **E&A Pool Creditors** and subject to Clause 21.3 to **General Creditors**, wherever the **Scheme** provides for payments in respect of the **Admitted Claims** of such creditors to be made by way of dividend.
- 23.2 From time to time after the **Dividend Trigger Date** the **Joint Scheme Administrators** shall review the assets remaining in the **Creditors' Fund**, and the **Liabilities** owed to **E&A Pool Creditors** and **General Creditors**, and determine the **Available Distributable Amount** in accordance with Clause 23.3.
- 23.3 The **Available Distributable Amount** shall be the amount which, in the opinion of the **Joint Scheme Administrators** is prudently available from the **Creditors' Fund** for distribution by way of dividend to **E&A Pool Creditors** and **General Creditors** in respect of their **Admitted Claims**, having paid **Admitted Claims** in respect of **Preferential Liabilities** and proper provision having been made for contingent and future **Liabilities** to **E&A Pool Creditors** and **General Creditors**, and for any other liabilities which, in the **Joint Scheme Administrators'** view, should be provided for.
- 23.4 As soon as reasonably practicable following completion of the steps referred to in Clause 23.2, the **Joint Scheme Administrators** shall cause to be paid to **E&A Pool Creditors** and **General Creditors** in respect of **Admitted Claims** other than those **Admitted Claims** or parts of **Admitted Claims** which constitute **Preferential Liabilities**, a dividend at the same rate on all **Admitted Claims** of **E&A Pool Creditors** and **General Creditors** using the whole of the **Available Distributable Amount** calculated in accordance with Clause 23.3 at the date of such payment. For the avoidance of doubt, notwithstanding the provisions of Clause 27, each calculation of a dividend following the payment of the first dividend, shall be by reference to the relevant **Admitted Claims** before deducting any dividend previously paid thereon.
- 23.5 Following each determination of the **Available Distributable Amount** in accordance with Clause 23.3 in the case of those **E&A Pool Creditors** or **General Creditors** who have not previously received a dividend in respect of their **Admitted Claims** or any of them or who received a smaller dividend in terms of percentage of **Admitted Claim** than those **Scheme Creditors** whose **Admitted Claim** was established as at the **Dividend Trigger Date**, the **Joint Scheme Administrators** shall forthwith cause to be paid to such **E&A Pool Creditor** or **General Creditor** a sum equal to the aggregate of all sums which they would have received by way of dividend since the **Dividend Trigger Date** had the relevant **Admitted Claim** been

determined on the **Dividend Trigger Date** provided that the payment made shall not exceed the **Available Distributable Amount**. No further dividends shall be paid pursuant to Clause 23.4 until the sum to which each such **E&A Pool Creditor** or **General Creditor** is entitled pursuant to this Clause 23.5 has been paid in full. Where payments are to be made simultaneously to a number of **Scheme Creditors** pursuant to this Clause 23.5 and the **Available Distributable Amount** is less than the aggregate of such payments, the **Available Distributable Amount** shall be divided between such **Scheme Creditors** in the same proportions as the sums owed to them pursuant to this Clause 23.5 bear to each other.

#### 24. Method of Payment of Dividends and Distributions

- 24.1 All dividend payments and **Distributions** by the **Company** (other than payments made pursuant to Clause 26, which shall be paid by such means as the **Joint Scheme Administrators** and the relevant **Scheme Creditor** shall agree, and payments pursuant to Clause 21.1, which shall be made by the **E&A Pool Manager** in accordance with its normal practice) shall be made by cheque in favour of the relevant **Scheme Creditor** or of such other person as he may direct by notice in writing and shall be sent by **Post**, but at the risk of the **Scheme Creditor** (who shall bear the costs of clearing each such cheque) to the last known address of the **Scheme Creditor** or to any other address of which the **Joint Scheme Administrators** may receive notification in writing from the **Scheme Creditor**.
- 24.2 Subject to Clause 25.4, the sending by **Post** of such a cheque shall be good discharge to the relevant **Scheme Creditor** of the dividend or **Distribution** in respect of which the cheque is drawn, and shall constitute conclusive evidence that the relevant **Scheme Creditor** has received such cheque.

#### 25. Unclaimed Dividends or Distributions

- 25.1 Any balance remaining in the **Scheme Accounts** or in accounts maintained by the **E&A Pool Manager** at the **Termination Date** representing cheques or other means of payment of **Distributions** or dividends in respect of which the **Scheme Accounts** have not been debited, and any accumulated interest thereon, shall remain in or be transferred to the **Scheme Accounts** for a period of up to 2 years from the **Termination Date** and shall be held on trust, for the purpose of paying the same to the **Scheme Creditors** entitled thereto in accordance with Clause 25.4, and after a period of 2 years dealing with any remaining balance in accordance with Clause 25.2.2.
- 25.2 The **Company** acting by the **Joint Scheme Administrators** shall, prior to the **Termination Date**, execute any deed or document necessary or desirable to establish or give effect to the said trust and shall appoint the **Joint Scheme Administrators** or either of them or such other person or persons as they shall approve, as trustee or trustees of such trust. The **Trustee(s)** shall be entitled to be remunerated, in accordance with his or their normal rate of charge, out of the interest accrued or accruing to the balance remaining in the **Scheme Accounts** including any accumulated interest in the **Scheme Accounts** at the **Termination Date** and each such **Trustee** shall:
- 25.2.1 use his reasonable endeavours to make payments out of the balance to the **Scheme Creditors** entitled thereto according to their respective entitlements; and
- 25.2.2 transfer any balance remaining after the said 2 years to the **E&A Pool Participants**, each **E&A Pool Participant's** share of such balance being determined by reference to his **Agreed Percentage** at the **Termination Date**.
- 25.3 The trust established pursuant to Clause 25.1 shall determine on the happening of the first to occur of the following events:
- 25.3.1 the balance in the **Scheme Accounts** being dissipated by payments made pursuant to Clause 25.2.1 and/or in respect of the trustees' remuneration pursuant to Clause 25.2; or

- 25.3.2 a transfer being made pursuant to Clause 25.2.2; or
  - 25.3.3 the expiry of three years from the **Termination Date**.
- 25.4 After the **Termination Date** **Scheme Creditors** who have not claimed their dividends or **Distributions** or who have not received the cheque or payment referred to in Clause 24 in respect of their dividend or **Distribution** shall be entitled, notwithstanding the provisions of Clause 24.2, to claim the amount of any such cheque or funds by notice in writing to the **Trustee(s)**. Any such notice sent to the **Trustee(s)** must be received before the expiry of 2 years from the **Termination Date**. Payment will only be made in respect of such claims where:
- 25.4.1 neither the **Scheme Accounts** nor any bank account operated by **E&A Pool Manager** in which funds paid to the **E&A Pool Manager** by the **Company** have been held, has already been debited in respect of the relevant cheque or transfer; and
  - 25.4.2 the **Trustee** or **Trustees** are satisfied as to the validity of such claim.

## 26. Commutations and Settlements

- 26.1 The **Joint Scheme Administrators** may, at their absolute discretion, enter into a settlement or commutation agreement in relation to any one or more of a **Scheme Creditor's Scheme Claims** including, for the avoidance of doubt, **Scheme Claims** in respect of future and contingent **Liabilities**, on such terms as they shall deem appropriate, provided that:
- 26.1.1 the amount paid to any such **Scheme Creditor** by the **Company** pursuant to any such agreement, whether by way of actual transfer of funds or set-off against a sum owed by the relevant **Scheme Creditor** to the **Company**, shall not exceed such amount as the **Joint Scheme Administrators** estimate at that time to be the net present value of all dividends or **Distributions** which that **Scheme Creditor** would become entitled to receive pursuant to the **Scheme** in respect of the relevant **Scheme Claim** or **Scheme Claims**; and
  - 26.1.2 the discretion shall be exercised in the interests of **Scheme Creditors** as a whole; and
  - 26.1.3 after the **Dividend Trigger Date** the payment of any sum to a **Scheme Creditor** pursuant to a commutation or settlement in an amount of more than 50,000 **US Dollars** or (where the payment is in any other currency) the equivalent at the **Scheme Rate**, shall have been approved by the **Creditors' Committee**.

## 27. Other Provisions

Without prejudice to the provisions of Clauses 24.2, and 25.4, payment by the **Company** of a dividend or **Distribution** in respect of an **Admitted Claim** shall for all purposes constitute a valid discharge of the **Company** in respect of the **Liability** to which such **Admitted Claim** relates to the extent of such dividend or **Distribution**.

# THE JOINT SCHEME ADMINISTRATORS

## 28. The Joint Scheme Administrators

- 28.1 There shall be two **Joint Scheme Administrators** having the powers, duties and functions conferred upon them by the **Scheme**. In exercising their powers and carrying out their duties and functions under the **Scheme**, the **Joint Scheme Administrators** shall act in good faith and with due care and diligence in the interests of the general body of **Scheme Creditors** and shall exercise their powers under the **Scheme** for the purpose of ensuring that the **Scheme** is operated in accordance with its terms.
- 28.2 Other than in their capacity as trustees pursuant, if applicable, to Clause 25.2, the **Joint Scheme Administrators** shall, prior to an **Insolvency Proceeding**, act as agents of the **Company** in exercising their powers and in carrying out their duties and functions under the **Scheme** and following an **Insolvency Proceeding**, to the extent that their agency is not terminated as a result of such event by operation of law, shall continue so to act.
- 28.3 Nothing in this **Scheme** shall render the **Joint Scheme Administrators** liable for any **Liabilities** or obligations of the **Company**.

## 29. Joint Scheme Administrators' Exercise of Powers

- 29.1 Any act required or authorised under the **Scheme** to be done by the **Joint Scheme Administrators** may be done by both or either of the persons for the time being holding the office of **Joint Scheme Administrator**.

## 30. Qualifications of the Joint Scheme Administrators

- 30.1 The **Joint Scheme Administrators** shall be individuals qualified to act as Insolvency Practitioners under the **Insolvency Act** or any amendment, modification or re-enactment thereof who shall obtain and maintain during the **Scheme Period** an insurance bond for the same amount and in respect of the same matters as would be required were they to have been appointed joint liquidators of the **Company** pursuant to a winding up.
- 30.2 The first **Joint Scheme Administrators** shall be: Mark Christopher Batten and Douglas Nigel Rackham of PricewaterhouseCoopers of Plumtree Court London EC4A 4HT, United Kingdom.

## 31. Resignation and Removal of the Joint Scheme Administrators

- 31.1 The **Joint Scheme Administrators** or either of them may resign their appointment at any time by giving not less than twelve months' notice in writing to the **Company** and to the **Creditors' Committee**, or such shorter period of notice as the **Joint Scheme Administrators** and the **Creditors' Committee** may agree in writing.
- 31.2 The Office of a **Joint Scheme Administrator** shall be vacated if he:
- 31.2.1 dies;
  - 31.2.2 is convicted of an indictable offence or, in the case of a conviction under the laws of another jurisdiction, of an offence which would be an indictable offence under the laws of England and Wales;
  - 31.2.3 resigns his office by notice in accordance with Clause 31.1;
  - 31.2.4 becomes bankrupt;
  - 31.2.5 is no longer a person qualified to act in accordance with Clause 30.1;
  - 31.2.6 is disqualified from acting as a director of a company under the **Company Directors Disqualification Act**; or

- 31.2.7 is admitted to hospital because of mental disorder or is the subject of an order made by a court having jurisdiction whether in England or elsewhere in matters concerning his mental disorder.
- 31.3 If the office of both of the **Joint Scheme Administrators** is vacated in accordance with Clause 31.2 the **Creditors' Committee** shall be entitled to appoint replacement **Joint Scheme Administrators** provided that:
- 31.3.1 such replacements are qualified to act in accordance with Clause 30.1 and not ineligible by reason of any of the matters referred to in Clause 31.2 and consent so to act; and
- 31.3.2 the appointment of such persons shall be subject to ratification by a **Creditors' Resolution** at a meeting of **Scheme Creditors** called for the purpose and held within 56 days of such appointment.
- 31.4 Notwithstanding the provisions of Clause 31.3.2 the persons appointed by the **Creditors' Committee** as replacement **Joint Scheme Administrators** shall be entitled to act as **Joint Scheme Administrators** throughout the period from the date of their appointment by the **Creditors' Committee** to the date of the said meeting of **Scheme Creditors**. In the event that the appointment of such **Joint Scheme Administrators** is not ratified at the said meeting, the **Scheme Creditors** shall at that meeting elect replacement **Joint Scheme Administrators** by **Creditors' Resolution**. Such replacement **Joint Scheme Administrators** shall be persons qualified to act in accordance with Clause 30.1 and not ineligible by reason of any of the matters referred to in Clause 31.2 and who consent so to act. If no such **Creditors' Resolution** is passed, the appointment made by the **Creditors' Committee** shall, notwithstanding the provisions of Clause 31.3.2, stand until the next meeting of **Scheme Creditors**, which shall take place within 56 days. Failing actual ratification of the appointment made by the **Creditors' Committee**, or election by the **Scheme Creditors** of replacement **Joint Scheme Administrators** or a **Scheme Administrator** at that meeting, the appointment made by the **Creditors' Committee** shall be deemed to be ratified.
- 31.5 The **Joint Scheme Administrators** or either of them shall be removed from office if:
- 31.5.1 20 or more **Scheme Creditors** with **Scheme Claims** or **Agreed Liabilities** of a total value of not less than one-fifth of the total value of all **Scheme Claims** (excluding the value of **Disputed Scheme Claims**) and **Agreed Liabilities**, (valued, in the case of **E&A Pool Participants**, in accordance with Clause 42.4.3) in each case subject to any applicable set-off and after deduction of any applicable **Security**, send by **Post** to the **Joint Scheme Administrators'** office and the **Company's** registered office a written request that the **Joint Scheme Administrators** convene a meeting of the **Scheme Creditors** on not less than 28 days and not more than 56 days' notice for the purpose of reviewing either or both of the **Joint Scheme Administrators'** appointments supported by written details of the grounds for such review; and
- 31.5.2 at such a meeting of the **Scheme Creditors** duly convened and held to review their or either of their appointments, the **Joint Scheme Administrators** are given an opportunity to be heard; and
- 31.5.3 notwithstanding any representation made by either or both of the **Joint Scheme Administrators**, and subject to the provisions of Clause 45.2 the **Scheme Creditors** at such meeting pass a **Creditors' Resolution** that the **Joint Scheme Administrators** or either of them be removed from office;

provided that, in the event that both **Joint Scheme Administrators** are thus removed from office, the **Scheme Creditors** shall at that meeting elect replacement **Joint Scheme Administrators**. If a **Creditors' Resolution** in favour of replacement **Joint Scheme Administrators** is not passed, the **Creditors' Committee** shall appoint replacement **Joint**

**Scheme Administrators** in accordance with the provisions of Clause 31.3. Until the appointment of the replacement **Joint Scheme Administrators**, the former **Joint Scheme Administrators** shall continue in office. The replacement **Joint Scheme Administrators** shall be persons duly qualified in accordance with Clause 30.1 who are not ineligible by virtue of any of the matters referred to in Clause 31.2 and who consent so to act.

31.6 In the event that one of the **Joint Scheme Administrators** shall vacate or be removed from office, the other shall appoint a replacement **Joint Scheme Administrator**. Any such replacement shall be a person duly qualified in accordance with Clause 30.1 who is not ineligible by reason of any of the matters referred to in Clause 31.2 and who consents so to act. For the avoidance of doubt, and notwithstanding the first sentence of Clause 28.1, during such time as there may be a single **Scheme Administrator** he shall be entitled to exercise all of the powers and carry out all of the duties and functions of the **Joint Scheme Administrators**.

### 32. General Powers of the **Joint Scheme Administrators**

32.1 The **Joint Scheme Administrators** shall have the power to manage and control the business, affairs and **Property** of the **Company** for the purposes of implementing the **Scheme** subject to the provisions thereof, together with the powers specifically conferred on them thereby.

### 33. Specific powers and obligations of the **Joint Scheme Administrators**

33.1 In carrying out their duties and functions under the **Scheme**, the **Joint Scheme Administrators** shall (without prejudice to the full terms of the **Scheme**) be empowered:

33.1.1 to convene and attend meetings of the **Board**, to have full access to all such information as they may from time to time require in relation to the affairs of the **Company** or the operation of the **Scheme** and to all books, papers, documents and other information contained or represented in any format whatsoever in the possession or under the control of the **Company**. Such information, books, papers and documents may be disclosed by the **Joint Scheme Administrators** to the **Creditors' Committee** and to the **Scheme Creditors** if they consider such disclosure to be for the benefit of the **Scheme**;

33.1.2 to employ and remunerate as a **Scheme Expense** accountants, actuaries, lawyers, run-off managers and other professional advisers or agents (including their partners and the partners and staff of all PricewaterhouseCoopers firms, associated firms, associations and companies or their successors or any of them) in connection with the **Scheme**;

33.1.3 to pay the **Company's** share of **Operating Expenses** to the **E&A Pool Manager**;

33.1.4 to delegate in writing to any person qualified as set out in Clause 30.1 and not ineligible by reason of any of the matters referred to in Clause 31.2 all or any of the powers and discretion conferred upon the **Joint Scheme Administrators** under the **Scheme** and from time to time to revoke any such delegation, provided that the **Joint Scheme Administrators** shall both be personally responsible for any act or omission of any such delegatee to the same extent as if they had expressly authorised it;

33.1.5 to petition the courts of any jurisdiction to obtain recognition or enforcement of the **Scheme** or to bring, commence or defend any **Proceedings** in the name and, insofar as is permitted by law, on behalf of the **Company** in any matter affecting the **Company** in any jurisdiction, or to prevent the continuation or commencement of any **Proceedings** against the **Company** or its **Property** and/or to seek such other relief as they deem appropriate or which the relevant court may grant and, for the avoidance of doubt, this shall include the power to make

- application under Section 304 of the United States Federal Bankruptcy Code, II USC or any amendment, re-enactment, replacement or analogous provision of United States law;
- 33.1.6 to apply to the **Court** for directions in relation to any particular matter arising under, or in the course of the operation of, the **Scheme**;
- 33.1.7 on behalf of the **Company** to negotiate, compromise, waive or settle claims by and against the **Company** and in particular, without limitation, to agree on behalf of the **Company** with reinsurers and retrocessionaires and **Scheme Creditors** to the commutation of any liabilities owed to or by the **Company**, in the case of a commutation or settlement concerning sums owed by the **Company**, in accordance with the provisions of Clause 26;
- 33.1.8 to treat and authorise the **E&A Pool Managers** to treat any sum agreed to be paid pursuant to any commutation or settlement between an **E&A Pool Creditor** and the participants on the relevant **E&A Pool** who participated along with the **Company** in the contract or contracts to which the commutation relates or pursuant to which the claim the subject of the settlement arises as a claim agreed by the **E&A Pool Manager** for the purposes of Clause 18.2;
- 33.1.9 to pay a sum to any **Scheme Creditor** by way of advance on his dividend entitlement in respect of any one or more of his **Scheme Claims**, provided that the allowance paid shall not exceed the amount which the **Joint Scheme Administrators** estimate to be the net present value of all dividends which the **Scheme Creditor** would be entitled to receive in respect of the relevant **Scheme Claim** or **Scheme Claims**;
- 33.1.10 to open, maintain and operate such bank accounts as they may think fit and to close such accounts;
- 33.1.11 to convene and attend meetings of the **Creditors' Committee** for the purpose of consulting with or providing information to them. The **Joint Scheme Administrators** shall give notice to each **Committee Member** of such meetings which notice shall be of such length as the **Joint Scheme Administrators** may in the particular circumstances deem appropriate;
- 33.1.12 where appropriate, to treat those acting or believed to be acting on behalf of principals insured or reinsured by the **Company** including, but not limited to, managing general agents, the managers of underwriting pools and the holders of line slips or binding authorities as if they were a principal creditor or debtor in place of their principal in respect of their principal's **Scheme Claim** or debt owed to the **Company**, until such time as the **Joint Scheme Administrators** receive notice in writing from any such insured or reinsured principal that the relevant party has no authority to act on their behalf, or that the relevant party's authority to act on their behalf has come to an end;
- 33.1.13 to appoint additional **Committee Members** in the event that the number of **Committee Members** shall fall to 4 or below 4 and the **Creditors' Committee** do not exercise their power of appointment under Clause 38.5, but so that the number of **Committee Members** shall not exceed 8;
- 33.1.14 to exercise in the name of the **Company** in accordance with the provisions set out therein, the powers conferred by Clause 39.3;
- 33.1.15 to do all acts and to execute in the name and, insofar as permitted by law, on behalf of the **Company** any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for or incidental to the full and proper implementation of the **Scheme**;

- 33.1.16 to do all such things as may be necessary for the preservation, getting in and realisation of the **Property** of the **Company**;
  - 33.1.17 to make any payment which is necessary or incidental to the performance of their functions;
  - 33.1.18 in the name and on behalf of the **Company** to rank and claim in the bankruptcy, insolvency, sequestration, liquidation or other similar or analogous proceedings of any person indebted to the **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;
  - 33.1.19 subject to Clause 39.3, to prepare and/or submit to a meeting of **Scheme Creditors** proposals for an **Alternative Scheme**, such meeting to be convened in accordance with the rules governing the convening of meetings of creditors to consider that **Alternative Scheme**;
  - 33.1.20 following an **Alternative Scheme** submitted to **Scheme Creditors** in accordance with Clause 33.1.19 becoming effective, to transfer part or all of the **Company's Property** whether forming part of the **Creditors' Fund** or otherwise to the control of the persons for the time being responsible for administering such **Alternative Scheme**, for the purpose of applying the same in accordance with the terms of such **Alternative Scheme**, or to apply such **Property** themselves for the purposes of and in accordance with such **Alternative Scheme**;
  - 33.1.21 to transfer sums or assets from the **Creditors' Fund** to **General Assets** in accordance with Clauses 13 and 14.7, and from **General Assets** to the **Creditors' Fund** in accordance with Clause 14.3.1;
  - 33.1.22 to procure the presentation of a petition for the winding up of the **Company** or to request the directors and shareholders of the **Company** to resolve to wind up the **Company**;
  - 33.1.23 to exercise any other powers necessary for or incidental to the full and proper implementation of the **Scheme**;
  - 33.1.24 to grant security over or cause the **Company** to grant security over the **Property** of the **Company** and to maintain, replace or renew letters of credit which are already in existence at the **Effective Date**, but without prejudice to the rights of **Secured Creditors** in respect of the **Security** held by them and to establish such new letters of credit as they may think fit for the purposes of the **Scheme**;
  - 33.1.25 to use the **Company's** seal;
  - 33.1.26 to call up any uncalled capital; and
  - 33.1.27 to do all other things incidental to the exercise of the foregoing powers.
- 33.2 The **Joint Scheme Administrators** shall treat the members of a **Lloyd's Syndicate** having a **Scheme Claim** in their capacity as members of that **Lloyd's Syndicate** as if they were a single **Scheme Creditor** of the **Company** in respect of the aggregate of such **Scheme Claims** and the members of a **Lloyd's Syndicate** owing money to the **Company** in their capacity as members of that **Lloyd's Syndicate** as a single debtor of the **Company** in respect of the aggregate of the sums due, in each case on the basis that the effect of closing a year of account by means of reinsurance to close into a later year is that the rights and liabilities of the members of the syndicate in such closing year become instead the rights and liabilities of the members of the successor syndicate or syndicates in such later year.

**34. Reinsurance Premiums and Reinsurance Cover**

- 34.1 The **Company** acting by the **Joint Scheme Administrators** shall be entitled to enter into contractual arrangements with any person to provide insurance or reinsurance cover to the **Company** for any risk if the **Joint Scheme Administrators** are satisfied that this will benefit and/or protect the **Scheme Creditors**.

# THE SCHEME ADJUDICATOR AND THE DISPUTE RESOLUTION PROCEDURE

## 35. The Scheme Adjudicator

- 35.1 A **Scheme Adjudicator** shall be appointed by the **Joint Scheme Administrators** in consultation with the **Creditors Committee**, in the circumstances described in Clauses 6.8, 17.9, 18.4, 18.8, 42.4.4 and 44.3 and shall adjudicate on the dispute in relation to which he has been appointed in accordance with the **Dispute Resolution Procedure**. Such **Scheme Adjudicator** shall be a fit and proper person who, in the opinion of the **Joint Scheme Administrators** and the **Creditors' Committee**, is duly qualified to carry out the functions allocated to him by the **Scheme**, and who consents to act as **Scheme Adjudicator**. Notwithstanding the provisions of Clauses 6.8, 17.9, 18.4, 18.8, 42.4.4 and 44.3 the **Joint Scheme Administrators** shall not be obliged to consult the **Creditors' Committee** as to the appointment of a **Scheme Adjudicator** where they refer a dispute to a **Scheme Adjudicator** already appointed in consultation with the **Creditors' Committee** in relation to another dispute.
- 35.2 In exercising his powers and carrying out his duties and functions under a **Scheme**, a **Scheme Adjudicator** shall act in good faith, and with due care and diligence, in the interests of the general body of **Scheme Creditors**, and shall exercise his powers under the **Scheme** for the purpose of ensuring that the **Scheme** is operated in accordance with its terms.
- 35.3 The **Joint Scheme Administrators**, with the consent of the **Creditors' Committee**, may remove any **Scheme Adjudicator**, and may appoint such other person as they and the **Creditors' Committee** shall consider qualified pursuant to Clause 35.1, and not otherwise ineligible by reason of any of the matters referred to in Clause 35.4, to act as **Scheme Adjudicator** in his place.
- 35.4 The office of **Scheme Adjudicator** shall be vacated if the holder of such office for the time being shall:
- 35.4.1 die;
  - 35.4.2 be convicted of an indictable offence or, in the case of a conviction under the laws of another jurisdiction, of an offence which would be an indictable offence under the laws of England and Wales;
  - 35.4.3 resign his office by 63 days notice in writing sent by **Post** to the **Joint Scheme Administrator** or such shorter period as the **Joint Scheme Administrators** and the **Creditors' Committee** shall agree;
  - 35.4.4 be removed from office and be replaced by the **Joint Scheme Administrators** in accordance with Clause 35.3;
  - 35.4.5 become bankrupt;
  - 35.4.6 be disqualified from acting as a director of a company under the **Company Directors Disqualification Act**; or
  - 35.4.7 be admitted to hospital because of mental disorder, or be the subject of an order made by a court having jurisdiction, whether in England or elsewhere, in matters concerning his mental disorder.
- 35.5 A **Scheme Adjudicator** shall be entitled to such remuneration in respect of the performance of his functions under the **Scheme** as shall be agreed by the **Joint Scheme Administrators**. He shall also be entitled to be reimbursed his reasonable costs and expenses incurred in

performing such functions, provided the incurring of such costs and expenses was authorised by the **Joint Scheme Administrators**. Such remuneration and reasonable costs and expenses shall be paid as a **Scheme Expense** in accordance with Clause 8.1.11, unless paid by a **Scheme Creditor** pursuant to Clause 37.2.4.

### 36. Specific Powers, Duties and Functions of the **Scheme Adjudicator**

36.1 Each **Scheme Adjudicator** shall adjudicate, as an expert and not as an arbitrator, on all matters referred to him pursuant to Clauses 6.8, 17.9, 18.4, 18.8, 42.4.4 and 44.3.

### 37. Dispute Resolution Procedure

37.1 Any disputed matter to be referred to the **Scheme Adjudicator** pursuant to Clauses 6.8, 17.9, 18.4, 18.8, 42.4.4 or 44.3 shall be referred by the **Joint Scheme Administrators** by notice in writing sent by **Post** (and copied with enclosures by **Post** to the **Scheme Creditor** concerned). Such notice shall set out details of the matter to be resolved and shall be accompanied by the **Joint Scheme Administrators'** submissions together with supporting evidence, including copies of such of the **Company's** records as shall appear relevant, and copies of any relevant documents provided by the **Scheme Creditor** concerned to the **Joint Scheme Administrators**.

37.2 In dealing with the dispute referred to him pursuant to Clause 6.8, 17.9, 18.4, 18.8, 42.4.4 or 44.3 a Scheme Adjudicator shall:

37.2.1 be entitled to lay down such rules and procedures as he in his absolute discretion deems appropriate for the purpose of assisting him in reaching his decision and shall be entitled to call for such evidence, documents, data and information as he may require, ensuring that each party to the dispute has an opportunity to consider and comment on any evidence, documents, data and information provided by the other; and

37.2.2 be entitled to consult with such advisers, including legal advisers, actuaries and other experts, as he may deem appropriate; and

37.2.3 be entitled to require the **Joint Scheme Administrators** or such of their partners or staff as shall be relevant, and the **Scheme Creditor** to appear before him for the purpose of addressing him on any aspect of the dispute on such date and at such place as he shall reasonably require; and

37.2.4 subject to Clause 35.5, be entitled, in respect of his remuneration and reasonable costs and expenses incurred by him, to order the parties to deposit such sum as he shall deem appropriate as security in respect of such costs, and to direct that any or all of such remuneration, costs and expenses shall be paid by the **Company**, in which case the **Joint Scheme Administrators** shall cause the same to be paid as a **Scheme Expense** or by the **Scheme Creditor** in which case, the same shall be paid by the **Scheme Creditor** forthwith, and in any event no later than 14 days from the date of such direction. Where the **Scheme Creditor** fails to make such payment, it shall be deducted from any sum which may be or become due to the **Scheme Creditor** by way of dividend or **Distribution** and where the **Scheme Creditor** is not entitled to receive a dividend or distribution under the **Scheme**, or is subsequently found to be a **Net Debtor**, or the amount of such remuneration, costs and expenses exceeds the value of any dividend or **Distribution** to which he is entitled, the **Joint Scheme Administrators** shall pay such amount or (if applicable) such excess as a **Scheme Expense** and treat the same as a debt owed by the **Scheme Creditor** or **Net Debtor** to the **Company**, which shall be payable forthwith.

- 37.3 A **Scheme Adjudicator** shall as soon as possible, and in any event before the expiration of 91 days from the date of the notice by which the dispute was referred to him, certify in writing sent by **Post** to the **Joint Scheme Administrators** and the relevant **Scheme Creditor**, his determination in relation to the disputed matter, provided that a **Scheme Adjudicator** may, with the consent of the **Joint Scheme Administrators** (such consent not to be unreasonably withheld) extend the 91 day period by such time as he and the **Joint Scheme Administrators** shall agree.
- 37.4 The decision of a **Scheme Adjudicator** on a dispute referred to him in accordance with this **Scheme** shall to the extent permitted by law be final and binding and for the avoidance of doubt, there shall be no right of appeal from, or to make any claim against such **Scheme Adjudicator** in respect of such decision. For the avoidance of doubt, a **Scheme Adjudicator** shall only adjudicate on disputes referred to him pursuant to Clauses 6.8, 17.9, 18.4, 18.8, 42.4.4 and 44.3.
- 37.5 In the event that a **Scheme Adjudicator** shall become aware that he has a conflict of interest in relation to any matter referred to him, he shall inform the **Joint Scheme Administrators** of such conflict forthwith, and the **Joint Scheme Administrators** may, at their absolute discretion, appoint another **Scheme Adjudicator** in his place to deal with the dispute.

## THE CREDITORS' COMMITTEE

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

- 38.1 There shall be a **Creditors' Committee** for the purposes mentioned in the **Scheme** which shall comprise not less than 4 and not more than 8 **Scheme Creditors**. The first **Committee Members** shall be those persons elected at the meetings of creditors for the purpose of considering and if thought fit approving the **Scheme**.
- 38.2 No one shall be elected or nominated or appointed as a **Committee Member** who is ineligible by reason of any of the matters referred to in Clause 38.4 or who was not at the **Petition Date** and is not at the date of such election or nomination a **Scheme Creditor**.
- 38.3 The **Committee Members** and **Nominated Representatives**, when acting for the purposes of the **Scheme**, shall act in good faith at all times in the interests of the general body of **Scheme Creditors**.
- 38.4 The office of **Committee Member** shall be vacated if that member:
- 38.4.1 in the case of **Committee Members** who are individuals only:
    - 38.4.1.1 dies;
    - 38.4.1.2 is convicted of an indictable offence or, in the case of a conviction under the laws of another jurisdiction, of an offence which would be an indictable offence under the laws of England and Wales, in respect of which he receives a custodial sentence; or
    - 38.4.1.3 is admitted to hospital because of mental disorder or is made the subject of an order by a court having jurisdiction whether in England or elsewhere in matters concerning his mental disorder;
  - 38.4.2 in the case of all **Committee Members**:
    - 38.4.2.1 resigns office by notice sent by **Post** to the **Joint Scheme Administrators**;
    - 38.4.2.2 is removed from office by a **Creditors' Resolution** of the **Scheme Creditors**;
    - 38.4.2.3 appears likely ultimately, having taken into account contingent and future as well as current mutual liabilities between the **Company** and that **Committee Member**, not to be a **Scheme Creditor** or to be an overall **Net Debtor** and the remaining **Committee Members** resolve that he should cease to be a **Committee Member**;
    - 38.4.2.4 knowingly contravenes the provisions of the **Scheme** and the remaining **Committee Members** resolve that he should cease to be a **Committee Member**; or
    - 38.4.2.5 fails to attend three consecutive meetings of the **Creditors' Committee**, and the remaining **Committee Members** resolve that he should cease to be a **Committee Member**.
- 38.5 The **Creditors' Committee** shall have power subject to Clause 38.2, at any time to appoint any **Scheme Creditor** to be a **Committee Member**, whether to fill a casual vacancy or, subject to Clause 38.1, as an addition to the existing members.

### 39. Functions of the **Creditors' Committee**

- 39.1 The **Creditors' Committee** shall be responsible for assisting the **Joint Scheme Administrators** in the implementation of the **Scheme** including, without limiting the generality of the foregoing, providing their views on any matter pertaining to the **Scheme** to the **Joint Scheme Administrators**.
- 39.2 The **Creditors' Committee** shall ensure that there is at least one **Scheme Administrator** in office at all times throughout the **Scheme Period**.
- 39.3 The **Company** acting by the **Joint Scheme Administrators** shall not, except with the prior approval of the **Creditors' Committee**:
- 39.3.1 enter into any lease or purchase the freehold of any premises;
  - 39.3.2 after the **Dividend Trigger Date** agree to the commutation, settlement, waiver or compromise of a **Scheme Claim** when the amount to be paid pursuant to the proposed commutation, settlement waiver or compromise exceeds 50,000 **US Dollars** or, if payable in another currency, the equivalent calculated at the **Scheme Rate**;
  - 39.3.3 prepare and/or submit proposals for an **Alternative Scheme** to **Scheme Creditors** in accordance with Clause 33.1.19;

provided that, in the event that the **Joint Scheme Administrators** give notice in writing by **Post** to the **Committee Members** that they wish to enter into or do any transaction or thing mentioned in this Clause 39.3 and the **Creditors' Committee** has not within the time specified in such notice passed a resolution to the effect that it does not approve the same, the **Joint Scheme Administrators** may enter into or do the transaction or thing notwithstanding that the **Creditors' Committee** has not given its approval.

- 39.4 The **Creditors' Committee** shall have the other functions specifically referred to in the **Scheme**.

### 40. Information to be given to the **Creditors' Committee**

- 40.1 The **Creditors' Committee** may from time to time resolve to seek such information as it may reasonably think necessary or desirable from the **Joint Scheme Administrators** concerning the affairs of the **Company**, the operation of the **Scheme**, the determination of any dividend or **Distribution** and such other matters concerning the affairs of the **Company** as the **Creditors' Committee** may reasonably require and the **Joint Scheme Administrators** shall (subject always to Clause 40.3) provide the same unless the **Court** shall otherwise direct, or the **Joint Scheme Administrators** are for any reason unable to do so.
- 40.2 The **Joint Scheme Administrators** shall either attend or appoint a delegate to attend each meeting of the **Creditors' Committee**, including any meeting at which information provided under Clause 40.1 is submitted or considered, for the purpose of giving such explanations and information as the **Creditors' Committee** may require.
- 40.3 Nothing in the **Scheme**, including for the avoidance of doubt Clause 40.1, shall require the **Joint Scheme Administrators** to provide to the **Creditors' Committee** information the release of which the **Joint Scheme Administrators** determine would be detrimental to the interests of the **Scheme Creditors** as a whole. If the **Joint Scheme Administrators** refuse to provide information under this Clause 40.3, they must inform the **Creditors' Committee** of the reasons for such refusal.
- 40.4 The **Joint Scheme Administrators** shall, upon request by any **Committee Member**, supply any **Committee Member** with a copy of the **Company's** latest available audited accounts in their possession.

#### 41. Proceedings of the **Creditors' Committee**

- 41.1 The Chairman of any meeting of the **Creditors' Committee** shall be one of the **Joint Scheme Administrators**, or a person nominated by them or either of them so to act.
- 41.2 **Committee Members** other than individuals shall, and **Committee Members** who are individuals may, appoint a **Nominated Representative** to attend and vote at meetings of the **Creditors' Committee** on their behalf and to fulfil their functions as **Committee Member**. The appointment of a **Nominated Representative** shall terminate automatically in the event that the appointing **Committee Member** ceases to hold office.
- 41.3 Subject to the provisions of the **Scheme**, the **Creditors' Committee** may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it sees fit. Any **Committee Member** may at any time summon a meeting of the **Creditors' Committee**, to be held during normal business hours on a **Working Day** in England unless all the other **Committee Members** and the **Joint Scheme Administrators** agree otherwise. Written notice of any such meeting of the **Creditors' Committee** (including the time, date and purpose for which the meeting is called) must be sent by **Post** to the other members and the **Joint Scheme Administrators** at their office not less than 21 days before the day on which the meeting is to be held, or such lesser period of notice as the **Joint Scheme Administrators** and the **Creditors' Committee** may agree.
- 41.4 Meetings of the **Creditors' Committee** may be validly held where the **Committee Members** or their **Nominated Representatives** are present physically, or through the medium of a conference call, video conference or such other electronic means of communication as shall allow them to communicate contemporaneously and the words "present in person" shall be deemed, for the purposes of Clause 41.5, to include being present by such means.
- 41.5 Subject to Clause 41.6, the quorum necessary for the transaction of business shall be a majority of **Committee Members** who must be present in person.
- 41.6 The **Creditors' Committee** may act notwithstanding any vacancy in its body, but if and so long as the number of **Committee Members** does not exceed 3, the continuing **Committee Members** or their **Nominated Representatives** may act for the purpose of convening a meeting of **Scheme Creditors** or filling the vacancy or vacancies in the membership of the **Creditors' Committee**, but for no other purpose.
- 41.7 Matters arising for decision at any meeting of the **Creditors' Committee** shall be decided by a majority of votes of the **Committee Members** and **Nominated Representatives** present. In the case of an equality of votes, the chairman of the meeting shall have a casting vote but, for the avoidance of doubt, neither the **Joint Scheme Administrators** nor any person nominated by them pursuant to Clause 41.1 shall be entitled to vote at meetings of the **Creditors' Committee** in any other circumstances.
- 41.8 A resolution in writing, including, for the avoidance of doubt, a facsimile copy of such resolution, whether on one or separate pieces of paper, signed by or on behalf of all or a majority of **Committee Members** for the time being, shall be as valid and effective as if passed at a meeting of the **Creditors' Committee** duly convened and held.
- 41.9 Each **Committee Member** and **Nominated Representative** shall preserve the confidentiality of all information received in his capacity as a **Committee Member** or **Nominated Representative** which is not information that is a matter of public record concerning the **Company** and the operation of the **Scheme**, and shall not use such information for pecuniary advantage or for any purpose other than the performance of his functions under the **Scheme**, unless he has obtained the prior written approval of the **Joint Scheme Administrators**.
- 41.10 No **Committee Member** or **Nominated Representative** shall, save as provided in this Clause 41.10, act as a **Committee Member** or **Nominated Representative** in relation to any matter in respect of which he has a conflict of interest in performing his functions under the

**Scheme.** Where any **Committee Member** or **Nominated Representative** has such a conflict of interest, he shall at any meeting of the **Creditors' Committee** declare in advance any interest, that he has, or might have, (and, in the case of a **Nominated Representative**, that he is aware that the **Committee Member** for whom he acts has, or might have) in any information provided or matters to be considered at that meeting or in any deliberation of the **Creditors' Committee**, and subject as hereinafter provided shall absent himself from the meeting. Neither a **Committee Member** nor a **Nominated Representative** shall be entitled to participate in or vote at any meeting of the **Creditors' Committee** in respect of any matter in relation to which such a conflict of interest arises unless at that meeting the other **Committee Members** and **Nominated Representatives** present resolve (with the agreement of the **Joint Scheme Administrators**) that the relevant **Committee Member** or **Nominated Representative** should be entitled either to vote or to participate in the meeting or both.

- 41.11 Unless the **Creditors' Committee** shall (with the agreement of the **Joint Scheme Administrators**) resolve otherwise, all meetings of the **Creditors' Committee** shall be held in London, England at such venue as may be specified in any notice convening such meetings.
- 41.12 The **Joint Scheme Administrators** shall cause proper minutes to be kept of all proceedings of the **Creditors' Committee** and shall send a copy of such minutes to each **Committee Member** except that, where such minutes detail proceedings relating to any matter in respect of which a **Committee Member** or **Nominated Representative** has a conflict of interest, the relevant section of the minutes shall be deleted from the copy sent to such **Committee Member** unless a resolution was passed pursuant to Clause 41.10 that such **Committee Member** or **Nominated Representative** should be entitled to participate in such proceedings.

## MEETINGS OF SCHEME CREDITORS

### 42. Meetings of **Scheme Creditors**

- 42.1 For the avoidance of doubt, the provisions of Clauses 42 to 47 inclusive, save for Clause 42.5, shall have no application to the convening and conduct of the meetings of **Scheme Creditors** held for the purpose of considering, and if thought fit, approving the **Scheme** or an **Alternative Scheme**.
- 42.2 The **Joint Scheme Administrators** and/or the **Creditors' Committee** may convene a meeting of **Scheme Creditors** whenever and for such purposes as the **Creditors' Committee** and/or the **Joint Scheme Administrators** shall think fit.
- 42.3 In addition to the circumstances set out in Clause 42.2, the **Joint Scheme Administrators** shall forthwith summon a meeting of the **Scheme Creditors** whenever they shall be required to do so by notice in writing sent by **Post** to the **Joint Scheme Administrators** and signed by or on behalf of 5 or more **Scheme Creditors** having **Scheme Claims** or **Agreed Liabilities** amounting to not less than one fifth in value of the aggregate of all **Scheme Claims** and **Agreed Liabilities** excluding the value of any **Disputed Scheme Claims**, subject to any applicable set-off and after deduction of any applicable **Security**. The notice requiring the **Joint Scheme Administrators** to summon the meeting must specify the purpose for which the meeting is required and any resolutions to be proposed at the meeting and if such notice is duly served in accordance with this Clause 42.3 it shall be the duty of the **Joint Scheme Administrators** to give notice of the meeting in accordance with Clause 43.
- 42.4 In calculating the value of **Scheme Claims** or **Agreed Liabilities** in accordance with Clause 42.3:
- 42.4.1 **Scheme Claims** or **Agreed Liabilities**, or the right to receive payment in respect of them, acquired by transfer, assignment, sale or novation of debt or of the right to receive payment, or by reason of any reorganisation or reconstruction of companies, after the **Effective Date**, shall not be counted; and
- 42.4.2 the **Joint Scheme Administrators** shall place a value on any **Disputed Scheme Claim** of any **Scheme Creditor** serving notice pursuant to Clause 42.3, being such value as they in their absolute discretion may deem appropriate; and
- 42.4.3 in the case of notice served by any **E&A Pool Participant** pursuant to Clause 42.3, the value of that **E&A Pool Participant's Agreed Liability** shall be the value of the percentage of the aggregate of **Current Balances** and **Reserves** which constitutes a **Liability** to that **E&A Pool Participant**, the relevant **Current Balances** and **Reserves** being those by reference to which the relevant **E&A Pool Participant's** current **Agreed Percentage** was calculated; and
- 42.4.4 in the event of a dispute as to the valuation of **Scheme Claims** or **Agreed Liabilities** for the purposes of Clause 42.3 the **Joint Scheme Administrators** shall, subject to Clause 35.1, in consultation with the **Creditors' Committee**, appoint a **Scheme Adjudicator** to deal with the dispute in accordance with the **Dispute Resolution Procedure**. The decision of the **Scheme Adjudicator** shall be final for the purposes of and in relation to a notice requiring a meeting to be convened pursuant to Clause 42.3.
- 42.5 For the avoidance of doubt, the amount in respect of which any **Scheme Creditor** votes at any meeting of **Scheme Creditors** (including a meeting to approve the **Scheme**), and any adjudication of, or decision on, discrepancies between the information in the **Company's** records and that provided by **Scheme Creditors** prior to the holding of the meeting of

**Scheme Creditors**, to approve the **Scheme** or an **Alternative Scheme** for the purpose of voting at the said meeting of **Scheme Creditors**, shall not be binding on the **Company**, the **Scheme Creditors** or the **Joint Scheme Administrators** save in respect of such vote.

#### 43. Notice of Meetings of **Scheme Creditors**

- 43.1 Notice in writing of every meeting of **Scheme Creditors**, specifying the time and place of the meeting and the general nature of the business to be transacted at the meeting, and setting out any resolutions to be proposed at the meeting, shall be sent to each **Scheme Creditor** at his last known address (if any) or such other address as he may have given to the **Company** (or the **Joint Scheme Administrators**) for the service of such notice upon him. Every such notice shall be sent by **Post** and the accidental omission to send any such notice to, or the non-receipt of a notice by, any **Scheme Creditor** entitled to receive the same shall not invalidate the proceedings in any meeting. The **Joint Scheme Administrators**, or where the meeting is convened by it pursuant to Clause 42.2, the **Creditors' Committee** shall, in so far as they are able, cause to be published an advertisement of each meeting in the same newspaper(s) and publication(s) in which the notice of the meetings of **Scheme Creditors** to consider and if thought fit approve the **Scheme** was advertised. The **Joint Scheme Administrators**, or where relevant, the **Creditors' Committee**, may also cause to be published in such other place or places as they deem fit notices or advertisements of any proposed meeting of **Scheme Creditors**.
- 43.2 It shall be sufficient to give not less than 28 days' notice of a meeting of **Scheme Creditors**.
- 43.3 No resolution may be proposed or passed at a meeting of **Scheme Creditors** unless such resolution was set out in the notice of such meeting, or in the case of a resolution to appoint a **Committee Member**, was so set out or was notified to **Scheme Creditors** pursuant to Clause 47.1.4.2.

#### 44. Voting at Meetings

- 44.1 Every **Scheme Creditor** present in person or by proxy, shall have one vote for every **US Dollar** of his **Scheme Claim** as valued by the Chairman, less the value of any applicable **Security** and after applying set-off. Each **E&A Pool Participant** shall have one vote for every **US Dollar** of the value of the aggregate of **Current Balances** and **Reserves** which constitutes a **Liability** to the **E&A Pool Participant**, the relevant **Current Balances** and **Reserves** being those by reference to which the relevant **E&A Pool Participant's** current **Agreed Percentage** was calculated.
- 44.2 For voting purposes **Scheme Claims** and **Agreed Liabilities**, where necessary, will be converted into **US Dollars** at the **Scheme Rate**.
- 44.3 Where a **Scheme Creditor** disputes the decision of the Chairman of the meeting as to the admission and value of his vote at that meeting, the **Joint Scheme Administrators** shall, subject to Clause 35.1, in consultation with the **Creditors' Committee** appoint a **Scheme Adjudicator** to deal with the dispute in accordance with the **Dispute Resolution Procedure**. The decision of the **Scheme Adjudicator** shall be final for the purposes of and in relation to the proceedings in that meeting.
- 44.4 Every **Scheme Creditor** entitled to vote shall have the right to appoint any person as his proxy to attend and vote in his place. The instrument appointing a proxy may be in any form which the Chairman of the meeting may approve and must be lodged at the place specified in the notice of meeting for the lodging of proxies not less than 2 clear **Working Days** before the meeting at which it is to be used. Proxies may be lodged by facsimile in which case they shall be sent to the facsimile number specified for that purpose in the notice of meeting.

44.5 **Creditors' Resolutions** at meetings of **Scheme Creditors** shall be passed if a majority in number representing three fourths in value (calculated in accordance with Clauses 44.1, 44.2 and 44.3) of those **Scheme Creditors** entitled to do so vote in person or by proxy in favour thereof.

#### 45. Quorum Required for Meetings

45.1 No business shall be transacted at any meeting of **Scheme Creditors** unless a quorum is present when the meeting proceeds to business. Subject to Clause 45.2, five **Scheme Creditors** present in person or by proxy and having the right to vote at the meeting shall constitute a quorum.

45.2 Where a resolution is proposed for the removal of the **Joint Scheme Administrators** or either of them from office, it shall be necessary for there to be at least twenty **Scheme Creditors** present in person or by proxy and having the right to vote at the meeting.

#### 46. Chairman of Meetings

One of the **Joint Scheme Administrators** shall be the Chairman of all meetings of the **Scheme Creditors** unless such meeting has been convened for the purpose of reviewing either or both of the **Joint Scheme Administrators'** appointments and a resolution has been proposed for the removal of one or both of the **Joint Scheme Administrators**, in which case a person nominated by the **Creditors' Committee** shall preside. If there is a vacancy in the office of Chairman or if the Chairman is not present within fifteen minutes after the time appointed for opening the meeting or is unwilling to preside, the **Scheme Creditors** present in person or by proxy shall choose a **Committee Member** or, if no such member is present or if all such members present decline to preside, one of themselves, to be Chairman of the meeting.

#### 47. Powers of the Scheme Creditors in General Meeting

47.1 Without prejudice to the terms of this **Scheme**, a meeting of **Scheme Creditors** duly convened and held shall have power by a **Creditors' Resolution**:

47.1.1 subject to the provisions of Clause 31.5, to remove the **Joint Scheme Administrators** or either of them from office and appoint a person or persons qualified to act in accordance with Clause 30.1 and not ineligible by reason of any of the matters referred to in Clause 31.2 in their place;

47.1.2 to terminate the operation of the **Scheme** (subject to the prior agreement of the **Joint Scheme Administrators** or the **Court**) pursuant to Clause 48.1.1;

47.1.3 to remove a **Scheme Adjudicator** from office (subject to the prior agreement of the **Joint Scheme Administrators** or the **Court**) and appoint a person qualified to act in accordance with Clause 35.1 and not ineligible by reason of any of the matters referred to in Clause 35.4, in his place, provided that no **Scheme Creditor** with an ongoing dispute which at the time of the meeting has been, or is about to be, referred to that **Scheme Adjudicator** to be resolved pursuant to the **Dispute Resolution Procedure** may vote upon such a resolution;

47.1.4 to remove any **Committee Member** from office and (without prejudice to the **Creditors' Committee's** power under Clause 38.5 and subject to Clause 38.2), to appoint any person to be a **Committee Member**, either to fill a casual vacancy or as an additional member, but so that the total number of members shall not exceed 8. No person shall be appointed as a **Committee Member** at any meeting of **Scheme Creditors** unless:

47.1.4.1 he is recommended by the **Creditors' Committee** and consents to act as a member; or

- 47.1.4.2 not less than 14 and no more than 35 clear days before the date appointed for that meeting, notice signed by a **Scheme Creditor** qualified to vote at the meeting has been given by **Post** to the **Joint Scheme Administrators**, who shall forthwith pass such notice to the **Creditors' Committee**, of the intention to propose that person for appointment, together with notice signed by that person of his willingness to be appointed. The **Joint Scheme Administrators** shall notify **Scheme Creditors** of the proposed resolution to appoint a **Committee Member** by notice in writing sent by **Post** to each **Scheme Creditor** at his last known address (if any) or such other address as he may have given to the **Company** or the **Joint Scheme Administrators** for the service of notices upon him.

## TERMINATION OF THE SCHEME

### 48. Termination of the Scheme

48.1 Save as provided for in Clause 50.2, the **Scheme** shall forthwith cease to have effect in relation to all **Scheme Creditors** upon the happening of the first to occur of the following events:

- 48.1.1 the **Scheme Creditors** passing a **Creditors' Resolution** (with the prior agreement of the **Joint Scheme Administrators** or the **Court**) that the **Scheme** be terminated; or
- 48.1.2 subject to the provisions of Clause 48.3 the expiry of 182 days from publication of the notice referred to in Clause 48.2; or
- 48.1.3 an **Alternative Scheme** which contains provisions relating to the payment, whether in full or otherwise, of the **Scheme Claims** of all **Scheme Creditors** becoming effective.

48.2 In the event that:

- 48.2.1 the **Admitted Claim** in respect of all **Scheme Claims** of **E&A Pool Creditors** and **General Creditors** which have been notified to the **Company** has been established; and
- 48.2.2 either such **Admitted Claims** have been paid in full, or, following the **Dividend Trigger Date**, the **Joint Scheme Administrators** consider that only one further dividend can be paid in respect of such **Admitted Claims**; and
- 48.2.3 the **Joint Scheme Administrators** consider that no further claims are likely to be made against the **Company**;

the **Joint Scheme Administrators** shall cause to be published in the same newspapers and publications in which the meeting of **Scheme Creditors** to consider and vote on the **Scheme** was advertised, or, if this should not prove to be reasonably practicable, in such other newspapers or publications as they shall deem appropriate, a notice calling for any party who believes he may have a **Scheme Claim** to contact the **Joint Scheme Administrators** giving details of that claim within 91 days of the date of publication of the notice, and stating that, in default of any further claims being submitted to the **Joint Scheme Administrators** within that period, the **Scheme** will terminate on the expiry of 182 days from the date of publication of the notice.

48.3 Provided no further **Scheme Claims** (for the avoidance of doubt, not being **Scheme Claims** which have previously been rejected by the **Joint Scheme Administrators** or the **E&A Pool Manager**) have been submitted to them within 91 days from the date of publication of the notice referred to in Clause 48.2, following the expiry of that 91 day period and before the expiry of 182 days from publication of such notice,

- 48.3.1 if there is any balance remaining in the **Operating Fund**, instruct the **E&A Pool Manager** to pay such balance over to the **Company**, together with any other funds held by it on behalf of the **Company**; and
- 48.3.2 cause to be paid, if applicable, and subject to there being sufficient funds available, a final **Distribution** or dividend to **E&A Pool Creditors** and **General Creditors**, and a final **Distribution** to **E&A Pool Participants**;

following which the **Scheme** shall terminate.

#### 49. Partial Termination of the Scheme

In the event that an **Alternative Scheme** is implemented which provides for payment, whether in full or otherwise, of the **Scheme Claims** of certain **Scheme Creditors**, the **Scheme** shall cease to have effect in respect of such **Scheme Creditors** only forthwith on that **Alternative Scheme** becoming effective.

#### 50. Effect of Termination or Partial Termination of the Scheme

50.1 Upon termination of the **Scheme** in accordance with Clause 48, save as provided for in this Clause 50, the provisions of the **Scheme** shall forthwith cease to have effect.

50.2 Notwithstanding the termination of the **Scheme** in accordance with Clause 48:

50.2.1 the trust established pursuant to Clause 25.1 and the objects and conduct thereof shall continue; and

50.2.2 the provisions of this Clause 50 and of Clauses 19, 25, 27, 52, 53.2 and 58 shall continue in full force and effect.

50.3 At the expiration of 2 years from the **Termination Date**, the right of any **Scheme Creditor** to make any claim against the **Company** pursuant to Clause 25 shall expire.

50.4 On partial termination of the **Scheme** in accordance with Clause 49:

50.4.1 the provisions of the **Scheme**, other than this Clause 50 and Clauses 19, 25, 27, 52, 53.2 and 58 which shall continue in full force and effect save to the extent that they conflict with the provisions of the **Alternative Scheme**, shall forthwith cease to have effect in relation only to those **Scheme Creditors** for whom provision is made in the **Alternative Scheme** which has given rise to such partial termination; and

50.4.2 the **Scheme** shall continue in full force and effect in relation to all other **Scheme Creditors** until terminated in accordance with Clause 48.

## EFFECT OF AN INSOLVENCY PROCEEDING

### 51. Effect of an **Insolvency Proceeding**

- 51.1 The occurrence of an **Insolvency Proceeding** during the **Scheme Period** shall have no effect on the operation of the **Scheme**, which shall continue in full force and effect until terminated in accordance with Clause 48. For the avoidance of doubt, notwithstanding the occurrence of any such **Insolvency Proceeding** the continuation by the **Joint Scheme Administrators** of the exercise of their powers in accordance with the **Scheme** shall not be affected, save insofar as may be a necessary consequence by operation of law, notwithstanding any loss of agency in respect of the **Company** which may result from such **Insolvency Proceeding**.
- 51.2 In the event of any conflict between the provisions of the **Scheme** and the provisions of the **Insolvency Act** and/or the **Insolvency Rules** and/or the Insurance Companies Act 1982 and/or the Insurance Companies (Winding-Up) Rules 1985, in each case as amended, modified or re-enacted from time to time, or any analogous statutes or rules which may apply to the **Company** following an **Insolvency Proceeding**, for **Scheme** purposes only, the provisions of the **Scheme** shall prevail.

# INDEMNITY, BOARD FUNCTIONS AND SCHEME CREDITORS' CO-OPERATION

## 52. Validity of Acts of and Responsibility of the **Joint Scheme Administrators** and the **Creditors' Committee**

52.1 Subject to any applicable provision of the **Companies Act**, or the **Insolvency Act** or, in either case, any amendment, modification or re-enactment thereof:

52.1.1 No **Scheme Creditor** shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the **Joint Scheme Administrators** in pursuance of their functions or duties under the **Scheme**, or the exercise or non-exercise by the **Joint Scheme Administrators** or either of them in good faith of any power or discretion conferred upon them for the purposes of the **Scheme** and neither of the **Joint Scheme Administrators** shall be liable for any loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion, unless such loss is attributable to their or either of their own negligence, breach of duty or trust, fraud or dishonesty or attributable to the negligence, breach of duty or trust, fraud or dishonesty of any delegatee appointed by them or either of them under Clause 33.1.4. References in this Clause to the **Joint Scheme Administrators** shall be deemed to refer to the **Joint Scheme Administrators** acting both in their capacity as such and, where applicable, in their capacity as **Trustee(s)**.

52.1.2 No **Scheme Creditor** shall be entitled to challenge the validity of any act done or omitted to be done in good faith by any **Committee Member** or **Nominated Representative**, the **Scheme Actuary** or a **Scheme Adjudicator** in pursuance of his functions or duties under the **Scheme**, and such **Committee Member** or **Nominated Representative**, **Scheme Actuary**, or **Scheme Adjudicator**, as the case may be, shall not be liable for any loss arising out of any such act or omission, unless such loss is attributable to his own negligence, breach of duty or trust, fraud or dishonesty.

52.2 References in Clauses 52.1.1, 52.1.2 and 53 to the **Joint Scheme Administrators**, **Committee Members**, **Nominated Representatives**, **Scheme Actuary**, any **Scheme Adjudicator** and the **Board** shall include previous holders of such offices.

## 53. Indemnities and Validation

53.1 The **Company** shall indemnify the **Joint Scheme Administrators**, the members of the **Board**, **Committee Members** and **Nominated Representatives**, the **Scheme Actuary** and any **Scheme Adjudicator** against any liability by way of legal and other advisers' costs incurred by them in defending any proceedings in relation to the preparation, negotiation and implementation of the **Scheme**, whether civil or criminal, in which judgment is given in their favour, or which is discontinued before judgment is given, or in which they are acquitted, or in connection with any application in which relief is granted to them by the **Court** from liability for negligence, default, breach of duty or breach of trust.

53.2 Notwithstanding a subsequent discovery that there was some defect in the procedure for calling or voting at any meetings or the passing of resolutions or the appointment of a **Committee Member**, the **Joint Scheme Administrators** any **Scheme Adjudicator** or a trustee or trustees pursuant to Clause 24.2, or that any of them was not eligible for appointment pursuant to the provisions of the **Scheme**, all acts done by the **Creditors' Committee**, such **Committee Member** or its **Nominated Representative**, the **Joint Scheme**

**Administrators**, the **Scheme Adjudicator** or such trustee or trustees, or any of them shall be valid as if every such procedure had been correctly adhered to and every such person had been duly appointed and was so eligible, provided that, in the case of any meeting in respect of which such a defect is discovered, that meeting was quorate.

#### 54. Functions of the Board

- 54.1 The **Board** shall continue to have and fulfil all obligations imposed upon the directors of a company by statute, subject to the powers given to the **Joint Scheme Administrators** under this **Scheme**, but for the avoidance of doubt, the **Board** shall not have or exercise any power or control in respect of the **Company**, its **Property**, assets or affairs.
- 54.2 The **Board** shall be entitled to request the **Joint Scheme Administrators** to provide all such information relating to the operation of the **Scheme** as may be reasonable, provided that any such request is made in the bona fide course of the **Board** fulfilling its obligations referred to at Clause 54.1. The **Board** may in addition and provided always that the request is reasonable and is made by the **Board** in the bona fide course of its fulfilling its obligations referred to at Clause 54.1, request one of the **Joint Scheme Administrators** to attend a meeting of the **Board** and to provide such information as they may reasonably require, 21 days' notice to be given of such meeting in writing sent by **Post** to the **Joint Scheme Administrators**.

#### 55. Scheme Creditors to Co-operate

- 55.1 The **Scheme Creditors** shall co-operate with, and render such assistance to, the **Joint Scheme Administrators** as they may reasonably require, including but not limited to the provision of information and documents in connection with their **Scheme Claims** and the operation of the **Scheme**, and shall provide such assistance as the **Joint Scheme Administrators** may reasonably require in connection with the recovery of any **Property** or the enforcement of obligations owed to the **Company**.

#### 56. Dispatch of Notices and Other Written Communications and Documents

- 56.1 All notices and other written communications and documents required to be sent pursuant to the provisions of the **Scheme** shall be sent by **Post** unless otherwise specifically provided in this **Scheme**.
- 56.2 Notices and other written communications and documents to be sent to the **Joint Scheme Administrators** and/or the **Company** shall be sent to Plumtree Court, London EC4A 4HT, United Kingdom Ref: PC240/NR or such other address as may be notified to creditors from time to time.
- 56.3 Notices and other written communications and documents to be sent to **Scheme Creditors** may be sent to such address as they notify to the **Joint Scheme Administrators** following the **Effective Date** and, failing such notification, to such address as may be shown in the **Company's** or the **E&A Pool Manager's** records, or any other address being the last known address of the **Scheme Creditor** which the **Joint Scheme Administrators** may reasonably believe is appropriate.
- 56.4 Where the **Scheme** provides for notices or other written communications or documents to be sent to the **Joint Scheme Administrators** by facsimile, the appropriate facsimile number shall be +44 (0)20 7212 6316 or such other facsimile number as may be notified to creditors from time to time and such forms or notices shall be clearly marked for the attention of the **Joint Scheme Administrators** of The Insurance Corporation of Singapore (UK) Limited.
- 56.5 Notices and any other written communications or documents sent by **Post** to **Scheme Creditors** pursuant to the **Scheme** shall be deemed, in the absence of evidence to the contrary, to have been received by the relevant **Scheme Creditor** on the second **Working Day** after dispatch, where the **Scheme Creditor's** address is in the United Kingdom, and on

the seventh **Working Day** after dispatch in all other cases, and references to the receipt by a **Scheme Creditor** of any such notice, communication or document shall be construed accordingly. References to a **Scheme Creditor's** address in this Clause 56.5 are to that **Scheme Creditor's** address as established in accordance with Clause 56.3. Notice periods laid down by the **Scheme** are to be calculated by reference to clear days from the date on which the notice concerned was sent by **Post**.

56.6 A sworn statement by the **Joint Scheme Administrators** or a member of their staff that an envelope containing a notice was sent by **Post** shall be conclusive evidence that the notice was given.

#### 57. Extension and Calculation of Deadlines

57.1 All or any of the deadlines laid down by the **Scheme** for the taking of any step by the **Joint Scheme Administrators** or by any **Scheme Creditor** may be extended for such period or periods as may be determined by the **Joint Scheme Administrators** in their absolute discretion, whether in relation to one or more **Scheme Claims** only or in relation to all **Scheme Claims**.

57.2 Deadlines laid down by the **Scheme** shall be calculated by reference to elapsed days and not **Working Days** but, in the event that such a deadline expires on a day which is not a **Working Day** in England, such deadline shall be deemed not to expire until close of business on the **Working Day** in England next following.

#### 58. Governing Law

58.1 The **Scheme** shall be governed by and construed in accordance with English law and the **Scheme Creditors** hereby agree that the **Court** shall (save as provided in Clause 58.2) have exclusive jurisdiction to hear and determine any dispute or proceedings arising out of the **Explanatory Statement** or the **Scheme** or the operation of the **Scheme**, and the **Scheme Creditors** hereby submit to the exclusive jurisdiction of the Court for such purposes.

58.2 Notwithstanding the provisions of Clause 58.1, the **Joint Scheme Administrators** retain the right to bring **Proceedings** in the name of the **Company** or otherwise in the Courts of any other country having jurisdiction under its own laws to hear such **Proceedings**.

## Part 3 – Appendices

[THIS PAGE LEFT BLANK INTENTIONALLY]

**Notice convening the meeting of Scheme Creditors to vote on the Scheme**

**NO. 6087 of 2001**

**IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT**

**IN THE MATTER OF  
THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED  
(PROVISIONAL LIQUIDATORS APPOINTED)**

**AND**

**IN THE MATTER OF THE COMPANIES ACT 1985**

NOTICE IS HEREBY GIVEN that by an Order dated 16 October 2001 made in the above matter the Court has directed that meetings be convened of the Scheme Creditors (as defined in the scheme of arrangement referred to below) of the above mentioned Company ("the Company") for the purposes of considering, and if thought fit, approving (with or without modification) a scheme of arrangement proposed to be made between the Company and the Scheme Creditors ("the Scheme of Arrangement").

The meeting to consider the Scheme of Arrangement for:

1. E&A Pool Creditors (as defined in the Scheme of Arrangement) will be held on 4 December 2001 at 11 am at The Chartered Insurance Institute, 20 Aldermanbury London EC2V 7HY;
2. General Creditors (as defined in the Scheme of Arrangement) will be held on 4 December 2001 at 11.15 am or as soon thereafter as the meeting of E&A Pool Creditors has concluded at The Chartered Insurance Institute, 20 Aldermanbury London EC2V 7HY;
3. E&A Pool Participants (as defined in the Scheme of Arrangement) will be held on 4 December 2001 at 11.30 am or as soon thereafter as the meeting of General Creditors has concluded at The Chartered Insurance Institute, 20 Aldermanbury London EC2V 7HY;
4. Oberon Pool Creditors (as defined in the Scheme of Arrangement) will be held on 4 December 2001 at 11.45 am or as soon thereafter as the meeting of E&A Pool Participants has concluded at The Chartered Insurance Institute, 20 Aldermanbury London EC2V 7HY.

Scheme Creditors are requested to attend the meeting relevant to them at the time and place above indicated either in person or by proxy.

Scheme Creditors may vote in person at the relevant meeting of creditors, or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

A copy of the text of the Scheme of Arrangement and a copy of the Explanatory Statement required to be furnished pursuant to section 426 of the Companies Act 1985, as well as blank forms of proxy, are available from the offices of PricewaterhouseCoopers, Plumtree Court, London, EC4A 4HT, United Kingdom (Ref: PC240/NR).

### List of Documents available for Inspection

1. Memorandum and Articles of Association of the Company.
2. Order of the High Court of Justice of England and Wales summoning the meetings of Scheme Creditors to consider and if thought fit approve the Scheme of Arrangement.
3. Preliminary Injunction under section 425 of the US Bankruptcy Code.<sup>1</sup>
4. The Scheme Document.

<sup>1</sup> As at the date of the Explanatory Statement, the preliminary has yet to be obtained. However, if and when such an injunction is obtained, the Joint Provisional Liquidators will make it available for inspection as soon as may be practicable.

## **PART XIII ARRANGEMENTS AND RECONSTRUCTIONS**

### **Sections 425 and 426 of the Companies Act 1985**

#### **425 Power of company to compromise with creditors and members**

(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the court may on the application of the company or any creditor or member of it or, in the case of a company being wound up, [or an administration order being in force in relation to a company, of the liquidator or administrator], order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) The court's order under subsection (2) has no effect until an office copy of it has been delivered to the registrar of companies for registration; and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting the company or defining its constitution.

(4) If a company makes default in complying with subsection (3), the company and every officer of it who is in default is liable to a fine.

(5) An order under subsection (1) pronounced in Scotland by the judge acting as vacation judge in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933 is not subject to review, reduction, suspension or stay of execution.

(6) In this section and the next—

- (a) "company" means any company liable to be wound up under this Act, and
- (b) "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

[425]

#### **426 Information as to compromise to be circulated**

(1) The following applies where a meeting of creditors or any class of creditors, or of members or any class of members, is summoned under section 425.

(2) With every notice summoning the meeting which is set to a creditor or member there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) In every notice summoning the meeting which is given by advertisement there shall be included either such a statement as above-mentioned or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(6) If a company makes default in complying with any requirement of this section, the company and every officer of it who is in default is liable to a fine; and for this purpose a liquidator [or administrator] of the company and a trustee of a deed for securing the issue of debentures of the company is deemed an officer of it.

However, a person is not liable under this subsection if he shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of his interests.

(7) It is the duty of any director of the company, and of any trustee for its debenture holders, to give notice to the company of such matters relating to himself as may be necessary for purposes of this section; and any person who makes default in complying with this subsection is liable to a fine.

**[426]**

## Section 386 of and Schedule 6 to the Insolvency Act

### 386 Categories of preferential debts

**386(1) [Debts listed in Sch. 6]** A reference in this Act to the preferential debts of a company or an individual is to the debts listed in Schedule 6 to this Act (money owed to the Inland Revenue for income tax deducted at source; VAT, insurance premium tax, landfill tax, car tax, betting and gaming duties, beer duty, lottery duty, air passenger duty; social security and pension scheme contributions; remuneration etc. of employees; levies on coal and steel production); and references to preferential creditors are to be read accordingly.

**386(2) [“The debtor”]** In that Schedule “the debtor” means the company or the individual concerned.

**386(3) [Interpretation of Sch. 6]** Schedule 6 is to be read with Schedule 4 to the Pension Schemes Act 1993 (occupational pension scheme contributions).

### Schedule 6 – The Categories of Preferential Debts

Section 386

#### Category 1: Debts Due to Inland Revenue

**1** Sums due at the relevant date from the debtor on account of deductions of income tax from emoluments paid during the period of 12 months next before that date.

The deductions here referred to are those which the debtor was liable to make under section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn), less the amount of the repayments of income tax which the debtor was liable to make during that period.

**2** Sums due at the relevant date from the debtor in respect of such deductions as are required to be made by the debtor for that period under section 559 of the Income and Corporation Taxes Act 1988 (sub-contractors in the construction industry).

#### Category 2: Debts Due to Customs and Excise

**3** Any value added tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
  - (b) in any other case the amount of any value added tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the 6-month period;
- and in sub-paragraph (a) “prescribed” means prescribed by regulations under the Value Added Tax Act 1994.

**3A** Any insurance premium tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph:

- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any insurance premium tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;  
and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1994.

**3B** Any landfill tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph:

- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any landfill tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;  
and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1996.

**4** The amount of any car tax which is due at the relevant date from the debtor and which became due within a period of 12 months next before that date.

**5** Any amount which is due—

- (a) by way of general betting duty, bingo duty or gaming duty, or
- (b) under section 12(1) of the Betting and Gaming Duties Act 1981 (general betting duty and pool betting duty recoverable from agent collecting stakes), or
- (c) under section 14 of, or Schedule 2 to, that Act (gaming licence duty),  
from the debtor at the relevant date and which became due within the period of 12 months next before that date.

**5A** The amount of any excise duty on beer which is due at the relevant date from the debtor and which became due within a period of 6 months next before that date.

**5B** Any amount which is due by way of lottery duty from the debtor at the relevant date and which became due within the period of 12 months next before that date.

**5C** Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.

#### Category 3: Social Security Contributions

**6** All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the Social Security Contributions and Benefits Act 1992 or the Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the 12 months next before the relevant date.

**7** All sums which on the relevant date have been assessed on and are due from the debtor on account of Class 4 contributions under either of those Acts of 1975, being sums which–

- (a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or a Northern Ireland department), and
- (b) are assessed on the debtor up to 5th April next before the relevant date, but not exceeding, in the whole, any one year's assessment.

Category 4: Contributions to Occupational Pension Schemes, etc.

**8** Any sum which is owed by the debtor and is a sum to which Schedule 4 to the Pension Schemes Act 1993 applies (contributions to occupational pension schemes and state scheme premiums).

Category 5: Remuneration, etc., of Employees

**9** So much of any amount which–

- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
  - (b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,
- as does not exceed so much as may be prescribed by order made by the Secretary of State.

**10** An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.

**11** So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within paragraph 9 or 10.

**12** So much of any amount which–

- (a) is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985, and
  - (b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,
- as does not exceed such amount as may be prescribed by order made by the Secretary of State.

Interpretation for Category 5

**13(1)** For the purposes of paragraphs 9 to 12, a sum is payable by the debtor to a person by way of remuneration in respect of any period if–

- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or
- (b) it is an amount falling within the following sub-paragraph and is payable by the debtor in respect of that period.

**13(2)** An amount falls within this sub-paragraph if it is–

- (a) a guarantee payment under Part III of the Employment Rights Act 1996 (employee without work to do);
- (b) any payment for time off under section 53 (time off to look for work to arrange training) or section 56 (time off for ante-natal care) of that Act or under section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties etc.);
- (c) remuneration on suspension on medical grounds, or on maternity grounds, under Part VII of the Employment Rights Act 1996; or

- (d) remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancy dismissal with compensation).

**14(1)** This paragraph relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or being adjudged bankrupt or (his employer being a company not in liquidation) by or in consequence of—

- (a) a receiver being appointed as mentioned in section 40 of this Act (debenture-holders secured by floating charge), or
- (b) the appointment of a receiver under section 53(6) or 54(5) of this Act (Scottish company with property subject to floating charge), or
- (c) the taking of possession by debenture-holders (so secured), as mentioned in section 196 of the Companies Act.

**14(2)** For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any enactment, that remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.

**14(3)** The reference in sub-paragraph (2) to any enactment includes an order or direction made under an enactment.

**15** Without prejudice to paragraphs 13 and 14—

- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the debtor in that period, and
- (b) references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.

#### Category 6: Levies on Coal and Steel Production

**15A** Any sums due at the relevant date from the debtor in respect of—

- (a) the levies on the production of coal and steel referred to in Article 49 and 50 of the E.C.S.C. Treaty, or
- (b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.

#### Orders

**16** An order under paragraph 9 or 12—

- (a) may contain such transitional provisions as may appear to the Secretary of State necessary or expedient;
- (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## Section 304 US Bankruptcy Code

### Section 304. Cases ancillary to foreign proceedings

- (a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.
- (b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may -
- (1) enjoin the commencement or continuation of -
    - (A) any action against
      - (i) a debtor with respect to property involved in such foreign proceeding; or
      - (ii) such property; or
    - (B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;
  - (2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or
  - (3) order other appropriate relief.
- (c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with -
- (1) just treatment of all holders of claims against or interests in such estate;
  - (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
  - (3) prevention of preferential or fraudulent dispositions of property of such estate;
  - (4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;
  - (5) comity; and
  - (6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

**Receipts and Payments for the period 14 October 1993 to 31 July 2001**

	£
<b>Receipts</b>	
Realisation of investments	1,291,339.38
Interest	4,582,780.01
Bank Balance	8,733,222.96
Sundry asset realization	1,100.00
Reinsurance recoveries	4,645,376.75
Tax Refund	578,443.45
<b>Total receipts</b>	<u><u>19,832,262.54</u></u>
<b>Payments</b>	
Sundry expenses	1,357.22
Foreign Exchange	300,002.07
Bank charges and commissions	29,161.20
Provisional liquidators' Remuneration	1,657,807.25
Provisional liquidators' Disbursements	29,977.11
Legal fees	509,790.47
Taxation	1,311,888.02
Accountants' Fees	396,498.50
Consultancy Fees	262,702.02
Run off fees	1,120,303.00
Net VAT	393,192.94
<b>Total Payments</b>	<u><u>6,012,679.80</u></u>
<b>Closing balance</b>	<u><u>13,819,582.75</u></u>

**Notes**

- (1) Non sterling receipts and payments have all been converted at the rate of exchange ruling at 31 July 2001.
- (2) Certain reinsurance recoveries are held in escrow pending the Scheme becoming effective.

**THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED**

(Joint Provisional Liquidators Appointed)

**DIRECTORS' REPORT AND FINANCIAL STATEMENTS**

31 December 2000

Registered Number: 1520360  
Registered Office: Plumtree Court  
London  
EC4A 4HT

# Contents

	Page
DIRECTORS' REPORT	91
REPORT OF THE AUDITORS TO THE MEMBERS	94
PROFIT AND LOSS ACCOUNT: TECHNICAL ACCOUNT – GENERAL BUSINESS	95
PROFIT AND LOSS ACCOUNT: NON-TECHNICAL ACCOUNT	96
STATEMENT OF TOTAL RECOGNISED GAINS AND LOSSES	97
RECONCILIATION OF MOVEMENTS IN SHAREHOLDERS' FUNDS	97
BALANCE SHEET	98
CASH FLOW STATEMENT	100
NOTES	101

# Directors' Report

The Directors present their annual report together with the financial statements for the year ended 31 December 2000.

## Principal Activity and Business Review

The principal activity of the company is general insurance and reinsurance business. The company voluntarily ceased to write new business on 1 January 1992. A winding up petition in respect of the company was presented by the company to the High Court on 14 October 1993. On the same date Philip Singer and Christopher Hughes were appointed Joint Provisional Liquidators of the company by order of the Court. On the 29 December 2000 Christopher Hughes was replaced by David Vaughan.

A major part of the business of the company was previously underwritten via the English & American Underwriting Agency. The English & American Insurance Company Limited went into provisional liquidation on 17 March 1993 and, as a consequence, Participant Run-Off Limited was formed on 1 April 1993.

With effect from 14 October 1993, the Joint Provisional Liquidators have appointed Participant Run-Off Limited, on an interim basis, to handle the run-off of a major part of the company's business. The rest of the company's business is being run off under alternative arrangements.

## Future Developments

The Joint Provisional Liquidators are considering the merits of a reserving type of Scheme of Arrangement whereby non-participant creditors are paid in full, subject to a maximum limit, and the remaining participant creditors, the English & American Pool participants, are paid a proportion of their claim with the remaining funds. It is proposed that creditors arising from the company's participation in the Oberon pool, which was fully closed into St Paul Re, will be the responsibility of St Paul Re.

The proposed scheme will only become effective when approved by the requisite majority of creditors and sanctioned by the Court.

## Results and Dividends

The results for the year ended 31 December 2000 and the state of the company's affairs at that date are as shown in the attached financial statements. The profit after taxation was £104,554 (1999: loss £1,524,349). The actuarial estimate of projected future losses showed no significant deterioration over the year.

As explained in note 15 to the financial statements, due to the inherent nature of the business underwritten, a substantial measure of estimation is involved in quantifying the company's outstanding insurance liabilities and the ultimate amount cannot be known with certainty.

The state of the company's affairs, subject to the uncertainties previously referred to, can be summarised as follows:

	2000	1999
	£	£
Gross assets including estimated reinsurance recoveries	27,031,421	24,691,086
Estimated gross liabilities	(34,849,906)	(32,525,081)
Net deficiency of assets	<u>(7,818,485)</u>	<u>(7,833,995)</u>

### Dividends and Transfers to Reserves

The Directors do not recommend the payment of a dividend to shareholders. The result for the year (see page 96) was transferred to reserves.

### Directors

The present Directors are:

Chan Seck Chun  
Mun Cheong Fai

Both Directors served throughout the year.

### Statements of Directors' Responsibilities

Company law requires the Directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss for that period. In preparing those financial statements, the Directors are required to:

- (a) select suitable accounting policies and then apply them consistently;
- (b) make judgements and estimates that are reasonable and prudent;
- (c) state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- (d) prepare the accounts on the going concern basis unless it is inappropriate to presume that the company will continue in business. (As explained in note 1, these financial statements have not been prepared on a going concern basis.)

The Directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Act 1985. They have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the company and to prevent and detect fraud and other irregularities.

Although the directors are legally responsible for the above, since 14 October 1993, the Joint Provisional Liquidators' appointment gives them, *inter alia*, the following powers and functions: control of the books and records of the company; protection of the company's assets; maintenance of the company's bank accounts; and administration and settlements of claims by or against the company where these are in the interest of creditors.

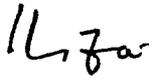
In applying these powers and performing these functions, the Joint Provisional Liquidators have controlled the preparation of the financial statements.

The Insurance Corporation of Singapore (UK) Limited

**Auditors**

In accordance with Section 385 of the Companies Act 1985, a resolution for the appointment of RSM Robson Rhodes as auditors of the company, is to be proposed at the forthcoming Annual General Meeting.

**BY ORDER OF THE BOARD**

A handwritten signature in black ink, appearing to read 'L. Far'.

**DIRECTOR**

08 June 2001

**REPORT OF THE AUDITORS TO THE MEMBERS OF  
THE INSURANCE CORPORATION OF SINGAPORE (U.K.) LIMITED  
(JOINT PROVISIONAL LIQUIDATORS APPOINTED)**

We have audited the financial statements on pages 95 to 100 which have been prepared following the accounting policies set out on pages 101 to 103.

**Respective responsibility of Directors and Auditors**

As described on page 92, the company's Directors are responsible for the preparation of the financial statements. It is our responsibility to form an independent opinion, based on our audit, on those financial statements and to report our opinion to you.

**Basis of Opinion**

We conducted our audit in accordance with Auditing standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

**Going Concern**

In forming our opinion, we have considered the adequacy of the disclosures made regarding the financial statements not being prepared on a going concern basis in note 1 to the accounts, and to uncertainties surrounding the ultimate settlement of long tail exposures as set out in note 15 to the accounts. Our opinion is not qualified in this respect.

**Opinion**

In our opinion the financial statements give a true and fair view of the state of the company's affairs as at 31 December 2000 and of its profit for the year then ended and have been properly prepared in accordance with the Companies Act 1985.



Chartered Accountants and Registered Auditors  
186 City Road  
London  
EC1V 2NU

Dated 08 June 2001

**PROFIT AND LOSS ACCOUNT: TECHNICAL ACCOUNT – GENERAL BUSINESS**

FOR THE YEAR ENDED 31 DECEMBER 2000

	Note	2000 £	£	Restated 1999 £	£
<b>Discontinued Operations:</b>					
<b>Earned premiums, net of reinsurance</b>					
Gross premiums written	3	31,624		47,135	
Outward reinsurance premiums		(25,420)		(45,696)	
			6,204		1,439
Allocated investments return transferred from the non-technical account			763,119		528,421
<b>Claims incurred, net of reinsurance</b>					
Gross claims paid	3	(107,350)		(113,094)	
Other claims agreed – gross		(763,401)		(651,624)	
Gross claims agreed		(870,751)		(764,718)	
Reinsurers' Share		389,040		271,579	
		(481,711)		(493,139)	
Change in the provision for claims					
Gross amount	7	64,527		485,593	
Reinsurers' Share		125,859		(660,897)	
		190,386		(175,304)	
(Increase) in claims incurred net of reinsurance			(291,325)		(668,443)
<b>Net operating expenses</b>	5		(354,660)		(1,334,414)
<b>Balance on the technical account for general business all derived from discontinued operations</b>					
			123,338		(1,472,997)

**PROFIT AND LOSS ACCOUNT: NON-TECHNICAL ACCOUNT**

FOR THE YEAR ENDED 31 DECEMBER 2000

	Note	£	2000 £	Restated 1999 £
Balance on the general business technical account			123,338	(1,472,997)
Investment income	6	763,299		527,791
Unrealised (loss)/profit on investments		(81)		385
Investment expenses and charges	6	(99)		245
		<u>763,119</u>		<u>528,421</u>
Allocated investments return transferred to the general business technical account		(763,119)		(528,421)
Realised exchange (loss)			<u>(18,784)</u>	<u>(1,868)</u>
Profit/(Loss) on ordinary activities before tax	8		104,554	(1,474,865)
Tax on profit/(loss) on ordinary activities	10		<u>0</u>	<u>(49,484)</u>
Profit/(Loss) for the financial year after tax			104,554	(1,524,349)
Dividends			<u>0</u>	<u>0</u>
Retained profit/(loss) for the financial year transferred to reserves	14		<u><u>104,554</u></u>	<u><u>(1,524,349)</u></u>

## STATEMENT OF TOTAL RECOGNISED GAINS AND LOSSES

FOR THE YEAR ENDED 31 DECEMBER 2000

	2000	1999
	£	£
Retained profit/(loss) for the financial year	104,554	(1,524,349)
(Deficit) on translation of net currency assets	(89,044)	(9,146)
	<u>15,510</u>	<u>(1,533,495)</u>
Total gains and losses recognised in the year	<u><u>15,510</u></u>	<u><u>(1,533,495)</u></u>

## STATEMENT OF HISTORIC COSTS, PROFITS AND LOSSES

FOR THE YEAR ENDED 31 DECEMBER 2000

There is no material difference between the results for the current year and the previous year as described in the profit and loss accounts and the results on an unmodified historic cost basis. Accordingly, a note of the historical costs, profits and losses is not given.

## RECONCILIATION OF MOVEMENTS IN SHAREHOLDERS' FUNDS

FOR THE YEAR ENDED 31 DECEMBER 2000

	2000	1999
	£	£
Profit/(Loss) for the financial year	104,554	(1,524,349)
Dividends	—	—
	<u>104,554</u>	<u>(1,524,349)</u>
Retained profit/(loss) for the financial year	104,554	(1,524,349)
Other gains and losses relating to the year	(89,044)	(9,146)
	<u>15,510</u>	<u>(1,533,495)</u>
Net addition to shareholders' funds	15,510	(1,533,495)
Opening shareholder's funds	(7,833,995)	(6,300,500)
	<u>(7,818,485)</u>	<u>(7,833,995)</u>
Closing shareholders' funds	<u><u>(7,818,485)</u></u>	<u><u>(7,833,995)</u></u>

**BALANCE SHEET**

AS AT 31 DECEMBER 2000

	Note	£	2000 £	Restated 1999 £
<b>ASSETS</b>				
<b>Investments</b>				
Financial investments	11		12,824,061	11,011,658
<b>Reinsurers' share of technical provisions</b>				
Claims outstanding	7 & 15		6,523,144	5,977,155
<b>Debtors</b>				
Debtors arising out of reinsurance operations		7,328,097		7,464,113
Other debtors		693		642
Taxation recoverable		12,505		5,719
			<u>7,341,295</u>	<u>7,470,474</u>
<b>Other assets</b>				
Cash at bank and in hand	12		332,258	231,799
<b>Prepayments and accrued income</b>				
Accrued interest			10,663	0
			<u>10,663</u>	<u>0</u>
<b>Total assets</b>			<u><u>27,031,421</u></u>	<u><u>24,691,086</u></u>

**BALANCE SHEET**

AS AT 31 DECEMBER 2000

	Note	£	2000 £	£	Restated 1999 £
<b>LIABILITIES</b>					
<b>Capital and reserves</b>					
Called up share capital	13	5,000,000		5,000,000	
Profit and loss account	14	(12,818,485)		(12,833,995)	
Shareholders' funds attributable to equity interests			(7,818,485)		(7,833,995)
<b>Technical Provisions</b>					
Claims outstanding	7 & 15		15,530,617		14,711,871
<b>Provisions for other risks and charges</b>					
	16		2,929,666		3,113,582
<b>Creditors</b>					
Creditors arising out of reinsurance operations		16,265,480		14,593,804	
Amounts due to parent undertaking		64		22	
Other creditors		863		863	
			<u>16,266,407</u>	<u>14,594,689</u>	
<b>Accruals</b>			<u>123,216</u>		<u>104,939</u>
<b>Total liabilities</b>			<u><u>27,031,421</u></u>		<u><u>24,691,086</u></u>

These financial statements were approved by the Board of Directors on 8 June 2001 and were signed on its behalf by Mun Cheong Fai



## CASH FLOW STATEMENT

FOR THE YEAR ENDED 31 DECEMBER 2000

	Note	£	2000 £	£	1999 £
<b>Net cash inflow from operating activities</b>	17		1,073,145		301,367
<b>Cash flows were invested as follows:</b>					
<b>Net portfolio investment</b>					
Fixed Income Securities		57		(743)	
Deposits with credit institutions		981,517		1,810,864	
			981,574		1,810,121
<b>Increase/(Decrease) in cash holdings</b>			91,571		(1,508,754)
<b>Net investment of cash flows</b>			1,073,145		301,367

**The movement in cash and portfolio investments reflects:**

	1 January 2000 £	Cash flow £	Changes to market value and currencies £	31 December 2000 £
Cash at bank	231,799	91,571	8,888	332,258
Fixed income securities	6,148	57	(54)	6,151
Deposits with credit institutions	11,005,510	981,517	830,883	12,817,910
	<u>11,243,457</u>	<u>1,073,145</u>	<u>839,717</u>	<u>13,156,319</u>

## **1 Basis of Preparation**

The company has a deficiency of net assets and accordingly the accounts are not prepared on a going concern basis.

The financial statements have been prepared in accordance with the provisions of Section 255 of, and Schedule 9A to the Companies Act 1985 as amended by the Companies Act 1985 (Insurance Companies Accounts) Regulations 1993.

The financial statements have also been prepared in accordance with applicable accounting standards and under the historical cost accounting rules, modified to include the revaluation of investments and comply with the SORP issued by the Association of British Insurers in 1998.

## **2 Discontinued Operations**

All of the company's operations relate to the run-off of the insurance business it underwrote prior to 1 January 1992 and the investment of assets under its control.

## **3 Accounting Policies**

The following accounting policies have been applied consistently in dealing with items which are considered material to the company's financial statements.

### *Recognition of profits and losses*

The technical result is determined on a funded basis, under which the incurred cost of claims, acquisition and administrative expenses are charged and earned premiums are credited to the technical account, net of reinsurance, as follows:

Premiums written are fully earned, and relate to adjustments to prior year estimates of premiums due to the company.

Claims incurred includes all claims handling and claims settlement expense payments made in respect of the financial period, and the movement in provision for outstanding claims and settlement expenses, and includes claims incurred but not reported.

The value of claims agreed represents the value of claims agreed during the year together with the amount of claims settlement expenses paid during the year.

### *Claims outstanding*

Outstanding claims comprise provisions for the estimated cost of settling all claims incurred up to but not paid at the balance sheet date whether reported or not, together with related claims handling and settlement expenses. Full provision for all future costs and expenses has been made. The provision for outstanding claims has not been discounted in any way.

### *Equalisation reserves*

Equalisation reserves are calculated in accordance with the requirements of the Insurance Companies (Reserves) Act 1995. However, the net premium income written by the company falls below the de minimis level specified in the Insurance Companies (Reserves) Regulations 1996 and therefore no transfers are required to be made to an equalisation reserve.

#### *Expenses*

Full provision is made, within technical provisions, for the company's share of the estimated ultimate claims settlement expenses and other run-off costs. Additionally, provision is made, net of future investment return, within the provision for future administration expenses, for the costs associated with implementing and managing a procedure to wind up the business of the company.

There are uncertainties as to the period over which the company's business will be run off, the procedure that will be adopted, and the level of investment income that will be achieved on the company's assets. The amount of future investment return has been restricted so that an asset is not created for future investment return.

All expenditure is charged against the provisions previously made. The movements in such provisions are reflected in the general business technical account.

#### *Investment income*

Investment income is accounted for on an accruals basis and comprises interest receivable on deposits with credit institutions and income from listed securities.

Future investment return is based on projected cash balances and investments and offset against future administrative expenses in the provision for future expenses. The amount of future investment return is restricted to the amount of the provision for future administrative expenses so that an asset is not created for future investment return.

#### *Allocation of investment return*

Investment income, realised and unrealised gains and losses, expenses and charges are all initially accounted for in the profit and loss non-technical account. This investment income is allocated entirely to the profit and loss technical account as it is earned on assets held to support the insurance liabilities.

#### *Change of accounting policy*

In the previous year's financial statements, investment return was accounted for only in the profit and loss non-technical account. To reflect the fact that investments will be applied to fund future administrative expenses and make payments to creditors, it is appropriate to allocate investment returns to the technical account.

This is a change from the previous policy and comparative figures have been restated as appropriate. There is no effect on shareholder funds.

#### *Realised gains on investments*

Realised gains represent the difference between the redemption value of the investments and their valuation at the last balance sheet date. All realised gains are recognised in the accounting period in which they arise.

#### *Unrealised gains and losses on investments*

Unrealised gains and losses represent the difference between the valuation of investments at the balance sheet date and their purchase price. All unrealised gains and losses are taken to the non-technical account.

#### *Investments*

All investments are stated at their current value. Listed investments are stated at mid-market value.

31 December 1999 and 2000

*Debtor and creditor balances*

The amounts due to and from reinsurers, and the debtors and creditors arising out of insurance operations, represent the net balance for each contract after taking into account provision for potential bad debts.

*Foreign currencies*

The technical and non-technical accounts include transactions in United States Dollars, Canadian Dollars, Singapore Dollars and UK Sterling. The accounts reflect the UK Sterling equivalent of these transactions at the rates of exchange ruling at the end of the year. Other transactions denominated in foreign currencies are translated into Sterling at the rates of exchange ruling at the dates of the transactions.

Assets and liabilities denominated in foreign currencies are translated into Sterling using the rates of exchange ruling at the balance sheet date and the gains or losses on translation are included in the technical account – general business or the non-technical account as appropriate.

	2000	1999
	£	£
United States Dollars	1.49	1.61
Canadian Dollars	2.24	2.34
Singapore Dollars	2.59	2.69

**4 Segmental Information**

	Gross premiums		Gross claims incurred		Reinsurance balance	
	2000	1999	2000	1999	2000	1999
	£	£	£	£	£	£
Marine, aviation & transport	22,706	33,968	(1,443,434)	169,087	(112,122)	(501,144)
Property	6,060	10,901	1,060,861	(42,917)	(259,037)	124,142
Liability	2,858	2,266	119,263	151,315	(440,436)	38,525
Other	0	0	794,304	1,640	(10,727)	(50,841)
	<u>31,624</u>	<u>47,135</u>	<u>530,994</u>	<u>279,125</u>	<u>(822,322)</u>	<u>(389,318)</u>

All transactions accounted for in the technical account arise from treaty reinsurance policies written in the London Market.

As the company is in run-off, an allocation of operating expenses by class of business would not be meaningful and is not provided in these accounts.

**5 Net Operating Expenses**

	2000	1999
	£	£
Acquisition costs	763	1,440
Administrative expenses	353,897	1,332,974
	<u>354,660</u>	<u>1,334,414</u>

31 December 1999 and 2000

## 6 Investment Income, Expenses and Charges

	2000	1999
	£	£
Bank interest	763,298	527,791
Investment expenses	(99)	(245)

## 7 Change in Technical Provisions

	2000	1999
	£	£
<b>Gross amount</b>		
Provisions brought forward:		
Claims outstanding	14,711,871	14,851,470
Foreign exchange adjustment	883,272	345,994
Revalued provision brought forward	15,595,143	15,197,464
Provisions carried forward:		
Claims outstanding	15,530,617	14,711,871
Decrease in gross technical claims provisions	64,526	485,593
<b>Reinsurers' share of technical provisions</b>		
Reinsurers' share brought forward	(5,977,155)	(6,466,452)
Foreign exchange adjustment	(420,130)	(171,600)
Revalued position brought forward	(6,397,285)	(6,638,052)
Reinsurers' share carried forward	(6,523,144)	(5,977,155)
Increase/(Decrease) in reinsurers' technical claims provisions	125,859	(660,897)

## 8 Profit/(Loss) on Ordinary Activities Before Tax

	2000	1999
	£	£
Profit/(Loss) on ordinary activities before tax is stated after charging		
Auditors' remuneration:		
Audit	14,706	14,700
Other services	0	0

## 9 Remuneration of Directors

The emoluments of the Directors were £nil (1999 – £nil).

31 December 1999 and 2000

## 10 Taxation

The taxation charge for the year comprises:

	2000	1999
	£	£
UK Corporation Tax on result for the year	0	0
Overseas income tax	0	49,484
	<u>0</u>	<u>49,484</u>
	<u><u>0</u></u>	<u><u>49,484</u></u>

The company has tax losses carried forward totalling £12.5 million. No deferred tax has been provided as in the opinion of the Directors no taxation liability will arise in the foreseeable future.

## 11 Financial Investments

	Market value 2000 £	Cost 2000 £	Market value 1999 £	Cost 1999 £
Listed shares and units in unit trusts	6,151	5,708	6,148	5,650
Deposits with credit institutions	<u>12,817,910</u>	<u>12,817,910</u>	<u>11,005,510</u>	<u>11,005,510</u>
	<u><u>12,824,061</u></u>	<u><u>12,823,618</u></u>	<u><u>11,011,658</u></u>	<u><u>11,011,160</u></u>

Included within listed shares and units in unit trusts, is an amount of £5,534 (1999: £5,476) relating to unit trusts held by Citireserve as a pool investment.

## 12 Cash at Bank and Deposits with Credit Institutions

Included within cash at bank and deposits with credit institutions are amounts of £6,878,460 (1999: £5,275,536) held in escrow pending resolution of the question of offset against pool liabilities.

## 13 Called Up Share Capital

	2000 £	1999 £
<i>Authorised</i>		
Ordinary shares of £1 each	<u>10,000,000</u>	<u>10,000,000</u>
<i>Allotted, called up and fully paid</i>		
Ordinary shares of £1 each	<u>5,000,000</u>	<u>5,000,000</u>

31 December 1999 and 2000

---

#### 14 Reserves

	£
Balance at 1 January 2000	(12,833,995)
Transfers to reserve	104,555
Net movement on reserves due to exchange differences	<u>(89,044)</u>
Balance at 31 December 2000	<u><u>(12,818,485)</u></u>

#### 15 Technical Provisions

A substantial measure of judgement is involved in assessing provisions for claims outstanding, the ultimate cost of which cannot be known with certainty at the balance sheet date. This uncertainty applies, in particular to losses arising on London Market business underwritten on the company's behalf through syndicates managed by English & American Underwriting Agency Limited.

The provision for net claims outstanding, which is based upon an actuarial valuation by KPMG dated 27 February 2001 as at 31 December 2000, represents an estimated undiscounted liability of £9,007,473 (1999: £8,787,319) and includes a provision for future claims settlement expenses of £1,298,243 (1999: £1,405,591). This estimate was based on the high end of the range of actuarial projections of the development of outstanding claims and incurred but not reported claims.

Technical provisions also include an undiscounted liability of £1,337,219 (1999: £nil) for the company's participation in the Oberon pool. This is fully reinsured and therefore the accounts reflect reinsurers' share of the same amount of £1,337,219 (1999: £nil).

The adjustment to the amount of the technical claims provisions, which will arise in future years and which may be significant, will be reflected in the accounts for the period in which the adjustment arises.

The reinsurers' share of the technical provisions is based on KPMG actuarial valuation.

#### 16 Provision for Other Risks and Charges

The estimated full amount of the provision for future administrative expenses is £3,284,785 (1999: £3,608,372), which has been reduced to £2,929,666 (1999: £3,113,582) by the offset of the estimated future investment return.

31 December 1999 and 2000

## 17 Reconciliation of Profit Before Tax to Net Cash Inflow/(Outflow) from Operating Activities

	2000	1999
	£	£
Operating profit/(loss) for the year before taxation	104,555	(1,474,865)
Foreign exchange difference on opening currency reserves	(89,044)	(9,146)
Net unrealised loss/(gain) on investments	81	(385)
Increase in general insurance technical provision	272,756	349,698
Decrease in debtors and accrued income	118,517	63,209
Increase in creditors and accruals	1,689,993	824,031
(Decrease)/Increase in provisions for other risks and charges	(183,916)	867,747
Foreign exchange difference on investments, cash and taxation payable	(839,797)	(318,922)
	<u>1,073,145</u>	<u>301,367</u>
Net cash inflow from operating activities	<u>1,073,145</u>	<u>301,367</u>

## 18 Immediate and Ultimate Parent Company

The immediate parent company is The Insurance Corporation of Singapore Limited with the ultimate parent company being DBS Group Holdings Ltd. Both companies are incorporated in Singapore.

## 19 Related Parties

A winding up petition was presented by the company to the High Court on 14 October 1993. On that same date Philip Singer and Christopher Hughes were appointed Joint Provisional Liquidators of the company by order of the Court. David Vaughan replaced Christopher Hughes on 29 December 2000. While in office, each were partners in PricewaterhouseCoopers which provides services to the company. During the year ended 31 December 2000, as provisional liquidators, PricewaterhouseCoopers' fees, approved by the creditors committee for services provided to the company, amounted to £147,058. Other fees paid to PricewaterhouseCoopers totalled £4,700.

The Directors have no material interest in any contract with the company.

## 20 Annual Insurance Return

The Treasury issued to the company on 24 March 1998 an Order under section 68 of the Insurance Companies Act 1982 providing that the provisions of section 17 of that Act should be modified in its application to the company so that the requirements under section 17 shall be satisfied by the company preparing audited statutory accounts in accordance with Part I of Schedule 9A to the Companies Act 1985.



**PricewaterhouseCoopers**  
Southwark Towers  
32 London Bridge Street  
London SE1 9SY  
Telephone +44 (0) 20 7939 3000  
+44 (0) 20 7583 5000  
Facsimile +44 (0) 20 7378 0647  
Direct Phone 020 7213 5823  
Direct Fax 020 7212 4476

**Messrs PJ Singer & DN Rackham**  
Joint Provisional Liquidators  
The Insurance Corporation of Singapore (UK) Limited  
Plumtree Court London  
EC4A 4HT

3 October 2001

Dear Sirs

**The Insurance Corporation of Singapore (UK) Limited (“the Company”)**

## Scheme of Arrangement

### Introduction

1 As joint provisional liquidators (“the Provisional Liquidators”) of the Company, you instructed us to perform certain services to assist in the process of implementing the proposed Scheme of Arrangement between the Company and its creditors (“the Scheme”). For the purposes of the Scheme, creditors are divided into the following groups:

- those creditors whose claims against the Company arise as a result of a contract of insurance, reinsurance or retrocession entered into with the pools managed by English & American Underwriting Agency Limited (“E&A pools”) (“External E&A Pool Creditors”);
- those creditors who were participants along with the Company on the E&A Pools, excluding the eight participants listed in Appendix A to this letter (“Internal E&A Pool Creditors”);
- those creditors who were participants along with the Company on the E&A Pools, and who are included in the list at Appendix A to this letter (“E&A Pool Participants”);
- those creditors whose claims against the Company arose through participation by the Company on the Oberon pool, such liabilities having been wholly reinsured by St Paul Reinsurance Co. Ltd (“St Paul”) (“Oberon Pool Creditors”).
- Creditors who do not fall within any of the above groups (“General Creditors”).

2 Although the claims of both Internal E&A Pool Creditors and E&A Pool Participants arise out of their participation in the E&A Pools, they will be treated differently under the Scheme. It has been decided that Internal E&A Pool Creditors will receive substantially the same treatment as External E&A Pool Creditors. This is because balances with the Internal E&A Pool Creditors are

PricewaterhouseCoopers is the successor partnership to the UK firms of Price Waterhouse and Coopers & Lybrand. The principal place of business of PricewaterhouseCoopers and its associate partnerships, and of Coopers & Lybrand, is 1 Embankment Place, London WC2N 6NN. The principal place of business of Price Waterhouse is Southwark Towers, 32 London Bridge Street, London SE1 9SY. Lists of the partners’ names are available for inspection at those places.

All partners in the associate partnerships are authorised to conduct business as agents of, and all contracts for services to clients are with, PricewaterhouseCoopers. PricewaterhouseCoopers is authorised by the Institute of Chartered Accountants in England and Wales to carry on investment business.

small, and in some cases smaller than those of some of the External E&A Pool Creditors. In this report, as in the Scheme, Internal E&A Pool Creditors and External E&A Pool Creditors together are described as “E&A Pool Creditors”.

3 This report has been prepared for inclusion in the Scheme Document which is being sent with the notice of the meeting of creditors to consider the Scheme. This report should be read in conjunction with the Scheme Document, including the Explanatory Statement and all appendices thereto. The terms of our engagement are contained within a letter of engagement dated 4 September 2000.

4 The terms used in this report have the meanings which they bear in the Scheme set out on pages 19 to 76 unless stated otherwise.

5 This report has been supplied on the understanding that it is solely for the use of the persons to whom it is addressed and for the purposes set out herein. No person other than those to whom it is addressed may rely on it for any purposes whatsoever.

6 The results of our review are set out under the following main headings:

	Paragraphs
Scope of our work	7 to 11
Audited financial statements	12
Key problems and solutions provided by the scheme	13 to 14
Comparison with alternatives	15 to 19
Advantages and disadvantages to the E&A Pool Creditors	20 to 25
Relevant factors, assumptions and uncertainties	26 to 27
Oberon Pool creditors	28 to 32
Conclusions	33

### Scope of our work

7 We have assessed the potential outcome for the Company’s E&A Pool Creditors under the proposed Scheme and have contrasted this with the alternative outcomes of either a liquidation of the Company, or a *pari-passu* scheme (as set out below). We comment on, but have not specifically considered, the outcome for the E&A Pool Participants within this report. With regard to General Creditors, we understand that the only claim of which you are currently aware is a contingent claim by St Paul which will arise where reinsurers of the Oberon Pool, who are also E&A Pool Creditors, set off their claim as an E&A Pool Creditor against their reinsurance obligations (although it is possible that some claims for brokerage may emerge). The outcome for St Paul as a General Creditor will be the same as the outcome for E&A Pool Creditors.

8 You have advised us that the “crystallisation” scheme option, by which liabilities would be agreed and finalised, is not considered suitable in the particular circumstances of the Company, as the inter-relationships surrounding the E&A pools make this type of scheme uneconomical. As a consequence we have not included this option within our report.

9 As part of the assessment described in paragraph 7 above, we have examined the Company’s financial position as at 31 December 2000, based upon the latest available audited financial statements of the Company. This was done for the purpose of checking that the balances used as a basis for determining the benefits of the Scheme have been properly extracted from the 31 December 2000 financial statements.

10 We have further reviewed the report analysing the Company’s reserves produced by KPMG plc dated 13 July 2001 (“the KPMG report”). The reserves are defined by the KPMG report as being the liability of the Company to future claims (being known outstandings plus IBNR) less future premiums.

11 We have reviewed the arrangements in place with St Paul. The proposed scheme is based on the assumption that St Paul will pay the Oberon Pool Creditors in full. St Paul will continue to assess these liabilities as a matter of course. We understand that a formal agreement is to be entered into between the Company and St Paul which will confirm these arrangements, so that Oberon Pool Creditors can look directly to St Paul for payment and not to the Company.

### **Audited financial statements**

12 The audited financial statements of the Company for the year ended 31 December 2000 were approved by the directors and signed on 8 June 2001. A copy of the financial statements is contained on pages 95 to 100 of the Scheme Document. The report of the auditors expresses an unqualified opinion, but contains an explanatory paragraph in respect of the uncertainties surrounding the ultimate settlement of long tail exposures. These uncertainties are in respect of the adequacy of the net estimates of the gross technical provisions and the related reinsurance recoverable in respect of losses arising on London Market business underwritten on the Company's behalf through the E&A Pools.

### **Key problems and solutions provided by the scheme**

13 As a result of substantial losses to the Company arising from its participation on business written on the Company's behalf through the E&A Pools, the Company is insolvent. Several courses of action have been considered by you to address the position that the Company cannot meet all its obligations to creditors in full and that recapitalisation and refinancing are not available.

14 You have evaluated these various courses of action available as solutions to the problem, and have concluded that the best workable solution is contained in the proposed scheme. The terms of the Scheme provide a mechanism for establishing a cash fund, for the benefit of E&A Pool Creditors and General Creditors (the "Creditors' Fund"), which should be sufficient to enable settlement of 100% of the estimated ultimate liabilities of the Company to E&A Pool Creditors and General Creditors. The Scheme also contains provisions for payment of liabilities of the Oberon Pool Creditors by St Paul.

### **Comparison with alternatives**

15 The table below shows the total creditor balances together with assets for distribution and net deficit as at 31 December 2000. These numbers differ from the 31 December 2000 financial statements in the following ways:

- Balances owed to and by External E&A Pool Creditors have been net down for the estimated level of offset
- Net reserves have been re-stated to "best estimate" per the KPMG report, which is below the level of net reserves in the financial statements
- Creditors have been adjusted to exclude fronting fees or participant funding where the identity of the creditor or legitimacy of the balance is in doubt (this has been accepted by major participants)
- Debtors and Creditors have been adjusted to take account of the commutation agreement entered into with the Transglobe Re Pool.

	31/12/00
	Balances
	£m
Creditors arising out of reinsurance operations	14.9
Claims Outstanding (including IBNR, and Oberon Creditors)	12.0
	<hr/>
TOTAL	26.9
	<hr/> <hr/>
Assets for Distribution (net of costs)	18.3
Deficit	8.6
Dividend	68%

16 The figures in the above table would apply to E&A Pool Creditors and General Creditors under a “*pari-passu*” scheme. Such a scheme would operate in the same way as the proposed scheme, except that all creditors, including E&A Pool Participants and Oberon Pool Creditors, would share equally in the Company’s assets. The same basis would apply under liquidation, except as detailed in paragraph 18 and 19 below.

17 The figures in the above table have been prepared before any adjustments for the time value of money. The table shows that the dividend available to E&A Pool Creditors and General Creditors under either a “*pari-passu*” scheme or under a liquidation is considerably less than the 100% estimated settlement available under the Scheme.

18 Liquidation appears to be the worst of all the options available to E&A Pool Creditors and General Creditors.

This is because:

- in the absence of a Scheme, or some kind of binding methodology for valuing claims, the Company’s creditors will be unable to receive a dividend until the bulk of the technical liabilities have been settled, which is calculated to be over a period of 13 years for non-APH claims, but longer for APH claims, according to the KPMG report. This is therefore a cash-flow disadvantage for many creditors; and
- in the liquidation scenario the Company’s cash assets would have to be deposited in the Insolvency Services Account, which is administered by the Department of Trade and Industry and which pays interest at only 3.5% compared to the other scenarios, where currently 4.5% or more could be achieved. Although a further limited range of investments is open to a liquidator, H M Treasury would charge a fee on the purchase of these investments, which would have the effect of cancelling out any increased return which might have been earned (on the basis of current interest rates). A potential interest “cost” of a liquidation is approximately £1.3m calculated on the basis of current interest rates.
- Whilst annual actuarial reviews will be needed under the Scheme, this is not the case for a liquidation – however the cost associated with enhancing the systems for a liquidation may outweigh this benefit, as referred to in paragraph 27.

19 In a liquidation, the reinsurance recoveries applicable to the Company’s liabilities on the Oberon Pool would be available for distribution to all creditors, and not just Oberon Pool Creditors. Such creditors would not therefore, in the absence of an agreement with St Paul on the same basis as that which has been reached for the purposes of the Scheme, be paid in full. The additional costs incurred in quantifying and accounting for the gross liabilities and related recoveries on Oberon Pool business may also outweigh the benefits of any reinsurance recovered. We understand that the estimated gross liabilities for the Company in respect of the Oberon Pool Creditors amounts to approximately £1.3m. We set out below in paragraph 29 and onwards more detail in respect of the Company’s liabilities to the Oberon Pool Creditors.

## Advantages and disadvantages to E&A Pool Creditors and General Creditors

20 The primary advantage to E&A Pool Creditors and General Creditors of the proposed Scheme is the increased level of dividend potentially available, as compared to the alternatives of a *pari passu* scheme or liquidation illustrated above.

21 The following table shows the total anticipated return to creditors, based on best estimate reserves as determined within the KPMG report, split between the E&A Pool Participants, and the E&A Pool Creditors. The contingent claim of St Paul in respect of any valid claim of an E&A Pool Creditor which is applied in set-off by such a creditor against its liabilities as a reinsurer of the Oberon Pool, is taken account of in the E&A Pool Creditor figures. The estimated return to St Paul in respect of such a claim is therefore the same as the estimated return to E&A Pool Creditors. The figures below are stated on the same basis as those in the table above, except that they have not been adjusted for external offset:

	E&A Pool Participants £'000	E&A Pool Creditors £'000
Unpaid Balances	13,662	2,475
Reserves – at KPMG best estimate	9,411	2,093
Total	23,073	4,568
Percentage of claim	66%	100%

22 The scheme proposes that a fund be created (known as the “Creditors’ Fund”) in favour of E&A Pool Creditors and General Creditors, set at an amount which should be based on the above “best estimate” reserves, plus an additional ‘buffer’ for unanticipated deterioration. The buffer is to be set at a level which equates to 23% of the “best estimate” reserves. This should enable the fund (at 123% of the best estimate reserves), to be set at a level which would exceed the minimum margin required by the EU for a typical solvent company (“EU margin”), which requires a minimum margin of between 23% and 26% of average annual claims incurred (refer to paragraph 3 of Article 16 of the First EU Non-Life Directive). The estimated buffer, as above is approximately £482,000 compared to a calculated EU margin for the company as a whole of £71,000. This means that the excess over the EU margin is approximately £411,000.

23 A secondary advantage to the E&A Pool Creditors and General Creditors under the proposed Scheme is the increased flexibility afforded in respect of the investment opportunities. The potential for increased investment return generated from the Creditors Fund (which accumulates into the fund), in comparison to a liquidation, is driven by the reduced level of investment restrictions imposed on the Scheme Administrator as compared to a Liquidator. As the reserves are undiscounted, this investment income provides a further buffer for the benefit of E&A Pool Creditors and General Creditors.

24 A further advantage of the proposed Scheme compared to a liquidation is the cash-flow advantage. The pay-out patterns for the liabilities to the E&A Pool Creditors, as determined in the KPMG report, show that over 25% of the reserves are due to be settled within one year. Consequently certain short tail claim creditors amongst the E&A Pool Creditors should be able to receive payment for their claims much sooner than under a liquidation. The claims of General Creditors can be paid as soon as they are agreed or established by proceedings. Under a liquidation no payment would be made until the final loss is agreed, which is determined to be more than 13 years away according to KPMG.

25 E&A Pool Creditors and General Creditors should be aware of the fact that the scheme does not allow for an increase in the valuation of the fund, although the E&A Pool Participants may elect, but are not obligated, to “top up” the fund. Whilst liabilities to E&A Pool Creditors’ and General Creditors, will be re-assessed each year, in the unlikely event that the Creditors’ Fund is found to be insufficient to settle the ultimate liabilities in respect of E&A Pool Creditors and

General Creditors, then remaining liabilities will not be settled at 100%. In this case the Scheme provides for a scaling down of each remaining creditor's entitlement under the fund. This may arise if, in particular, longer tail liabilities are found to be under-reserved through time, as under the Scheme the short tail claim creditors would be settled before long tail claims. In this situation, certain of the E&A Pool Creditors and General Creditors may have to accept settlement at less than 100% of their claim, although offset is applied before any ratchetting down. Nevertheless, any such reduction is most unlikely to return a dividend to any E&A Pool Creditor or General Creditor which is lower than would have been available to that creditor under one of the alternative scenarios available.

### **Relevant factors, assumptions, and uncertainties**

#### *Fundamental Uncertainty over Gross Loss Reserves*

26 As detailed above, the fund is due to be set up in such a way that it will contain a buffer for unanticipated losses. Nevertheless, given the fundamental uncertainties disclosed within the financial statements, there is a risk that current estimates may prove in due course to be inaccurate. PwC actuaries have reviewed the assumptions and methodologies used by KPMG to determine their best estimate reserving levels. Overall they consider the approach to be reasonable. Their report is contained in Appendix 10 to the Scheme Document.

#### *Relative Costs and Savings*

27 It has been assumed that current systems will be used to administer the Scheme. Under the alternative of a liquidation scenario, the systems would have to be enhanced for certain reinsurance processing requirements and further resources put into recovering reinsurance. The additional cost of this systems enhancement can however be offset against the fact that annual actuarial reviews will not be necessary in a liquidation. The more significant cost under a liquidation, as referred to in paragraph 18, is that of the investment income forgone, which may amount to as much as £1.3m, or more depending on interest rate movements.

### **Oberon pool creditors**

28 Oberon Underwriters Limited ("Oberon") was formed in 1979 and operated from 1 January 1980, underwriting and managing business for a group of reinsurance companies known as the Oberon Stamp. The Company became a participant on the "Oberon Stamp" with effect from 1 January 1981 and left the Oberon Stamp with effect from 31 December 1983. Subsequently the Company paid a sum to the continuing stamps to cover and reinsure it from its net current and future liabilities calculated as at 31 December 1985. As of 31 December 1986 St Paul was the only remaining stamp company and pursuant to its contractual obligations has continued to deal with and settle as appropriate all valid claims against the Oberon Stamp, including those against the Company and has made reinsurance recoveries in respect of such claims under reinsurance policies written for the benefit of companies underwritten for by Oberon.

29 If the Company were to enter into full liquidation the balances due to the individual Oberon Pool Creditors together with the related reinsurances due from individual reinsurers would need to be included in order for set-off to be applied. There would therefore be a need to develop an enhanced ledger system in order to quantify the gross and net liabilities by principal. In addition the ability to recover reinsurances may become more complex and problematic. As a consequence of these issues, the costs of including the Oberon Pool Creditors in a liquidation scenario are likely to outweigh the benefits for all creditors.

30 As a result of the above, it is proposed under the Scheme that Oberon Pool Creditors will look to St Paul to settle all present and future valid claims against the Company in respect of the Oberon Stamp.

31 The effect of the Oberon Pool Creditors accepting this arrangement will in practice result in no change to the claim recognition and payment procedures that have operated since St Paul become the sole company responsible for the Oberon Stamp. The potential benefits to the Oberon Pool Creditors of the proposed Scheme include:

- (a) settlement will not be affected by the delays associated with determining dividend payments which may occur in the event of a full liquidation;
- (b) St Paul offer much better security to the Oberon Pool Creditors than that of the Company, which at best can only pay a dividend of less than 100%

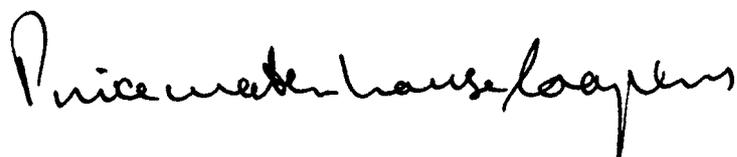
32 By accepting the Scheme, the Oberon Pool Creditors will have accepted this arrangement. A separate agreement will be entered into between the Company and St Paul to bind St Paul into the arrangement. This agreement will become effective at the same time as the Scheme.

### Conclusions

33 The proposed Scheme appears to offer a better outcome for the E&A Pool Creditors and General Creditors than the two alternatives considered, which are the *pari-passu* scheme, and a liquidation, for the following reasons;

- (a) the balance of the fund relating to the E&A Pool Creditors and General Creditors is due to be set at a level which will offer a much higher dividend than the alternatives;
- (b) the proposed scheme will enable a faster repatriation of cash to the E&A Pool Creditors and General Creditors;
- (c) the investment return available under the proposed Scheme will be greater than that available under a liquidation.

Yours faithfully



**Appendix A**

**E&A Pool Participants not included within the E&A Pool Creditors**

Baloise Insurance Company Limited  
City International Insurance Company Limited  
English & American Insurance Company Limited  
Economic Insurance Company Limited  
Fuji International Insurance Company Ltd  
GE Frankona Reinsurance Ltd  
Nippon Insurance Company of Europe Limited  
SR International Business Insurance Company Ltd

## APPENDIX 9



### KPMG Plc

9th Floor  
1 Canada Square  
Canary Wharf  
London E14 5AG  
United Kingdom

Tel +44 (0) 20 7311 1000  
Fax +44 (0) 20 7694 2340  
Telex 8811541 KPMGLO G  
DX 38050 Blackfriars

### Nigel Rackham

Joint Provisional Liquidator  
Insurance Corporation of Singapore (UK) Limited  
(In Provisional Liquidation)  
c/o PricewaterhouseCoopers  
Plumtree Court  
LONDON EC4A 4HT

Your ref

Our ref rc/aw/710

Contact Richard C Wilkinson  
020 7311 5399

8 October 2001

Dear Sir

### Insurance Corporation of Singapore (UK) IBNR Variability Assessment as at 31 December 2000

#### 1 Introduction

KPMG were instructed by the Joint Provisional Liquidators of the Insurance Corporation of Singapore (UK) Limited ("ICS (UK)") on 2 April 2001 to carry out certain work to assist the Joint Provisional Liquidators in the establishment of a Scheme of Arrangement for ICS (UK).

This letter summarises the results contained in our report dated 13 July 2001.

#### 2 Overview

The liabilities accruing to ICS (UK) through its participations in the English & American Underwriting Agency Pools ("the E&A Pools") fall into three distinct parts:

- liabilities to external creditors arising through participations in underwriting stamps,
- balances between ICS (UK) and other participants in the E&A Pools through intra-pool reinsurance,
- recoveries from outwards reinsurance.

The analysis that we have been requested to undertake involves assessment of the best estimate, of variability about that best estimate and of the likely timing of payment patterns for:

- liabilities to external creditors,
- 'small' intra-pool balances.

Small here means the Pool participants which are not included in the listing of major individual Pool participants in the Scheme documentation.



KPMG Plc, a company incorporated under the UK Companies Act, is a member of KPMG International, a Swiss association

KPMG Plc is authorised by the Institute of Chartered Accountants in England and Wales to carry on investment business.  
Registered in England  
No 3513178

Registered office  
8 Salisbury Square  
London EC4Y 8BB

Pool members that have commuted their liabilities with the remaining Pool participants are not included in our results, which reflect the position following the commutations.

### 3 Data

This section lists the data with which we have been provided for our analysis. We have also made use where necessary of data provided for our assessment of the E&A Pools. Unless stated otherwise the data have been provided to us by Participant Run-Off Limited ("PRO"). For each data item we have indicated whether it relates to gross stamp or net pool exposures. We have additionally had the benefit of discussions with staff at PRO.

- 1) Development statistics – gross stamp
- 2) APH claims ("Policy listing") – gross stamp
- 3) Lloyd's E&O claims – gross stamp
- 4) Stamp outstanding claims – net pool

## 4 Methods – ICS (UK) gross stamp participation in the E&A Pools

### 4.1 Premiums

We have made due allowance for future premiums that relate to reinstatements of excess of loss layers within the Non-Marine Pool.

### 4.2 Best estimates – claims

We have previously, on behalf of PRO, undertaken an IBNR assessment of the E&A Pools as at 31 December 2000. The results of this assessment were presented in a report dated 27 February 2001 ("the PRO report"). The best estimates presented in the results section of this letter are based on this PRO report.

We have applied the Pool best estimates to the ICS (UK) participations in the form of IBNR to outstanding loadings. For example, given a Pool outstanding of 100 and best estimate IBNR of 50, the IBNR to outstanding loading is 50%. If, further, the ICS (UK) outstanding is 6 (say a 10% share of a proportion of the gross business) we have calculated the best estimate IBNR as 50% of 6 or 3.

We have calculated IBNR to outstanding loadings separately for each underwriting year and claim type as follows:

- Aviation Pool: APH and non-APH claims;
- Non-Marine Pool: E&O and other claims;

These are the claim types where the outstanding claims are significant. The impact of other claim types on the outstandings is small and we have made no further adjustments to the resulting loadings for differences between the business in which ICS (UK) participated and the 100% Pools.

### 4.3 Analysis of variability – APH claims

#### *Aviation Pool*

The data provided to us indicates that the ICS (UK) share of pollution claims is \$2,000 paid and \$27,000 outstanding. Nearly all of this figure relates to two airports: Tucson and Logan. The Pool as a whole is involved in the notification, or precautionary notification, of claims from 33 airports across the underwriting years 1981 to 1983. This compares with 13 airports notified at the time of last year's report.

The future development of pollution claims within the Aviation Pool depends on a number of complex issues including the effectiveness of the Aviation pollution exclusion wording, which, we understand, applied to the exposures written within the Pool, and notifications from new polluted sites. An exposure based approach is not practical as the exposures involve very high limits.

Given the scale of ICS (UK)'s involvement we have taken the following approach:

- as a best estimate that the IBNR to ICS (UK) will be the share of the pollution IBNR implicit within the PRO report (ie. \$126,000),
- a 'realistic worst case' estimate would involve ICS (UK) in 23 airports in total, each with an average cost equal to the current average incurred cost of Tucson and Logan Airports, plus 15% for IBNER claims. This results in a worst case reserve of around \$397,000 (approx.  $23 * \$15,000 * 1.15$ ).

We have assumed that the realistic worst case estimate will prove adequate with a probability of 95%. The method we have used to convert these estimates into a probability distribution is discussed further in this section. The notified amount of other APH claims within the Aviation Pool is small and we have made no further adjustment to our estimates for other APH claims.

#### *Non-Marine Pool*

The following table shows the number and incurred cost of notifications or precautionary notifications of APH claims within the Non-Marine Pool, as extracted from the data provided to us. Amounts are ICS (UK)'s share.

Claim Type	Number of notifications	Paid	Outstanding
Asbestos	38	—	\$1,470
Pollution	46	—	\$6,629
Silicone Implants	58	—	\$33,527
Blood Products	12	\$70,080	\$46,302

TABLE 1: ICS (UK) INVOLVEMENT IN NON-MARINE APH CLAIMS AS AT 31 DECEMBER 2000

We have excluded from this table notifications of non-US asbestos and pollution related claims. We consider that the likelihood of these involvements leading to significant IBNR claims is small.

Nearly all of the US claims come from the underwriting years 1984 and 1985. The lack of notifications from later underwriting years is consistent with the switch in focus within the Pool in 1986. We have followed the same overall framework for asbestos and pollution claims within the Non-Marine Pool as to pollution claims within the Aviation Pool. The details are as follows:

- as a best estimate that the IBNR to ICS (UK) will be zero as the outstanding claims are tiny;
- for asbestos we have assumed a 'realistic worst case' IBNR is split approximately equally between (i) development of known claims (IBNER) and (ii) new claims (pure IBNR). Our exposure analysis of ICS (UK) policies that contain asbestos related claims implies a realistic worst case IBNER of \$360,000. Applying our assumed ratio of pure IBNR to IBNER, this implies a realistic worst case IBNR of \$720,000;
- that, for pollution, a 'realistic worst case' estimate for the IBNR would equal \$110,000.

The Non-Marine asbestos 'realistic worst case' IBNR of \$720,000 is due to two factors:

- published estimates of the total cost of asbestos claims are currently showing very wide variations: this confirms the increased uncertainty in projecting these claims forward and demonstrates the need for a wide range in our estimates for ICS (UK);
- most of the recognised exposure in the data provided to us comes from treaty reinsurance policies that are not included with the LMCS database provided to PRO each year end, rather the claim updates are provided through brokers: this increases the potential for delays in notification updates and is evidenced by the lack of movement in the notified position in 2000.

We have assumed that the 'realistic worst case' estimate will prove adequate with 95% probability. The method we have used to convert these estimates into a probability distribution is discussed further in this section.

Silicone implant and infected blood product claims arise from relatively few original sources. Given that such claims from one original source will be aggregated as one products claim the likelihood of significant cost from these sources is small in relation to the potential from asbestos and pollution claims. We have therefore not adjusted our estimates of variability for other APH claim types.

It should be noted that we have made no allowance for new types of claim, for example tobacco and lead paint, within our analysis.

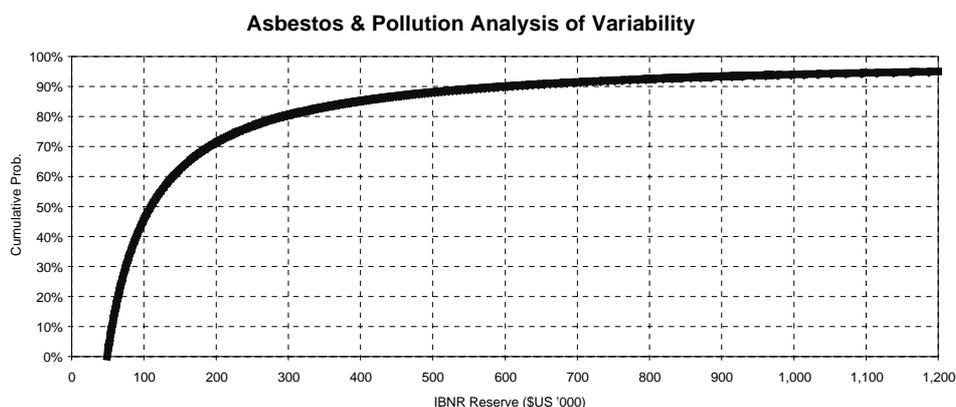
#### *Aggregation of APH estimates*

Following from the assessment of APH claims within the Non-Marine and Aviation Pools we have restricted our attention to variability in the future development of asbestos and pollution claims.

We have assumed that there is a high degree of correlation between the variability in asbestos and pollution claims originating from the two Pools. In total our analysis yields an IBNR with a best estimate of \$126,000 and a 95% likelihood of being less than \$1,200,000 (\$370,000 for Aviation pollution plus \$720,000 for Non-Marine asbestos plus \$110,000 for Non-Marine pollution). For consistency with our analysis of other claims we have modelled this IBNR using a Pareto distribution with the following parameters.

- The minimum value is a *saving* of half of the best estimate reserve for asbestos and pollution claims. This reserve is about \$153,000 (\$27,000 of outstanding claims and \$126,000 of IBNR), and therefore the saving would be a reduction in reserves of \$76,500,
- The likelihood of the IBNR being less than the best estimate of \$126,000 is 56%,
- The likelihood of the IBNR being less than the 'realistic worst case' estimate of \$1,200,000 is 95%.

The Pareto distribution we have used to model this IBNR is shown in the following chart.



It must be stressed that the process discussed in this section provides a judgemental assessment of future development of asbestos and pollution claims, based on the current state of knowledge. This analysis is not statistically rigorous. Moreover there is no guarantee that future development will lie within the range discussed.

#### **4.4 Analysis of variability – Lloyd’s E&O claims**

Current indications are that there may be some scope for modest reductions in the current outstanding cost of Lloyd’s E&O claims follow the re-presentations from Equitas. At this stage however it is not possible to quantify the potential and we have chosen to make no allowance for additional variation between the outstanding and the actual future cost of Lloyd’s E&O claims.

#### 4.5 Analysis of variability – other claims

For other claim types we have adopted an approach outlined by Thomas Mack of Munich Re in his 1993 paper to the Casualty Actuarial Society. This method is commonly referred to as “Mack’s Method”. Mack’s Method exploits the assumptions underlying the traditional chain ladder method in order to quantify the variability in the chain ladder reserve estimate itself. The method does not require any specific assumptions about the claims amount distributions.

We have then fitted a lognormal distribution to estimate the reserve level that will prove to be adequate that using the best estimate IBNR and the standard errors obtained from applying Mack’s Method.

Apart from Lloyd’s E&O claims, the specific claim issues discussed in the previous paragraphs in this section have had little relative impact on incurred claims to date. We have therefore excluded Lloyd’s E&O claims but no other specific claim types from the historical development patterns. We have also combined all currencies and business classes in our analysis for each Pool.

It is important to note that this process measures variation in past data and does not measure systematic trends.

Our analysis indicates that the likelihood of the actual IBNR being smaller than the best estimate is about 56%. This probability is greater than 50% because the modelled distributions are not symmetrical. To ensure consistency between APH and non-APH we have assumed that the best estimate IBNR for APH claims will be sufficient with a probability of 56%.

#### 4.6 Payment patterns

We have treated Lloyd’s E&O claims separately within the payment pattern analysis. It is probable that the Non-Marine Pool’s involvement in reinsurance of Lloyd’s E&O claims will be settled en bloc. The table following shows the payment patterns assumed for the balance (that is, excluding Lloyd’s E&O) of the best estimate reserves.

Payment Year	Non-Marine Payment Pattern %	Aviation Payment Pattern %	APH Payment Pattern %
2001	22	30	5
2002	17	22	5
2003	14	16	5
2004	11	11	5
2005	9	8	5
2006	7	6	5
2007	6	4	5
2008	4	2	5
2009	3	1	5
2010	2	0	5
2011	2	0	5
2012	1	0	5
2013	1	0	5
2014+	1	0	35

TABLE 2: BEST ESTIMATE PAYMENT PATTERNS

It should be noted that these patterns are estimates of the future payment of outstanding and IBNR claims, less future premiums, for ICS (UK)’s Gross Stamp share of the Pools. We have made no assessment of the impact of ICS (UK)’s provisional liquidation on settlement patterns or for unpaid balances.

## 5 Methods – intra-pool balances between ICS (UK) and other small participants in the E&A Pools

### 5.1 Premiums

The classes of business, such as Marine Excess of Loss, that are likely to give rise to future premium, do not form a significant proportion of the intra-pool liabilities of ICS (UK). Future premium development is therefore likely to be small and we have made no assessment in this area.

### 5.2 Best estimates – claims

The best estimates presented in the results section of this report are based on the PRO report.

We have allocated these estimates by stamp using the stamp outstanding data provided to us by PRO. This data is consistent with the data provided for the PRO report except in that the data provided for the PRO report does not include Marine APH outstandings. We have allocated Marine APH reserves for the 1985 and subsequent underwriting years by stamp in proportion to the total stamp outstandings.

For other claims we have applied the Pool best estimates to each stamp participation in the form of IBNR to outstanding loadings. This process produces best estimates of outstanding and IBNR claims by underwriting year, claim type and stamp, the selected claim types being:

- 1) APH claims (A, P and H separately for Non-Marine),
- 2) Marine/Aviation Excess of Loss,
- 3) balance.

We have processed these estimates through a model of the intra-pool reinsurance to obtain best estimate intra-pool balances. We have further assumed in our model that all external reinsurance is treaty so that amounts gross of all external reinsurance are reinsured from the gross stamp to the net pool. We believe that this assumption is reasonable.

We have made an allowance for reinsurance bad debt based on the approach used in the PRO report. We have also modified our model to allow for commutations. This reallocation is based on the percentages provided to us by PRO.

### 5.3 Analysis of variability

We have adopted a similar approach in our analysis of variability for intra-pool balances to that adopted for external APH claims. For each Pool and claim type we have assessed:

- 1) the ratio between the 'best case' liability and the best estimate liability,
- 2) the ratio between the 'realistic worst case' liability and the best estimate liability.

In this process we have distinguished between liabilities arising from the gross to net reinsurance and liabilities arising from the reinsurance to close.

For convenience we have assigned a 0% likelihood of adequacy to the 'best case' liability and a 95% likelihood of adequacy to the 'realistic worst case' liability. For consistency with the external liabilities we have assigned a 56% likelihood of adequacy to the best estimate.

We have then selected a probability distribution that we consider provides a reasonable model of the *additional* liability over and above the best estimate, and fitted it to the selected parameters. The selected distributions are either translated lognormal or Pareto depending on the degree to which the distribution is likely to be skewed.

As an example of this process we have assessed that for non-APH claims within the Non-Marine Pool, the 'best case' liability is 50% of the best estimate (additional liability of -50%) and the 'realistic worst case' liability is 150% of the best estimate (additional liability of 50%). We have constructed a translated lognormal distribution for the *additional* liability with a 0th percentile

of –50%, 56th percentile of 0% and 95th percentile of 50%. This then together with the ‘fixed’ best estimate provides a model of variability for the assessment of non-APH claims within the Non-Marine Pool.

We have additionally tested the sensitivity of our projections of Marine and Aviation excess of loss claims to potential reinsurance shortfalls. This testing has indicated that the impact of potential shortfalls on ICS (UK)’s intra-pool liabilities is small and we have therefore made no additional allowance for this issue.

#### 5.4 Payment patterns

Just over 81% of the total best estimate intra-pool creditor liability of \$844,000 is APH claims and of the balance \$84,000 is other Aviation claims. Given the relatively small size of the total liability and in particular of non-APH, non-Aviation claims, we have made the following assumptions:

- 1) APH claims will be paid uniformly over the next twenty years,
- 2) non-APH claims will follow the Aviation payment pattern.

### 6 Results

#### 6.1 Best estimates

##### *Stamp exposures*

The best estimate stamp reserves are set out in the following table. These are constructed as outstanding claims as per Slipstream, plus best estimate IBNR, less future premium estimate.

All figures in consolidated US Dollars 000’s	Non Marine	Aviation	Total
Outstanding	1,744	93	1,837
IBNR (non-APH)	323	2	325
IBNR (APH)	0	126	126
Less: future premium	13	0	13
<b>TOTAL</b>	<b>2,054</b>	<b>221</b>	<b>2,275</b>

TABLE 3: BEST ESTIMATE GROSS STAMP RESERVES AS AT 31 DECEMBER 2000

##### *Intra-pool exposures: small participants only*

The best estimate intra-pool reserves excluding any debtor amounts are set out in the following tables. These are constructed from the mid-range reserve estimates in the PRO report (including an allowance for reinsurance bad debt). The first table shows how the estimates are divided by Pool. The second shows how the estimates are divided by claim type. All amounts are in consolidated US Dollars.

	MARINE	AVIATION	NON-MARINE	TOTAL
	US Dollars 000s			
Total small 2000				
G/N	0	61	0	61
RITC	45	299	439	783
<b>Total</b>	<b>45</b>	<b>360</b>	<b>439</b>	<b>844</b>

TABLE 4: BEST ESTIMATE INTRA-POOL RESERVES – BY POOL AS AT 31 DECEMBER 2000

	APH	Mar/Avn X/L US Dollars 000s	OTHER	TOTAL
Total small 2000				
G/N	38	3	20	61
RITC	647	4	132	783
Total	685	7	152	844

TABLE 5: BEST ESTIMATE INTRA-POOL RESERVES – BY CLAIM TYPE AS AT 31 DECEMBER 2000

## 6.2 Analysis of variability

### Stamp exposures

The estimates of variability in reserve, being outstanding claims plus IBNR less future premium, are set out in the following table. As an example, the modelled likelihood of the reserve being less than \$2,520,000 is 80%.

Confidence level	Non- Marine	Aviation	APH	Total
	US Dollars 000s			
56% (best estimate)	2,054	68	153	2,275
50%	2,038	68	136	2,242
55%	2,050	68	149	2,268
60%	2,064	68	166	2,298
65%	2,078	68	188	2,335
70%	2,094	69	217	2,380
75%	2,112	69	257	2,438
80%	2,133	69	318	2,520
85%	2,158	69	419	2,647
90%	2,193	69	620	2,883
95%	2,250	70	1,227	3,548

TABLE 6: ANALYSIS OF VARIABILITY IN STAMP RESERVE AS AT 31 DECEMBER 2000

Note that the analysis presented in this table is not statistically rigorous. Moreover there is no guarantee that future development will lie within the range presented. We have assumed that future development in the three areas is completely correlated. To the extent that, for example, the development of APH and non-APH claims may be independent of one another, the variability in the combined reserve will be less and, for example, the 95% IBNR will be less than the figure set out in the table.

### Intra-pool exposures

The estimates of variability in reserve, being outstanding claims plus IBNR less future premium, for the small intra-pool creditor balances are set out in the following table.

US Dollars 000s	confidence level										
	56% best	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%
Total small 2000	844	793	831	877	932	1,002	1,100	1,229	1,429	1,774	2,568

TABLE 7: ANALYSIS OF VARIABILITY IN SMALL INTRA-POOL RESERVES AS AT 31 DECEMBER 2000

### 6.3 Payment patterns

#### *Stamp exposures*

The estimated payment pattern for outstanding claims, plus best estimate IBNR, less best estimate future premium is set out in the following table.

Payment Year	Lloyd's	Other	Aviation	APH	Total
	E&O	Non-Marine			
US Dollars 000s					
2001	689	295	21	8	1,013
2002	0	238	15	8	261
2003	0	191	11	8	210
2004	0	153	7	8	168
2005	0	122	5	8	135
2006	0	96	4	8	108
2007	0	75	2	8	85
2008	0	58	1	8	67
2009	0	44	1	8	52
2010	0	32	0	8	40
2011	0	23	0	8	31
2012	0	16	0	8	23
2013	0	10	0	8	18
2014+	0	11	0	54	65
Total	689	1,365	68	153	2,275

TABLE 8: BEST ESTIMATE STAMP PAYMENT PATTERN AS AT 31 DECEMBER 2000

#### *Intra-pool exposures*

The estimated payment pattern for outstanding claims, plus best estimate creditor IBNR is set out in the following table.

Payment Year	APH	Other	Total
	US Dollars 000s		
2001	35	49	84
2002	35	36	71
2003	35	25	60
2004	34	17	51
2005	34	13	47
2006	34	9	43
2007	34	6	40
2008	34	3	37
2009	34	1	35
2010	34	0	34
2011	34	0	34
2012	34	0	34
2013	34	0	34
2014+	240	0	240
Total	685	159	844

TABLE 9: BEST ESTIMATE INTRA-POOL PAYMENT PATTERN AS AT 31 DECEMBER 2000

## 7 Assumptions and Limitations

### Insurance Process

In this letter we present: estimates of the aggregate cost of future claims, estimates of variability in that cost and payment patterns. These estimates have been constructed by combining statistical analysis of historical development together with judgmental estimates, based on market benchmarks, of variability in the future development of certain specific claim types. These statistical and judgmental estimates are each designed to measure the extent to which random fluctuations can mask past development patterns, and cause variability in the actual future out-turn about the underlying pattern. We have however made no attempt to estimate the extent to which future development may differ structurally from past development. In particular we have made no attempt to assess the impact of major changes in law, in legal precedent or new claim types.

Given the inherent uncertainty in the insurance process there can be no guarantee that the eventual out-turn will not differ significantly from the estimates presented.

### Data

We have relied upon data provided by PRO and have not undertaken any independent verification other than broad checks for reasonableness and consistency.

In the PRO report, in order to respect the confidentiality of the market information about the development of asbestos and pollution related claims provided to participants, PRO have given us block outstanding amounts only for major subdivisions within each pool. While we have attempted to correct for this in our projections, this necessarily increases the level of uncertainty.

PRO do not produce intra-pool indebtedness figures in a format similar to that which we have produced for the purposes of this review. As a result we have not been able to undertake any reconciliation of the figures we have produced with figures produced by PRO.

### Claims handling and management

We have made no adjustments to our projections for any changes over time in the speed of internal processing of data. No allowance has been made for the future costs of PRO or for other costs incurred by participants in managing the run off of the business.

PRO have begun to negotiate commutations with non-Pool participants of business written by the Pools. As far as we are aware any such commutations to date do not have a material impact on historical development patterns. We have therefore made no adjustment in our work for these commutations completed to date. We have, however, made an allowance for the commutations which have taken place between Pool participants and the other Pool participants. We have made no allowance for any commutations that may be completed after 31 December 2000.

Yours faithfully

KPMG Plc

KPMG Plc



**PricewaterhouseCoopers**  
Southwark Towers  
32 London Bridge Street  
London WC2N 6NN  
Telephone +44 (0) 20 7212 3402  
Facsimile +44 (0) 20 7212 5108

**Mr N Rackham**  
Joint Provisional Liquidators  
The Insurance Corporation of Singapore (UK) Limited  
PricewaterhouseCoopers  
Plumtree Court  
London  
EC4A 4HT

5 October 2001

Reference: bj/ap10923final/jb

Dear Sirs

**The Insurance Corporation of Singapore (UK) Limited (In Provisional Liquidation)  
Independent Actuarial Review**

As requested, I have conducted an independent high-level review of the actuarial work conducted by KPMG, in respect of The Insurance Corporation of Singapore (UK) Ltd (In Provisional Liquidation), ("ICSUK"). I have reviewed the IBNR variability assessment undertaken by KPMG as detailed in their report entitled, "IBNR variability assessment as at 31 December 2000", dated 13 July 2001.

**Scope**

I have reviewed the methodology and analysis used by KPMG in their IBNR variability assessment. My work has included an assessment of the suitability of the actuarial methods used by KPMG, the selection of statistical distributions and the associated parameters, and the choice of the other inputs used by KPMG in the IBNR variability assessment.

I have not reviewed the KPMG IBNR best estimates and the methods applied to obtain these best estimates at any stage of my work.

**Reliances & limitations**

I have not audited any data provided to us by KPMG, although I have conducted a number of brief checks for reasonableness and consistency. I have been able to assess the reasonability of the variability assessment only to the extent that detail has been provided in KPMG's report dated 13 July 2001.

PricewaterhouseCoopers is the successor partnership to the UK firms of Price Waterhouse and Coopers & Lybrand. The principal place of business of PricewaterhouseCoopers and its associate partnerships, and of Coopers & Lybrand, is 1 Embankment Place, London WC2N 6NN. The principal place of business of Price Waterhouse is Southwark Towers, 32 London Bridge Street, London SE1 9SY. Lists of the partners' names are available for inspection at those places.

All partners in the associate partnerships are authorised to conduct business as agents of, and all contracts for services to clients are with, PricewaterhouseCoopers. PricewaterhouseCoopers is authorised by the Institute of Chartered Accountants in England and Wales to carry on investment business.

I note the following limitations to KPMG's analysis:

- KPMG's assessment has concentrated on the US asbestos-related claims. Only a small amount of commentary has been provided in the report on the variability analysis for the "Other" class of business;
- KPMG has made no allowance for large losses or new types of claims in their work; and
- Some areas of the statistical analysis rely on subjective assumptions and we note KPMG's comment about their own work that "the analysis is not statistically rigorous".

### Opinion

On the basis of my review, described above, I consider the results of the variability assessment methodologies adopted by KPMG to be reasonable and appropriate to ICSUK's circumstances.

Yours sincerely

A handwritten signature in black ink, appearing to read 'BJP', with a large, stylized flourish underneath.

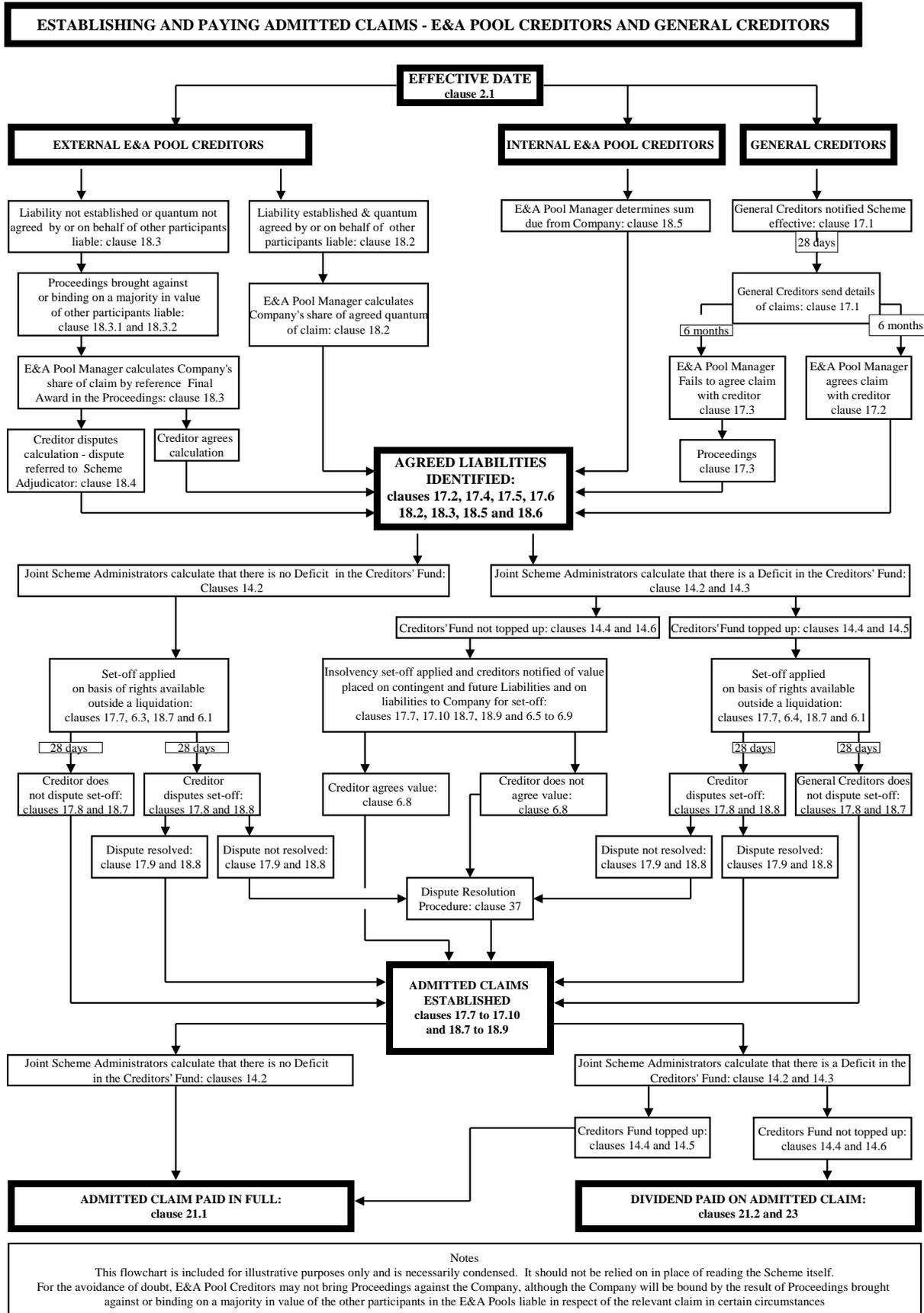
Bryan Joseph FIA, MAAA

5 October 2001

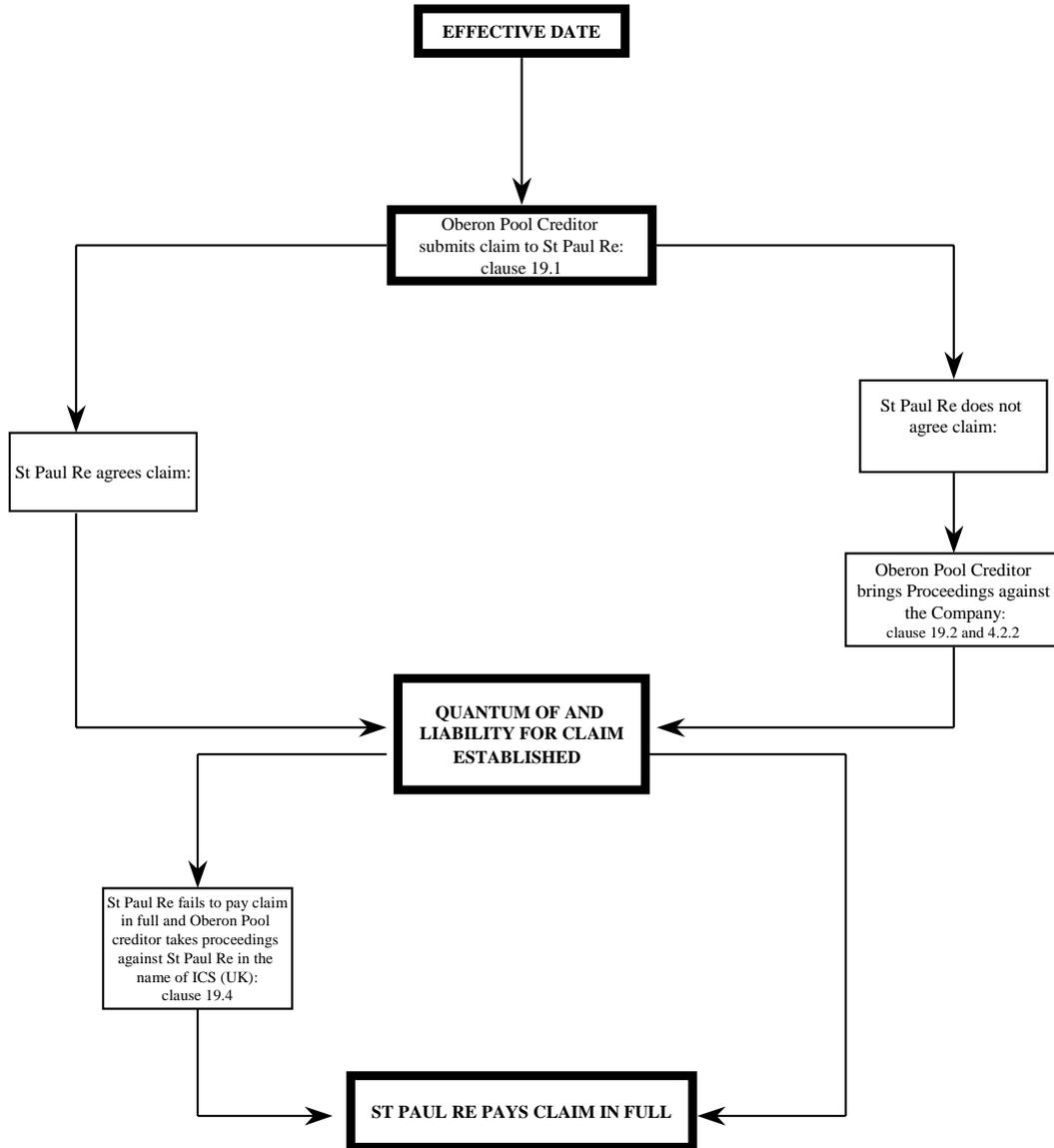
The Insurance Corporation of Singapore (UK) Limited

### List of E&A Pool Participants

1. Baloise Insurance Company Limited
2. City International Insurance Company Limited
3. English & American Insurance Company Limited
4. Economic Insurance Company Limited
5. Fuji International Insurance Company Ltd
6. GE Frankona Reinsurance Ltd
7. Nippon Insurance Company of Europe Limited
8. SR International Business Insurance Company Ltd



**ESTABLISHING AND PAYING CLAIMS - OBERON POOL CREDITORS**



Notes  
This flowchart is included for illustrative purposes only, and is necessarily condensed. It should not be relied on in place of reading the Scheme itself.

## The Deed

# Deed

between

St Paul Reinsurance Company Limited

as St Paul Re

The Insurance Corporation of Singapore (UK) Limited (in provisional liquidation)

as ICS

and

Philip John Singer and Douglas Nigel Rackham

as the Joint Provisional Liquidators

relating to

Oberon Underwriters Limited

**Simmons & Simmons**

**THIS DEED** is dated 19 October 2001 and made

**BETWEEN:**

- (1) **ST PAUL REINSURANCE COMPANY LIMITED** (“St Paul Re”), registered in England and Wales, having its registered office at The St Paul House, 27 Camperdown Street, London E1 8DS;
- (2) **THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED**, (“ICS”), having its registered office at Plumtree Court, London EC4A 4HT, acting by its joint provisional liquidators Philip John Singer and Nigel Douglas Rackham of PricewaterhouseCoopers, Plumtree Court, London EC4A 4HT; and
- (3) **PHILIP JOHN SINGER AND DOUGLAS NIGEL RACKHAM** (the “Joint Provisional Liquidators”).

**Background:**

- (a) Oberon Underwriters Limited (“Oberon”) was formed in September 1979 and operated from 1 January 1980 solely for the purpose of underwriting and managing business for a group of reinsurance companies known as the “Oberon stamp”, which initially comprised Mercury Reinsurance Company (UK) Limited (which changed its name to St. Paul Fire and Marine Insurance Company (U.K.) Limited and subsequently to St. Paul Reinsurance Company Limited), San Francisco Insurance Company (UK) Limited and the Nippon Fire and Marine Insurance Company (UK) Limited.
- (b) ICS became a participant on the Oberon stamp with effect from 1 January 1981 and left the Oberon stamp with effect from 31 December 1983 and subsequently paid a sum to the continuing stamp to cover and release it from its net current and future liabilities calculated as at 31 December 1985. San Francisco Insurance Company (UK) Limited and Nippon Fire and Marine Insurance Company (UK) Limited left the Oberon stamp with effect from 31 December 1984 and subsequently made a payment in similar fashion in respect of their net current and future liabilities calculated as at 31 December 1986. St Paul Re as remaining stamp company and pursuant to its contractual rights and obligations has continued to deal with and settle as appropriate all valid claims against the Oberon stamp including ICS and has made reinsurance recoveries in respect of such claims under reinsurance policies written for the benefit of companies underwritten for by Oberon.
- (c) Philip John Singer was appointed Joint Provisional Liquidator to ICS on 14 October 1993 and Douglas Nigel Rackham was appointed Joint Provisional Liquidator to ICS on 31 July 2001.
- (d) This Deed, inter alia, provides for ICS to confirm and ratify that St Paul Re shall deal with and settle as appropriate all policyholders’ valid claims in relation to business written by Oberon on behalf of ICS for the underwriting years 1981-1983 inclusive and make reinsurance recoveries in respect of such claims according to the terms of this Deed.
- (e) The parties hereto intend that this Deed is merely confirmatory of arrangements already in effect between them and that accordingly this Deed is not intended to create new rights or remedies in favour of the other party.

## IT IS HEREBY AGREED AS FOLLOWS:

### 1. Interpretation

#### 1.1 Definitions:

**“Claims”** means losses and claims for insurance, reinsurance or retrocession payments under the Policies brought by Policyholders;

**“Effective Date”** means the date on which this Deed becomes effective in accordance with clause 5;

**“Joint Scheme Administrators”** means the two persons for the time being appointed as such pursuant to the provisions of the Scheme, and where there is only one scheme administrator, that person;

**“Policies”** means all policies within the meaning of Section 96(1) of the Insurance Companies Act 1982 (the “Act”) evidencing insurance, reinsurance or retrocession contracts which were underwritten on behalf of the stamp by Oberon and which imposed on the stamp including at the time ICS obligations the performance of which constitute for the purposes of the Act the carrying on of insurance business in the United Kingdom;

**“Policyholders”** means such persons who are insured or reinsured under the Policies (including for the avoidance of doubt any person who has acquired a claim by reason of any transfer, assignment, sale or novation of debt or of right to receive payment or by reason of any reorganisation or reconstruction of companies) and any broker who has funded a claim of such a person under a Policy at the written request of the Company or pursuant to a contractual obligation to the Company provided that they shall not stand in any better position than the persons who are or were insured or reinsured under the Policies;

**“Reinsurance Agreements”** means such contracts of reinsurance or retrocession entered into between the Oberon stamp and its reinsurers to provide reinsurance protection in relation to risks underwritten by Oberon between 1 January 1981 and 31 December 1983;

**“Reinsurers”** means such reinsurers who are party to the Reinsurance Agreements; and

**“Scheme”** means a scheme of arrangement pursuant to section 425 of the Companies Act 1985 between ICS and its creditors in substantially the form attached hereto as Schedule 2.

1.2 Words and phrases defined in the Scheme shall have the same meaning ascribed to them in this Deed.

1.3 References to the singular include the plural and vice versa unless the context otherwise requires.

1.4 In the case of conflict between this Deed and the Scheme, the terms of this Deed shall prevail.

### 2. Claims handling

2.1 St. Paul Re confirms that it will continue to pay all valid Oberon Pool Claims provided that in respect of any Claim made, the Policyholder making the Claim shall first execute an assignment to St. Paul Re of its Claim in the terms of the draft assignment in Schedule 1, if requested to do so by St. Paul Re.

2.2 St Paul Re shall have the sole right to settle, discharge or compromise all Claims on such terms as it thinks fit and shall have the sole right at its expense to commence or to defend in the name of ICS all proceedings relating to such Claims and shall indemnify ICS in full against all costs, demands, expenses and liabilities arising in connection with the Claims. Without limitation to the foregoing, St Paul Re shall pay in full all sums as it determines to be validly due from ICS to Policyholders as a result of Claims or proceedings in respect of Claims brought by Policyholders pursuant to clause 4.2.2 of the Scheme.

- 2.3 ICS shall not have the right to commence or carry on litigation or arbitration or other formal enforcement proceedings regarding the Claims nor shall ICS have the right or authority to settle, compromise, negotiate, waive or release any of the Claims without the prior written consent of St Paul Re.
- 2.4 Without limitation to clause 2.1, ICS agrees that St Paul Re shall have absolute discretion in the handling of all Claims including whether or not the Claim should be adjusted, settled, compromised or rejected and if it should be settled, then in what amount. For the avoidance of doubt ICS hereby confirms and agrees that all Claims which St Paul Re has adjusted, settled, compromised or rejected prior to the Effective Date are hereby ratified and accepted by ICS.
- 2.5 St Paul Re hereby confirms that ICS is not liable to make any payment to St Paul Re in respect of Claims settled or compromised by St Paul Re prior to the Effective Date and St Paul Re agrees not to pursue a claim against ICS in respect of amounts paid by it pursuant to such settlements or compromises other than as permitted by Clause 3.4 of this Deed.
- 2.6 In the event that St. Paul Re fails to pay a claim in respect of which both liability and quantum have been established, whether by agreement with St. Paul Re or as a result of proceedings brought by the relevant Policyholder pursuant to Clause 4.2.2 of the Scheme, St Paul Re hereby acknowledges that the Policyholder concerned shall be entitled to take proceedings against St. Paul Re, pursuant to Clause 19.4 of the Scheme in the name of ICS. St. Paul Re shall not dispute or require proof of the Policyholder's entitlement to take proceedings in the name of ICS and shall not take any step to enforce against ICS any costs order made against ICS in those proceedings.

### 3. **Reinsurance recoveries and payments to Policyholders**

- 3.1 ICS hereby assigns absolutely to St Paul Re (to the extent that St Paul Re does not already have the benefit of the same) the right to collect and entitlement to all reinsurance recoveries and other receivables under the Reinsurance Agreements and St Paul Re shall have full authority to make and keep such collections in full. For the avoidance of doubt ICS hereby confirms and agrees that all collections by St Paul Re under the Reinsurance Agreements made prior to the Effective Date are hereby ratified and accepted by ICS and that the same belong absolutely to St Paul Re.
- 3.2 ICS agrees that at no cost to ICS St Paul Re may bring proceedings in the name of ICS against the Reinsurers for recovery of all and any sums due under the Reinsurance Agreements.
- 3.3 ICS hereby confirms that St Paul Re is not liable to pay to ICS any sums which have been paid to St Paul Re under the Reinsurance Agreements prior to the Effective Date and ICS will not seek to recover from St Paul Re any such sums which are paid after the Effective Date.
- 3.4 ICS acknowledges that St Paul Re may seek from Policyholders an assignment of their rights (if any) against ICS under the Policies in respect of any Claims paid by St Paul Re. St Paul Re agrees not to pursue a claim against ICS under any such assignment save to establish the liability of ICS in respect of such Claim and/or to establish the quantum of such liability to the extent it is necessary to do so to enable St Paul Re to recover under the Reinsurance Agreements.

### 4. **Set-off**

- 4.1 If at any time Reinsurers exercise or purport to exercise any right of set-off in respect of claims pursued by St. Paul Re under the Reinsurance Agreements, where set-off is said to arise out of the valid obligations of ICS to such Reinsurers in their capacity as E&A Pool Creditors, ICS agrees that St. Paul Re shall be entitled to submit a claim in the Scheme as a General Creditor in respect of the loss caused by such set-off.

4.2 Where a Reinsurer applies set-off in the circumstances described in Clause 4.1 above, St. Paul shall promptly notify ICS of this and of the amount of the claim applied in set-off and shall provide ICS with such other information in relation to the claim as ICS shall request.

#### 5. **Effective Date**

5.1 This Deed shall come into effect on the date on which an office copy of the Order of Court sanctioning the Scheme shall be delivered for registration to the Registrar of Companies of England and Wales.

5.2 ICS and St Paul Re agree that the terms of this Deed shall remain in full force and effect and be binding upon them notwithstanding the sanctioning, amendment, variation or termination of the Scheme. In the event of conflict, the terms of this Deed shall prevail over the terms of the Scheme.

#### 6. **Correspondence and inspection of records**

6.1 ICS shall forthwith upon receipt of the same and at its own cost and expense forward to St Paul Re all and any correspondence and report to St Paul Re all and any verbal enquiries or communications regarding a Claim received by ICS from time to time.

6.2 St Paul Re may, and its servants or agents reasonably acceptable to ICS may, at any reasonable time during business hours inspect, examine, verify and photocopy all documents, accounts, books, vouchers, correspondence, papers and computer records relating to the Policies, the Claims and/or the Reinsurance Agreements which are either:

- (a) in the possession or under the control of ICS; or
- (b) reasonably obtainable by them from a third party (provided St Paul Re meets the reasonable costs and expenses incurred by ICS in obtaining the same);

except (in either case) where such records are held by ICS subject to an express confidentiality agreement entered into by it with a third party in the ordinary course of ICS's business.

6.3 ICS agrees at the expense of St Paul Re to supply such copies of documents or other records or information relating to any Claims or recoveries or potential recoveries under the Reinsurance Agreements as St Paul Re may reasonably request from time to time which are either in the possession or under the control of ICS or reasonably obtainable by them from a third party (provided St. Paul Re meets the reasonable costs and expenses incurred by ICS in obtaining the same) unless such records are held by ICS subject to an express confidentiality agreement entered into by it with a third party in the ordinary course of ICS's business. Where such copies of documents or other records or information ought previously to have been delivered up by ICS to St Paul Re the supply of such copies shall be at the expense of ICS.

#### 7. **Further assurances**

7.1 The parties agree that they will at the expense of the person requesting such assistance cooperate fully to do all such further acts and things and execute any further documents as may be necessary or desirable to give full effect to the arrangements contemplated by this Deed provided that nothing in this clause shall require ICS to do any act or thing which is expressly prohibited by the Scheme.

#### 8. **Exclusion of personal liability**

8.1 For the purposes of this Deed references to the Joint Provisional Liquidators shall include their employees and their firm.

8.2 The Joint Provisional Liquidators are party to this Deed solely for the purpose of receiving the benefit of and enforcing this Deed, and any personal liability of the Joint Provisional Liquidators arising directly or indirectly by virtue of this Deed whether by reason of negligence or otherwise is hereby excluded.

- 8.3 The Joint Provisional Liquidators shall have no personal liability in any form nor shall any other party have any right of recourse to assets at any time under their control other than by way of pro rata distribution among creditors of equal rank having the right to prove a claim.
- 8.4 These exclusions of liability shall be in addition and not in substitution for any right of indemnity or relief or remedy otherwise available and shall continue notwithstanding completion of this Deed in whole or part.
- 8.5 Notwithstanding the termination of this Deed pursuant to clause 12 or the termination of the Joint Provisional Liquidators' appointment these exclusions of liability shall continue and shall operate as a waiver of any claims of other parties in tort as well as under or in relation to this Deed; and
- 8.6 The foregoing provisions are fair and reasonable in the present circumstances and accord with normal practices with regard to the fact that ICS is insolvent.
- 8.7 The Joint Scheme Administrators and their successors from time to time may enforce the terms of Clauses 8.1 to 8.6 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 as if any reference to the Joint Provisional Liquidators in those clauses were to such Joint Scheme Administrators.

## 9. Notices

- 9.1 Notices, demands or other communications required or permitted to be given or made under or in connection with this Deed shall be in writing and signed by or on behalf of the person giving it and shall be sufficiently given or served if delivered personally or sent by prepaid first class post with recorded delivery, by legible telefax addressed to the intended recipient at its address set out in this Deed (or to such other address as any party may from time to time duly notify to the other).

St Paul Re	ICS and the Joint Provisional Liquidators
St Paul Reinsurance Company Limited St Paul House 27 Camperdown Street London E1 8DS	Insurance Corporation of Singapore (UK) Limited (in provisional liquidation) PricewaterhouseCoopers Plumtree Court London EC4A 4HT
Attention: General Manager, Claims	Attention: Mr Nigel Rackham
Fax No: 020 7220 8162	Fax No: 020 7212 6316

## 10. Waiver of rights

- 10.1 The rights of any party shall not be prejudiced or restricted by any time, indulgence or forbearance extended to any other party. A waiver by any party in respect of a breach of a provision of this Deed shall not operate as a waiver of, or bind the party concerned to waive, a succeeding breach of the same provision or of any other provision hereof.

## 11. Illegality and void or unenforceable restrictions

- 11.1 If any provision of this Deed shall be declared invalid, unenforceable or illegal by any courts of the jurisdiction to which it is subject, such invalidity and unenforceability or illegality shall not prejudice or affect the remaining provisions of this Deed which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

11.2 If any restriction or undertaking is found by a court or other competent authority to be void or unenforceable the parties shall negotiate in good faith to replace such void or unenforceable restriction or undertaking with a valid provision which, as far as possible, has the same legal and commercial effect as that which it replaces or which, as far as possible, reflects the original intention of the parties.

11.3 If any provision of this Deed is declared invalid, unenforceable or illegal the parties shall be entitled to continue to rely on and enforce their pre-existing rights insofar as those rights were confirmed by the offending provision and are capable of continuing to exist.

## 12. **Termination**

12.1 This Deed shall not be terminable except by the agreement of St Paul Re, ICS and the Joint Scheme Administrators in writing.

## 13. **Non-assignment**

13.1 This Deed is personal to the parties and the benefit and obligations of this Deed may not be assigned by any party without the prior written consent of the other parties save that St. Paul Re may without consent sub-contract any of its functions to a third party.

## 14. **Third Party Rights**

14.1 Subject to Clause 8.7, a person who is not party to the Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Deed. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

## 15. **No partnership**

15.1 Nothing in this Deed shall constitute a partnership between the parties or any of them and accordingly no party shall at any time be liable for or bear any share of the underwriting or any other liabilities or losses of the other except as provided herein and except to the extent that any such liability or losses shall have arisen by virtue of a breach by the other of a provision of this Deed.

## 16. **Stamp duty**

16.1 It is hereby certified that the transaction effected by this Deed does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £60,000.

16.2 Without prejudice or limitation to the foregoing, if it is subsequently adjudicated value has passed by reason of this Deed in favour of a party to it, such party shall bear all and any liability to taxation (including stamp duty) as a result thereof.

## 17. **Governing law**

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

## 18. **Jurisdiction**

18.1 Each of the parties irrevocably submits to the exclusive jurisdiction of the English courts.

IN WITNESS whereof this Deed has been executed by the parties on the day and year first above written.

## Appendix 14

# Schedule 1

This Deed is made the ● day of ● 2001 between ● (“the Assignor”) of ● and St. Paul Reinsurance Company Limited (“St. Paul Re”) of 27 Camperdown Street, London, E1 8DS.

### WHEREAS

1. St. Paul Re has confirmed to the Joint Provisional Liquidators of the Insurance Corporation of Singapore (UK) Limited (in provisional liquidation) (“ICS”) that it will continue to pay all valid claims which the Assignor has under policies of insurance or reinsurance underwritten by ICS between 1 January 1981 and 31 December 1983 as a member of the Oberon Stamp (“Claims”) provided that if requested to do so by St. Paul Re the Assignor shall first have executed an assignment to St. Paul Re of such Claims.
2. The Assignor hereby assigns to St. Paul Re the Claims subject to the terms of this Deed.

### IT IS AGREED THAT

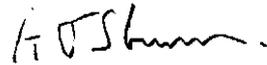
3. It is a condition precedent to the assignment of any Claim or Claims to St. Paul Re under this Deed that St. Paul Re shall have made payment of the Claim or Claims to the Assignor (whether by cash payment or set-off) whereupon the assignment of the Claim or Claims under this Deed will take effect forthwith.
4. Subject to paragraph 3 above, the Assignor assigns to St. Paul Re its interest in and all benefit of the Claims together with the right to pursue, settle or compromise the Claims on such terms as St. Paul Re thinks fit.
5. The Assignor agrees to provide such assistance as St. Paul Re may reasonably request in writing for the purpose of pursuing the Claim against ICS.
6. St. Paul Re agrees to indemnify the Assignor against any costs or expenses incurred by the Assignor as a result of St. Paul Re pursuing the Claim against ICS or reasonably requesting assistance provided that St. Paul Re shall not be liable for any such costs or expenses unless they are incurred with the prior written consent of St. Paul Re.
7. This Deed shall not be terminable except by the agreement of all parties hereto in writing.
8. This Deed shall be governed by and construed in accordance with English law and each of the parties irrevocably submits to the exclusive jurisdiction of the English Courts.

Executed as a Deed

SIGNED and executed as a Deed )  
by Guy Ross Butler )  
duly authorised for and on behalf of )  
St Paul Reinsurance Company Limited )



SIGNED and executed as a Deed )  
by Alistair John Sinclair Gunn )  
duly authorised for and on behalf of )  
St Paul Reinsurance Company Limited )

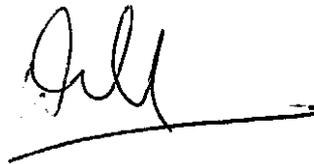


The Common Seal of The Insurance )  
Corporation of Singapore (UK) Limited )  
(Provisional Liquidators Appointed) )  
was affixed to this Deed in the presence of: )



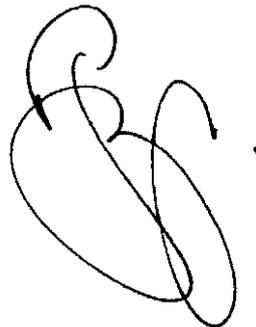
Provisional Liquidator  
(without personal liability)

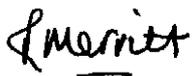
SIGNED and executed as a Deed )  
by Douglas Nigel Rackham, )  
Joint Provisional Liquidator )  
(without personal liability) )



Witnessed: 

Signed and executed as a Deed by )  
Philip John Singer )  
Joint Provisional Liquidator )  
(without personal liability) )



Witnessed: 

## Draft Deed of Assignment

This Deed is made the ● day of ● 2001 between ● (“the Assignor”) of ● and St. Paul Reinsurance Company Limited (“St. Paul Re”) of 27 Camperdown Street, London, E1 8DS.

### WHEREAS

1. St. Paul Re has confirmed to the Joint Provisional Liquidators of the Insurance Corporation of Singapore (UK) Limited (in provisional liquidation) (“ICS”) that it will continue to pay all valid claims which the Assignor has under policies of insurance or reinsurance underwritten by ICS between 1 January 1981 and 31 December 1983 as a member of the Oberon Stamp (“Claims”) provided that if requested to do so by St. Paul Re the Assignor shall first have executed an assignment to St. Paul Re of such Claims.
2. The Assignor hereby assigns to St. Paul Re the Claims subject to the terms of this Deed.

### IT IS AGREED THAT

3. It is a condition precedent to the assignment of any Claim or Claims to St. Paul Re under this Deed that St. Paul Re shall have made payment of the Claim or Claims to the Assignor (whether by cash payment or set-off) whereupon the assignment of the Claim or Claims under this Deed will take effect forthwith.
4. Subject to paragraph 3 above, the Assignor assigns to St. Paul Re its interest in and all benefit of the Claims together with the right to pursue, settle or compromise the Claims on such terms as St. Paul Re thinks fit.
5. The Assignor agrees to provide such assistance as St. Paul Re may reasonably request in writing for the purpose of pursuing the Claim against ICS.
6. St. Paul Re agrees to indemnify the Assignor against any costs or expenses incurred by the Assignor as a result of St. Paul Re pursuing the Claim against ICS or reasonably requesting assistance provided that St. Paul Re shall not be liable for any such costs or expenses unless they are incurred with the prior written consent of St. Paul Re.
7. This Deed shall not be terminable except by the agreement of all parties hereto in writing.
8. This Deed shall be governed by and construed in accordance with English law and each of the parties irrevocably submits to the exclusive jurisdiction of the English Courts.

Executed as a Deed

## **Curricula Vitae for the Joint Scheme Administrators**

### **Douglas Nigel Rackham**

Nigel is a director in the Business Recovery Services practice specialising in the insurance industry. His insurance experience started in the early 1980s as auditor and advisor to a number of brokers and Lloyd's syndicates and agencies. He has worked in the business recovery area since 1990 covering a range of industries and running insolvencies of various sizes and complexities. A particular expertise has been undertaking business reviews and assisting in turnaround situations.

Since 1995 Nigel has worked primarily in the insurance run-off market advising on exit routes and developing innovative solutions for stakeholders. He is currently the Liquidator, Provisional Liquidator or Scheme Administrator for a number of insurance companies including:

Black Sea and Baltic Insurance Company Limited  
Fremont Insurance Company (UK) Limited  
The Insurance Corporation of Singapore (UK) Limited  
The Hawk Insurance Company Limited  
United Standard Insurance Company Limited  
Andrew Weir Insurance Company Limited  
Trinity Insurance Company Limited  
Bryanston Insurance Company Limited  
Oaklife Insurance Company Limited

Nigel is a fellow of the Institute of Chartered Accountants in England and Wales and a licensed Insolvency Practitioner.

### **Mark Christopher Batten**

Mark is a partner in the Business Recovery Services practice specialising in the insurance industry. He has specialised in Corporate Reconstruction since 1982 where he led investigations into the financial viability and reconstruction of a range of companies, primarily in the engineering, technology, property, construction and leisure sectors.

From 1993 until 1998, Mark was a Managing Partner of Financial Advisory Services across Europe. This comprised Corporate Finance, Project Finance and Privatisation, Business Recovery and Dispute Analysis and Investigation. Following this he became Leader of Shareholder Value/Valuation Opinions Practice where he was responsible for the strategy formulation and execution and selling work in the UK and mainland Europe, including working with a FTSE 100 company on financial strategy.

With effect from 2001, Mark has held the position of Leader of the Insurance Restructuring Practice. He is currently the Liquidator, Provisional Liquidator or Scheme Administrator for a number of insurance companies including:

Chester Street Insurance Holdings Limited  
The Charter Reinsurance Company Limited  
Independent Insurance Company Limited  
North Atlantic Insurance Company Limited  
ICS Reinsurance Private Limited  
Grand Union Insurance Company Limited  
Dai Ichi Kyoto Reinsurance Company S A  
Kobe Reinsurance S A

The Insurance Corporation of Singapore (UK) Limited

**Informal Creditors' Committee pro-forma letter of support for the Scheme**

Nigel Rackham  
Provisional Liquidator  
The Insurance Corporation of Singapore (UK) Limited  
Plumtree Court  
London EC4A 4HT

Dear Sirs

[Company name], a member of the Informal Creditors' Committee referred to in the Explanatory Statement contained herein, has considered the information contained in this document, including the Scheme of Arrangement ("the Scheme"), the Explanatory Statement and its Appendices.

On the basis of such information, we intend to vote for the Scheme at the meeting of creditors summoned by the notice set out in this document.

We consent to the inclusion of a copy of this letter as an appendix to the Scheme.

Yours faithfully