

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 YOU SHOULD TAKE YOU SHOULD CONSULT YOUR PROFESSIONAL ADVISER WITHOUT DELAY. A COPY OF THIS DOCUMENT HAS BEEN SENT TO KNOWN PROFESSIONAL ADVISERS AND OTHER REPRESENTATIVES OF PERSONS WHO HAVE, OR MAY HAVE, SCHEME CLAIMS AGAINST ENGLISH & AMERICAN INSURANCE COMPANY LIMITED ("SCHEME COMPANY"). SUCH REPRESENTATIVES ARE REQUESTED TO BRING THE CONTENTS OF THIS DOCUMENT TO THE ATTENTION OF THEIR CLIENTS.

## **FINAL CLOSURE SCHEME OF ARRANGEMENT**

**pursuant to Part 26 of the Companies Act 2006**

**between**

**ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

(by way of further amendment to an existing scheme of arrangement dated 28 October 1994  
(as amended by a scheme of arrangement dated 1 June 2000 and a scheme of arrangement  
dated November 2009))

**and its**

**SCHEME CREDITORS**

(as defined in the Scheme of Arrangement)

## **IMPORTANT NOTICE TO SCHEME CREDITORS**

This document has been prepared in connection with a proposed final closure scheme of arrangement (the "Scheme") pursuant to Part 26 of the Companies Act 2006 between English & American Insurance Company Limited ("the Scheme Company") and its "Scheme Creditors" (as defined in the Scheme). In doing so the Scheme Company has relied upon information obtained from their records as maintained by PRO Insurance Solutions Limited, the proposed Scheme Manager.

Unless otherwise indicated, the statements, opinions and information contained in this document are made as at the date of this document and reflect the circumstances existing and the information of which the Scheme Company was aware at that time.

Nothing in this document shall constitute any admission of fact or liability on the part of the Scheme Company or any other person with respect to any asset to which it may be entitled or any claim against it. No estimate of the amount of any claim against the Scheme Company provided to it or taken into account for the purposes of voting on the Scheme shall be binding on the Scheme Company or any other party for the purposes of the Scheme or for any other purpose.

The Scheme Company has not authorised any person to make any representations concerning the Scheme which are inconsistent with the statements contained herein and if any 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 in Part 1 of this document is qualified in its entirety by reference to the Scheme in Part 2 of this document. Scheme Creditors should read and consider carefully the full text of the Scheme. Unless otherwise indicated, capitalised terms defined in the Scheme have the same meaning throughout this document.

None of the contents of this document are intended to constitute legal, tax, financial or other professional advice given to Scheme Creditors. Scheme Creditors should take advice from their own professional advisers before taking any action in connection with the Scheme.

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# TABLE OF CONTENTS

	Page
<b>IMPORTANT NOTICE TO SCHEME CREDITORS</b>	ii
<b>CONTACT DETAILS</b>	iii
<b>KEY DATES AND EXPECTED TIMETABLE</b>	v
PART 1: EXPLANATORY STATEMENT	1
PART 2: THE SCHEME	31
PART 3: NOTICE CONVENING THE SCHEME MEETINGS	77
PART 4: VOTING FORMS AND INSTRUCTIONS FOR COMPLETION	79

## KEY DATES AND EXPECTED TIMETABLE

Voting Forms to be returned	15 December 2023
Scheme Meetings to vote on the Scheme	19 December 2023
Court hearing to sanction the Scheme	24 January 2024
Effective Date of the Scheme	25 January 2024
Bar Date	9 May 2024
Date of earliest payments to Scheme Creditors under the Scheme	1 August 2024

The above dates, other than the Scheme Meeting and return of the Voting Forms, are tentative only as the hearing of the petition for the sanctioning of the Scheme by the Court will only proceed if the Scheme is approved by the requisite majority at the Scheme Meeting.

# **PART 1: THE EXPLANATORY STATEMENT**

Explanatory Statement issued in compliance with Part 26  
of the Companies Act 2006 relating to a proposed

## **FINAL CLOSURE SCHEME OF ARRANGEMENT** (the "**Scheme**")

**between**

### **ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

(by way of further amendment to an existing scheme of arrangement dated 28 October 1994 (as amended by a scheme of arrangement dated 1 June 2000 and a scheme of arrangement dated November 2009))

**and its**

### **SCHEME CREDITORS**

(as defined in the Scheme of Arrangement)

## Contents

Clause	Name	Page
1	Letter from the Scheme Administrators of English & American Insurance Company Limited .....	1
1.1	Introduction.....	1
1.2	What is a Scheme of Arrangement and how does it become binding?.....	1
1.3	Who will be affected? .....	2
1.4	History of the Scheme Company .....	2
1.5	Marsh Mac Protected Policies .....	3
1.6	What liabilities are included in the Scheme?.....	4
1.7	Why is the Scheme Company proposing this Scheme?.....	4
1.8	How will the valuation of Scheme Claims work? .....	4
1.9	What are the advantages of the Scheme for Scheme Creditors? .....	5
1.10	What are the disadvantages of the Scheme for Scheme Creditors?.....	6
1.11	Recommendation for the Scheme.....	9
1.12	Scheme Meetings .....	9
1.13	What are Scheme Creditors required to do? .....	10
1.14	Next Steps .....	11
2	Financial Information and Directors' Interests .....	13
2.1	Financial Position .....	13
2.2	Directors' Interests .....	13
3	Summary of the Scheme .....	13
3.1	Summary.....	13
3.2	Effect of the Scheme and stay of Proceedings.....	13
3.3	Distribution of Claim Forms and the Bar Date.....	14
3.4	Return of Claim Forms.....	14
3.5	Agreement of Claim Forms .....	15
3.6	Adjudication.....	16
3.7	Valuation Statements .....	17
3.8	Currency conversion .....	18
3.9	Managing general agents, line-slip holders, managers of underwriting pools....	18
3.10	Payments to Scheme Creditors.....	18
3.11	Effect of the Scheme .....	19
3.12	The Scheme Manager .....	19
3.13	The Scheme Administrators .....	19
3.14	The Creditors' Committee .....	19
3.15	Scheme Meetings .....	19
3.16	Extension of time limits .....	19
3.17	Prohibited payments.....	20
3.18	Completion and Release .....	20
3.19	Governing law and jurisdiction .....	20
3.20	How can you find out more about the Scheme and ask questions?.....	20

### Appendix Name

1	Scheme Process Diagram
2	Summary Balance Sheet as 31 December 2022
3	Documents Available for Inspection
4	Curriculum Vitae of Joshua Dwyer
5	Curriculum Vitae of Romy Comiter

1 **LETTER FROM THE SCHEME ADMINISTRATORS OF ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

**TO: THE SCHEME CREDITORS OF ENGLISH & AMERICAN INSURANCE COMPANY LIMITED ("SCHEME COMPANY")**

1.1 **Introduction**

We are writing to you concerning the scheme of arrangement which the Scheme Company proposes to enter into with its Scheme Creditors. This letter forms part of the Explanatory Statement, the purpose of which is:

- (a) to provide background information in relation to the proposed Scheme;
- (b) to explain the advantages and disadvantages of the proposed Scheme; and
- (c) to explain the main provisions of the proposed Scheme,

in order to help Scheme Creditors to reach an informed decision on whether to vote in favour of the Scheme at the meetings of Scheme Creditors to be held on 19 December 2023 (the "**Scheme Meetings**"). As explained in more detail at paragraph 1.12 of this Explanatory Statement, the Scheme Company has concluded that Scheme Creditors form two separate classes, which will vote separately at two separate Scheme Meetings.

Unless otherwise indicated, capitalised terms defined in the Scheme have the same meaning when used in this letter and the remainder of the Explanatory Statement. The Scheme is set out in full at Part 2 of this document, and a summary of its principal provisions is set out at Section 3 of this Explanatory Statement. Please note that the summary is a guide and should not be relied on as a substitute for reading the Scheme itself.

Under the proposed Scheme, if it becomes effective, the Scheme Company will seek to agree the Scheme Claims of Scheme Creditors. If such Scheme Claims cannot be agreed, they will be determined by the Scheme Adjudicator in accordance with the provisions of the Scheme.

1.2 **What is a Scheme of Arrangement and how does it become binding?**

A scheme of arrangement, such as that proposed here, is an arrangement between a company and some or all of its creditors (or any class of them) entered into pursuant to Part 26 of the Companies Act 2006. A scheme of arrangement becomes legally binding on a company and all its creditors or any class of them if:

- (a) a majority in number, representing not less than 75 per cent. in value, of the creditors or class of creditors present and voting in person or by proxy vote in favour of the scheme of arrangement at a meeting or meetings convened with the permission of the Court;
- (b) the Court subsequently sanctions the scheme of arrangement; and



- (c) an office copy of the order of the Court to that effect is delivered for registration to the Registrar of Companies in England and Wales.

The requisite majorities voting in favour of the Scheme will be required at both of the two Scheme Meetings the Scheme Company is convening.

### 1.3 **Who will be affected?**

The Scheme is proposed between the Scheme Company and its Scheme Creditors. The term "**Scheme Creditor**" is defined in the Scheme itself but in summary, means a creditor of the Scheme Company who has, or who may in the future have, a claim against the Scheme Company arising under an Insurance Contract issued through the Institute of London Underwriters ("**ILU**") between 3 July 1980 and 6 October 1983 by or on behalf of the Scheme Company (a "**Scheme Claim**"). The term "**Insurance Contract**" as defined in the Scheme includes retrocession, reinsurance, as well as direct insurance contracts. If you have no Scheme Claim against the Scheme Company you will not be entitled to attend or vote at the Scheme Meeting.

It should be noted that if it becomes effective, the Scheme will bind the Scheme Company and all its Scheme Creditors, irrespective of whether they had notice of the Scheme and irrespective of whether they voted for or against the Scheme or not at all.

### 1.4 **History of the Scheme Company**

The Scheme Company commenced underwriting in 1929 and was involved in a number of underwriting activities, participating from 1954 in a number of underwriting pools (the "**Pools**") as well as underwriting on a standalone basis, including as a member of the ILU. Pooling is a method of spreading risk whereby a combination of insurers, writing a specific class of insurance, agree to share the premiums and losses in agreed proportions.

As a result of increased adverse claims experience, the Pools ceased taking on new business with effect from 23 November 1992 and the Scheme Company ceased underwriting completely with effect from that date. The Scheme Company had the largest individual share (approximately 70%) of the Pools' estimated remaining liabilities, and on 19 March 1993, a winding-up petition was presented by the Scheme Company acting by its directors. Anthony James McMahon and Roger Smith, partners in KPMG Peat Marwick, were appointed as provisional liquidators by order of the High Court of England and Wales.

The administration of the Pools continued on a unified basis. In 1993, Pro Insurance Solutions Limited ("**Pro**") were appointed as run-off manager for the Pools. Pro continues to manage the Scheme Company's remaining business.

The provisional liquidators developed a run-off plan for the Scheme Company which included the implementation of a "reserving" or "run-off" scheme of arrangement under section 425 of the Companies Act 1985 (the predecessor to Part 26 of the Companies Act 2006), (the "**Original Scheme**") dated 28 October 1994. The Original Scheme was amended by an amending scheme of arrangement dated 1 June 2000 and in its amended form is referred to in this Explanatory Statement and the final closure scheme now being proposed by the Scheme Company as the **Existing Scheme**. Under the Existing Scheme, the Scheme Company has continued in run-off and made payments to creditors *pro rata* on their agreed claims (known as "**Established Scheme Liabilities**"). The current Scheme Administrators of the Existing Scheme are Darryl Ashbourne and Joshua Dwyer (the "**Scheme**").

**Administrators**") of Interpath Advisory, which acquired the restructuring and insolvency practice of KPMG LLP in Great Britain on 4 May 2021.

In 2010, the Existing Scheme was amended by a further scheme of arrangement (the "**Closure Scheme**") dated November 2009. The Closure Scheme provided for a mandatory valuation of claims (including estimating the value of contingent and prospective claims), and payment of dividends based on that valuation, which were discounted for the time value of money. Claims not submitted by the deadline imposed by the Closure Scheme no longer qualify for payment by the Scheme Company.

The Closure Scheme applied to all liabilities of the Scheme Company, other than liabilities under policies issued through the ILU between 3 July 1980 and 6 October 1983 ("**Marsh Mac Protected Policies**") which had not matured in the ordinary course by the time the Closure Scheme became effective. The Closure Scheme was declared complete on 15 December 2016.

## 1.5 **Marsh Mac Protected Policies**

Liabilities under the Marsh Mac Protected Policies had been covered by guarantees in favour of the ILU for the benefit of policyholders whose policies were issued and signed through the ILU between 3 July 1980 and 6 October 1983 (both dates inclusive). One of these guarantees was provided by The Marsh & McLennan Companies, Inc ("**Marsh Mac**") and another by Bowring Services Limited. In September 1993, the guarantees were released and replaced by an irrevocable letter of credit in favour of the ILU procured by Marsh Mac (the "**Marsh Mac LOC**"), under which Marsh Mac Protected Creditors may be entitled to additional payments in respect of their claims under policies issued during the period that had been covered by the guarantees, as they are agreed in the ordinary course.

At the time the Closure Scheme was being implemented, Marsh Mac was approached with offers for options to participate in the Closure Scheme. They declined to do so and refused to provide an undertaking that the Marsh Mac LOC would also cover claims under Marsh Mac Protected Policies which were valued under the Closure Scheme, rather than maturing in the ordinary course. In order to preserve the potential for recovery under the Marsh Mac LOC, liabilities under Marsh Mac Protected Policies that had not matured by the time the Closure Scheme became effective were excluded from the scope of the Closure Scheme. Claims under Marsh Mac Protected Policies continue to be adjusted and administered under the Existing Scheme.

Claimants under Marsh Mac Protected Policies ("**Marsh Mac Protected Creditors**") may also have the benefit of a trust fund held by the Scheme Company (the "**Trust Fund**"). The Trust Fund covers claims under policies issued by the Scheme Company through the ILU from 1 September 1983, overlapping by approximately 5 weeks with the period covered by the Marsh Mac LOC, which ends on 6 October 1983. Marsh Mac Protected Policies issued in the period 1 September 1983 to 6 October 1983 (both dates inclusive) ("**Overlap Period**") are also therefore covered by the Trust Fund. Claims under policies issued through the ILU after 6 October 1983 were included in the scope of the Closure Scheme, and a top up payment of 24% of such claims as valued under the Closure Scheme has been made to the policyholders concerned. Unmatured claims under Marsh Mac Protected Policies were not included in the Closure Scheme, and a small portion of the Trust Fund has been set aside for the benefit of Marsh Mac Protected Creditors with policies issued in the Overlap Period. Those creditors are entitled to receive a top up from the Trust Fund as and when their claims mature.

## 1.6 **What liabilities are included in the Scheme?**

As a result of the Closure Scheme, the only remaining insurance liabilities for which the Scheme Company has any obligation to make a payment arise under Marsh Mac Protected Policies, where the policyholders concerned did not opt in to the Closure Scheme. It is these liabilities that will be dealt with by the Scheme.

## 1.7 **Why is the Scheme Company proposing this Scheme?**

Having consulted with our legal advisers and the remaining member of the Creditors' Committee, we have concluded that the Scheme Company should propose the Scheme to accelerate the closure of its estate.

The Scheme Administrators have experienced difficulty in locating other Scheme Creditors willing to act as part of the Creditors' Committee. In the latest report to creditors dated 20 January 2023 the Scheme Administrators invited any Scheme Creditor to contact them should they wish to become members of the Creditors' Committee but have not received any expressions of interest.

The objective of the Scheme is to terminate the Scheme Company's run-off earlier than would otherwise be the case, thus saving administration costs and ensuring that the run-off expense provision is not exhausted before all claims are agreed and as far as possible creditors receive a dividend percentage at least equal to that paid under the Closure Scheme. This will be achieved by placing a value on a Scheme Creditor's current, future and contingent claims against the Scheme Company and making a final distribution based on that estimated value. The valuation process will include a discount to calculate the present value.

Scheme Creditors will need to balance the advantages the Scheme is designed to achieve against the risk of the Scheme prejudicing their ability to effect a recovery under the Marsh Mac LOC, bearing in mind that a recovery does not appear to be guaranteed even in the absence of the Scheme. Please refer to paragraph 1.10(d) for further details.

## 1.8 **How will the valuation of Scheme Claims work?**

Scheme Creditors must include their own valuation of their Scheme Claims on their Claim Form, which must be submitted by the Bar Date. The Estimation Guidelines, which are at the Appendix to the Scheme, set out the methods Scheme Creditors might apply in deriving the values for their Scheme Claims, together with examples of appropriate supporting documentation for claim values related to losses which have been incurred by a Scheme Creditor but not notified to it ("**IBNR**"). The Scheme Company will follow the Estimation Guidelines when considering and attempting to agree the Scheme Claims submitted.

The Estimation Guidelines set out different methods depending on the business/claim type, to derive an estimate of the value of the Scheme Claims. Details of the methods by claim type are given in the Estimation Guidelines.

In situations where the Scheme Creditor has applied its own methodology to estimate IBNR, and provided details of it, the Scheme Company will use its judgment to assess the reasonableness of the methodology employed by the Scheme Creditor, as compared to the generic methodology for the relevant claim type(s) set out in the Estimation Guidelines.

If the Scheme Company agrees that a Scheme Creditor's methodology is more appropriate than the corresponding methodology in the Estimation Guidelines, then

the Scheme Company will proceed to review the detailed application of the Scheme Creditor's methodology, including the reasonableness of all the assumptions.

In some cases, the Scheme Company may select results based on a combination of results produced by the application of the Scheme Creditor's methodology, and those produced by application of the relevant section(s) of the Estimation Guidelines.

The Estimation Guidelines will be applied to calculate a Scheme Creditor's ultimate claims - outstanding claims plus IBNR claims (as defined in the Estimation Guidelines).

For all claim types where required data is not available, the Scheme Company will use its judgment in deciding on an appropriate methodology to apply in order to derive an estimate of IBNR claims, which in some cases may be zero, particularly if limited supporting data is available. In all cases, the Scheme Company will document its rationale for selection of a particular methodology and set of assumptions.

For claim types that have little or no claims history at the date of submission of claims under the Scheme, but where the Scheme Creditor wishes to assert an IBNR claim, the approaches outlined in the Estimation Guidelines may need some modification to reflect the specific circumstances of the submitted claim. However, as for other policies and claim types, it will be advisable for Scheme Creditors to submit details of their own methodology for estimating their claim.

Once the inwards outstanding claims and IBNR claims have been ascertained, they will be discounted to the Bar Date to take account of the time value of money. The Scheme Creditors must apply a discount rate of 3.48%, being the 10-year yield, as at 31 March 2023, on US Treasury bonds (or, in the case where the underlying Scheme Claim owed to a Scheme Creditor is predominantly payable in a currency other than US Dollars, equivalent government securities of the country as at 31 March 2023 in whose currency the Scheme Claims are payable). Scheme Creditors will need to submit details of the payment profile used in calculating the discount.

## 1.9 **What are the advantages of the Scheme for Scheme Creditors?**

The principal benefits to Scheme Creditors of the proposed Scheme include the following:

- (a) Run-off expense provision is not exhausted before all claims are agreed

When the Closure Scheme was implemented in 2010, the Scheme Company continued to maintain, in addition to the estimated loss reserves associated with the Marsh Mac Protected Creditors, a run-off expense provision to cover the costs of administering the run-off. At that time, it was estimated that the run-off would extend for approximately a further 10 years and adequate allowance was made to cover run-off administration costs, so that Marsh Mac Protected Creditors would receive the same dividend percentage as other creditors received under the Closure Scheme.

However, over time the run-off expense provision has naturally eroded as costs of the run-off have been met (the investment income that had been assumed to set-off some of the costs has been very low given the prolonged low interest rate environment). As a result, we believe there is now a risk that the run-off expense provision could be exhausted prior to the agreement of all claims in the normal course. In consultation with Pro we have carried out a detailed review of the Marsh Mac Protected Policies which has provided more certainty on the level of potential outstanding claims.

Recent claims development has been restricted to a small number of open claims, which we are closely monitoring.

Since the Closure Scheme was terminated in 2016, despite a number of claims being agreed by us, as far as we are aware, no Marsh Mac Protected Creditor has been successful in obtaining payment of a claim under the Marsh Mac LOC. Continuing the run-off of the Scheme Company's business simply in order to preserve a potential entitlement under the Marsh Mac LOC, in circumstances where the Scheme Company's assets may be further eroded or even exhausted before claims can be agreed in the ordinary course, is not in the interests of Scheme Creditors.

Accordingly, the proposed Scheme will bring an early end to EAIC's run-off, saving administration costs and ensuring that as far as possible creditors receive the same dividend percentage as was paid to other creditors under the Closure Scheme. Scheme Creditors will need to balance this advantage against the risk of the Scheme prejudicing their ability to effect a recovery under the Marsh Mac LOC, bearing in mind that a recovery does not appear to be guaranteed even in the absence of the Scheme.

(b) Potential to receive more than in the normal course of run-off

The Scheme will place a once-and-for-all value on future claims, either by agreement or, if that is not possible, by valuation through adjudication. The principles the Scheme Manager will adopt in reviewing claims submitted under the Scheme and which will also be followed by the independent adjudicator in any adjudication process are set out at Paragraph 1.8 (*How will the valuation of Scheme Claims work?*) above and in the Estimation Guidelines. As this is an estimate of the value of future claims involving an element of judgement, a Scheme Creditor could receive more than they would have received had the Scheme Company's business been run off and claims been left to mature in the normal course.

(c) Potential for an increase in the dividend percentage

The Scheme provides for the dividend percentage to be set at a level that ensures that the Scheme Company's assets (less any sums required to meet expenses) are shared pro rata among Scheme Creditors. Accelerating the run-off of the Scheme Company's remaining business under the Scheme will result in savings in administration costs which could permit an increase in the dividend percentage, currently set at 49.6%. Scheme Creditors could therefore receive a higher percentage of their claims than would be the case if the Existing Scheme were to continue. For those Scheme Creditors that have Established Scheme Liabilities under the Existing Scheme for which they have already received payment of a dividend, this will be achieved by a top-up payment to ensure that in total they have received payment of a sum equal to the increased dividend percentage of their Established Scheme Liabilities.

#### 1.10 **What are the disadvantages of the Scheme for Scheme Creditors?**

In considering the Scheme, Scheme Creditors should also be aware of the following potential disadvantages of the Scheme:

(a) Bar Date for submission of Scheme Claims

The Scheme Company cannot accept Claim Forms submitted after the Bar Date and failure to meet this deadline will result in a Scheme Creditor losing its entitlement in respect of any Scheme Claim, other than a claim for an Established Scheme Liability which has already been determined under the Existing Scheme (referred to in the Scheme as an Existing Scheme ESL). However, Scheme Creditors may choose when submitting their Voting Forms for the purposes of the Scheme Meeting to have their Claims Table adopted as their Claim Form should the Scheme become effective, by checking the relevant box on the Claims Table. In that case, the Claims Table will be treated as if it were a Claim Form returned by the Bar Date in accordance with the requirements of the Scheme, and the Scheme Creditor will not need to complete and return a Claim Form (although it may still choose to do so). If a Scheme Creditor submits a Claims Table without exercising this option, and then fails to return a Claim Form prior to the Bar Date, the Claims Table will be treated as if it were a Claim Form returned by the Scheme Creditor prior to the Bar Date.

For the avoidance of doubt, Scheme Creditors do not need to submit claims for an Existing Scheme ESL, which continue to be binding on the Scheme Company and the relevant Scheme Creditor. This means that if a Scheme Creditor's only claim is for an Existing Scheme ESL, they do not need to submit a Claim Form.

- (b) Replacement of cover with a value that may be less than you would receive in the normal course of run-off

Once the Scheme has been fully implemented, a Scheme Creditor's cover under Insurance Contracts will have been removed. In return, the Scheme puts a present value on future claims, either by agreement or, if that is not possible, by valuation through adjudication by an independent adjudicator. As this is an estimate of the value of future claims involving an element of judgement, a Scheme Creditor could receive less than they would have received had the Scheme Company's business been run off and claims been left to mature in the normal course.

- (c) Stay on Proceedings

There is a prohibition on Scheme Creditors commencing or continuing Proceedings against the Scheme Company in relation to Scheme Claims. This means that existing rights to arbitrate or commence Proceedings are removed and replaced by the Scheme Adjudication process. The provisions in the Existing Scheme regulating Proceedings against the Scheme Company will be amended by those in the Scheme.

- (d) Marsh Mac LOC

The Scheme Company was not party to any of the guarantees issued in favour of the ILU for the benefit of policyholders, and neither the Scheme Company nor the Scheme Administrators were privy to the settlement arrangements under which the guarantees provided by Marsh Mac and Bowring were replaced by the Marsh Mac LOC. The Scheme Administrators understand that those arrangements included certain additional requirements agreed between the ILU and Marsh Mac that you are obliged to meet in order to draw down under the Marsh Mac LOC. The Scheme Administrators understand Marsh Mac's position to be that claims which are valued whether under the Scheme or any other form of compromise, rather than being left to mature in the ordinary course, do not qualify for payment

under the Marsh Mac LOC. If that is correct, Scheme Creditors may not be able to make any recovery under the Marsh Mac LOC for claims valued under the Scheme, and the most you will receive is a percentage (according to the current Payment Percentage) of their claim as valued and, if the claim arises under a policy issued during the Overlap Period, a top up payment from the Trust Fund.

In light of this uncertainty, you should not assume that you will be able to recover the difference between the dividend paid to you under the Scheme and the full amount of your claim under the Marsh Mac LOC. It is worth noting however that the Scheme does not contain any provisions extinguishing Marsh Mac's obligations in respect of Marsh Mac Protected Policies (although as mentioned in the previous paragraph, Marsh Mac's view is that claims valued under the Scheme do not qualify for payment under the Marsh Mac LOC).

There is a possibility that you may receive a more substantial recovery through a drawdown under the Marsh Mac LOC if the Scheme is not implemented. As they are not involved in the process of effecting recoveries under the Marsh Mac LOC, the Scheme Administrators are not aware of the approach the ILU takes in assessing compliance with the conditions applying to drawdowns, some of which are restrictive. However, of the 12 claims that have become Established Scheme Liabilities since completion of the Closure Scheme in 2016, none have, to the Scheme Administrators' knowledge, been the subject of a successful drawdown under the Marsh Mac LOC for the difference between the dividend paid and the full amount of the Established Scheme Liability. You may wish to contact the ILU and request a copy of the Marsh Mac LOC and the procedures the ILU applies in assessing compliance with the conditions applying to drawdowns in order to make your own assessment.

The impact of the proposed Scheme on your ability to recover under the Marsh Mac LOC is a significant factor that you should take into account in deciding whether to vote in favour of the proposals.

You are of course free to contact Marsh Mac and/or the ILU separately to discuss their approach to claims valued under the proposed Scheme; and whether they agree that you are entitled to a payment under the Marsh Mac LOC in respect of any unpaid balance of such claims, after a final distribution under the Scheme, and, if applicable, the Trust Fund. We will provide you with the relevant contact details for Marsh Mac and the ILU on request. You may also wish to obtain your own legal advice in respect of any payments you could be entitled to under the Marsh Mac LOC and/or the Trust Fund.

(e) Decrease in the dividend percentage

As already mentioned, the Scheme provides for the dividend percentage to be set at a level that ensures that the Scheme Company's assets (less any sums required to meet the expenses) are shared pro rata among Scheme Creditors. Depending upon the quantum of claims agreed or determined under the Scheme, it is therefore possible that the dividend percentage (currently 49.6%) will need to be reduced. Dividends already paid at the higher rate to Scheme Creditors who have Established Scheme Liabilities under the Existing Scheme will not be clawed back. However, their entitlement to payment in respect of any further claim submitted under the Scheme will be reduced to a level that ensures as far as possible, that the total sum paid to them, including dividends paid under the Existing Scheme,

does not exceed the revised dividend percentage of their total claim. As already mentioned, it is also possible that the dividend percentage will be increased.

#### 1.11 **Recommendation for the Scheme**

We consider that the Scheme will offer Scheme Creditors the most effective and economical method for having their Scheme Claims determined and paid in the shortest practicable time. All Scheme Creditors who are entitled to vote are encouraged to vote in favour of the Scheme at the relevant Scheme Meeting.

**The likely impact of the Scheme on the ability to recover under the Marsh Mac LOC is a significant factor you should take into account in deciding whether to vote in favour of the Scheme. As mentioned above you may wish to contact Marsh Mac and/or the ILU direct to discuss the position and you may wish to take your own legal advice.**

We believe that the benefits to the Scheme Creditors of the Scheme outweigh any potential disadvantages. If the Scheme is not implemented, the run-off expense provision may be exhausted before all claims are agreed. We therefore recommend the proposed Scheme to accelerate the closure of the Scheme Company's estate, thus saving administration costs and ensuring that the run-off expense provision is not exhausted before all claims are agreed.

**While there is no minimum prescribed turnout for a meeting of creditors to vote on a proposed scheme of arrangement, at least one Scheme Creditor will need to vote in order for a valid meeting to be held. If no Scheme Creditors vote, the Scheme cannot become effective. In order to ensure that the Scheme Meetings are properly representative of the views of Scheme Creditors we encourage all Scheme Creditors to vote at the relevant Scheme Meeting in person or by proxy. The requisite majorities must be achieved at both Scheme Meetings in order for the Scheme to be approved.**

#### 1.12 **Scheme Meetings**

Having considered the rights of Scheme Creditors and the effect of the Scheme on those rights, and having taken legal advice, the Scheme Company has concluded that Scheme Creditors fall into two classes for the purposes of voting on the Scheme. Each such class will vote at a separate Scheme Meeting. The relevant classes are:

- (a) Scheme Creditors in respect of Existing Scheme ESLs. Existing Scheme ESLs are Established Scheme Liabilities which have been determined under the Existing Scheme. These will remain binding on the Scheme Company and the Scheme Creditor and will not be subject to valuation under the Scheme.
- (b) Scheme Creditors in respect of all Scheme Claims other than claims for Existing Scheme ESLs, being Outstanding Claims and IBNR Claims (together "**Unmatured Claims**") which will be subject to valuation under the Scheme.

Scheme Creditors with both Existing Scheme ESLs and Unmatured Claims are entitled to vote at both meetings in respect of the relevant Scheme Claim.

A full explanation of the rationale for dividing Scheme Creditors into two classes was set out in the letter sent to Scheme Creditors on 13 September 2023 ("**Practice Statement Letter**"). A copy of the Practice Statement Letter is available on the Website.



### 1.13 **What are Scheme Creditors required to do?**

If you are a Scheme Creditor of the Scheme Company, you are entitled to attend and vote at one or both of the Scheme Meetings. The Scheme Meetings have been convened as directed by the Court for the purpose of considering and, if thought fit, approving the Scheme in relation to the Scheme Company.

The Scheme Meetings will be held on 19 December 2023 at the offices of Bryan Cave Leighton Paisner LLP, Governor's House, 5 Laurence Pountney Hill, London EC4R 0BR, United Kingdom at the following times:

- (a) 2:00 p.m. (London time) for Scheme Creditors in respect of Existing Scheme ESLs ("**Existing Scheme ESLs Meeting**")
- (b) 2:15 p.m. (London time), or as soon as the Scheme Meeting for Scheme Creditors in respect of Existing Scheme ESLs concludes or is adjourned, for Scheme Creditors in respect of Unmatured Claims ("**Unmatured Claims Meeting**").

If you have an Existing Scheme ESL and an Unmatured Claim you are entitled to vote at both Scheme Meetings in respect of the relevant Scheme Claim.

Notice of the Scheme Meetings is included in Part 3 of this document. Scheme Creditors may attend the relevant Scheme Meeting in person (or if a corporation, by a duly authorised representative) or by proxy.

The Voting Form for the Existing Scheme ESLs Meeting comprises a form of proxy only. The Voting Form for the Unmatured Claims Scheme Meeting comprises a form of proxy and Claims Table. The Voting Forms, together with instructions and guidance notes for completion, are set out at Part 4 of this document or can be downloaded from the Website. Scheme Creditors whose only Scheme Claim is for an Existing Scheme ESL will receive details of their Existing Scheme ESL according to the Scheme Company's records with the notice of the Scheme Meetings, for use in completing the Voting Form. If you do not think the details provided are accurate, please contact Pro at the address and contact given below, who will be pleased to assist.

Whether or not you intend to be present in person at the relevant Scheme Meeting, please return your completed Voting Form as soon as possible, and in any event so that they are received by 5:00 p.m. (London time) on 15 December 2023 to:

**Stephanie Wilton**

**PRO Insurance Solutions Limited**

Southgate House, Southgate Street, Gloucester, GL1 1UB, United Kingdom

Tel: +44 (0) 7795848215

Email: [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com)

Scheme Creditors entitled to vote at both Scheme Meetings should complete both the Voting Form for the Existing ESLs Meeting and the Voting Form for the Unmatured Claims Meeting. Voting Forms may be sent by email to the email address shown above and will only be accepted if they are legible and received by 5:00 p.m. (London time) on 15 December 2023.

Voting forms may also be handed in at the registration desk at the Scheme Meetings prior to their commencement.

Voting forms will be duly considered by Pro in consultation with the Scheme Administrators in order to determine the value of each relevant vote at each of the Scheme Meetings. The value to be attributed to each Scheme Creditor's claim for voting purposes will be determined by the chairman of each of the Scheme Meetings on the basis of the information provided by the Scheme Creditor and the information available to Pro and the Scheme Company from the Scheme Company's existing records.

Any Scheme Claims which are not denominated in US Dollars will be converted into US Dollars for the purpose of voting at the Scheme Meeting. Scheme Claims will be converted at the mid-market rate of exchange between the two currencies quoted in the international edition of the Financial Times on the Business Day prior to the Scheme Meeting or, if no such rate is published, the closing mid-market rate of exchange between the two currencies as quoted by Barclays Bank PLC on that date and if no such rate is available, such rate as may reasonably be selected by us.

Scheme Claims (other than Scheme Claims for Existing Scheme ESLs) will be discounted for the time value of money. Details of the applicable discount rate are given in the Notes to Section B of the Claims Table at Part 4 (*Voting Form and Instructions for Completion*) of this document.

The chairman has the power to reject a claim, in whole or in part, for voting purposes only, if they consider that it does not represent a reasonable assessment of the claim against the Scheme Company. The decision of the chairman as to the value to be placed on a claim for voting purposes, where it differs from the value asserted by the Scheme Creditor, where possible, will be notified to the relevant Scheme Creditor before the relevant Scheme Meeting and, in any event, as soon as possible afterwards and prior to the hearing of the application to sanction the Scheme.

Scheme Creditors should provide sufficient and appropriate evidence to support their estimate of their claim values. Instructions on how to complete the Voting Forms and suggestions on appropriate supporting evidence are contained in Part 4 (*Voting Form and Instructions for Completion*) of this document.

**The amount of a claim admitted for voting purposes will not determine the value of the claim for the purposes of the Scheme. It will not constitute an admission of the existence or amount of any Scheme Claim and will not bind the Scheme Company or the Scheme Creditor.**

#### 1.14 **Next Steps**

Scheme Creditors should complete Voting Forms in accordance with the instructions and guidance notes for completion at Part 4 of this Scheme Document and return them by 5:00 p.m. (London time) on 15 December 2023 to the address and contact give in Paragraph 1.13 (*What are Scheme Creditors required to do?*). Scheme Creditors whose only claim is for an Existing Scheme ESL do not need to complete and return the Claims Table part of the Voting Form but should complete and return the proxy form.

Voting forms may also be handed in at the registration desk at the Scheme Meeting prior its commencement.

If the Scheme is formally approved and becomes effective, Scheme Creditors will be asked to submit their Scheme Claims using the Claim Form (with the instructions and guidance notes on it) downloaded from the Website or by contacting Pro (contact details above) to request a paper or e-mail copy of a Claim Form. Claim Forms received by Pro prior to the Bar Date will be assessed by Pro. Scheme Creditors also

have the option to have their Claims Table submitted for the purposes of the Scheme Meeting treated as their Claim Form, by checking the relevant box on the Claims Table when they return it. In that case, they will not need to submit a Claim Form by the Bar Date unless they wish to do so. Scheme Creditors whose only claim is for an Existing Scheme ESL do not need to submit a Claim Form.

If Scheme Claims cannot be agreed, they will be determined by the Scheme Adjudicator in accordance with the provisions of the Scheme. Scheme Creditors will then be provided with a Valuation Statement setting out the amount payable to a Scheme Creditor and payments will be made within 7 days following the Scheme Administrators' review of the Payment Percentage.

Yours faithfully

for **ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

.....  
Darryl Ashbourne  
Scheme Administrator

## 2 **FINANCIAL INFORMATION AND DIRECTORS' INTERESTS**

### 2.1 **Financial Position**

A summary balance sheet for the Scheme Company is at Appendix 2 (*Summary Balance Sheet as 31 December 2022*) to this Explanatory Statement.

### 2.2 **Directors' Interests**

None of the directors of the Scheme Company are Scheme Creditors. The Scheme will not affect the directors' interest in the Scheme Company and no additional remuneration will be received by them under the terms of the Scheme.

## 3 **SUMMARY OF THE SCHEME**

*(References to Clause numbers in the following sections refer to Clauses in the Scheme).*

### 3.1 **Summary**

3.1.1 The purpose of the Scheme is to amend the Existing Scheme to provide for the valuation of Scheme Claims, accelerate the payment to the Scheme Creditors of their respective Payment Percentage and discharge the Scheme Company's liability in respect of all Net Ascertained Claims. Each Scheme Creditor's Scheme Claims (other than Scheme Claims for Existing Scheme ESLs) will be valued, taking account of discounting in accordance with the principles set out in the Estimation Guidelines to reflect their present value, in accordance with the Scheme.

3.1.2 The proposed Scheme is a "cut-off" scheme whereby Scheme Creditors will have until 23:59 hours (London time) on the day falling 105 days after the Scheme becomes effective (the "**Bar Date**") to submit their Scheme Claims. All supporting information, unless provided in response to a request by the Scheme Manager or the Scheme Adjudicator, must be submitted by the Bar Date. In order to arrive at an Agreed Claim, the Scheme provides a period of up to 28 days after the Bar Date for the Scheme Creditor and the Scheme Company to reach agreement. This period can be extended at the discretion of the Scheme Manager in certain circumstances. If agreement cannot be reached, the Scheme then provides for an adjudication process to resolve any disputes, whether legal, factual or relating to valuation. A flow chart showing the Scheme process is attached to this Explanatory Statement at Appendix 1 (*Scheme Process Diagram*).

### 3.2 **Effect of the Scheme and stay of Proceedings**

3.2.1 If the Scheme becomes effective it will bind all Scheme Creditors of the Scheme Company. Scheme Creditors are essentially persons with current or potential future claims against the Scheme Company under contracts of insurance, reinsurance or retrocession issued through the ILU between 3 July 1980 and 6 October 1983 by or on behalf of the Scheme Company.

3.2.2 Once the Scheme is effective, and as already provided for under the Existing Scheme, Clause 9.4.1 provides that Scheme Creditors will not be permitted to commence or continue any Proceedings against the Scheme Company to establish the existence or amount of any Scheme Claim. Any Scheme Claim which cannot be resolved by agreement between the Scheme Manager and a Scheme Creditor will be determined by the adjudication procedure provided for by the Scheme.

- 3.2.3 Similarly, unless the Scheme Company has failed to make a payment which it is obliged to make under the Scheme, a Scheme Creditor is prohibited from taking any Proceedings against the Scheme Company for the purpose of enforcing payment of a Scheme Claim (Clause 9.4.2).
- 3.2.4 If, despite these prohibitions, a Scheme Creditor does pursue Proceedings against the Scheme Company and obtains money or property as a result, this is to be treated as an advance payment under the Scheme (Clause 9.4.4). The Scheme Creditor's entitlement to payment under the Scheme will be reduced or extinguished accordingly. Any amounts recovered or costs in excess of that entitlement shall be repaid to the Scheme Company (Clause 9.4.6).
- 3.2.5 The Scheme will not affect a Scheme Creditor's right to enforce any Security, provided it is done in accordance with the terms on which the Security was provided (Clause 9.6.1). Any payment already obtained by a Scheme Creditor from its Security (other than payment from the Trust Fund) towards its Scheme Claim will be deducted in calculating the Scheme Creditor's Net Ascertained Claims (Clause 9.6.1).

### 3.3 **Distribution of Claim Forms and the Bar Date**

- 3.3.1 As soon as reasonably practicable after the Effective Date, the Scheme Manager will advertise notice of the Effective Date and the Bar Date in the same publications which were used to advertise notice of the Scheme Meetings to vote on the Scheme, or in other publications if that is not possible (Clause 2.2.1(b)). The Scheme Manager will also (so far as it is reasonably able) send to every Scheme Creditor for whom it possesses what it reasonably believes to be current contact details, notification of the Effective Date and of the Bar Date (Clause 2.2.1(a)).
- 3.3.2 The advertisement and notification will also ask those Scheme Creditors who wish to assert a Scheme Claim under the Scheme to complete and submit or return Claim Forms by the Bar Date and if they do not wish to download Claim Forms via the Website, to contact the Scheme Manager to request a paper or E-mail Copy of a Claim Form (Clause 2.2.3).

### 3.4 **Return of Claim Forms**

- 3.4.1 The Bar Date is a critical part of the Scheme process as it sets a point in time – 23:59 hours (English time) on the day falling 105 days after the Scheme has become effective – by which Scheme Claims and all supporting information must be submitted by Scheme Creditors and received by the Scheme Manager. Scheme Claims must be submitted, either by Post or E-mail Copy, by means of a Claim Form together with supporting evidence (Clause 2.3.1). The Claim Form contains instructions and guidance notes to assist in its completion. Scheme Creditors can also contact Pro using the contact details at page 10 of this document for further guidance. Any amounts owed by the Scheme Creditor to the Scheme Company will also be agreed or determined as part of this process, and the Scheme Creditor's Agreed Claim (if any) will be reduced by any amount found to be due from the Scheme Creditor.

**Existing Scheme ESLs continue to be binding on the Scheme Company and relevant Scheme Creditor and do not need to be included on a Claim Form. Scheme Creditors whose only Scheme Claim is for an Existing Scheme ESL do not need to submit a Claim Form.**

- 3.4.2 A Scheme Creditor may, by checking the relevant box on the Claims Table and then submitting that Claims Table, elect that the Claims Table which it submitted to the Scheme Company for the purpose of voting at the relevant Scheme Meeting be treated as its Claim Form for the purposes of the Scheme. In that case, the Claims

Table will be deemed to be a Claim Form returned by the Scheme Creditor prior to the Bar Date (Clause 2.3.4), and the Scheme Creditor will not be obliged to submit a Claim Form unless it wishes to do so. If a Scheme Creditor has submitted a Claims Table without asking for it to be treated as a Claim Form, and subsequently fails to return a Claim Form prior to the Bar Date, the Claims Table will nevertheless be deemed to be a Claim Form returned by the Scheme Creditor prior to the Bar Date.

3.4.3 If a Scheme Creditor submits more than one Claim Form, the last Claim Form to be submitted will be taken as being its Claim Form and the information on any prior Claim Form will not be taken into account (Clause 2.3.6).

3.4.4 **If a Scheme Creditor does not submit a Claim Form by the Bar Date (or deemed to have submitted a Claim Form as set out in paragraph 3.4.2), that Scheme Creditor shall not be entitled to assert any Scheme Claim against the Scheme Company (Clause 2.3.7), except in respect of an Existing Scheme ESL.**

3.4.5 Supporting evidence must be supplied to substantiate the amounts entered on the Claim Forms (Clause 2.3.1) and Scheme Creditors are deemed to represent and warrant that such evidence is correct (Clause 2.3.8). The Scheme Manager will accept supporting evidence received up to 7 days after the Bar Date so long as the Claim Form itself is received by the Bar Date (Clause 2.3.3).

### 3.5 **Agreement of Claim Forms**

3.5.1 In the event that the Scheme Manager agrees with the contents of a Claim Form, it shall notify the Scheme Creditor of this by no later than 14 days after the Bar Date (Clause 2.4.1).

3.5.2 The Scheme Manager may request further clarification from a Scheme Creditor any time up to 14 days after the Bar Date. The Scheme Creditor must provide any such clarification requested within 14 days of the request being made (Clause 2.4.2).

3.5.3 If the Scheme Manager does not agree with amounts submitted on the Claim Form, it shall, by no later than 14 days after the Bar Date, notify the relevant Scheme Creditor of the matters which are disputed and the reasons for disputing them, and attempt to agree the disputed matters with the Scheme Creditor concerned within 14 days of the date of such notice, failing which the disputed matters will be determined by the adjudication procedure provided for by the Scheme (Clause 2.4.5).

3.5.4 In the event that the Scheme Creditor concerned does not provide a substantive response and/or fails to respond to the Scheme Manager's attempts to agree the disputed matters with the Scheme Creditor, the Scheme Manager shall be entitled to treat the Claim Form as having been amended to reflect its assessment of the disputed matters and shall not be obliged to refer the disputed matters to the Scheme Adjudicator for determination (Clause 2.4.8).

3.5.5 The Scheme Manager may in its absolute discretion extend the deadlines referred in the two preceding paragraphs by a period of up to 14 days; and/or refer disputed matters to the Scheme Adjudicator for determination where at any time the Scheme Manager believes (in its sole discretion) that it will be impossible or impracticable to reach agreement with the relevant Scheme Creditor (Clause 2.4.6).

### 3.6 **Adjudication**

- 3.6.1 The role of the Scheme Adjudicator effectively replaces any right to litigate or arbitrate in respect of disputes. This process has been designed to deal with claims expeditiously, economically and fairly.
- 3.6.2 The first Scheme Adjudicator under the Scheme will be Romy Comiter, a Managing Director in the firm of FTI Consulting, whose powers, duties, functions and rights are conferred upon her by the Scheme. The Scheme Adjudicator will deal with Disputed Claims in accordance with the Adjudication provision in Clause 2.5 of the Scheme. A copy of Romy Comiter's curriculum vitae, describing her qualifications and experience, can be accessed via the Website and is attached to this document at Appendix 5.
- 3.6.3 The Scheme Adjudicator's decision will be final and binding on the Scheme Company and the Scheme Creditor to the extent permitted by law (except where the law does not permit this, for instance in case of fraud) (Clause 2.5.11).
- 3.6.4 The Scheme Adjudicator will act as an independent expert and not as an arbitrator and her specific function will be to adjudicate any Disputed Claim referred to her in accordance with the terms of the Scheme (Clause 2.5.9). The Scheme Adjudicator will be entitled to engage such appropriate professional advisers as she considers necessary (Clause 2.5.7).
- 3.6.5 The Scheme obliges the Scheme Adjudicator to notify conflicts of interest to the Scheme Company. It also provides for the appointment of an alternate Scheme Adjudicator to deal with those Scheme Claims where conflicts of interest have arisen (Clause 6.1.2).
- 3.6.6 Any remuneration, costs and expenses incurred by the Scheme Adjudicator will be paid by the Scheme Company. The Scheme Adjudicator may, in her absolute discretion, apportion her remuneration, costs and expenses in respect of a particular Disputed Claim between the Scheme Company and the Scheme Creditor, in which case the Scheme Creditor must reimburse the Scheme Company for their share (Clause 2.5.12). The Scheme Company may, in its absolute discretion, deduct any amount to be paid by the Scheme Creditor to the Scheme Company from any sums payable to the Scheme Creditor in respect of the Payment Percentage of the Scheme Creditor's Final Closure Scheme ESL (Clause 2.5.14).
- 3.6.7 The Scheme Adjudicator is not a Scheme Creditor, shareholder or director of the Scheme Company. The Scheme Adjudicator's remuneration is not dependent on the outcome of the adjudication process under the Scheme or on whether claim values are reduced as a result.
- 3.6.8 Scheme Creditors will not be entitled to challenge acts done or omitted to be done in good faith and with due care by the Scheme Adjudicator in performing her duties or functions under the Scheme and the Scheme Adjudicator will not be liable for any loss unless such loss is attributable to her negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty subject to the terms of the Scheme Adjudicator's engagement letter with the Scheme Company (Clause 6.3.2).
- 3.6.9 The Scheme Manager shall provide the Scheme Adjudicator with a copy of the documentation it has relating to the relevant Scheme Claim (including the Claim Form and any correspondence). The Scheme Adjudicator will also have access to all of the Scheme Company's records and information which the Scheme Adjudicator considers she needs to resolve the dispute in relation to the Scheme Claim (Clause 2.5.1). In

each case, provision of such information will be subject to arrangements to maintain confidentiality and any privilege. The Scheme Adjudicator may also:

- (a) request clarification with respect to the information provided from the Scheme Creditor and/or the Scheme Manager, and the Scheme Creditor and/or Scheme Manager will have 14 days to provide such clarification (Clause 2.5.4(a)); and/or
  - (b) request the Scheme Manager, Scheme Company and/or Scheme Creditor to appear before her within 14 days of receipt of notice from the Scheme Adjudicator (Clause 2.5.4(b)).
- 3.6.10 The Scheme Adjudicator will base her decision on the supporting evidence available to her at the end of these periods (although the Scheme Adjudicator has discretion to extend the time periods pursuant to (Clause 2.5.6), and is entitled to consult with professional advisers (Clause 2.5.7).
- 3.6.11 The Scheme Adjudicator will inform the Scheme Manager and the Scheme Creditor of her determination in relation to a Disputed Claim in writing within 14 days of the later of:
  - (a) the receipt of documents provided by the Scheme Manager pursuant to Clause 2.5.1;
  - (b) the receipt of any clarification requested pursuant to Clause 2.5.4(a);
  - (c) the conclusion of any appearance before her pursuant to Clause 2.5.4(b); or
  - (d) the failure of the relevant party to provide such clarification or appear before her pursuant to Clause 2.5.2(a) or (b) respectively.
- 3.6.12 The duties and functions of the Scheme Adjudicator are set out in Clause 6.2. These duties and any liabilities of the Scheme Adjudicator under the Scheme are limited by Clause 6.3.
- 3.6.13 **A flow chart summarising the scheme process is attached to this Explanatory Statement at Appendix 1 (*Scheme Process Diagram*).**
- 3.7 **Valuation Statements**
  - 3.7.1 A Valuation Statement will be sent or made available to each Scheme Creditor within 14 days of the last of:
    - (a) agreement or valuation of a Scheme Creditor's Scheme Claim and Scheme Debt, if any, and conversion into US Dollars, if necessary;
    - (b) where applicable, the making of a Final Award in respect of any Proceedings commenced or continued by the Scheme Creditor in accordance with the Scheme; and
    - (c) resolution of any outstanding Disputed Claims by the Scheme Adjudicator (Clause 2.6.1).
  - 3.7.2 The Valuation Statement will set out the total value of a Scheme Creditor's Agreed Claims established under the Scheme, any Scheme Debts to be set off against the sums due to the Scheme Creditor and any applicable Tax the Scheme Company is required to withhold or deduct.



3.7.3 The amount shown on a Valuation Statement after the adjustments described above is the Scheme Creditor's "**Net Ascertained Claim**" (and "**Established Scheme Liability**") or "**Net Debt**" if it is an amount in favour of the Scheme Company. A Valuation Statement becomes binding upon the Scheme Creditor unless disputed within 14 days of the date of the Valuation Statement (Clause 2.6.6(a)). A Valuation Statement can only be disputed if it contains a clear typographical or arithmetical error which is apparent on its face or an error in the transposition of binding information to it. These kinds of error are referred to as a "**Manifest Error**" (Clause 2.6.6(b)).

3.7.4 Within 7 days of a dispute concerning a Manifest Error on a Valuation Statement being resolved, the Scheme Manager shall send the relevant Scheme Creditor a revised Valuation Statement which will be final and binding on the Scheme Company and the Scheme Creditor concerned (Clause 2.6.6(c)(i)). If the Scheme Manager determines that there are no grounds for alteration of the original amount or preparation of a revised Valuation Statement, the Scheme Manager will send notice to the relevant Scheme Creditor that that is the case within 7 days of making such determination (Clause 2.6.6(c)(ii)).

### 3.8 **Currency conversion**

Where a Scheme Creditor has Agreed Claims denominated in a currency other than US Dollars, the Agreed Claims will be converted to US Dollars at the Scheme Rate (Clause 2.6.5(a)). If the Scheme Creditor owes a debt to the Scheme Company, for the purpose of preparing a Valuation Statement, any Scheme Debt denominated in a currency other than US Dollars will be converted to US Dollars at the Scheme Rate (Clause 2.6.5(b)).

### 3.9 **Managing general agents, line-slip holders, managers of underwriting pools**

Where one entity is authorised to act on behalf of a number of Scheme Creditors, the Scheme Manager may require it to allocate Scheme Claims between its principals (Clause 9.9.1), failing which such persons (or their principals) may not be entitled to claim in the Scheme (Clause 9.9.3). As an alternative, the Scheme Manager may treat that entity as if it were the principal creditor or debtor in place of its principals, unless it is satisfied that the entity has no authority to act on the principals' behalf or that the principals do not wish their payments to be made to the agent (Clause 9.9.2).

### 3.10 **Payments to Scheme Creditors**

3.10.1 The method and timing of payment of the Payment Percentage of Established Scheme Liabilities, including any payment to be made in respect of Existing Scheme ESLs where the Payment Percentage has been increased, is set out at Clauses 3.3 and 3.4. Payment by the Scheme Company, whether by cheque (if requested), telegraphic transfer or such other manner as the Scheme Administrators may from time to time determine, will be made in full within 21 days following the Scheme Administrators' review of the Payment Percentage pursuant to Clause 3.2 (Clause 3.3.2).

3.10.2 Clause 3.4.2 deals, in relation to payments to the Scheme Company's Scheme Creditors, with cheques that are not cashed or payments which it has not been possible to make because the correct banking details are not available. If these payments are not claimed or the cheques are not cashed within six months of the attempted payment or the cheque being sent by Post, the payment obligation will be deemed to have been satisfied.

### 3.11 **Effect of the Scheme**

- 3.11.1 Payment of the Payment Percentage of an Established Scheme Liability will be in full and final settlement of all and any Scheme Claims and Established Scheme Liabilities of the relevant Scheme Creditor against the Scheme Company (Clause 2.7.1). Scheme Creditors agree under the Scheme to give credit in any claim they make under the Marsh Mac LOC for the amount received (whether by way of payment or as a result of the application of set-off) under the Scheme.
- 3.11.2 The liability of the Scheme Company in respect of Scheme Claims and Established Scheme Liabilities will be extinguished on the Completion Date as explained at paragraph 3.18 (*Completion and Release*) of this Explanatory Statement below.

### 3.12 **The Scheme Manager**

- 3.12.1 The first Scheme Manager will be Pro, which has been handling the administration of the Scheme Company since 1993. The Scheme Manager has responsibility for implementing the Scheme process on behalf of the Scheme Company. The Scheme Manager is the agent of the Scheme Company and has a duty to act in good faith and due care in exercising its powers and carrying out its duties and functions under the Scheme.
- 3.12.2 The duties and functions of the Scheme Manager are set out in Clauses 5.1 and 5.2. These duties and any liabilities of the Scheme Manager under the Scheme are limited by Clause 5.3.

### 3.13 **The Scheme Administrators**

- 3.13.1 Joshua Dwyer of Interpath Advisory will be appointed as a Scheme Administrator, alongside Darryl Ashbourne, at the Effective Date. A curriculum vitae for Mr Dwyer is at Appendix 4 (Curriculum Vitae of Joshua Dwyer).
- 3.13.2 The Scheme removes the requirement under the Existing Scheme for a Scheme Administrator to be a licensed insolvency practitioner; and provides that a Scheme Administrator is only required to give notice of their resignation to the Creditors' Committee where there is a Creditors' Committee in place.

### 3.14 **The Creditors' Committee**

The current Creditors' Committee consists of one Scheme Creditor.

### 3.15 **Scheme Meetings**

As there are now very few Scheme Creditors with known claims, the Scheme removes the requirement under the Existing Scheme that a resolution put to a meeting of Scheme Creditors requires at least twenty-six Scheme Creditors to vote in favour. The requirement under the Scheme is for a majority in number constituting 75% in value of those voting in person or by proxy. It is not anticipated that there will be a need for meetings of Scheme Creditors to be convened.

### 3.16 **Extension of time limits**

The Scheme Administrators may, at their discretion, extend any of the time limits set by the Scheme, apart from the Bar Date, by up to a period equal to the original time limit. They may only be extended for a longer period if the Scheme Administrators and Scheme Creditor agree in writing, or in cases of force majeure (Clause 9.13.1).

### 3.17 **Prohibited payments**

In some cases the Scheme Company may be prevented by a law or regulation, such as the sanctions regulations imposed by the Office of Foreign Assets Control ("OFAC") in the United States, from making payment to a Scheme Creditor under the Scheme. In such case, the Scheme Company will deal with the monies owing to such Scheme Creditor ("**Blocked Monies**") in accordance with such law or regulation, or as instructed by the relevant authority. In the absence of any instructions as to how to deal with Blocked Monies, the Scheme Company will hold them in an account with a United Kingdom clearing bank until it receives instructions from the relevant authority, or it becomes legal to pay the monies to the relevant Scheme Creditor. If neither of these has occurred upon the completion of the Scheme, the Blocked Monies will revert to the Scheme Company and the relevant Scheme Creditor shall have no further claim on the Scheme Company in respect of such monies (Clause 9.14).

### 3.18 **Completion and Release**

- 3.18.1 When they believe that the Scheme has been implemented in accordance with its terms, the Scheme Administrators will issue a certificate of completion to the Scheme Company and to the Trustee of the Scheme Company's shares, specifying the date on which the Scheme will terminate (Clause 4.1). The Scheme Company shall display the certificate of completion on the Website for a period of no less than 12 months from the date on which the certificate was issued (Clause 4.2.3).

Following termination of the Scheme, it is intended that the Scheme Company will be wound up.

- 3.18.2 **Once the Scheme has been declared completed, all Scheme Claims will be deemed to have been paid and Scheme Creditors will have no further rights under the Scheme or in respect of Scheme Claims.**

### 3.19 **Governing law and jurisdiction**

- 3.19.1 The Scheme will be governed by and construed in accordance with the laws of England. The Court is given exclusive jurisdiction to hear and determine any disputes which arise out of the Scheme or any associated document or form or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme (Clause 9.15). This should not be confused with the adjudication procedures under the Scheme, as this provision only applies to the interpretation and enforcement of the terms of the Scheme itself. The Scheme does not affect the validity of any provisions determining law and jurisdiction in an Insurance Contract (Clause 9.15.1).
- 3.19.2 The Scheme Company, however, still has the power to take Proceedings in any other country which has jurisdiction under its own laws to hear those Proceedings (Clause 9.15.2). It is envisaged that this power may be used if necessary to endeavour to prevent a Scheme Creditor from taking steps in another jurisdiction which contravene the provisions of the Scheme.

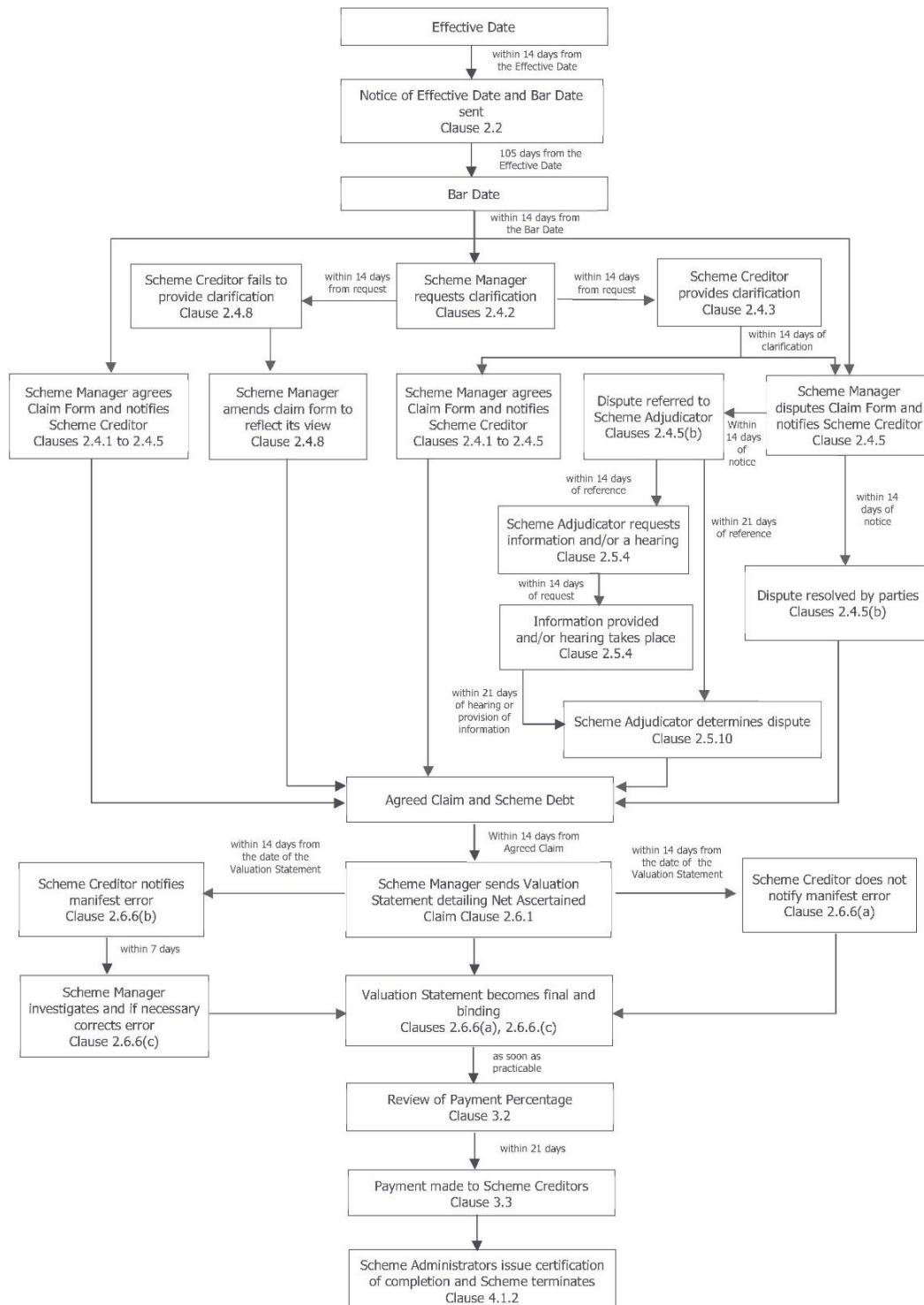
### 3.20 **How can you find out more about the Scheme and ask questions?**

To find out more please either:

- visit the Website at [www.eaic.co.uk](http://www.eaic.co.uk);
- e-mail the Scheme Manager at [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com);

- phone the Scheme Manager on +44 (0) 7795848215.

## Appendix 1 Scheme Process Diagram



**Appendix 2**  
**Summary Balance Sheet as 31 December 2022**

	<b>Unaudited</b>	<b>Audited</b>
	<b>31 December 2022</b>	<b>31 December 2021</b>
	<b>US\$'m</b>	<b>US\$'m</b>
<b>Assets</b>		
Cash	3.5	6.2
Sundry Debtors	0.1	
<b>Total Assets</b>	<b>3.6</b>	<b>6.2</b>
<b>Liabilities</b>		
Due to policyholders		
agreed claims	5.6	2.0
less scheme payments	-2.8	-1.0
	2.8	1.0
Outstanding and IBNR reserves	6.2	9.9
	9.0	10.9
Provision for run-off costs	0.4	1.1
Other creditors	0.2	0.3
	9.6	12.3
Shareholders' deficit	-6.0	-6.1
<b>Total Liabilities</b>	<b>3.6</b>	<b>6.2</b>

## **Notes to the Summary Financial Statements**

1. The asset and liability values above reflect foreign currency fluctuations.
2. The value of outstanding claims and IBNR reserves are prudent estimated values and the amounts that will ultimately be admitted as agreed claims in the Closure Scheme could be (materially) different from these values. No dividends have been paid in respect of these claims under the Existing Scheme.
3. Amounts included above as "Due to Policyholders – agreed claims" comprise those claims that have been admitted in the Existing Scheme and a dividend at the current rate of 49.6% has been paid. These creditors will only be eligible for additional dividend payments if the dividend rate is increased.
4. Amounts included in the provision for run-off costs and other creditors comprise expense amounts that are payable at 100%.

### **Appendix 3**

#### **Documents Available for Inspection**

1. The document of which this Appendix forms part including the Explanatory Statement and the Scheme.
2. Order of the Court convening the Scheme Meeting.
3. The Original Scheme.
4. The Existing Scheme.
5. The Closure Scheme.
6. The audited accounts of the Scheme Company as at 31 December 2021.

Copies of the above documents will be available for inspection by Scheme Creditors after the date hereof until the closure of the Scheme Meetings on 19 December 2023 at the offices of Interpath Ltd at 10 Fleet Place, London EC2M 7RB, during ordinary business hours on weekdays (excluding public holidays).



## **Appendix 4**

### **Curriculum Vitae of Joshua Dwyer**

Mr Dwyer is a chartered accountant and licensed insolvency practitioner with over 20 years' experience working on advisory assignments and formal restructuring appointments across a number of industries, many with cross-border elements.

He has extensive experience working with clients to assess their strategic options and to develop and execute strategies to preserve and protect value.

Some of his notable experience includes:

- Joint administrator of the parent of an FCA regulated mortgage broking, income protection and asset management business, facilitating a sale of two regulated operating subsidiaries immediately on appointment.
- Contingency planning for the potential Special Administration of an FCA regulated multi-asset broker and dealer.
- Restructuring advisor to an FCA regulated mortgage broker, supporting the delivery of a new equity raise.
- Advised the UK's Department for Business, Energy and Industrial Strategy in relation to the initial review of the proposed strategy and funding requirements for the potential Special Administration of a large energy supplier.
- Independent evaluation for a Caribbean government on the proposed restructuring of a systemically important insurance and financial services conglomerate.
- Advisor to the National Bank of Ukraine and PJSC PrivatBank, supporting the design and implementation of a comprehensive legal strategy following PrivatBank's nationalisation and \$5bn recapitalisation.
- Developing a wind-down plan for the closure of PJSC PrivatBank's Cyprus branch in coordination with the Central Bank of Cyprus.
- Advised the asset management company of a European sovereign to evaluate the commercial value of NPLs and alternative value preservation and recovery strategies.
- Served as interim CFO of the asset management company of a European sovereign, responsible for the delivery of the company's €1.1bn primary bond issuance, which was used to fund the acquisition of NPLs from local financial institutions.
- Contingency planning in relation to one of the UK's largest 'sub-prime' consumer finance lenders.
- Part of the team managing the Administration of a UK based provider of third-party administration and business process outsourcing for branded insurance distributors and insurance companies.
- Advised the provisional liquidators of LDK Solar Co. Ltd, a United States listed Chinese manufacturer of photovoltaic products, on the restructuring of \$800m of offshore liabilities through Cayman and Hong Kong schemes of arrangement.

## **QUALIFICATIONS**

- Licensed Insolvency Practitioner (JIEB)
- Member of the Institute of Chartered Accountants in England & Wales
- Member of the Association of Business Recovery Professionals
- BBus(Acc), Royal Melbourne Institute of Technology

## **Appendix 5**

### **Curriculum Vitae of Romy Comiter**

Ms. Comiter has been working as a consultant for more than 35 years and has specialized in the insurance industry. She is an expert in long tail claims (asbestos, environmental and health hazards) with particular focus in evaluating current and future liability for use in litigation, settlement, commutation and reinsurance recoveries.

Ms. Comiter has assisted clients in designing, developing, and implementing models for the quantification and allocation of complex losses, as well as providing consulting services focused on the financial impact alternative assumptions have on the assignment of costs to insurance policies. She has also sampled and reviewed the underlying claims filed against an insured to assess and verify key claimant traits and supporting documentation, as well as performed reconciliations of claims and financial data across multiple disparate sources.

Ms. Comiter has served as an expert witness at deposition and trial in both the US and UK on long tail mass tort claims and has spoken at conferences. She has been recognized consistently in Who's Who Legal Expert Witness list as an expert with significant experience. Her work has been on behalf of regulators, insureds, insurers, reinsurers, and capital providers. As such she has a strong understanding of each's viewpoints with regards to the assessment of liability.

Some of her notable accomplishments include:

- Opined on matters involving the allocation of mass tort claims and the valuation of (re)insurers' potential liability; work often involves the creation and/or critique of models developed to allocate claims under alternative methodologies to assess the impact of legal defenses and other carrier settlements, as well as analysis of the underlying claims.
- Served as the Independent Vote Reviewer on a solvent scheme of arrangement involving long tail claims – asbestos and environmental.
- Implemented and led the Claim Audit Program for an Asbestos Personal Injury Trust.
- Developed technology solutions to assist clients in managing large complex sets of claims and policy data to ensure that data is readily available, accurate, complete, and secure to enable better management decisions, reduced risks and enhanced productivity and operational efficiency
- Managed and negotiated a sizeable commutation related to long tail claims between two leading reinsurance entities which involved formulation of a business strategy and development of the financials to support and complete the deal.
- Oversaw the regulatory reviews of Insurance Managing General Agents (MGAs)/Coverholders and Third Party Administrators (TPAs) operating in the London Market which included more than 100 reviews across multiple classes of business conducted annually. Related work also included designing a Conduct Review Framework to assess the adequacy and effectiveness of an insurer's arrangements for managing conduct risk.

Ms. Comiter joined FTI Consulting, Inc. in June 2019 and is a Managing Director in the Global Insurance Services team. Prior to joining FTI, Ms. Comiter was a Partner at Mazars LLP. Previous to this, Ms. Comiter was a Director at LECG Business Consulting UK Limited (f/k/a SMART Advisory & Business Consulting), where she led the UK Insurance practice. Ms. Comiter was a Senior Director at Axiom Consulting preceding her role at LECG, where she managed the Claims Consulting Team. Previous to her position at Axiom, Ms. Comiter was at Grant Thornton,

where she attained the position of Senior Manager and Practice Leader of the Product Liability Insurance area.

## **EDUCATION**

University of Pennsylvania, Moore School of Engineering, Philadelphia, PA  
Bachelor of Science in Engineering in Computer Science and Electrical Engineering, May 1986  
New York University, Stern School of Business, New York, NY  
Master of Business Administration in Accounting, October 1992

## **EXPERT TESTIMONY / EXPERT REPORTS**

- The Diocese of Camden, New Jersey. United States Bankruptcy Court District of New Jersey; Case No. 20-2125
- Allianz Resolution Management v. General Reinsurance Corporation and SCOR Reinsurance (Arbitration)
- Fraser's Boiler Service Inc., Debtor, USBC Western Dist. WA, # 18-41245-BDL
- Cannon Electric, Inc., n/k/a ITT Cannon, Inc., a division of ITT Industries, Inc., et al., v. Ace Property & Casualty Co., et al., Case No. BC 290354 (Superior Court of the State of California, County of Los Angeles)
- Hopeman Brothers, Inc. v. Continental Casualty Company, and Lexington Insurance Company
- Carrier Corp. & Elliott Co. v. Allstate Insurance Co., et al.
- Flintkote v Certain London Companies, Wellington ADR Proceeding
- Exxon Mobil Corp., et al., v. Certain Underwriters at Lloyd's, London, et al.
- Asarco Personal Injury Trust v. Midland Insurance Company in Liquidation (asbestos and environmental matters)
- ITT Cannon Inc. vs. Affiliated FM Insurance Company et al.
- Maremont v. Ace Property & Casualty Insurance Company, et. al. pending in the United States District Court for the District of Delaware (No. 1:12-cv-01379-RGA)
- Navistar, Inc. v. Affiliated FM Ins. Co., et al
- Columbia Casualty Company and Continental Insurance Company v. 3M Company, et al.
- Brauer Supply Company 524(g) Asbestos Personal Injury Trust vs. Atlanta International Insurance Company, et al.
- Truck Insurance Exchange, Plaintiff, vs. Kaiser Cement and Gypsum Corporation, Defendant
- CX Reinsurance Company Limited v. IRB Brasil Resseguros SA, (UK arbitration)
- American Optical v. Admiral Insurance, et. al
- Home Insurance Company, Plaintiff, v. Cornell-Dubilier Electronics, Inc., et al

- Reliance Electric Co., Federal Pacific Electric Co. and Cornell-Dubilier Electronics V. Transit Casualty Company in Receivership
- Continental Insurance Co. v. Honeywell International Inc. et al., No. MRS-L-1523-00, Superior Court of New Jersey
- Viacom, as successor in interest to Westinghouse Electric Corporation V. Transit Casualty Company in Receivership
- E.R. Squibb & Sons, Inc. v. Accident and Casualty Insurance Company et al., No. 82 Civ 7327 (JSM), U.S. District Court for the Southern District of New York;
- First State Ins. Co. et al. v. Minnesota Mining & Manufacturing Co. et al., No. C-3-94-12780, District Court, Ramsey County, Minnesota
- Owens Corning Fiberglass v. Certain Underwriters at Lloyd's et al., an Alternative Dispute Resolution ("ADR") proceeding
- Certain Underwriters at Lloyd's, London and London Companies, et al. v. Pfizer Inc. and Quigley Co., Inc., an ADR proceeding
- Certain Underwriters at Lloyd's, London and London Companies, et al. v. Amchem Products, Inc., and Union Carbide Corp., an ADR proceeding
- Certain Underwriters at Lloyd's, London and London Companies v. Dana Corporation, an ADR proceeding
- Dana Corp. V. Certain Underwriters at Lloyd's, London and London Companies, an ADR proceeding
- Bryanston Insurance Company Limited, City Insurance Company et al., v Assurances Generales de France, Allstate Reinsurance Company (UK) Limited et al, (UK arbitration)

## **PART 2: THE SCHEME**

### **SCHEME OF ARRANGEMENT**

#### **FINAL CLOSURE SCHEME OF ARRANGEMENT**

Pursuant to Part 26 of the Companies Act 2006

#### **BETWEEN**

#### **ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

(by way of further amendment to an existing scheme of arrangement dated 28 October 1994 (as amended by a scheme of arrangement dated 1 June 2000 and a scheme of arrangement dated November 2009))

#### **AND THE SCHEME CREDITORS**

(as defined in the Scheme of Arrangement)

## Contents

Clause	Name	Page
1	Definitions and Interpretation .....	34
1.1	Definitions .....	34
1.2	Interpretation .....	40
2	Valuation of Scheme Claims .....	41
2.1	Application and Purpose of the Scheme .....	41
2.2	Distribution of Claim Forms and the Bar Date.....	41
2.3	Return of Claim Forms.....	42
2.4	Agreement of Claim Forms .....	43
2.5	Dispute resolution procedure .....	44
2.6	Valuation Statements .....	46
2.7	Effect of the Scheme and the Existing Scheme.....	48
3	Payments to the Scheme Creditors .....	49
3.1	Application of assets of the Scheme Company.....	49
3.2	Payment Percentage .....	49
3.3	Payments to Scheme Creditors.....	49
3.4	Mechanics of payments to Scheme Creditors.....	50
4	Completion and Release .....	51
4.1	Certificate of completion .....	51
4.2	Completion of the Scheme .....	51
4.3	Termination Events .....	52
4.4	Effect of winding-up .....	52
4.5	Vacation of Office following an Insolvency Event.....	52
4.6	Winding-up following the Completion Date .....	52
5	Scheme Office Holders .....	53
5.1	The Scheme Manager .....	53
5.2	Powers, rights, duties and functions of the Scheme Manager .....	53
5.3	Validation of acts of the Scheme Manager .....	53
5.4	The Scheme Administrators .....	54
6	Adjudication.....	54
6.1	Qualification, resignation and removal of the Scheme Adjudicator .....	54
6.2	Powers, rights, duties and functions .....	55
6.3	Responsibility and indemnity.....	56
7	The Scheme Company .....	56
7.1	General powers and obligations .....	56
8	Meetings of Scheme Creditors .....	57
8.1	Voting .....	57
9	General Provisions.....	57
9.1	Effective Date .....	57
9.2	Established Scheme Liabilities .....	57
9.3	Set-off.....	57
9.4	Stay of Proceedings.....	57
9.5	Interest .....	59
9.6	Security .....	59
9.7	No Release .....	60
9.8	Third party funding .....	60
9.9	Managing general agents, line-slip holders, managers of underwriting pools ....	60
9.10	Modification of the Scheme .....	61
9.11	Communications .....	61

9.12	Co-operation between Scheme Creditors, Scheme Manager, Scheme Company and Scheme Administrators .....	63
9.13	Extension of time limits .....	63
9.14	Prohibited payments.....	63
9.15	Governing law and jurisdiction .....	64
9.16	The Website .....	64



## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

**"Act"** means the Companies Act 2006 as amended and in force at the Effective Date.

**"Adjudication"** means the procedure for the resolution of disputes by a Scheme Adjudicator set out in Clause 2.5 (*Dispute resolution procedure*) and Clause 6 (*Adjudication*).

**"Adjudicator Costs"** means the remuneration (as determined in accordance with Clause 6.2.2) and reasonable costs and expenses of the Scheme Adjudicator incurred in respect of a Dispute including the fees and expenses of any adviser or expert consulted by her pursuant to Clause 2.5.7.

**"Admissible Interest"** means any interest to which a Scheme Creditor is entitled from the Scheme Company by reason of contract, judgment against the Scheme Company, decree or otherwise for a period or periods ending on the Record Date.

**"Advertise"** means the placing of advertisements in the same publications in which notice of the Scheme Meeting(s) was placed or, if that is not practicable, in such other publications as the Scheme Administrators shall reasonably deem appropriate.

**"Agreed Claim"** means the value of a Scheme Claim determined by the process set out at Clause 2.1 (*Application and Purpose of the Scheme*) to Clause 2.4 (*Agreement of Claim Forms*) inclusive.

**"Appendix"** means the Appendix to the Scheme containing the Estimation Guidelines.

**"Available Assets"** means the amount of Scheme Assets available for distribution to Scheme Creditors having deducted an appropriate provision for Scheme Costs and any other Liabilities for which, in the Scheme Administrators' opinion, provision should be made.

**"Bar Date"** means 23:59 hours (English time) on the day falling 105 days after the Effective Date or, if that is not a Business Day, then the Business Day next following.

**"Blocked Monies"** means any monies payable to a Scheme Creditor under the Scheme the payment of which is prohibited by an applicable law or regulation referred to in Clause 9.14 (*Prohibited payments*).

**"Business Day"** means any day other than (1) Saturday, (2) Sunday or (3) a day on which the UK clearing banks are not open for business in London.

**"Claim Form"** means the document entitled "Claim Form" including all guidance notes and instructions sent or made available to Scheme Creditors in accordance with Clause 2.2 (*Distribution of Claim Forms and the Bar Date*), an example of which is at Appendix C.

**"Completion Date"** shall mean the date upon which the Scheme is certified to have completed in accordance with Clause 4.2 (*Completion of the Scheme*).

**"Court"** means the High Court of Justice of England and Wales.

**"Creditors' Committee"** means the committee established pursuant to clause 6 of the Existing Scheme and all persons duly appointed from time to time as members of that committee.

**"de minimis amount"** means fifty US Dollars or its equivalent calculated using the Scheme Rate in any other currency, or such greater amount as the Scheme Administrators may reasonably determine from time to time.

**"Delegate"** means any person to whom the Scheme Administrators may delegate any of their functions and powers.

**"Dispute"** means a dispute referred to the Scheme Adjudicator in accordance with Clause 2.4.5, Clause 2.4.6 or Clause 9.4.5.

**"E-mail"** means delivery by electronic mail.

**"E-mail Copy"** means a copy sent by electronic mail.

**"Effective Date"** means the date on which a copy of the order of the Court sanctioning the Scheme is delivered for registration to the Registrar of Companies.

**"Employee"** means any partner or director in the same firm, company, limited liability partnership or partnership as another, or any individual employed, whether under a contract of service or a contract for services, by that firm, company or partnership or by any company owned by such firm, company or partnership.

**"Established Scheme Liability"** means a liability of the Scheme Company which is either (i) an Existing Scheme ESL or (ii) a Final Closure Scheme ESL.

**"Estimation Guidelines"** means the guidelines which are set out in the Appendix.

**"Existing Scheme"** means the Original Scheme as amended by the amending scheme of arrangement between the Scheme Company and its creditors dated 1 June 2000 which became effective on 31 August 2000.

**"Existing Scheme ESL"** means a liability of the Scheme Company which became an Established Scheme Liability in accordance with clause 2.6 or clause 2.12 of the Existing Scheme.

**"Explanatory Statement"** means the explanatory statement at Part 1 of the Scheme Document explaining the effect of the Scheme to Scheme Creditors pursuant to section 897 of the Act.

**"Final Closure Scheme ESL"** means a liability of the Scheme Company which becomes an Established Scheme Liability in accordance with Clause 9.2 (*Established Scheme Liabilities*).

**"FCA"** means the Financial Conduct Authority.

**"Final Award"** means in relation to Proceedings commenced or continued by a Scheme Creditor, as expressly provided for in the Scheme or with the written consent of the Scheme Company:

- (a) any judgment, order or award made against the Scheme Company in such Proceedings which gives rise to a quantified liability on the part of the Scheme Company and which either is not appealed by the Scheme Company within the deadline for appeal laid down by the relevant rules of procedure or by the court or tribunal concerned (as extended, if applicable, by agreement between the parties to the Proceedings or by such court or tribunal) or is made by a final appellate court or tribunal; and
- (b) any sum agreed to be paid pursuant to a negotiated settlement of such Proceedings.

For the avoidance of doubt, only the Scheme Company's share of any such award or negotiated settlement as determined by the relevant court or tribunal, or in the absence of such determination as calculated by the Scheme Administrators and/or the Scheme Adjudicator, shall be treated as an Agreed Claim owed by the Scheme Company.

**"IBNR Claim"** means a Scheme Claim for a Liability which has been incurred by a Scheme Creditor but not reported to it.

**"Insolvency Act"** means the Insolvency Act 1986 (as amended).

**"Insolvency Event"** means:

- (a) the making of an order by the Court to wind up the Scheme Company compulsorily pursuant to the Insolvency Act; or
- (b) the commencement of a creditors' voluntary liquidation in respect of the Scheme Company in accordance with the provisions of the Insolvency Act; or
- (c) the appointment of an administrator in respect of the Scheme Company in accordance with the provisions of the Insolvency Act; or
- (d) the commencement in relation to the Scheme Company of any analogous proceeding in any other jurisdiction.

**"ILU"** means the Institute of London Underwriters.

**"Insolvency Rules"** means the Insolvency Rules 1986 (as amended).

**"Insurance Contract"** means a contract or a policy of insurance, reinsurance, or retrocession of any kind whatsoever signed and issued through the ILU between 3 July 1980 and 6 October 1983 by or on behalf of the Scheme Company or in accordance with the terms of which the Scheme Company has assumed any liability.

**"Liability"** means any liability of a person whether it is present, future, prospective or contingent, whether or not its amount is fixed or liquidated whether or not it involves the payment of money and whether it arises at common law, in equity or by statute, in England or in any other jurisdiction or in any other manner whatsoever, but excluding any liability which is barred by statute at the Record Date, or otherwise unenforceable. For the avoidance of doubt, a person who does not have a legal liability under a contract or policy because such contract or policy is void or, being voidable, has been duly avoided will not have a liability for the purposes of the Scheme.

**"Manifest Error"** means an arithmetical or typographical error which is apparent either on the face of the document concerned or by reference to the information which has been or should, in accordance with the Scheme, have been inserted in the document concerned and has been incorrectly transcribed.

**"Net Ascertained Claim"** means the final balance shown on a Valuation Statement where that balance is in favour of the Scheme Creditor.

**"Net Debt"** means the final balance shown on a Valuation Statement where that balance is in favour of the Scheme Company.

**"Net Debtor"** means any person who has a Net Debt shown on their Valuation Statement.

**"Original Scheme"** means the scheme of arrangement between the Scheme Company and its Scheme Creditors dated 28 October 1994 and which became effective on 8 February 1995.

**"Original Scheme Date"** means 8 February 1995, being the date that the Original Scheme became effective.

**"Outstanding Claim"** means a Scheme Claim for a Liability which has been notified to the Scheme Creditor, excluding any Existing Scheme ESL.

**"Payment Percentage"** means the percentage of an Established Scheme Liability which is payable by the Scheme Company from time to time under the Scheme, which may be the Prevailing Payment Percentage.

**"Post"** means delivery by hand (including by a generally recognised commercial courier service), prepaid first-class post or airmail.

**"Pounds Sterling"** means pounds sterling, being the lawful currency of the United Kingdom.

**"Prevailing Payment Percentage"** means the percentage of an Existing Scheme ESL payable by the Scheme Company pursuant to the Existing Scheme and prevailing at the Effective Date.

**"Proceedings"** means any action or other legal proceeding in any jurisdiction or forum including for the avoidance of doubt judicial, quasi-judicial, administrative or arbitration proceedings.

**"Property"** means all forms of property (including money, goods, things in action, land and every description of property wherever situated) and of obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property and including, for the avoidance of doubt, all contributions to the assets of the Scheme Company not falling within the meaning of the Scheme Company's property under the Act.

**"Record Date"** means 28 October 1994, being the date of the Original Scheme.

**"Registrar of Companies"** means the registrar or other officer performing under the Act the duty of registration of companies in England and Wales.

**"Released Parties"** means the Scheme Company, the Scheme Administrators, the Creditors' Committee and any person holding, or who has at any time held, the

position of Scheme Manager or Scheme Adjudicator, including any Delegate, Employee or alternate of any of the foregoing persons, pursuant to the Scheme.

**"Scheme"** means the final closure scheme of arrangement as set out in this document subject to any modification, addition or condition approved or imposed by the Court.

**"Scheme Adjudicator"** means any person for the time being appointed under Clause 6 (*Adjudication*) as a Scheme Adjudicator.

**"Scheme Administrators"** means Darryl Ashbourne and Joshua Dwyer of Interpath Ltd, trading as Interpath Advisory, or such other person or persons appointed from time to time as Scheme Administrator in accordance with the provisions of the Scheme.

**"Scheme Amount"** means the aggregate amount of actual and deemed payments to a Scheme Creditor under the Scheme and/or the Existing Scheme converted into US Dollars at the rate of exchange prevailing in the winding-up.

**"Scheme Assets"** shall bear the same meaning as in the Existing Scheme.

**"Scheme Claim"** means a claim for any Liability of the Scheme Company under an Insurance Contract.

**"Scheme Company"** means English & American Insurance Company Limited (company number 240656), a company incorporated in England.

**"Scheme Costs"** means

- (a) all such costs, charges, expenses, disbursements and remuneration as are referred to in Clause 10.2.2 of the Existing Scheme; and
- (b) Adjudicator Costs; and
- (c) the estimated costs as determined by the Scheme Administrators of the winding-up of the Scheme Company pursuant to Clause 4.6 (*Winding-up following the Completion Date*).

**"Scheme Creditor"** means a creditor of the Scheme Company in respect of a Scheme Claim.

**"Scheme Debt"** means a Liability which is or may become payable to the Scheme Company arising in connection with the business of underwriting including, without limitation, reinstatement premiums, claim reserve deposits, refunds and rights of subrogation.

**"Scheme Document"** means the document containing the Scheme and the Explanatory Statement and the Appendix and schedules thereto.

**"Scheme Manager"** means the company referred to as such in Clause 5.1 (*The Scheme Manager*) and any company or person appointed in substitution for it pursuant to the Scheme.

**"Scheme Meeting"** means a meeting of Scheme Creditors convened by the Scheme Company with the leave of the Court for the purpose of considering and, if thought fit, approving the Scheme.

**"Scheme Payment"** means a payment made pursuant to the Existing Scheme or the Scheme in respect of a Scheme Claim.

**"Scheme Period"** means the period beginning on the Effective Date and ending on the date on which the Scheme terminates, as applicable.

**"Scheme Rate"** means the closing mid-market rate of exchange between the two currencies quoted in the international edition of the Financial Times on the last Business Day of the calendar quarter before the day on which a Valuation Statement in which it is to be applied is prepared or, if no such rate is published, the closing mid-market rate of exchange between the two currencies as quoted by Barclays Bank PLC on such date and if no such rate is available, such rate as may reasonably be selected by the Scheme Manager.

**"Security"** means any effective letter of credit, deposit, reserve of funds, escrow, trust fund, guarantee, indemnity, cash reserves or assets or similar arrangement or a mortgage, charge, lien or assignment by way of security, bond or other security interest over any Property of the Scheme Company issued to or created for the benefit of a Scheme Creditor.

**"Surviving Provisions"** means Clause 1.1, 5.4, 6.6, 6.7, 7.1.6 to 7.1.9, 7.2.2 and 7.2.3 of the Existing Scheme and Clause 1 (*Definitions and Interpretation*), Clause 2.3 (*Return of Claim Forms*), Clause 2.4.9, Clause 2.4.10, Clause 2.5.11 to Clause 2.5.14, Clause 2.6.6, Clause 2.7 (*Effect of the Scheme*) Clause 4.2 (*Completion of the Scheme*) Clause 4.3.2, Clause 4.4 (*Effect of winding-up*) Clause 4.6 (*Winding-up following the Completion Date*) Clause 5.3 (*Validation of acts of the Scheme Manager*) Clause 6.3 (*Responsibility and indemnity*) Clause 9.4 (*Stay of Proceedings*), Clause 9.6.3, Clause 9.7 (*No Release*), Clause 9.14 (*Prohibited payments*), Clause 9.15 (*Governing law and jurisdiction*) and Clause 9.16 (*The Website*) of the Scheme.

**"Tax"** means any form of taxation, levy, duty, charge, contribution, withholding or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by or payable to any Tax Authority.

**"Tax Authority"** means any government, state, municipality or any local state, federal or other fiscal, revenue, customs or excise authority, body or official anywhere in the world (including in the United Kingdom, without limitation, His Majesty's Revenue & Customs).

**"Termination Event"** means any of the events specified in Clause 4.3 (*Termination Events*).

**"Trust Deed"** means the deed executed by the Scheme Company, English & American Group Plc (in administration), English & American Insurance Holdings PLC (in administration) and the Trustee and having effect from the date on which the Existing Scheme became effective in accordance with its terms.

**"Trust Fund"** means the trust fund held on the terms of a trust declared on 29 May 2003 for the benefit of claimants under policies signed and issued by the Scheme Company through the ILU from 1 September 1983.

**"Trustee"** means the Law Debenture Trust Corporation p.l.c. (incorporated in England under the Companies Acts 1948 to 1981 with registered number 16752331) or such other trustee for the time being appointed under or by virtue of the Trust Deed.

**"Unclaimed Balance"** means any balance remaining in the Scheme Company's bank account representing sums payable to Scheme Creditors pursuant to Clause 3.3.2 or Clause 3.3.3 in respect of which such accounts have not been debited.

**"US Dollars"** means United States dollars, being the lawful currency of the United States of America.

**"Valuation Statement"** means the statement to be prepared in accordance with Clause 2.6 (*Valuation Statements*) in substantially the form set out at Appendix D.

**"Voting Form"** means the document entitled "Voting Form" including all guidance notes and instructions sent or made available to Scheme Creditors, an example of which is available via the Website.

**"Website"** means the website at [www.eaic.co.uk](http://www.eaic.co.uk).

**"Winding-Up Petition"** means the petition to wind up the Scheme Company numbered 002717 of 1993, presented to the Court on 19 March 1993.

## 1.2 Interpretation

In the Scheme unless the context otherwise requires or the Scheme expressly provides otherwise:

- (a) references to **Clauses** and **Appendix** are references to the Clauses and Appendix, respectively, of the Scheme,
- (b) references to months are to calendar months,
- (c) references to a **"person"** include an individual, firm, partnership, company, unincorporated body of persons or any state or state agency,
- (d) references to **"insurance"** shall include **"reinsurance"** and **"retrocession"** except where the context otherwise requires,
- (e) references to any enactment or other legislative provision shall be deemed to include the same as re-enacted, amended or extended save where expressly provided to the contrary,
- (f) the singular includes the plural and vice versa,
- (g) words importing one gender shall include all genders,
- (h) references in the Scheme to a firm or company other than the Scheme Company or a Scheme Creditor shall include any predecessor or successor of that firm or company whether by merger, demerger, amalgamation or otherwise,
- (i) time periods laid down by the Scheme shall, unless otherwise expressly stated, be calculated by reference to elapsed days and not Business Days, and in the event that a time period expires on a day which is not a Business Day, such period shall be deemed not to expire until 17:30 (English time) in England on the Business Day next following. Any time period expressed to run from a fixed date shall not include such date, and

- (j) for the avoidance of doubt, any references to a loss notified to a Scheme Creditor in the Scheme (including in the Estimation Guidelines, the Voting Forms, the Claim Forms, or other related documents) includes first-party losses where the Scheme Creditor has incurred the loss itself, as well as third-party losses of which it has been notified.

## **2 VALUATION OF SCHEME CLAIMS**

### **2.1 Application and Purpose of the Scheme**

- 2.1.1 With effect from the Effective Date, and subject to Clause 2.1.2 below, the Existing Scheme shall be amended as to incorporate the provisions of the Scheme (but subject to the terms thereof).
- 2.1.2 For the avoidance of doubt, the Existing Scheme shall, save as amended by the Scheme, continue in full force and effect.
- 2.1.3 The Scheme shall apply to all Scheme Claims.
- 2.1.4 Each Scheme Creditor's IBNR Claims and Outstanding Claims shall be valued, taking account of discounting in accordance with the principles set out in the Estimation Guidelines to reflect their present value, in accordance with the Scheme.
- 2.1.5 The purpose of the Scheme is to amend the Existing Scheme to value each Scheme Creditor's Scheme Claims, accelerate the payment to the Scheme Creditors of their respective Payment Percentage and discharge the Scheme Company's liability in respect of all Net Ascertained Claims.
- 2.1.6 Each Scheme Creditor is deemed to acknowledge that the Scheme and its proper application are fair and that all Scheme Creditors shall be bound thereby.

### **2.2 Distribution of Claim Forms and the Bar Date**

- 2.2.1 The Scheme Company shall:
  - (a) so far as it is reasonably able, within 14 days of the Effective Date, send to every Scheme Creditor of whom it is aware (except for any Scheme Creditors which have (a) informed the Scheme Company in writing that they do not have any Scheme Claims under the Existing Scheme; or (b) requested in writing not to receive correspondence relating to the Scheme), and for whom it possesses what it reasonably believes to be current contact details, notification of the Effective Date and of the Bar Date;
  - (b) as soon as reasonably practicable after the Effective Date, shall Advertise a notice confirming the Effective Date and the Bar Date.
- 2.2.2 Where the Scheme Manager does not have current contact details for a Scheme Creditor but does have the last known address of a broker or other person whom it reasonably believes is or may be an agent of the Scheme Creditor concerned, the Scheme Company shall send a copy of the notice referred to in Clause 2.2.1 to that broker or other person together with a request that such broker or other person forward the same to the Scheme Creditor as soon as reasonably practicable.
- 2.2.3 The advertisement and the notification sent pursuant to Clause 2.2.1 shall contain a request that Scheme Creditors who wish to assert a Scheme Claim under the Scheme complete and submit or return Claim Forms by the Bar Date and if they do not wish



to access Claim Forms via the Website, contact the Scheme Company to request a paper or E-mail Copy of a Claim Form.

- 2.2.4 The Scheme Company shall make Claim Forms available on the Website, and, if requested, send to each Scheme Creditor who requests one, a paper or E-mail Copy, as applicable.

**2.3 Return of Claim Forms**

- 2.3.1 Subject to Clause 2.3.4, each Scheme Creditor shall, prior to the Bar Date, complete and return a Claim Form whether by returning a paper or E-mail Copy in accordance with the instructions on it and its accompanying guidance notes, together with relevant supporting evidence.

- 2.3.2 In the period up to the Bar Date each Scheme Creditor shall be entitled to submit further or revised data on its Claim Form in accordance with the instructions upon it and its accompanying guidance notes and the provisions of this Clause 2.3 (*Return of Claim Forms*), and shall provide relevant supporting evidence to support the new or revised Claim Form to the Scheme Manager.

- 2.3.3 Any supporting evidence in relation to a Claim Form provided by a Scheme Creditor in accordance with this Clause 2.3 (*Return of Claim Forms*) will be disregarded if it is not received by the Scheme Manager within 7 days after the Bar Date provided always that the Scheme Company shall not accept a Claim Form or any amendment to a Claim Form after the Bar Date.

- 2.3.4 A Scheme Creditor may, by checking the relevant box on the Voting Form and then submitting that Voting Form, elect that the Voting Form which it submitted to the Scheme Company for the purpose of voting at the Scheme Meeting be treated as its Claim Form for the purposes of the Scheme and such Voting Form shall be deemed to be a Claim Form returned by the Scheme Creditor and received by the Scheme Manager prior to the Bar Date pursuant to Clause 2.3.1. If a Scheme Creditor has submitted a Voting Form without making that election and subsequently fails to return a Claim Form prior to the Bar Date, the Voting Form shall in any event be deemed to be a Claim Form returned by the Scheme Creditor and received by the Scheme Manager prior to the Bar Date.

- 2.3.5 A Scheme Creditor submitting a Claim Form shall bear all of the costs of preparing and submitting it and any supporting evidence submitted in connection with it.

- 2.3.6 In the event that the Scheme Manager is deemed to receive and/or actually receives more than one Claim Form from a Scheme Creditor in relation to the same Scheme Claim, the last to be submitted by the Scheme Creditor and received by the Scheme Manager prior to the Bar Date shall prevail.

- 2.3.7 In the event that a Claim Form has not been submitted by a Scheme Creditor and received by the Scheme Manager (or deemed to have been submitted and received pursuant to Clause 2.3.4) prior to the Bar Date, that Scheme Creditor shall not be entitled to assert any Scheme Claim against the Scheme Company except for the avoidance of doubt any Scheme Claim for an Existing Scheme ESL. For the avoidance of doubt, a Scheme Debt may still arise even if a Claim Form is not submitted.

- 2.3.8 Each Scheme Creditor shall be deemed to have represented and warranted to the Scheme Company that the information contained in any Claim Form and any information and supporting evidence provided by it or on its behalf pursuant to the Scheme is, to the best of its knowledge and belief, correct, reasonable and supported by appropriate evidence, and this warranty shall be a continuing one.

2.3.9 Existing Scheme ESL's shall for the avoidance of doubt be treated as final and binding hereunder.

**2.4 Agreement of Claim Forms**

2.4.1 In the event that the Scheme Company agrees with the contents of a Claim Form returned in accordance with Clause 2.3.1 or deemed to be returned in accordance with Clause 2.3.4 (including any amendments or additions incorporated by the Scheme Creditor in accordance with Clause 2.3 (*Return of Claim Forms*)) it shall, by no later than 14 days after the Bar Date, notify the relevant Scheme Creditor in writing of its agreement by E-mail or Post and all of the information on the Claim Form, including, for the avoidance of doubt, any which has been amended and completed in accordance with Clause 2.3 (*Return of Claim Forms*), shall be final and binding on the Scheme Company and the relevant Scheme Creditor.

2.4.2 The Scheme Company may, by E-mail or Post, request clarification from a Scheme Creditor in respect of its Scheme Claim or Scheme Debt any time up to 14 days after the Bar Date. The relevant Scheme Creditor shall provide such clarification within 14 days of the date of the request.

2.4.3 In the event that a Scheme Creditor provides clarification in respect of its Scheme Claims or Scheme Debts pursuant to Clause 2.4.2, Clause 2.3.8 shall apply to such clarification as if it had been provided with a Claim Form. The cost of providing such clarification shall be borne solely by the Scheme Creditor. The Scheme Company shall disregard such clarification if it is not received within 14 days of the date of the request.

2.4.4 In considering whether to accept any information on a Claim Form returned or deemed to be returned pursuant to Clause 2.3.1, Clause 2.3.2 or Clause 2.3.4 or any clarification provided in accordance with Clause 2.4.2, the Scheme Company shall, where applicable, have regard to the Estimation Guidelines.

2.4.5 In the event that the Scheme Company does not agree with information on or supporting information provided with a completed Claim Form or any clarification provided in accordance Clause 2.4.2 the Scheme Manager shall, by no later than 14 days after the Bar Date or the date on which such clarification was provided:

- (a) notify the relevant Scheme Creditor by E-mail or Post of the matters which are disputed and the reasons for disputing them; and
- (b) attempt to agree the disputed matters with the Scheme Creditor concerned within 14 days of the date of such notice, failing which the disputed matters shall, subject to Clause 2.4.8, be referred to the Scheme Adjudicator for determination in accordance with Clause 2.5 (*Dispute resolution procedure*).

2.4.6 The Scheme Company may in its absolute discretion:

- (a) extend the deadlines referred to in Clause 2.4.5 and Clause 2.4.8 by a period of up to 14 days; and/or
- (b) refer disputed matters to the Scheme Adjudicator for determination where at any time the Scheme Company believes (in its sole discretion) that it will be impossible or impracticable to reach agreement with the relevant Scheme Creditor, notwithstanding the time limits referred to in Clause 2.4.5 and Clause 2.4.8.

- 2.4.7 Where a Dispute is referred by the Scheme Company to the Scheme Adjudicator, the Scheme Company shall simultaneously send notice to the relevant Scheme Creditor to the effect that the disputed matter has been referred to the Scheme Adjudicator for Adjudication.
- 2.4.8 In the event that the Scheme Creditor concerned does not provide a substantive response to a request for clarification sent pursuant to Clause 2.4.2 or a notice sent by the Scheme Company pursuant to Clause 2.4.5 and/or fails to respond to the Scheme Company's attempts to agree the disputed matters with the Scheme Creditor within 14 days of the date of the request or notice, the Scheme Company shall be entitled to amend the Claim Form to reflect its assessment of the disputed matters and/or the value of the Scheme Claims and shall not, for the avoidance of doubt, be obliged to refer the disputed matters to the Scheme Adjudicator for determination.
- 2.4.9 All of the information on the Claim Form, including for the avoidance of doubt, any which has been amended or added in accordance with Clause 2.3 (*Return of Claim Forms*) and which has been agreed pursuant to Clause 2.4.1 or Clause 2.4.5.3, or amended by the Scheme Company pursuant to Clause 2.4.8 or determined by the Scheme Adjudicator pursuant to Clause 2.5 (*Dispute resolution procedure*), shall be final and binding on the Scheme Company and the relevant Scheme Creditor.
- 2.4.10 For the avoidance of doubt, neither the operation of this Clause 2.4 (*Agreement of Claim Forms*) nor the provision of clarification shall give rise to any Scheme Claim which was not notified to the Scheme Company on or before the Bar Date.
- 2.4.11 Following completion of the process set out in Clause 2.4 (*Agreement of Claim Forms*) in relation to a Scheme Creditor's Scheme Claims and Scheme Debts, the Scheme Company shall issue a Valuation Statement in accordance with Clause 2.6.1.

## 2.5 **Dispute resolution procedure**

- 2.5.1 In referring a Dispute to the Scheme Adjudicator in accordance with Clause 2.4.5, Clause 2.4.6(b) or Clause 2.4.7, the Scheme Company shall provide the Scheme Adjudicator with a copy of the Claim Form relating to the relevant Scheme Claim (as submitted by the Scheme Creditor including any amendments and any supporting information) and a copy of any notice, statement or correspondence sent or received by the Scheme Company or the Scheme Manager in connection with the Scheme Claim. The Scheme Adjudicator shall have access to all of the Scheme Company's non-privileged records and information in the possession of or under the control of the Scheme Company or the Scheme Manager which the Scheme Adjudicator considers she needs to resolve the dispute concerning such Scheme Claim. The Scheme Company shall provide a copy of any documents or information provided to the Scheme Adjudicator pursuant to this Clause 2.5.1 to the Scheme Creditor concerned at the same time as they are provided to the Scheme Adjudicator.
- 2.5.2 If a Scheme Creditor has provided:
- (a) supporting information at any time later than 7 days after the Bar Date which was unsolicited; or
  - (b) clarification pursuant to a request from the Scheme Company in accordance with Clause 2.4.2 outside the time limits specified in that clause;

the Scheme Company shall be entitled not to take account of such information or clarification and shall not be obliged to provide it to the Scheme Adjudicator.

- 2.5.3 In referring a Dispute to the Scheme Adjudicator pursuant to Clause 9.4.5, the Scheme Company shall provide the Scheme Adjudicator with any information it considers relevant to the assessment of the value of the Property, benefit or advantage obtained by the Scheme Creditor, with a copy to the Scheme Creditor concerned.
- 2.5.4 The Scheme Adjudicator shall consider the records and information sent to her in accordance with Clause 2.5.1 or Clause 2.5.3 as applicable and in the case of a Dispute of a kind referred to in Clause 2.5.1 shall have regard to (but not be bound by) the Estimation Guidelines and, as soon as reasonably practicable but, in any event, within 14 days of a Dispute being referred to the Scheme Adjudicator, shall notify the Scheme Manager and/or the Scheme Creditor concerned as to whether she requires:
- (a) clarification in relation to any of the documents, data or information provided pursuant to Clause 2.5.1 or Clause 2.5.3, in which case the relevant person shall within 14 days after deemed receipt of such notice provide the Scheme Adjudicator with the required clarification, and/or
  - (b) the Scheme Manager or the Scheme Company and/or the relevant Scheme Creditor to appear before and address her on any matter she shall determine, in which case the Scheme Manager, the Scheme Company and/or the relevant Scheme Creditor (or in each case its duly authorised representative) shall appear on such date, which shall be within 14 days after deemed receipt of such notice, and at such place as the Scheme Adjudicator shall prescribe.
- 2.5.5 The Scheme Adjudicator shall be entitled to prescribe and lay down such procedures or provisions for the purposes of an appearance of the parties before her as she in her sole and absolute discretion deems appropriate (including, without limitation, making provision for meetings via a video conferencing facility).
- 2.5.6 The Scheme Adjudicator may extend any time period laid down by Clause 2.5.4 as she thinks fit for any one or more or all Disputes provided that the relevant time period may not be extended for a period of more than 14 days.
- 2.5.7 The Scheme Adjudicator shall be entitled to consult with such advisers, including legal advisers, experts and actuaries from any relevant jurisdiction, as she may deem appropriate in considering any Dispute referred to her. The Scheme Adjudicator will consider all documents, data or information submitted in accordance with Clause 2.5.1 and any clarification provided in accordance with Clause 2.5.4(a).
- 2.5.8 If any person concerned fails to provide clarification in accordance with Clause 2.5.4(a) above or fails to appear before the Scheme Adjudicator in accordance with Clause 2.5.4(b) above, the Scheme Adjudicator shall make such determination as she sees fit in relation to the relevant Dispute on the basis of the information then available to her.
- 2.5.9 In adjudicating on any Dispute, the Scheme Adjudicator shall act as an expert and not as an arbitrator.
- 2.5.10 The Scheme Adjudicator shall notify the relevant Scheme Creditor and the Scheme Company of her determination in respect of the relevant Dispute and of the resulting amount of the Scheme Creditor's Agreed Claim and/or Net Ascertained Claim by notice given in accordance with Clause 9.11 (*Communications*) within 21 days after the later of:

- (a) receipt of the documents accompanying the reference of the Dispute to her in accordance with Clause 2.5.1;
- (b) the provision of clarification to her pursuant to Clause 2.5.4(a);
- (c) the conclusion of any appearance before her pursuant to Clause 2.5.4(b); or
- (d) the failure of the relevant party to provide such clarification in accordance with Clause 2.5.4(a) or to appear before her in accordance with Clause 2.5.4(b).

2.5.11 Any such determination shall, to the extent permitted by law, be final and binding on the Scheme Company and the relevant Scheme Creditor and neither party shall have any right of appeal from such determination. Neither the Scheme Creditor nor the Scheme Company shall have any right to make any claim against the Scheme Adjudicator in respect of such determination, save in respect of her negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty.

2.5.12 Notwithstanding Clause 6.2.2 and Clause 6.3.3(a), the Scheme Adjudicator may determine that any Adjudicator Costs shall be apportioned between the Scheme Company and the Scheme Creditor in such proportions as the Scheme Adjudicator may determine in her absolute discretion failing which the Scheme Company and the Scheme Creditor shall bear such costs and remuneration in equal proportions. The Scheme Creditor and the Scheme Company shall each bear their own costs, charges and expenses.

2.5.13 The Adjudicator Costs calculated in accordance with Clause 2.5.12 shall be paid by the Scheme Company within 30 days of receipt of the invoice issued by the Scheme Adjudicator to the Scheme Company. Where a proportion of such remuneration, costs, charges and expenses is payable by the Scheme Creditor pursuant to Clause 2.5.12, the Scheme Company shall provide a copy of the invoice issued by the Scheme Adjudicator to the Scheme Creditor and the Scheme Creditor shall pay its share to the Scheme Company as soon as reasonably practicable following receipt and in any event within 10 days.

2.5.14 The Scheme Company may deduct any Adjudicator Costs payable by a Scheme Creditor under Clause 2.5.13 from any payment due to that Scheme Creditor pursuant to Clause 3.3.

## 2.6 **Valuation Statements**

2.6.1 Save when Clause 2.6.4 shall apply, within 14 days of the last of the following:

- (a) completion of the steps referred to in Clause 2.1 (*Application and Purpose of the Scheme*) to Clause 2.4 (*Agreement of Claim Forms*) and Clause 2.6.5 or such of them as apply to the valuation of a Scheme Creditor's Scheme Claims and Scheme Debts;
- (b) where applicable, the making of a Final Award referred to in Clause 9.4.7; and
- (c) where applicable, notification by the Scheme Adjudicator of her determination in respect of any outstanding Dispute;

the Scheme Company shall send or make available to each such Scheme Creditor a Valuation Statement.

2.6.2 The Valuation Statement shall set out:

- (a) the total of the Scheme Creditor's Agreed Claims in respect of Outstanding Claims denominated in the currency of the relevant underlying Insurance Contract;
- (b) the total of the Scheme Creditor's Agreed Claims in respect of IBNR Claims denominated in the currency of the relevant underlying Insurance Contract;
- (c) the Scheme Creditor's aggregate Agreed Claims following any currency conversion required pursuant to Clause 2.6.5;
- (d) any sum the Scheme Creditor has received in settlement of any of its Agreed Claims from any applicable Security;
- (e) the value of the Scheme Creditor's Scheme Debts (if any) subject to Clause 9.3 (*Set-off*) in the currency in which they were incurred;
- (f) the aggregate value of a Scheme Creditor's Scheme Debts to be deducted from aggregate Agreed Claims following any currency conversion required pursuant to Clause 2.6.5;
- (g) any amounts which are required to be deducted or withheld by the Scheme Company for or on account of Tax in respect of any Admissible Interest;
- (h) the resulting net amount which the Scheme Manager calculates is due to or from the Scheme Creditor, which shall be that Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be; and
- (i) any amount to be deducted under Clause 2.5.14, in respect of Adjudicator Costs, from any payment due to that Scheme Creditor pursuant to Clause 3.3. in respect of the Scheme Creditor's Net Ascertained Claim.

2.6.3 For the avoidance of doubt a Net Ascertained Claim shall constitute an Established Scheme Liability for the purposes of the Existing Scheme.

2.6.4 **Scheme Company's power to commute**

The Scheme Company and the Scheme Creditor may agree at any time in writing the amount of a Net Ascertained Claim or Net Debt which should appear on that Scheme Creditor's Valuation Statement. In the event that such agreement is reached, notwithstanding the provisions of Clause 2.6.1, the Scheme Company shall as soon as reasonably practicable send or make available to the Scheme Creditor a Valuation Statement setting out only the amount of the Net Ascertained Claim or Net Debt, as applicable, so agreed.

2.6.5 **Currency conversion**

- (a) Agreed Claims denominated a currency other than US Dollars shall be converted into US Dollars at the Scheme Rate.
- (b) Scheme Debts to be applied by way of set-off pursuant to Clause 9.3 (*Set-off*) denominated in a currency other than US Dollars shall be converted into US Dollars Agreed Claims at the Scheme Rate.

#### 2.6.6 **Disputes concerning Manifest Error in Valuation Statements**

- (a) If no notice disputing an amount or any other matter set out on a Valuation Statement sent pursuant to Clause 2.6.1 is received by the Scheme Manager within 14 days of the date of the Valuation Statement, the contents of that Valuation Statement shall be deemed to be accepted by the relevant Scheme Creditor and, so far as the law permits, be final and binding on the Scheme Company and the relevant Scheme Creditor.
- (b) A Scheme Creditor may only dispute an amount or other matter set out on a Valuation Statement on the grounds of Manifest Error and shall inform the Scheme Manager of such dispute by notice to be received by the Scheme Manager within 14 days of the date of the Valuation Statement. Such notice shall set out sufficient details of the alleged Manifest Error for the Scheme Manager to investigate it and, if necessary, correct it.
- (c) Within 7 days of receipt of a notice pursuant to Clause 2.6.6(b) the Scheme Manager shall determine whether there are grounds for alteration of the original amount or preparation of the Valuation Statement and:
  - (i) if the Scheme Manager determines that there are grounds, shall make the necessary corrections and send the relevant Scheme Creditor a revised Valuation Statement which shall be final and binding on the Scheme Company and the Scheme Creditor concerned so far as the law permits;
  - (ii) if the Scheme Manager determines that there are no grounds, shall send notice to that effect to the relevant Scheme Creditor and the Valuation Statement sent pursuant to Clause 2.6.1 shall be final and binding on the Scheme Company and the Scheme Creditor concerned so far as the law permits.

#### 2.7 **Effect of the Scheme and the Existing Scheme**

##### 2.7.1 Each Scheme Creditor shall be deemed to agree that:

- (a) its aggregate Established Scheme Liability shall constitute the Scheme Company's entire remaining Liability to the relevant Scheme Creditor in respect of all of its Scheme Claims. For the avoidance of doubt, this Clause 2.7.1(a), shall not affect a Scheme Creditor's ability to claim or receive payment under any applicable Security; and
- (b) subject to the provisions of this Scheme, payments to Scheme Creditors in respect of Scheme Claims shall be made in accordance with Clause 3 (*Payments to the Scheme Creditors*).

##### 2.7.2 Nothing in the Scheme shall result in any Liability which is not a Scheme Claim against the Scheme Company forming part of a Net Ascertained Claim against the Scheme Company.

##### 2.7.3 Following the application of Clause 2.6 (*Valuation Statements*), where a Scheme Creditor's Valuation Statement shows a Net Debt all of the relevant Scheme Creditor's Scheme Claims shall be deemed to have been extinguished and the Scheme Company shall not owe any amount or have any liability in respect of them.

### 3 **PAYMENTS TO THE SCHEME CREDITORS**

#### 3.1 **Application of assets of the Scheme Company**

On and from the Effective Date the assets of the Scheme Company shall be applied for the benefit of Scheme Creditors in accordance with the provisions of the Scheme so as to ensure, so far as is possible, that (i) the payments made to Scheme Creditors, including amounts paid pursuant to the Existing Scheme or treated as having been paid under the Existing Scheme, do not exceed the current Payment Percentage of their aggregate Established Scheme Liabilities; and (ii) reserves are set aside for Scheme Costs and any other Liabilities for which the Scheme Administrators consider provision should be made.

#### 3.2 **Payment Percentage**

3.2.1 As soon as practicable following the determination of all Net Ascertained Claims or Net Debts (as applicable) in respect of all Scheme Creditors in accordance with the provisions of the Scheme, the Scheme Administrators shall calculate the Available Assets and determine the Payment Percentage in accordance with the requirements of Clause 3.2.2.

3.2.2 The Payment Percentage shall be set at such rate as the Scheme Administrators consider will ensure that after making payments to Scheme Creditors at that rate in accordance with Clause 3.3 (*Payments to Scheme Creditors*) all Scheme Creditors have received an equal share of Available Assets.

3.2.3 For the purpose of calculating Available Assets and setting the Payment Percentage, the Scheme Administrators shall obtain and consider such financial and/or actuarial information and advice as they shall consider appropriate.

#### 3.3 **Payments to Scheme Creditors**

3.3.1 No Scheme Creditor that has received payment under the Existing Scheme in respect of its Existing Scheme ESL shall be entitled to receive a payment under the Scheme until all Scheme Creditors with Established Scheme Liabilities have been paid the same percentage of their Established Scheme Liability. For the avoidance of doubt, for the purposes of this Clause 3.3.1, a Scheme Creditor shall be deemed to have been paid where the Scheme Company has attempted to make payment to that Scheme Creditor of the sum due pursuant to this Clause 3.3 (*Payments to Scheme Creditors*) in accordance with Clause 3.4.1 or has decided pursuant to Clause 3.4.2 not to make such payment.

3.3.2 As soon as reasonably practicable but, in any event, within 21 days following the Scheme Administrators' review of the Payment Percentage pursuant to Clause 3.2.1, if the Scheme Administrators determine that the Payment Percentage should be remain the same as or higher than the Prevailing Payment Percentage, the Scheme Company shall pay to each Scheme Creditor a sum equal to:

- (a) the Payment Percentage of the aggregate Established Scheme Liability, if any, of that Scheme Creditor; less
- (b) the aggregate of:
  - (i) the amount of any Scheme Payments previously made to the relevant Scheme Creditor;



- (ii) any payments deemed to have been received by the Scheme Creditor concerned pursuant to Clause 9.4.4 which have not already been deducted from the Scheme Creditor's Net Ascertained Claim; and
- (iii) any amount payable by the Scheme Creditor concerned pursuant to Clause 2.5.13 which has not been paid or discharged (including for the avoidance of doubt by deducting that amount from the Scheme Creditor's Net Ascertained Claim);

provided the sum of the amounts referred to in Clause 3.3.2(b) does not exceed the amount referred to in Clause 3.3.2(a).

3.3.3 As soon as reasonably practicable, but in any event, within 21 days following the Scheme Administrators' review of the Payment Percentage pursuant to Clause 3.2.1, if the Scheme Administrators determine that the Payment Percentage should be lower than the Prevailing Payment Percentage, the Scheme Company shall pay to each Scheme Creditor with a Final Closure Scheme ESL a sum equal to:

- (a) the Payment Percentage of the Final Closure Scheme ESL of that Scheme Creditor; less
- (b) the aggregate of:
  - (i) the amount of any Scheme Payments previously made to the relevant Scheme Creditor in respect of the Final Closure Scheme ESL;
  - (ii) any payments deemed to have been received by the Scheme Creditor concerned pursuant to Clause 9.4.4 which have not already been deducted from the Scheme Creditor's Net Ascertained Claim; and
  - (iii) any amount payable by the Scheme Creditor concerned pursuant to Clause 2.5.13 or pursuant to Clause 3.3.1;

provided that the sum of the amounts referred to in Clause 3.3.3(b) does not exceed the amount referred to in Clause 3.3.3(a).

### 3.4 **Mechanics of payments to Scheme Creditors**

3.4.1 All payments to a Scheme Creditor may be made in the absolute discretion of the Scheme Administrators:

- (a) at the expense of the Scheme Creditor (which expense may be deducted from the amount of the relevant payment) by telegraphic transfer to such bank account as the Scheme Creditor may from time to time notify the Scheme Company; or
- (b) at the option of the Scheme Company (but only if requested by the Scheme Creditor or if the Scheme Creditor has not provided current bank accounts details in accordance with Clause 3.4.1(a)) by cheque in favour of such Scheme Creditor or as it may direct and sent by Post at the risk of the Scheme Creditor to the last known address of the Scheme Creditor or to such other address as the Scheme Creditor may from time to time notify in writing to the Scheme Company provided that, if no address for the Scheme Creditor is known, such payments may be sent by Post to the last known

address of the broker through whom the relevant contract or policy was effected or to such other address as such broker may from time to time notify to the Scheme Company in writing; or

- (c) in such other manner as the Scheme Administrators may from time to time determine;

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

- 3.4.2 In the event that there remains an Unclaimed Balance on the expiry of six months from the date on which the Scheme Administrators first sought to make payment to the Scheme Creditors concerned pursuant to Clause 3.3.2 or Clause 3.3.3, as applicable, and Clause 3.4.1, the Scheme Administrators may transfer such Unclaimed Balance to a registered charity of their choice and the right of the Scheme Creditors concerned to such payment shall be extinguished.

- 3.4.3 The Scheme Administrators may determine that any payment under the Scheme of less than the *de minimis* amount shall not be sent to a Scheme Creditor because of the cost involved in making or receiving such a payment. Any amount so withheld shall be transferred to a registered charity of the Scheme Administrators' choice and the right of the Scheme Creditors concerned to such payment shall be extinguished.

## 4 **COMPLETION AND RELEASE**

### 4.1 **Certificate of completion**

- 4.1.1 When they believe that the provisions of Clause 2 (*Valuation of Scheme Claims*) and Clause 3 (*Payments to the Scheme Creditors*) have been complied with by the Scheme Company, the Scheme Administrators shall determine the date on which the Scheme is to be declared complete.

- 4.1.2 The Scheme Administrators shall issue a certificate of completion to the Scheme Company and to the Trustee, which shall be posted on the Website, certifying that the Scheme has been implemented in accordance with its terms and specifying the date on which the Scheme and the Existing Scheme shall terminate.

### 4.2 **Completion of the Scheme**

- 4.2.1 Upon the issue of a certificate of completion pursuant to Clause 4.1 (*Certificate of completion*) the Scheme and the Existing Scheme shall be complete and, save in relation to any fraud or dishonesty, and so far as the law permits, all obligations and Liabilities of the Released Parties in connection with or pursuant to the Scheme shall cease and be released absolutely. Any such obligation which has not been fulfilled in accordance with the Scheme or the Existing Scheme by the Completion Date shall nonetheless be deemed to have been correctly and fully performed, and no Scheme Creditor shall have any claim in respect of it or any loss arising from it.

- 4.2.2 Following the Completion Date, no Scheme Creditor shall be entitled to make any claim or to receive payment from the Scheme Company in respect of a Scheme Claim.

- 4.2.3 The Scheme Company shall display the certificate of completion on the Website for a period of no less than 12 months from the date on which the certificate was issued.

#### 4.3 **Termination Events**

4.3.1 Subject to Clause 4.3.2 (which shall survive such termination), the Existing Scheme and the Scheme shall terminate if:

- (a) the Scheme Administrators give notice in writing to the Scheme Company at its registered office that, after due enquiry, they have concluded that the Scheme is no longer in the interests of the Scheme Creditors and that the Scheme Company should be wound up; or
- (b) a resolution that the Scheme should be terminated and that the Scheme Company be wound up is passed at a meeting of the Scheme Creditors; or
- (c) a certificate of completion is issued in accordance with Clause 4.1 (*Certificate of completion*), in which case the Scheme shall terminate on the date specified in the certificate of completion.

4.3.2 The Surviving Provisions and any other provisions which expressly or by implication are necessary for the enforcement or interpretation of Scheme shall survive termination.

#### 4.4 **Effect of winding-up**

4.4.1 If the Scheme Company is wound up in circumstances where the Scheme has terminated in accordance with Clause 4.3.1(a) or Clause 4.3.1(b) each Scheme Creditor who has received a payment in respect of an Established Scheme Liability:

- (a) shall be treated as having proved in the winding-up for the amount its Established Scheme Liability;
- (b) shall be treated as having received by way of dividend in the winding-up an amount equal to the Scheme Amount and shall not be entitled to any dividend in the winding-up unless and until all the Scheme Creditors proving in the winding-up have received an equivalent percentage dividend; and
- (c) shall be entitled to receive dividends in the winding-up of the Scheme Company (calculated by reference to the amount for which it is treated as having proved as aforesaid) *pari passu* with all the Scheme Creditors of the Scheme Company.

#### 4.5 **Vacation of Office following an Insolvency Event**

4.5.1 If, following an Insolvency Event in relation to the Scheme Company, the Scheme Administrators reasonably consider that they cannot by reason of the Insolvency Event continue to fulfil their functions under the Scheme, the Scheme Administrators shall be entitled to vacate their office with immediate effect by written notice to the Scheme Manager and the Scheme Company and, save in relation to any fraud or dishonesty and, so far as the law permits, all Liabilities and obligations under or in connection with the Scheme of the Released Parties (with the exception of the Scheme Company) shall cease and be released absolutely with effect from such notice.

#### 4.6 **Winding-up following the Completion Date**

Upon termination of the Scheme in accordance with Clause 4.3.1(c) the Trustee shall, subject to the terms and provisions of the Trust Deed, forthwith take such steps as

lie within its power to place the Scheme Company in voluntary liquidation pursuant to section 84 of the Insolvency Act.

## **5 SCHEME OFFICE HOLDERS**

### **5.1 The Scheme Manager**

5.1.1 The Scheme Manager is PRO Insurance Solutions Limited which has given to the Scheme Company, and not withdrawn, its consent to act as Scheme Manager from the Effective Date and has contracted to be bound by the terms of the Scheme to the extent that the same apply to the Scheme Manager and/or the Scheme Company. In exercising its powers and carrying out its duties and functions under the Scheme, the Scheme Manager shall act in good faith, and with due care, and shall exercise its powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms. The Scheme Company undertakes to be bound by the acts and decisions of the Scheme Manager pursuant to the Scheme.

5.1.2 The Scheme Manager shall not have authority or power to bind the Scheme Company save as set out in the Scheme.

5.1.3 Nothing in the Scheme shall render the Scheme Manager liable for any Liabilities or other obligations of the Scheme Company.

5.1.4 The Scheme Company shall endeavour to procure that at all times during the Scheme Period there shall be a Scheme Manager. In the event of a vacancy in the office of Scheme Manager, the Scheme Company shall appoint a replacement Scheme Manager as soon as practicable provided that such replacement Scheme Manager is, in the reasonable opinion of the Scheme Company, suitably qualified and consents so to act. Without prejudice to the foregoing, in the event of a vacancy in the office of Scheme Manager, pending the appointment of a replacement Scheme Manager, the Scheme Company shall act as Scheme Manager and, for the avoidance of doubt, shall have the powers, rights, duties and functions conferred upon the Scheme Manager under the Scheme.

### **5.2 Powers, rights, duties and functions of the Scheme Manager**

5.2.1 The Scheme Manager shall assist the Scheme Company in the application of the Scheme and shall have the powers, rights, duties and functions conferred upon it under the Scheme for such purpose.

5.2.2 The Scheme Manager shall be entitled to carry out the functions and exercise the powers conferred, and shall perform the obligations imposed, on the Scheme Company under Clause 2 (*Valuation of Scheme Claims*), Clause 3.3 (*Payments to Scheme Creditors*) and Clause 3.4 (*Mechanics of payments to Scheme Creditors*) on behalf of and as agent for the Scheme Company.

### **5.3 Validation of acts of the Scheme Manager**

5.3.1 Subject to any applicable provision of the Act, and so far as the law permits, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and without wilful default or wilful breach of duty by the Scheme Manager in pursuance of their functions or duties under the Scheme or the exercise or non-exercise by them or either of them in good faith of any power or discretion conferred upon them for the purposes of the Scheme unless expressly permitted to do so by the Scheme. The Scheme Manager shall not be liable for any loss whatsoever and howsoever arising out of any such act or omission, or exercise or non-exercise of any power or discretion, unless such loss is attributable to their

own wilful default, wilful breach of duty or trust, fraud or dishonesty. For the avoidance of doubt, these provisions shall apply to the Scheme Company if and to the extent it fulfils the role of Scheme Manager.

- 5.3.2 Notwithstanding a subsequent discovery that the Scheme Manager was not eligible for their role pursuant to the provisions of the Scheme, all acts done by it prior to such discovery shall be valid as if it was so eligible.

#### 5.4 **The Scheme Administrators**

- 5.4.1 The Scheme Administrators shall:

- (a) realise the assets of the Scheme Company and apply them for the benefit of Scheme Creditors in accordance with the Scheme; and
- (b) supervise the carrying out of the Scheme in accordance with its terms in relation to the Scheme Company.

- 5.4.2 For these purposes the Scheme Administrators shall:

- (a) have power in the name and on behalf of the Scheme Company to manage the affairs, business and property of the Scheme Company; and
- (b) without prejudice to the generality of the foregoing, have the powers specified in clause 5.3.3. of the Existing Scheme.

- 5.4.3 For the avoidance of doubt the provisions of clause 5.1.1 of the Existing Scheme shall apply to the Scheme Administrators, save that:

- (a) the Scheme Administrators shall not be required to be qualified to act as an insolvency practitioner; and
- (b) a Scheme Administrator shall not be required to give notice of their resignation to the Creditors' Committee if there is no Creditors' Committee in place.

- 5.4.4 With effect from the Effective Date the Scheme Administrators shall be Darryl Ashbourne and Joshua Dwyer of Interpath Ltd.

### 6 **ADJUDICATION**

#### 6.1 **Qualification, resignation and removal of the Scheme Adjudicator**

- 6.1.1 Subject to the appointment of an alternate Scheme Adjudicator in accordance with Clause 6.1.2, there shall be one Scheme Adjudicator who shall be an individual who is duly qualified in the reasonable opinion of the Scheme Company, in consultation with the Scheme Manager, to discharge the function of the Scheme Adjudicator under the Scheme. The first Scheme Adjudicator shall be Romy Comiter of FTI Consulting.

- 6.1.2 In the event that:

- (a) the Scheme Adjudicator becomes aware that she has a conflict of interest in relation to any matter referred to her (in which case the Scheme Adjudicator shall, as soon as reasonably practicable thereafter, inform the Scheme Manager of such conflict); and/or

- (b) the Scheme Company or the Scheme Manager becomes aware that the Scheme Adjudicator has a conflict of interest in relation to any matter referred to the Scheme Adjudicator (in which case the Scheme Manager will notify the Scheme Adjudicator of such conflict);

the Scheme Manager shall, in either event, appoint an alternate Scheme Adjudicator qualified to act in accordance with Clause 6.1.1 for the sole purpose of adjudicating on the relevant matter and shall as soon as reasonably practicable give notice of such appointment to the Scheme Creditor in relation to which the conflict arises. The Scheme Adjudicator's appointment shall continue during the appointment of any alternate Scheme Adjudicator and she shall continue to adjudicate on other matters referred to her unless a conflict shall arise in respect of those matters in which case the terms of this Clause 6.1.2 shall apply.

- 6.1.3 For the avoidance of doubt, the provisions of Clause 6.1.4, Clause 6.1.5, Clause 6.2 (*Powers, rights, duties and functions*) and Clause 6.3 (*Responsibility and indemnity*) shall apply *mutatis mutandis* to any alternate Scheme Adjudicator appointed pursuant to Clause 6.1.2.

- 6.1.4 The Scheme Adjudicator may continue to act in spite of a conflict of interest if the Scheme Creditor in relation to whom the conflict arises and the Scheme Manager agree in writing to permit the Scheme Adjudicator to act and if the Scheme Adjudicator herself is willing to act notwithstanding such conflict. Any such waiver of a conflict will only be made after the Scheme Adjudicator, relevant Scheme Creditor and the Scheme Manager have been provided with (and have provided) sufficiently detailed disclosure of the circumstances and nature of the conflict to enable each of them to take an informed decision on whether the conflict may be waived without prejudicing or embarrassing any of them.

- 6.1.5 The office of Scheme Adjudicator shall be vacated if the appointee to that office shall:

- (a) die or become bankrupt;
- (b) be admitted to hospital because of mental disorder or be the subject of an order in matters concerning his mental disorder made by a court having jurisdiction in such matters in England and Wales;
- (c) be convicted of an indictable offence;
- (d) resign his office in accordance with any terms agreed with the Scheme Company; or
- (e) be removed for good cause by the Scheme Company,

and the Scheme Manager shall forthwith appoint a person who is qualified to act as Scheme Adjudicator pursuant to Clause 6.1.1 and not ineligible by reason of any of the matters referred to in this Clause 6.1.5.

## 6.2 **Powers, rights, duties and functions**

- 6.2.1 The Scheme Adjudicator shall be responsible for the adjudication of Disputes and the determination of the relevant Agreed Claim and if applicable Net Ascertained Claim following adjudication of a Dispute and shall have the powers, rights, duties and functions conferred upon her by the Scheme for such purposes.

- 6.2.2 The Scheme Adjudicator shall be paid such remuneration for the exercise and performance of her powers, rights, duties and functions under the Scheme as may

be agreed between the Scheme Adjudicator and the Scheme Administrators. Subject to Clause 2.5.12 and Clause 2.5.13, such remuneration and all other Adjudicator Costs shall be paid out of the Property of the Scheme Company.

### **6.3 Responsibility and indemnity**

6.3.1 In exercising her powers and rights and in carrying out her duties and functions under the Scheme, the Scheme Adjudicator shall act in good faith and with due care and diligence and shall exercise her powers and rights under the Scheme to ensure that the Scheme is operated in accordance with its terms.

6.3.2 No Scheme Creditor shall be entitled to challenge the validity of any act done or permitted to be done by the Scheme Adjudicator within her powers and in good faith and with due care and diligence pursuant to the provisions of the Scheme or in the exercise or performance of any power, right, discretion, duty or function conferred upon her under the Scheme and, subject to the terms of the Scheme Adjudicator's engagement letter with the Scheme Company, the Scheme Adjudicator shall not be liable for any loss unless any such loss is attributable to her own negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty.

6.3.3 Subject to the Act, the Scheme Adjudicator shall be entitled to an indemnity out of the Property of the Scheme Company against:

- (a) all costs, charges, expenses and liabilities properly incurred by her in the course of exercising or performing her powers, rights, duties or functions under the Scheme in relation to the Scheme Company; and
- (b) any liability incurred by her in defending any Proceedings, whether civil or criminal, in respect of any negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty on her part in relation to the operation of the Scheme in which judgment is given in her favour or in which she is acquitted, or in connection with any application in any such Proceedings in which relief is granted to her by a court from liability for negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty on her part in relation to the operation of the Scheme.

6.3.4 The Scheme Company may pay costs incurred by the Scheme Adjudicator in defending Proceedings of the nature described in Clause 6.3.3(b), provided that the Scheme Adjudicator undertakes to reimburse the Scheme Company (with interest) for any amount which would not, in the event, have been payable by the Scheme Company under Clause 6.3.3(b).

## **7 THE SCHEME COMPANY**

### **7.1 General powers and obligations**

For the purposes of implementing the Scheme, the Scheme Company shall have the powers and obligations conferred upon it by the Scheme. In exercising its powers and fulfilling its obligations under the Scheme, the Scheme Company shall act in good faith and with due care.

## 8 **MEETINGS OF SCHEME CREDITORS**

### 8.1 **Voting**

8.1.1 A resolution put to a meeting of Scheme Creditors shall be effective only if it is approved by a majority in number representing 75% of Scheme Creditors present and voting either in person or by proxy at the meeting.

8.1.2 The quorum for a meeting of Scheme Creditors shall be 3 Scheme Creditors present in person or by proxy and having the right to vote at the meeting.

## 9 **GENERAL PROVISIONS**

### 9.1 **Effective Date**

The Scheme shall come into operation on the Effective Date.

### 9.2 **Established Scheme Liabilities**

Upon a Scheme Creditor's Net Ascertained Claim becoming binding on the Scheme Creditor and on the Scheme Company in accordance with Clause 2.6.6, that Net Ascertained Claim shall, for the avoidance of doubt, constitute an Established Scheme Liability.

### 9.3 **Set-off**

9.3.1 Each Scheme Creditor agrees that subject to Clause 9.3.2, the aggregate amount of any Scheme Debts agreed or determined to be due from the Scheme Creditor to the Scheme Company pursuant to Clause 2.4 (*Agreement of Claim Forms*) shall be deducted from the Scheme Creditor's Agreed Claim and the Scheme Creditor's Agreed Claim will be reduced or extinguished accordingly.

9.3.2 No Liability of the Scheme Company to a Scheme Creditor which:

- (a) has been assigned or otherwise transferred (including but not limited to a transfer pursuant to a reorganisation or reconstruction of companies) to a person after the Original Scheme Date or which has been so assigned or transferred prior to that date but after that person had notice of the Winding-Up Petition; or
- (b) arises out of an obligation incurred by such Scheme Creditor after the Original Scheme Date;

may be included on a Claim Form or a Valuation Statement so as to extinguish or reduce any Liability of that person to the Scheme Company and the relevant Scheme Creditor's Net Ascertained Claim or Net Debt if any shall be calculated accordingly.

9.3.3 The rights of set-off or cross-claim permitted or provided for under the Scheme shall be the only rights of set-off or cross-claim permitted between Scheme Creditors and the Scheme Company.

### 9.4 **Stay of Proceedings**

9.4.1 Subject to the provisions of Clause 9.4.8, no Scheme Creditor shall be permitted to institute or continue any Proceedings whatsoever against the Scheme Company or its Property to establish the existence or amount of a Scheme Claim except as



expressly provided for in the Scheme or with the written consent of the Scheme Manager.

- 9.4.2 Save to the extent that the Scheme Company has failed to perform any obligation to make a payment to a Scheme Creditor in respect of a Net Ascertained Claim, no Scheme Creditor shall be entitled to take or continue any Proceedings against the Scheme Company or its Property in any jurisdiction whatsoever to enforce payment in whole or in part of any Scheme Claim, except as expressly provided for in the Scheme or with the written consent of the Scheme Administrators.
- 9.4.3 If and to the extent that a Scheme Creditor obtains an order, judgment, decision or award of a court or tribunal against the Scheme Company in relation to a Scheme Claim in contravention of Clause 9.4.1 or Clause 9.4.2, such order, judgment, decision or award shall not give rise to an Agreed Claim and shall be disregarded when determining any Liability of the Scheme Company in respect of the relevant Scheme Claim.
- 9.4.4 If any Scheme Creditor takes any action which is prohibited by Clause 9.4.1 or Clause 9.4.2 after the Effective Date, then:
- (a) it shall without prejudice to any other rights of the Scheme Company and/or the Scheme Manager be treated as having received an advance payment, on account of the Payment Percentage payable to it, equal to the amount or gross value of any money, Property, benefit or advantage obtained by it at the expense of the Scheme Company as a result of such action; and
  - (b) the process of valuing its Scheme Claim may be suspended, and the process of making payment in respect of it shall be suspended, until such action is discontinued.
- 9.4.5 If the gross value of any Property, benefit or advantage obtained by a Scheme Creditor cannot be agreed between the Scheme Company and the Scheme Creditor within 28 days of the Scheme Company advising the Scheme Creditor of its valuation of the same, the Scheme Company shall refer the issue to the Scheme Adjudicator for Adjudication pursuant to Clause 6 (*Adjudication*). In addition to determining the gross value, the Scheme Adjudicator shall be entitled to award such amount as she may in her absolute discretion consider to be appropriate in respect of interest, costs, charges and expenses incurred by the Scheme Company as a consequence of the action prohibited by Clause 9.4.1 or Clause 9.4.2.
- 9.4.6 If the amount of advance payment, which a Scheme Creditor is treated as having received pursuant to Clause 9.4.4, exceeds the total amount the relevant Scheme Creditor would otherwise be entitled to receive from the Scheme Company pursuant to the Scheme, then without prejudice to any other rights of the Scheme Company:
- (a) the Scheme Creditor shall immediately repay the excess to the Scheme Company, failing which interest shall accrue on such excess for the period from the date upon which the Scheme Creditor's Net Ascertained Claim is established under the Scheme to the date of repayment of such excess, at a rate equal to at 3% per year above the Bank of England's base rate from time to time. Interest shall accrue from day to day for the duration of such period (from and including the first day thereof), shall be calculated on the basis of the actual number of days elapsed and a 365-day year and shall be payable on the last day of such period. Such excess shall be held on trust for the Scheme Company by the relevant Scheme Creditor until it is paid to the Scheme Company;

- (b) the Scheme Company shall be deemed to have satisfied the full amount of its liability in respect of all of that Scheme Creditor's Scheme Claims pursuant to Clause 2.7.1.
- 9.4.7 In the event that Proceedings are commenced or continued by a Scheme Creditor as expressly provided for in the Scheme or with the written consent of the Scheme Administrators any Final Award made in such Proceedings shall be treated as an Agreed Claim.
- 9.4.8 Where the Scheme Company commences or continues any Proceedings against a Scheme Creditor, the Scheme Creditor may assert and prosecute a Scheme Claim against the Scheme Company in those Proceedings (whether by way of claim or counterclaim) so long as:
  - (a) such Scheme Claim arises out of the same transaction or occurrence that is the subject matter of such Scheme Company's claim in those Proceedings; and
  - (b) such Scheme Claim does not require for its adjudication the presence of any third party over whom the court or tribunal in question cannot acquire jurisdiction.
- 9.4.9 For the purposes of Clause 9.4.8, the Scheme Company shall be deemed not to be continuing any Proceedings which commenced before the Effective Date and in which the Scheme Company is not actively prosecuting its claims against such Scheme Creditor.
- 9.5 **Interest**

No interest other than Admissible Interest shall form part of a Scheme Claim or Agreed Claim, as the case may be.
- 9.6 **Security**
  - 9.6.1 Nothing in the Scheme shall prevent a Scheme Creditor from obtaining payment by means of 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. Any payment obtained by a Scheme Creditor from its Security (other than the Trust Fund) in respect of a claim agreed or determined pursuant to the Scheme shall be deducted from Scheme Creditor's aggregate Agreed Claims in calculating its Net Ascertained Claim.
  - 9.6.2 Where a Scheme Creditor holds Security and is entitled to receive but has not received payment pursuant to the Security in respect of an Agreed Claim, that Scheme Creditor's Net Ascertained Claim shall not be reduced by the value of the Security.
  - 9.6.3 For the avoidance of doubt, in pursuing a claim under any applicable Security other than the Trust Fund, Scheme Creditors shall give credit for the amount received under the Scheme whether by way of payment pursuant to Clause 3.3 (*Payments to Scheme Creditors*) or as a result of the application of set-off pursuant to Clause 9.3 (*Set-off*) and Clause 2.7.3.
  - 9.6.4 In the event that the Scheme Administrators calculate that the aggregate of the sum receivable under the Scheme, whether by way of payment pursuant to Clause 3.3 (*Payments to Scheme Creditors*) or as a result of the application of set-off pursuant to Clause 9.3 (*Set-off*), and the top-up payment to which the Scheme

Creditor is entitled from the Trust Fund amount to more than 100% of that Scheme Creditor's aggregate Established Scheme Liability, the sum payable to that Scheme Creditor pursuant to Clause 3.3 (*Payments to Scheme Creditors*) shall be reduced by such amount as is necessary to ensure that the Scheme Creditor receives no more than 100% of its aggregate Established Scheme Liability.

**9.7 No Release**

9.7.1 Subject to Clause 2.3.7, Clause 2.7 (*Effect of the Scheme*) and this Clause, nothing in the Scheme shall be construed as resulting in any release, extinguishment, modification, compromise or waiver of any Liability owed by the Scheme Company.

9.7.2 A Scheme Creditor's entitlement to payment under the Scheme in respect of its Net Ascertained Claim shall constitute the Scheme Company's entire liability to that Scheme Creditor in respect of its Scheme Claims and payment of the Payment Percentage of a Scheme Creditor's Established Scheme Liabilities in accordance with Clause 3 (*Payments to the Scheme Creditors*), shall be in full and final settlement of that Scheme Creditor's right to receive payment from the Scheme Company in respect of its Scheme Claims.

**9.8 Third party funding**

A person who has funded the payment of a Scheme Claim shall not constitute a Scheme Creditor for the purposes of making such Scheme Claim in the Scheme unless:

- (a) that person has acquired an assignment of the funded Scheme Claim or written confirmation from the beneficiary of such funding that they are entitled to submit a Scheme Claim in the place of such beneficiary in respect of the funded Scheme Claim and that assignment or written confirmation has been produced in a form acceptable to the Scheme Company; or
- (b) such funding took place pursuant to a contractual obligation of the person to the Scheme Company or in circumstances where, as a matter of law, the Scheme Company is liable to indemnify or reimburse such person. For the purpose of determining whether funding falls within this Clause 9.8(b) in the absence of agreement between the Scheme Company and the relevant person, the matter shall be referred to the Scheme Adjudicator for Adjudication in accordance with Clause 2.5 (*Dispute resolution procedure*) and Clause 6 (*Adjudication*) (in which case all references in that clause to the Scheme Creditor shall be read as references to the relevant person). The amount determined as being due in respect of that Scheme Claim shall, insofar as the law permits, be the amount that would have been due in respect of that Scheme Claim if it had been asserted by the beneficiary referred to in Clause 9.8(a).

**9.9 Managing general agents, line-slip holders, managers of underwriting pools**

9.9.1 The Scheme Manager shall be entitled to require any manager of an underwriting pool, managing general agent, holder of a line-slip, holder of a broker cover authority or binding authority to allocate Scheme Claims and, where applicable, Scheme Debts by reference to each relevant principal for which it is responsible. If the Scheme Manager does not receive sufficient details of the Scheme Claims allocated to each such principal together with any necessary evidence supporting the allocation, the Scheme Company shall, for the avoidance of doubt, be entitled to apply the

provisions of Clause 9.9.3. All Scheme Creditors affected by such allocation pursuant to this Clause 9.9.1 shall be bound by the allocation.

9.9.2 The Scheme Manager shall, as an alternative to Clause 9.9.1, have the power, the exercise of which shall bind Scheme Creditors, to treat those acting, or believed to be acting, on behalf of principals insured or reinsured by the Scheme Company or who reinsured the Scheme Company, including but not limited to, managers of underwriting pools, managing general agents and the holders of line-slips, broker cover authorities or binding authorities, as if they were a principal creditor or debtor in place of their principals until such time as the Scheme Manager receives notice in a form satisfactory to it in writing from any such insured or reinsured principal or reinsuring 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.

9.9.3 Should an agent or representative referred to in Clause 9.9.1 fail to provide sufficient details of the Scheme Claims allocated to each principal together with any necessary supporting evidence (as referred to in Clause 9.9.1) in a form acceptable to the Scheme Manager within 30 days after the Scheme Manager has submitted a request pursuant to Clause 9.9.1, neither such person nor any principals on whose behalf such person purports to act shall be entitled to claim in, or receive any payment under, the Scheme in respect of such Scheme Claim.

9.9.4 In the event of doubt as to which of Clause 9.9.1 and Clause 9.9.2 shall apply to an agent or representative, the decision of the Scheme Administrators in this respect shall so far as the law permits be final and binding.

#### 9.10 **Modification of the Scheme**

9.10.1 The Scheme Company may consent on behalf of all those concerned to any modification of, or addition to, the Scheme or any terms or conditions which the Court may think fit to approve or impose at any hearing of the Court to sanction the Scheme in accordance with Part 26 of the Act.

#### 9.11 **Communications**

9.11.1 Notwithstanding anything to the contrary in the Scheme, any information, forms, documents, notices or other written communications required to be, or capable of being, given or sent to the Scheme Manager, the Scheme Company, the Scheme Administrators or the Scheme Adjudicator (as the case may be) under or in relation to the Scheme, including without limitation any Claim Form, shall be given in writing, in a form that is legible (and may be disregarded if not legible) and may be:

- (a) given or sent in electronic form to the relevant E-mail address provided in Clause 9.11.2 or to such other electronic address as may be notified for the purposes of this Clause 9.11.1; or
- (b) given either by delivering the same by hand (including by courier) or by Post to the relevant address provided Clause 9.11.2 or to such other address as may be notified to Scheme Creditors from time to time for the purposes of this Clause 9.11.1.

9.11.2 The relevant E-mail and postal addresses for the purposes of Clause 9.11.1 are:

- (a) The Scheme Company and/or the Scheme Manager

Address: PRO Solutions Limited  
Southgate House

Southgate Street  
Gloucester GL1 1UB  
United Kingdom

Email address: [stepanie.wilton@pro-global.com](mailto:stepanie.wilton@pro-global.com)

Attention: Stephanie Wilton

(b) The Scheme Administrators

Address: Interpath Ltd  
10 Fleet Place  
London EC2M 7RB  
United Kingdom

Email address: [fabrizio.maffi@interpathadvisory.com](mailto:fabrizio.maffi@interpathadvisory.com)

Attention: Fabrizio Maffi

(c) The Scheme Adjudicator

Address: FTI Consulting  
200 Aldersgate  
Aldersgate Street  
London EC1A 4HD  
United Kingdom

Email address: [romy.comiter@fticonsulting.com](mailto:romy.comiter@fticonsulting.com)

Attention: Romy Comiter

9.11.3 Notwithstanding anything to the contrary in the Scheme, any information, forms, documents, notices or other written communications referred to in Clause 9.11.1 to be given or sent by the Scheme Manager, the Scheme Company, the Scheme Administrators or the Scheme Adjudicator (as the case may be) may be given either

- (a) by delivering the same by hand (including by courier) or by Post to the relevant address or to such other address as may be notified to Scheme Creditors from time to time for the purposes of this Clause 9.11.3 and, in the case of a Scheme Creditor, to its last known address of which the Scheme Manager or the Scheme Company is aware or to such address or as may be notified to the Scheme Manager for the purposes of this Clause 9.11.3;
- (b) by sending the same in electronic form to any E-mail address previously notified, or used, by the intended recipient (the use of which all Scheme Creditors hereby consent to) or to such other electronic address as may be notified for the purpose of this Clause 9.11.3.

9.11.4 Save in relation to Claim Forms, notices of Disputes by Scheme Creditors and information, supporting evidence and other material to be provided by a Scheme Creditor in connection with a Scheme Claim, where the actual date of receipt shall apply, any notice or other written communication to be given under the Scheme shall (except as herein otherwise provided) be deemed to have been received:

- (a) if delivered by hand or by courier pursuant to Clause 9.11.3, on the first Business Day following delivery;

- (b) if given or sent by Post pursuant to Clause 9.11.3, on the second Business Day after posting if the recipient is in the country of despatch and otherwise on the seventh Business Day after posting;
  - (c) if given or sent in electronic form pursuant to Clause 9.11.1, on the first Business Day following delivery provided that the same shall have been sent to the relevant address referred to in Clause 9.11.1.
- 9.11.5 It shall be sufficient proof of delivery in the case of a notice or other written communication of the type referred to in Clause 9.11.3 sent by Post that the accompanying envelope was properly stamped, addressed and given to the recognised courier service or otherwise properly placed in the care of the relevant postal service for delivery.
- 9.11.6 It shall be sufficient proof of delivery in the case of a notice or other written communication of the type referred to in Clause 9.11.1 contained in electronic form that the notice or other communication was given or sent in accordance with Clause 9.11.4(c).
- 9.12 **Co-operation between Scheme Creditors, Scheme Manager, Scheme Company and Scheme Administrators**  
  
The Scheme Creditors, Scheme Manager, Scheme Company and the Scheme Administrators respectively shall co-operate with each other and provide such assistance and information as any of them may reasonably require in connection with the Scheme and the enforcement of obligations owed to the Scheme Company pursuant to the Scheme including, but not limited to, the provision of information and documents in connection with Scheme Claims and the operation of the Scheme. Each Scheme Creditor is deemed to acknowledge that its obligations under the Scheme shall continue in the event that it becomes a Net Debtor.
- 9.13 **Extension of time limits**
  - 9.13.1 Except in relation to the Bar Date, the Scheme Administrators may in their sole discretion extend any of the deadlines laid down by the Scheme prior to the expiry of such deadlines as they relate to a specific Scheme Claim or Scheme Creditor or generally by such amount of time as they see fit in their sole discretion, provided that no such deadline shall be extended by more than its original maximum length except in the case of force majeure or if the relevant parties so agree in writing. In the event that the Scheme Administrators exercise such discretion, references to any relevant period of time or deadline in the Scheme shall be construed accordingly.
  - 9.13.2 The Scheme Manager shall give notice to Scheme Creditors, in respect of which it holds current contact details and which it reasonably believes may be affected by any extension of time or deadlines pursuant to Clause 9.13.1, of such extension.
- 9.14 **Prohibited payments**
  - 9.14.1 For the avoidance of doubt, where the Scheme Company is prevented by any law or regulation imposing international sanctions or prohibitions promulgated by the United States of America, the United Kingdom or any other jurisdiction to which the Scheme Company is subject, from making a payment to a Scheme Creditor or otherwise complying with any term of the Scheme, the requirements of such law or regulation shall override the terms of the Scheme and for the avoidance of doubt, compliance with such law or regulation will constitute full discharge of such Scheme Creditor's Scheme Claims under the Scheme.

9.14.2 Any Blocked Monies shall be applied by the Scheme Company in accordance with the requirements of such law or regulation or the instructions of the relevant authority. The Scheme Company shall be under no obligation to make any application to the relevant authority for a waiver of such law or regulation in any particular case.

9.14.3 In the event that the applicable law or regulation does not contain provisions as to how to deal with Blocked Monies, the Scheme Company shall, prior to the Completion Date, hold them in an account with a United Kingdom clearing bank until such time prior to the Completion Date as the Scheme Company is instructed by the relevant authority as to how to deal with the Blocked Monies or it becomes legal to pay them to the relevant Scheme Creditor. Any interest earned on such account shall be applied at the discretion of the Scheme Company. In the event that no such instruction is received prior to the Completion Date, the Scheme Company shall become entitled to take possession of the Blocked Monies immediately following the Completion Date and the relevant Scheme Creditor shall cease to have any entitlement to them. The Scheme Claim in respect of which such Blocked Monies would otherwise have been payable shall be deemed to be cancelled and the Scheme Creditor shall have no rights in respect of it.

#### 9.15 **Governing law and jurisdiction**

9.15.1 The Scheme shall be governed by, and construed in accordance with, English law, and Scheme Creditors hereby agree that the Court shall have exclusive jurisdiction to hear and determine any Proceedings and to settle any dispute which may arise out of the Scheme Document or any associated document or form, including this Clause 9.15 (*Governing law and jurisdiction*), or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme, and, for such purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the Court. For the avoidance of doubt, nothing in this Clause 9.15.1 shall affect the validity of provisions determining law and jurisdiction as between the Scheme Company and any Scheme Creditor contained in an Insurance Contract.

9.15.2 Notwithstanding the provisions of Clause 9.15.1, the Scheme Company retains the right to bring Proceedings in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

#### 9.16 **The Website**

Scheme Creditors shall be bound by, and shall be deemed to accept, the contents of the legal disclaimer on the Website relating to its contents and use.

## **Appendix Estimation Guidelines**

### **1 INTRODUCTION**

#### **1.1 Purpose and Scope**

1.1.1 The purpose of this Appendix (*Estimation Guidelines*) is to set out and explain the Estimation Guidelines that the Scheme Company will use when considering and attempting to agree Outstanding Claims and IBNR Claims (each as defined in Paragraph 1.2 (*Definitions*)) pursuant to the Scheme. It is also a guide for Scheme Creditors as to the types of methodologies that they might wish to use to estimate Outstanding Claims and IBNR Claims, and explains the information they should submit to support their Scheme Claim.

1.1.2 Scheme Creditors are advised to read this Appendix in its entirety.

1.1.3 If any Scheme Creditor is in doubt as to any aspect of this Appendix or as to the action they should take, then they should consider seeking appropriate professional actuarial or other advice.

1.1.4 If at any stage of the process, either before voting, or during compilation by a Scheme Creditor of their supporting information for their Scheme Claim, the Scheme Creditor has any questions relating to the application of the Estimation Guidelines to their Scheme Claim, then they should contact the Scheme Manager, in the first instance, who will be pleased to assist them.

#### **1.2 Definitions**

This Section 1.2 (*Definitions*) explains the meaning of certain capitalised terms used in this Appendix. Any other capitalised terms have the meanings give to them in the Scheme, except where otherwise indicated.

##### **1.2.1 Asbestos Direct Methodology**

The methodology for valuing Outstanding Claims and IBNR Claims relating to asbestos under direct and facultative reinsurance policies outlined in row (a) of the table on page 71 of these Estimation Guidelines.

##### **1.2.2 Ascertainment Date**

The date chosen by the Scheme Creditor, which must be a date earlier than the Bar Date, as at which their Outstanding Claim(s) and/or IBNR Claim(s) will be valued.

##### **1.2.3 Best Estimate**

An estimate of insurance liabilities that is intended to be the mean, or average of the range of possible outcomes. In other words, it is intended to represent the "expected" outcome. In practice, it may not be possible to apply strict statistical tests regarding whether the estimate is in fact an estimate of the mean or average outcome, but the description is designed to convey the principles on which the estimate is based.

##### **1.2.4 Burn Factor**

A factor that is usually applied to a limited layer of excess insurance/reinsurance coverage to derive an estimate of the ultimate losses to that layer.



- 1.2.5      Claims filed
- In the context of the Asbestos Direct Methodology, the number of asbestos claims filed against the Scheme Creditor or underlying assured.
- 1.2.6      Existing Scheme ESLs
- A liability of the Scheme Company which became an Established Scheme Liability in accordance with clause 2.6 or clause 2.12 of the Existing Scheme.
- 1.2.7      IBNR Claims
- The value, as at the Ascertainment Date, of Scheme Claims in respect of losses which have been incurred by a Scheme Creditor but not notified to it, for which it asserts that an amount will become due for payment by the Scheme Company.
- 1.2.8      Incurred Claims
- Reported claims as at the Ascertainment Date. This equals cumulative Existing Scheme ESLs plus Outstanding Claims at the Ascertainment Date.
- 1.2.9      Link Ratio/Chain Ladder /Development Factors
- A **"Link Ratio"/ "Chain Ladder" / "Development Factor"** is the name given to the ratios formed for each origin period.
- The associated projection method involves using the crude link ratios in two stages:
- (a)      selection of smoothed link ratios for those periods where sufficient development data are available; and
  - (b)      estimation of link ratios for periods where the development data available are sparse or non-existent.
- The first stage involves examining various weighted averages of past development and the selection of representative estimates to be applied to future years. The second stage involves fitting curves to the ratios selected in the first stage and using these curves to project ratios for the tail of the development.
- These ratios are then applied to the latest cumulative Incurred Claim figures, separately for each period of origin, to project future claims to ultimate.
- 1.2.10     Outstanding Claims
- The value, as at the Ascertainment Date, of Scheme Claims in respect of losses notified to the Scheme Creditor for which it asserts on a Claim Form that an amount will become due for payment to it by the Scheme Company, excluding any amounts already included in Existing Scheme ESLs.
- 1.2.11     Paid Survival Ratio
- This is defined as:
- Current Reserve/A suitable average historical amount paid per annum.

- 1.2.12 Reserve
- Outstanding Claims plus IBNR Claims.
- 1.2.13 Settlement Distribution
- In the context of the Asbestos Direct Methodology, this relates to the assumed payment pattern profile of a newly filed or pending asbestos claim.
- 1.2.14 Ultimate Claims
- The sum of Incurred Claims and IBNR Claims (including ultimate indemnity and expense amounts, where appropriate). It also equals Existing Scheme ESLs plus Reserve.

### 1.3 **Application of the Estimation Guidelines**

- 1.3.1 The Scheme Company will apply the Estimation Guidelines in a consistent way for all Outstanding Claims and IBNR Claims. For example, the methodology and assumptions will be similar, where possible, across the same claim types for different Scheme Creditors.
- 1.3.2 The process is designed to be on a "Best Estimate" basis, that is, it is intended to derive an estimate equivalent to a mean, expected or average outcome. Further explanation of this basis is given in Paragraph 1.2 (*Definitions*).
- 1.3.3 The methodology proposed in this Appendix has been devised by the Scheme Company using its knowledge and experience of the business to which the Scheme will apply. In addition, the Scheme Company has taken into account the methodology used previously in other schemes of arrangement, including the closure scheme of arrangement implemented between the Company and certain other insurers and certain of their respective creditors, which amended the Existing Scheme.
- 1.3.4 This Appendix also describes the data and information that Scheme Creditors should submit to support their Scheme Claims. In general terms, the more detailed this data and information is, the more likely it will be that the Scheme Company will be able to take that information into account when applying the Estimation Guidelines.

## 2 **PROCESS OVERVIEW**

### 2.1 **Submission of claims under the scheme**

- 2.1.1 There are three types of Scheme Claim:

- (a) Existing Scheme ESLs,
- (b) Outstanding Claims; and
- (c) IBNR Claims.

These three types are defined in Paragraph 1.2 (*Definitions*)

- 2.1.2 The Estimation Guidelines apply to Outstanding Claims and IBNR Claims.
- 2.1.3 Any Scheme Creditor who wishes to claim for Outstanding Claims and/or IBNR Claims should insert details of these on their Claim Form, providing supporting information and documentation prepared in accordance with the instructions for completion of

the Claim Form. Section 3 (*Supporting Evidence*) outlines the type of information that a Scheme Creditor should supply to assist the Scheme Company in reviewing their Scheme Claim in light of the Estimation Guidelines.

## 2.2 **Review Process adopted by the Scheme Company**

2.2.1 Outstanding Claims and IBNR Claims will be reviewed by the Scheme Company using the following worksteps:

- (a) review relevant manual and electronic files in relation to the Outstanding Claim(s) and/or IBNR Claim(s), including all relevant correspondence between the Scheme Manager and the Scheme Creditor;
- (b) verify all relevant policies, the Outstanding Claims and IBNR Claims entered by the Scheme Creditor on their Claim Form and any Existing Scheme ESLs which have been used by the Scheme Creditor in deriving their Scheme Claim and check that the Scheme Claim does not breach policy limits;
- (c) consider all supporting documents supplied by the Scheme Creditor that the Scheme Company considers relevant to the estimation of the Scheme Claim;
- (d) consider the method used by the Scheme Creditor to derive their Outstanding Claim(s) and/or IBNR Claim(s);
- (e) if necessary review the data, information and assumptions used on other relevant Outstanding Claim(s) and/or IBNR Claim(s).

2.2.2 In certain circumstances, the Estimation Guidelines used by the Scheme Company in reviewing the Scheme Creditor's estimate of its Outstanding Claim(s) and/or IBNR Claim(s), may mirror that used by the Scheme Creditor, as opposed to the relevant methodology set out in this Appendix. Further details are given in Section 4 (*Estimation Guidelines*).

2.2.3 If a particular Outstanding Claim or IBNR Claim does not fall into one of the categories of claim type for which the methodology is described in these Estimation Guidelines (e.g. unusual or anomalous claims), then the Scheme Creditor should apply an appropriate methodology, based on its experience and judgement and any actuarial advice received. Such instances should be clearly communicated to the Scheme Company.

2.2.4 The Scheme Company will, if it deems it appropriate, seek external input from other experts. These experts, may, for example, be asked to give input on certain legal matters.

2.2.5 If a Scheme Claim is affected by a particular market settlement agreement, then the Scheme Company will take this into account in considering the Scheme Claim. However, the Scheme Company will not be obliged to abide by this settlement where the Scheme Company is not bound by the settlement agreement.

2.2.6 Where a Scheme Creditor has made settlement agreements with other insurers, then, where relevant, the Scheme Company will take these agreements into account when reviewing the Scheme Claim, for example to ensure that appropriate set-off is allowed for.

2.2.7 Reinstatement and/or other adjustment premiums and/or profit commissions will not be considered by the Scheme Company, but rather will be calculated by the Scheme

Manager, as required, unless they are presented as Scheme Claims (for example, as might arise under Reinstatement Premium Protection policies).

- 2.2.8 Taking into account the above data and information, the Scheme Company will then derive its own estimate of the Outstanding Claim(s) and/or IBNR Claim(s) using the Estimation Guidelines described in Section 4 (*Estimation Guidelines*) or those used by the Scheme Creditor.
- 2.2.9 The Scheme Company will then derive the value of the Scheme Creditor's discounted Outstanding Claim(s) and/or IBNR Claim(s), using the approach outlined in Section 5 (*Discounting for Future Investment Income*).
- 2.2.10 The Scheme Company will provide the Scheme Creditor with a summary of its valuation of the Outstanding Claim(s) and/or IBNR Claim(s), if different from that submitted by the Scheme Creditor, including details of the Undiscounted and Discounted value of the Outstanding Claim(s) and/or IBNR Claim(s), and will seek to agree it with the Scheme Creditor.

### 3 **SUPPORTING EVIDENCE**

#### 3.1 **Evidence to Support Claims**

- 3.1.1 Each Scheme Creditor will be required to provide evidence to support their claim before the Bar Date. This evidence is needed to enable the Scheme Company to form a judgement on the reasonableness of the claim.
- 3.1.2 The nature of the evidence required is explained in the following paragraphs and in the instruction notes for completion of the Claim Forms. Failure to provide the supporting evidence requested may result in the Outstanding Claim(s) and/or IBNR Claim(s) being valued at a lower amount, and possibly at zero.

#### 3.2 **Outstanding Claims**

- 3.2.1 Supporting documentation should be in the same or substantially the same form as is customary for the insured/reinsured to send to the broker or the Scheme Manager in the normal course of business and, where applicable, stating the Scheme Company's policy references and percentage share of the relevant policy(ies).
- 3.2.2 Where components of Outstanding Claims are materially uncertain, the requirements on supporting documentation for IBNR Claims set out in Paragraph 3.3 (*IBNR Claims*) and Paragraph 3.4 (*Additional Guidance*) are equally applicable.

#### 3.3 **IBNR Claims**

- 3.3.1 Supporting documentation should include details of the following:
  - (a) the policies in respect of which IBNR is being asserted;
  - (b) the amount of the IBNR Claims claimed by policy;
  - (c) details of each individual loss, loss type and amount of claim(s) for each policy in respect of which IBNR Claims are being asserted; and
  - (d) details supporting the methodology, assumptions and calculations used to estimate the value of IBNR Claims.

3.3.2 Where the assumptions used are based, partly or wholly, on external data (i.e. not the Scheme Creditor's own data submitted as part of the Scheme process) then that data, and the associated analysis and rationale behind the selected assumptions, should also be supplied.

3.3.3 Additional Guidance for IBNR Claims is given in Section 3.4 (*Additional Guidance*).

#### 3.4 **Additional Guidance**

3.4.1 As a guide to the sort of information required by the Scheme Manager/Scheme Company to support an Outstanding Claim or an IBNR Claim it may be considered helpful to provide documentation consistent with the requirements of relevant actuarial standards. These include:

- (a) Technical Actuarial Standards in the United Kingdom available at <https://www.frc.org.uk/actuarial/technical-actuarial-standards>; and
- (b) Applicable Actuarial Standards of Practice adopted by the U.S. Actuarial Standards Board in the United States of America.

3.4.2 Although an actuarial report may not be necessary for all Scheme Creditors asserting IBNR Claims, Scheme Creditors claiming large IBNR amounts may consider that the provision of one would be helpful in supporting their claim.

3.4.3 Claims assessors' reports or lawyers' reports might also be helpful in supporting a Scheme Claim. In addition, where relevant, it might also be appropriate to refer to other reports or analyses, relating, for example, to economic or demographic issues that are likely to affect future claim development.

3.4.4 Scheme Creditors shall give clear justification for the methodology used and the assumptions made and provide relevant supporting information.

3.4.5 In considering the supporting evidence to be supplied, Scheme Creditors are advised to consider the description of the Estimation Guidelines in Section 4 (*Estimation Guidelines*) as this will help them understand the data and information that the Scheme Company will need in order to estimate/assess the Outstanding Claim(s) and/or IBNR Claim(s). As explained further in Paragraph 4.2 (*Estimation Guidelines Methodology*) below, in situations where the relevant data and information is not available to allow the Scheme Company to apply the Estimation Guidelines, then the Scheme Company will use its judgement to select an appropriate alternative methodology (which might be the methodology used by the Scheme Creditor, possibly with modification or alternative assumptions).

### 4 **ESTIMATION GUIDELINES**

#### 4.1 **Introduction**

4.1.1 This Section 4 (*Estimation Guidelines*) sets out the process that the Scheme Company will apply when assessing the reasonableness of the Scheme Creditor's estimate of the Outstanding Claim(s) and/or IBNR Claim(s) and deriving its own estimate of the same.

4.1.2 The methodology outlined here can also be used as a guide to Scheme Creditors as to the types of methodologies that they might wish to use to estimate their IBNR Claims.

## 4.2 Estimation Guidelines Methodology

- 4.2.1 In general terms, the Scheme Company will take into account all the relevant information, as referred to in Paragraph 2.2 (*Review Process adopted by the Scheme Company*). The Scheme Company will take into account updated data supplied by the individual Scheme Creditor, as well as wider relevant information gathered from other Scheme Creditors as part of the Scheme process, plus relevant wider industry knowledge. The Estimation Guidelines that will be used by the Scheme Company, by claim type, are set out in the table in Paragraph 4.2.2 below.
- 4.2.2 When we refer to the “**Scheme Creditor’s Policies**” below, this means the policies or contracts that the Scheme Creditor has with the Scheme Company, equivalent to the defined term, “Insurance Contract”, in the Scheme.

	Claim type	Methodology
(a)	U.S. and Non U.S. Asbestos, Environmental Pollution and Health Hazard (“ <b>APH</b> ”) - Direct and Facultative reinsurance (“ <b>Direct</b> ”)	<p>Ground-up exposure analysis, allowing for estimation of total claim amounts, allocated across years of coverage and to the Scheme Creditor’s Policies.</p> <p>The methodology for Non-U.S. Asbestos and Pollution Direct will be very similar to that for U.S. Asbestos and Pollution Direct, modified to reflect the specific circumstances of the relevant territory. In particular, for United Kingdom Asbestos exposures, the methodology and assumptions will take into account the findings of the paper entitled “UK Asbestos Working Party update 2020” (see ‘2021 GIRO Paper’ link at <a href="https://www.actuaries.org.uk/system/files/field/document/AWP%20paper%202020%20Final.pdf">https://www.actuaries.org.uk/system/files/field/document/AWP%20paper%202020%20Final.pdf</a>) and in the “UK Asbestos Working Party 2022 Update” paper (see ‘2022 Update Note’ at <a href="https://www.actuaries.org.uk/system/files/field/document/AWP%202022%20Update%20Note_Final.pdf">https://www.actuaries.org.uk/system/files/field/document/AWP%202022%20Update%20Note_Final.pdf</a>)</p>
(b)	U.S. and Non-U.S. APH – Excess of Loss and Proportional Reinsurance and Retrocession (“ <b>Reinsurance</b> ”)	<p>Exposure-based projection of individual underlying direct loss estimates (as they affect the underlying direct or reinsurance policies written by the Scheme Creditor) aggregated appropriately and then applied to relevant Scheme Creditor’s Policies.</p> <p>Or, if suitable data is not available (e.g. due to the remoteness of the Scheme Creditor’s Policies from the original assureds, as is sometimes the case with reinsurance/retrocession business), then application of appropriate benchmark Burn Factors, Paid Survival Ratios and/or IBNR-to-outstanding claims ratios and/or Ultimate to Paid or Incurred claim ratios.</p>

	Claim type	Methodology
(c)	Direct and Reinsurance Non-APH classes of business	<p>Appropriate development factors (and/or loss ratios) will be derived by application of standard actuarial techniques, such as the Link Ratio/Chain Ladder method to claims development triangles. These factors will either be derived from relevant data supplied by the Scheme Creditor, or from other appropriate data for the relevant classes of business. In the event that the historical integrity of the development factors has been materially affected by means of settlements, commutations or other similar events, the default approach will be adjusted to using benchmark factors as described in 0 below.</p> <p>For individual loss events (e.g. individual catastrophes) the approach above will be modified to either:</p> <p>projection to ultimate of the Scheme Creditor's underlying gross loss development for each event, the results of which are then applied to the relevant Scheme Creditor's Policies; or</p> <p>projection to ultimate of the loss development for each event as it affects the relevant Scheme Creditor's Policies (i.e. projection of the paid and/or incurred claims for each event that are recoverable under the Scheme Creditor's Policies);</p> <p>or, if suitable data is not available, then:</p> <p>application of benchmark factors for each event to the Scheme Creditor's data for that event (e.g. benchmark ultimate to paid/incurred claims ratio and/or IBNR-to-outstanding claims ratios for that event multiplied by the paid/incurred and/or outstanding claims for that event under the relevant Scheme Creditor's Policies).</p> <p>In some cases, the above approach may be modified, to consider:</p> <p>(a) details of known individual claims, including consideration of associated loss adjuster or attorney reports;</p> <p>(b) loss emergence patterns (e.g. number and amount of claims that have emerged in the past for the relevant or lower layer policies).</p>

4.2.3 The principal source of data and information that the Scheme Company will use in order to apply the above Estimation Guidelines will be the information supplied by

the Scheme Creditor as part of their submission under the Scheme supplemented by information in the Scheme Company's records. The Scheme Company will have the discretion to use wider market knowledge and information where it deems it appropriate to use such information, but will not be under any obligation to use such wider knowledge and information when applying the Estimation Guidelines for a particular Outstanding Claim(s) and/or IBNR Claim(s).

- 4.2.4 For all claim types, the Estimation Guidelines described in this Appendix may need to be adapted by the Scheme Company, depending on the data and information provided to the Scheme Company by the Scheme Creditor. In particular, if the Scheme Creditor has applied a different methodology to that outlined in the relevant part of these Estimation Guidelines, then the Scheme Company will consider whether it can also adopt a similar or the same methodology, with perhaps differing assumptions to those used by the Scheme Creditor. Further details are given in Paragraph 4.3 (*Use of Scheme Creditors' methodology*)
- 4.2.5 In situations where there is uncertainty surrounding one or more of the assumptions to be used by the Scheme Company to estimate a Scheme Claim, then an approach that involves the use of probabilities, assigned to different assumptions, may be utilised. In such cases, the Scheme Company may seek appropriate expert (e.g. legal or actuarial) opinion, if it considers this necessary. In addition, the Scheme Creditor will have the opportunity to provide input to these probabilities, if they wish, and on any other aspects of the uncertainty surrounding their claims affecting Scheme Policies. This will ensure that their views on uncertainty and on the likelihood of potential outcomes are taken into account in deriving an estimate of their Scheme Claim.
- 4.2.6 It is recognised that, in using this Appendix as a guide to the methodology that a Scheme Creditor may use to estimate their Outstanding Claim(s) and/or IBNR Claim(s), it may be necessary to adapt that methodology to suit the particular circumstances surrounding the Outstanding Claim(s) and/or IBNR Claim(s) and/or due to the information available to the Scheme Creditor.
- 4.2.7 For all claim types, where required data is not available, the Scheme Company will use its judgement in deciding on appropriate Estimation Guidelines to apply in order to derive an estimate of the Outstanding Claim(s) and/or IBNR Claim(s), which in some cases may be zero if the available supporting data is limited. In all cases, the Scheme Company will provide the Scheme Creditor with an explanation of the rationale for selection of a particular methodology and set of assumptions when discussing its estimate of the Outstanding Claim(s) and/or IBNR Claim(s) with the Scheme Creditor.
- 4.2.8 Where Scheme Creditors submit claims of different types then the relevant methodology described in this Appendix for each claim type will be applied separately by claim type.
- 4.2.9 Where Scheme Creditors submit a claim on an all sums basis, then it must be submitted as net of contributions attributable to insurers on other policies or coverage years triggered by the loss.
- 4.2.10 The above table describes the methodology to be used to derive the undiscounted Outstanding Claim(s) and/or IBNR Claim(s). This amount will be discounted as described in Section 5 (*Discounting for Future Investment Income*).



### 4.3 **Use of Scheme Creditors' methodology**

- 4.3.1 In situations where the Scheme Creditor has applied their own methodology, the Scheme Company will use its judgement to assess the reasonableness of the methodology employed by the Scheme Creditor, as compared to the methodology for the relevant claim type(s) as set out in Paragraph 4.2 (*Estimation Guidelines Methodology*).
- 4.3.2 If the Scheme Company deems that a Scheme Creditor's methodology is more appropriate than the corresponding methodology in Section 4 (*Estimation Guidelines*) then the Scheme Company will proceed to review the detailed application of the Scheme Creditor's methodology, including the reasonableness of the assumptions.
- 4.3.3 In some cases, the Scheme Company may select results based on a combination of results produced by the application of the Scheme Creditor's methodology, and those produced by application of the relevant methodology in Section 4 (*Estimation Guidelines*).
- 4.3.4 In reviewing a Scheme Creditor's methodology and assumptions in relation to the Scheme Claim, the Scheme Company's judgement of their reasonableness will include consideration of whether they comply with the following principles:
- (a) the methodology should normally be a recognised approach used by actuaries and other reserving practitioners to estimate general insurance claims liabilities. Such methods include loss development factor methods (e.g. using past claims development data) and exposure-based methods. Uses of other, less recognised approaches should be justified by the Scheme Creditor in their supporting information;
  - (b) selected assumptions should be based on a rational and unbiased analysis (of the Scheme Creditor's own, and where appropriate relevant wider market, information), and not simply set at the extremes of possible ranges for those assumptions;
  - (c) the estimates produced by application of the methodology should be on a Best Estimate basis. This term is defined in Paragraph 1.2 (*Definitions*).
  - (d) where estimates are based on selected proportions of the relevant insurance cover (e.g. 50 per cent of limits) then these proportions should be supported by analysis to justify the selected values. For example, the proportions could be based upon projections of reported losses, using specific information relating to those individual losses; and
  - (e) in situations where there is uncertainty surrounding the assumptions used within a Scheme Creditor's own methodology, then an approach that involves the use of probabilities, assigned to different assumptions, may be utilised. In such cases, the selected probabilities should be justified, and, wherever possible, be backed up with expert (e.g. legal) opinion.
- 4.3.5 In all cases, the information supporting the application of a Scheme Creditor's own methodology and assumptions, including the calculations, should be as comprehensive as possible, to allow the Scheme Company to verify the validity of the assumptions and understand the rationale for the implied results.
- 4.3.6 It should be noted that specific principles apply to the situation where there is limited or no claims history associated with one or more claim types under the Scheme

Creditor's Policies, but where the Scheme Creditor has submitted a claim for IBNR. These are covered in Paragraph 4.4 (*Policies with claim types having limited or no claims history*).

#### **4.4 Policies with claim types having limited or no claims history**

4.4.1 This Paragraph 4.4.1 relates to policies with claim types that have limited or no claims history at the date of submission of claims under the Scheme, but where Scheme Creditors wish to assert an IBNR claim.

4.4.2 When reviewing a Scheme Claim of this type, the Scheme Company will first consider into which of the following two categories the claim falls:

- (a) Direct or Reinsurance policies where there are one or more known underlying losses, which when projected to their estimated ultimate level can be shown to affect the relevant policies. An example might be higher-layer direct or reinsurance policies, where the claims are estimated to increase such that they will affect these layers; and
- (b) all other Direct or Reinsurance policies, where there are no specific known underlying losses that can be projected. An example might be Direct policies where there are no quantified reported losses in any year.

4.4.3 For the first category, the approach outlined in Paragraph 4.2 (*Estimation Guidelines Methodology*) will be used by the Scheme Company to estimate the relevant losses to the policies.

4.4.4 For the second category, the approaches outlined in this Appendix may need some modification to reflect the specific circumstances of the submitted claim. However, as for other policies and claim types, Scheme Creditors may submit their own methodology for estimating their claim. In considering the suitability of such methodology, and hence of the amount claimed, the Scheme Company will apply the following principles to test for reasonableness:

- (a) for direct insurance exposures (as opposed to reinsurance), there should be a demonstrable link between the claim type(s) being claimed and the business activities of the Scheme Creditor. Scheme Creditors should supply details linking their business activities with the claim type(s) being claimed (e.g. details of products manufactured by Scheme Creditors, and the types of claim that may be associated with these products). For reinsurance exposures, there should similarly be a link between the business activities of the entity(ies) insured by the Scheme Creditor and the claim type(s) being claimed;
- (b) the selected assumptions should be based on a rational and unbiased analysis (of the Scheme Creditor's own, and where appropriate relevant wider market information), and not simply set at the extremes of possible ranges for those assumptions;
- (c) where an exposure-based approach has been used, then, in the case of personal-injury based direct claims, it should begin with reasonable assumptions regarding the population of exposed persons, the proportion that will ultimately claim and the likely size of these claims;
- (d) exposure to selected claim types or sources of claim should be based on recognised sources; and

- (e) when the results are “grossed-up” to be at an industry or country-wide level, they should be plausible, based on current known information. In other words, if we take the estimates for the Scheme Creditor’s Policies and divide them by an appropriate market share percentage, then the resulting industry or country-wide figure should be plausible.

4.4.5 As an example, in the early years after asbestos was identified as affecting certain defendants, but where there was limited or no claims history, it was possible to review the exposed population (e.g. based on the number employed by a defendant, or otherwise affected by their activities, over a specified period) and estimate the ultimate number of asbestos-related claims that might arise in future from each defendant. Costs of individual claims could similarly be estimated using costs associated with claims arising from other similar product or premises-related sources.

4.4.6 The comment made at the start of this Appendix regarding Scheme Creditors contacting the Scheme Manager to discuss their proposed methodology is particularly relevant for this type of claim. Any Scheme Creditor in doubt as to whether their proposed methodology will be acceptable is encouraged to contact the Scheme Manager as soon as possible before the Bar Date.

## 5 **DISCOUNTING FOR FUTURE INVESTMENT INCOME**

Once the values of Outstanding Claims and IBNR Claims have been ascertained, they must be discounted to the Ascertainment Date to take account of the time value of money.

The discount rate to be applied is 3.48%, being the 10-year yield, as at 31 March 2023, on US Treasury bonds (or, in the case where the underlying Scheme Claim owed to a Scheme Creditor is predominantly payable in a currency other than US Dollars, equivalent government securities of the country as at 31 March 2023 in whose currency the Scheme Claims are payable). Scheme Creditors will need to submit details of the payment profile used in calculating the discount.

Adjustments will be made by the Scheme Company to allow for the period between the Ascertainment Date and the last business day of the month before the date of the Valuation Statement for each Scheme Creditor. The overall effect of these adjustments will be to discount Outstanding Claims and IBNR Claims as at the last Business Day of the month before the Valuation Statement date. In effect, only payments projected to be made after this date will be subject to discount for future investment income.

# PART 3: NOTICE CONVENING THE SCHEME MEETING

IN THE HIGH COURT OF JUSTICE

CR-2023-005956

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF ENGLISH & AMERICAN INSURANCE COMPANY LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2006

NOTICE IS HEREBY GIVEN that, by an order dated 3 November 2023 made in the above matter, the High Court of Justice of England and Wales has directed that separate meetings (the "**Scheme Meetings**") be held of the Scheme Creditors (as defined in the proposed scheme of arrangement hereinafter mentioned) of the above-named company ("**EAIC**") for the purpose of considering, and if thought fit, approving (with or without modification) the scheme of arrangement pursuant to Part 26 of the Companies Act 2006 proposed to be made between EAIC and its Scheme Creditors (the "**Scheme**").

The Scheme Meetings are to be held on 19 December 2023 at the offices of Bryan Cave Leighton Paisner LLP, Governor's House, 5 Laurence Pountney Hill, London EC4R 0BR, United Kingdom as follows:

- for Scheme Creditors in respect of claims which have been agreed or determined under the scheme of arrangement implemented by the Scheme Company in 1994 ("**Existing Scheme ESLs**") at 2:00 p.m. (London time); and
- for Scheme Creditors in respect of all other Scheme Claims (as defined in the Scheme) at 2:15 p.m. (London time) or as soon as the meeting for the Scheme Creditors with Existing Scheme ESLs concludes or is adjourned.

All Scheme Creditors are requested to attend the relevant Scheme Meeting or Scheme Meetings, as applicable, either in person or by proxy. Scheme Creditors with both an Existing Scheme ESL and a Scheme Claim which does not relate to an Existing Scheme ESL are entitled to vote at both Scheme Meetings.

Scheme Creditors may vote in person at the Scheme Meetings or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place. A form of proxy is included in the Voting Forms for use at the Scheme Meetings.

A copy of the text of the Scheme and a copy of the explanatory statement required to be provided pursuant to Part 26 of the Companies Act 2006 (the "**Explanatory Statement**") as well as examples of blank Voting Forms, are incorporated at Parts 1, 2 and 4, respectively, of the document of which this notice forms part. These documents may also be obtained from the website at [www.eaic.co.uk](http://www.eaic.co.uk). Further copies may also be obtained by attending at, or on written application to, PRO Insurance Solutions Limited ("**Pro**") at the address below.

Scheme Creditors are requested to send their Voting Forms to Pro either by: (a) mail to Stephanie Wilton, PRO Insurance Solutions Limited, Southgate House, Southgate Street, Gloucester, GL1 1UB, United Kingdom; or (b) email to [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com), to be received by 5:00 p.m. (London time) on 15 December 2023. An e-mailed copy of a Voting Form

will only be accepted if legible. Voting forms may also be handed in at the registration desk prior to the commencement of the Scheme Meetings.

The Court has appointed Darryl Ashbourne of Interpath Advisory or failing him, Joshua Dwyer of Interpath Advisory or failing him, any other director of EAIC, to act as chairman of the Scheme Meetings and has directed the chairman to report the result of the Scheme Meetings to the Court.

If approved by the requisite majority of Scheme Creditors, the Scheme will be subject to the subsequent approval of the Court.

EAIC may, at the hearing of the application for sanction by the Court of the Scheme, consent on behalf of Scheme Creditors to any amendment to the Scheme or any terms or conditions which the Court may think fit to approve or impose.

For further information please contact Pro as follows:

Phone: +44 (0) 7795848215

Email: [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com)

Dated 6 November 2023

## PART 4: VOTING FORMS AND INSTRUCTIONS FOR COMPLETION

Please note that the defined terms in capital letters contained within these guidance notes and instructions bear the meanings given to them in the Scheme, unless the context otherwise requires.

### Introduction

If you are a Scheme Creditor you will be entitled to attend and vote, either in person (which includes in the case of a corporation, partnership or other unincorporated body, sending a duly authorised representative) or by proxy, at the relevant meeting of Scheme Creditors summoned to consider the Scheme (the "**Scheme Meetings**"). You may appoint any person as your proxy, whether or not that person is a Scheme Creditor.

This document contains at page 84 an example of the Voting Forms for use at each of the Scheme Meetings. In the case of the Scheme Meeting for Scheme Creditors in respect of Unmatured Claims, the Voting Form comprises:

1. A form of proxy; and
2. A Claims Table.

You are urged to complete the Voting Form and return it, whether or not you intend to appoint a proxy.

In the case of the Scheme Meeting for Scheme Creditors in respect of Existing Scheme ESLs, the Voting Form comprises a form of proxy only. You are urged to complete the proxy form and return it whether or not you intend to appoint a proxy. The Scheme Company will enter the Existing Scheme ESL according to its records in the proxy form for Scheme Creditors with Existing Scheme ESLs. If you have not had your Existing Scheme ESL added to your proxy, or you have any questions about the information provided, you should contact the Scheme Manager at the address and contact details given under "**Further Information**" below.

Detailed instructions for completing the Voting Forms appear on pages 84 to 85, and some general guidance follows. You are urged to allow sufficient time before the relevant Scheme Meeting to research the information required to check and if applicable complete or amend the Voting Form.

Please ensure that you address all the parts of the Voting Form, indicating those parts which are not relevant to you.

### The Form of Proxy

If you do not wish to attend the Scheme Meeting in person, you may appoint the chairman of the Scheme Meeting, or some other person, as your proxy to represent you at the Scheme Meeting. A Scheme Creditor's proxy must attend the Scheme Meeting if that Scheme Creditor's vote is to be counted. Please note that corporations can only attend the Scheme Meeting by proxy or duly authorised representative.

It is particularly important that you sign the front page of the form of proxy indicating by your signature whether you are voting, or instructing the person appointed as your proxy to vote, for or against the Scheme. If you appoint the chairman as proxy they will be entitled to appoint another person to act as proxy in their place.

A Scheme Creditor whose only Scheme Claim is for an Unmatured Claim should also indicate their estimate of the aggregate value of their Scheme Claim, in accordance with the instructions on the form of proxy. The Scheme Company will insert the Existing Scheme ESLs according to its records for Scheme Creditors with Existing Scheme ESLs. If you have both Unmatured Claims and Existing Scheme ESLs you are required to submit separate forms of proxy for each. If you have any questions you should contact the Scheme Manager at the address and contact details given under "**Further Information**" below.

### **The Claims Table – Scheme Creditors with Unmatured Claims only**

You should enter details of your Scheme Claim in the in the Claims Table, furnishing supporting evidence for these claims in accordance with the instructions on the Claims Table. In the absence of supporting information, if there is a conflict between your valuation of your Scheme Claim and its valuation according to the Scheme Company's records, the chairman is likely to take the Scheme Company's valuation for voting purposes.

Your broker or other intermediary may be able to provide information concerning Insurance Contracts under which you may have a Scheme Claim against the Scheme Company.

Please ensure that you correctly identify any Insurance Contract(s) on your Claims Table in respect of which you intend to submit a Scheme Claim for voting purposes. Before admitting your Scheme Claim to vote at the relevant Scheme Meeting, the chairman of the Scheme Meeting will be obliged to satisfy himself that your Scheme Claim is reasonable. If you do not specify the Scheme Company's reference number for each of the Insurance Contracts under which your Claim arises, the chairman may not be able to satisfy himself that your Scheme Claim is reasonable, and accordingly may not be able to admit your Scheme Claim for voting purposes.

In order to identify any applicable Scheme Company reference number, you should in the first instance refer to the schedule of insurance (also known as the policy or coverage schedule), which forms part of the policy document or cover note produced to you by your insurance broker or other intermediary evidencing the Insurance Contract or otherwise. The schedule of insurance may bear one or more reference numbers.

It will be of assistance if you would furnish copies of the policy schedule or cover note and the schedule of insurance with the particulars of your Scheme Claims in accordance with the instructions contained in the Claims Table.

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

Scheme Claims against the Scheme Company other than claims for Existing Scheme ESLs ("**Unmatured Claims**") will be admitted for voting purposes at an estimated amount, less the amount of any known Security (other than the Marsh Mac LOC) and applicable set-off details of which are included by you in the Claims Table.

Scheme Creditors with Unmatured Claims which are disputed by the Scheme Company will be eligible to attend and vote at the relevant Scheme Meeting. The decision as to the value to be placed on their Scheme Claim for voting purposes will be made by the chairman of the Scheme Meeting. The admission of a Scheme Claim for voting purposes at the Scheme Meeting is without prejudice to the right of the Scheme Company to dispute any such Scheme Claim.

The chairman of the Scheme Meeting will consider whether or not a Scheme Creditor's estimate of the value of its Unmatured Claims are reasonable before they are admitted for voting purposes.

The admission of an Unmatured Claim for voting purposes does not constitute an admission of the existence or amount of any Liability of the Scheme Company and will not bind the Scheme Administrators, the Scheme Company or Scheme Creditors. Estimates of Unmatured Claims, whether by Scheme Creditors or by the chairman of the Scheme Meeting, will not be taken into account in calculating payments under the Scheme, will be used for voting purposes only. The exception to this is where the Scheme Creditor elects to have its Claims Table treated as a Claim Form under the Scheme, or returns a Claims Table without making that election and subsequently fails to submit a Claim Form. In both those cases, estimates included in the Claims Table will be used for the purposes of agreeing the Scheme Creditor's claims under the Scheme.

Scheme Claims not denominated in US Dollars will be converted at the mid-market rate of exchange between the two currencies as quoted by The Financial Times at close of business (London time) on the last Business Day before the Scheme Meeting, or if no such rate is published, the closing mid-market rate of exchange between the two currencies as quoted by Barclays Bank PLC on that date and if no such rate is available, such rate as may reasonably be selected by the Scheme Administrators.

You should consult your own legal adviser as to the consequences for you, in the event of any litigation in which you may be, or may become involved, of furnishing particulars of your Scheme Claim for the purposes of voting on the Scheme.

### **Return of the Voting Form**

When complete, the Voting Form should be returned to PRO Insurance Solutions Limited marked for the attention of Stephanie Wilton either by: (a) mail to Southgate House, Southgate Street, Gloucester, GL1 1UB, United Kingdom; or (b) email to [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com), to be received by 5:00 p.m. (London time) on 15 December 2023, (although if not so returned it may be handed in at the registration desk at the Scheme Meeting prior to commencement of the Scheme Meeting). An e-mailed copy of a Voting Form will only be accepted if legible.

### **Further information**

If you have any questions concerning the completion of the Voting Form or have any questions concerning the proposed Scheme, please contact:

Stephanie Wilton  
**PRO Insurance Solutions Limited**  
Southgate House  
Southgate Street  
Gloucester, GL1 1UB  
United Kingdom  
Tel: +44 (0) 7795848215  
Email: [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com)

Your queries will be dealt with as quickly as possible; if you cannot immediately speak to someone, please leave your name, telephone number and a brief description of your enquiry and your call will be returned.

Please read the Scheme Document carefully. If you are in any doubt as to the action you should take, you should consult your insurance broker or other professional adviser without delay.



## ENGLISH & AMERICAN INSURANCE COMPANY LIMITED - VOTING FORM

### EXISTING SCHEME ESLs

To be used at the meeting of the Scheme Creditors of English & American Insurance Company Limited (the "**Scheme Company**") to be held on 19 December 2023 at the offices of Bryan Cave Leighton Paisner LLP, Governor's House, 5 Laurence Pountney Hill, London EC4R 0BR, United Kingdom to consider and if thought fit approve the Final Closure Scheme of Arrangement pursuant to Part 26 of the Companies Act 2006 between the Scheme Company and its Scheme Creditors (the "**Scheme**").

Capitalised words and expressions in this form and the instructions shall, unless the context requires otherwise, bear the same meaning given to them in the Scheme.

This Voting Form is for use at the meeting for Scheme Creditors in respect of Scheme Claims for Existing Scheme ESLs, that is, Scheme Claims which have been agreed or otherwise determined as due from the Scheme Company and constitute Established Scheme Liabilities under the Existing Scheme. The Voting Form comprises a Form of Proxy only.

Further blank copies of the Voting Form can be obtained by visiting the Website at [www.eaic.co.uk](http://www.eaic.co.uk). If you require any further assistance, then please contact Stephanie Wilton on the phone number or at the email address given in the General Notes section of the Voting Form.

### GENERAL NOTES

- 1 You are requested to return the Voting Form to PRO Insurance Solutions Limited either by: (a) mail to Stephanie Wilton, Southgate House, Southgate Street, Gloucester, GL1 1UB, United Kingdom; or (b) email to [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com), to be received by 5:00 p.m. (London time) on 15 December 2023. An e-mailed copy of a Voting Form will only be accepted if legible. Voting Forms may also be handed in at the registration desk at the venue of the meetings prior to the Scheme Meeting.
- 2 Any alteration to the Voting Form must be initialled by the person who signs it.
- 3 If you are a Scheme Creditor and wish to vote either for the Scheme or against the Scheme you should complete the form of proxy. If you are a duly authorised agent and/or attorney of a number of Scheme Creditors and wish to vote either for the Scheme or against the Scheme, you should complete a separate form of proxy for each Scheme Creditor. Instructions for completion of form of proxy are given on the form.
- 4 It is important to note that the value of any dividend already paid to you by the Scheme Company under the Existing Scheme should be deducted from the value of the Scheme Claim to be entered in the form of proxy.

**The value to be attributed to a Scheme Creditor's Scheme Claim for voting purposes will be the value of the Scheme Creditor's Existing Scheme ESL according to the Scheme Company's records, less any payment already made to the Scheme Creditor in respect of it. The chairman will convert any Scheme Claim not denominated in United States dollars at the mid-market rate of exchange between the two currencies as quoted by The Financial Times at close of business (London time) on 18 December 2023, or if no such rate is published, the closing mid-market rate of exchange between the two currencies as quoted by Barclays Bank PLC on 18 December 2023 and if no such rate is available, such rate as may reasonably be selected by the Scheme Administrators.**

**The chairman's decision as to the value for which a Scheme Claim is to be admitted for voting purposes is final and binding. Where a Scheme Claim is rejected in whole or in part, he will advise the Scheme Creditor of his decision, prior to the Scheme Meeting where possible, and in any event, afterward.**

## FORM OF PROXY

I/We<sup>(Note 1)</sup> .....

(Enter the name of the Scheme Creditor including all former names)

of .....

(Enter the address of the Scheme Creditor)

Being a Scheme Creditor of the Scheme Company in the sum of <sup>(Note 2)</sup>:

..... currency ..... sum

HEREBY APPOINT the chairman of the Scheme Meeting or<sup>(Note 3)</sup>

.....

as my/our proxy to act for me/us at the Scheme Meeting for Scheme Creditors in respect of Existing Scheme ESLs for the purpose of considering and, if thought fit, approving (with or without modification) the Scheme, referred to in the notice summoning the Scheme Meeting, and at such Scheme Meeting, or any adjournment thereof, to vote for me/us and in my/our name for the Scheme or against the Scheme (either with or without modification as my proxy may approve) as hereinafter indicated.

**If you wish to vote for the Scheme, sign in the box marked "FOR the Scheme". If you wish to vote against the Scheme, sign in the box marked "AGAINST the Scheme". If you appoint the chairman as proxy they will be entitled to appoint another person to act as proxy on their behalf. If you do not sign in any of the boxes this form of proxy will not operate as a valid appointment of your proxy.**

NUMBERING ON THIS PAGE RELATES TO THE INSTRUCTIONS FOR COMPLETION OF THE FORM OF PROXY OVERLEAF

FOR the Scheme <sup>(Note 4)</sup> ..... Signature	AGAINST the Scheme ..... Signature
Name.....	
Position/Capacity <sup>(Note 5)</sup> ..... Date.....	
For completion by the Scheme Company : Admitted to vote for US\$	

When completed please return the proxy form to PRO Insurance Solutions Limited marked for the attention of Stephanie Wilton either by: (a) mail to Southgate House, Southgate Street, Gloucester, GL1 1UB, United Kingdom; or (b) email to stephanie.wilton@pro-global.com, to be received by 5:00 p.m. (London time) on 15 December 2023.

## **INSTRUCTIONS FOR COMPLETION OF THE FORM OF PROXY**

The numbered notes below correspond to the note numbers on the proxy form.

- Note 1: Enter the name and address of the Scheme Creditor in block capitals. If you are the duly authorised agent and/or attorney of a number of Scheme Creditors, complete a separate form of proxy in respect of each Scheme Creditor, and provide evidence (which must be satisfactory to the chairman of the Scheme Meeting) of your authority to execute the form of proxy on their behalf. Failure to provide evidence of such authority may invalidate this form of proxy.
- Note 2: The Scheme Company has entered the amount of your Existing Scheme ESL according to its records. If your Existing Scheme ESL is not shown on your form or proxy, or you have any questions about the information provided, you should contact the Scheme Manager at the address provided above.
- Note 3: If you wish to appoint a person other than the chairman of the Scheme Meeting as your proxy, delete the words "chairman of the Scheme Meeting" and enter the name of the person to be appointed. The person to be appointed as your proxy need not be a Scheme Creditor. If you have appointed a person other than the chairman of the Scheme Meeting as your proxy, in order to represent you, that person must attend in person at the Scheme Meeting.
- Note 4: Please select one box as appropriate, either: "FOR the Scheme" or "AGAINST the Scheme".
- Note 5: If you are the duly authorised representative of a corporation or a partnership or other unincorporated body or person, or the duly authorised agent and/or attorney of a number of Scheme Creditors, enter the capacity in which you have signed the form of proxy (for example, director, partner, or agent and/or attorney). Please note that if you are the duly authorised representative of a number of Scheme Creditors a separate form of proxy should be completed in respect of each Scheme Creditor. As mentioned in point 1 above, you must also provide evidence (which must be satisfactory to the chairman of the Scheme Meeting) of your authority to execute the form of proxy on behalf of the Scheme Creditor. Failure to provide evidence of such authority may invalidate this form of proxy.

## ENGLISH & AMERICAN INSURANCE COMPANY LIMITED - VOTING FORM

### UNMATURED SCHEME CLAIMS

To be used at the meeting of the Scheme Creditors of English & American Insurance Company Limited (the "Scheme Company") to be held on 19 December 2023 at the offices of Bryan Cave Leighton Paisner LLP, Governor's House, 5 Laurence Pountney Hill, London EC4R 0BR, United Kingdom to consider and if thought fit approve the Final Closure Scheme of Arrangement pursuant to Part 26 of the Companies Act 2006 between the Scheme Company and its Scheme Creditors (the "**Scheme**").

Capitalised words and expressions in this form and the instructions shall, unless the context requires otherwise, bear the same meaning given to them in the Scheme.

This Voting Form is for use at the meeting for Scheme Creditors in respect of Scheme Claims which do not constitute Established Scheme Liabilities under the Existing Scheme. The Voting Form comprises a Form of Proxy at Part A and a Claims Table at Part B and you are requested to complete both Parts.

Further blank copies of the Voting Form can be obtained by visiting the Website at [www.eaic.co.uk](http://www.eaic.co.uk). If you require any further assistance, then please contact Stephanie Wilton on the phone number or at the email address given in the General Notes section of the Voting Form.

### GENERAL NOTES

- 1 You are requested to return the Voting Form to PRO Insurance Solutions Limited either by: (a) mail to Stephanie Wilton, Southgate House, Southgate Street, Gloucester, GL1 1UB, United Kingdom; or (b) email to [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com), to be received by 5:00 p.m. (London time) on 15 December 2023. An e-mailed copy of a Voting Form will only be accepted if legible. Voting Forms may also be handed in at the registration desk at the venue of the meetings prior to the Scheme Meeting.
- 2 Any alteration to the Voting Form must be initialled by the person who signs it.
- 3 If you are a Scheme Creditor and wish to vote either for the Scheme or against the Scheme you should complete the Claims Table at Part B of the Voting Form and return it with the form of proxy. If you are a duly authorised agent and/or attorney of a number of Scheme Creditors and wish to vote either for the Scheme or against the Scheme, you should complete a separate Claims Table for each Scheme Creditor. Instructions for completion of each Part of the Voting Form are given in each Part.
- 4 Scheme Creditors should not construe any of the contents of the Claims Table at Part B of the Voting Form or any assistance provided by the Scheme Company, the Scheme Administrators or any of their respective advisers as legal, tax, financial or other professional advice. Each Scheme Creditor should consult its own professional advisers as to the legal, tax, financial or other matters relevant to the action it should take in connection with this Claims Table.

**The value to be attributed to each Scheme Creditor's Scheme Claim for voting purposes will be determined by the chairman of the Scheme Meeting on the basis of the information provided by the Scheme Creditor in the Claims Table and Proxy Form and the supporting information accompanying it. The chairman will convert any Scheme Claim not denominated in United States dollars at the mid-market rate of exchange between the two currencies as quoted by The Financial Times at close of business (London time) on 18 December 2023, or if no such rate is published, the**

**closing mid-market rate of exchange between the two currencies as quoted by Barclays Bank PLC on 18 December 2023 and if no such rate is available, such rate as may reasonably be selected by the Scheme Administrators. Account will be taken of any known set-off. The chairman of the Scheme Meeting may, for voting purposes only, reject a Scheme 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 Scheme Creditor. It is therefore important that where Scheme Creditors wish to vote in respect of Scheme Claims that do not constitute Existing Scheme ESLs they complete and return the Claims Table and provide supporting information for their valuation to which the chairman may refer in assessing its reasonableness.**

**The chairman's decision as to the value for which a Scheme Claim is to be admitted for voting purposes is final and binding. Where a Scheme Claim is rejected in whole or in part, he will advise the Scheme Creditor of his decision, prior to the Scheme Meeting where possible, and in any event, afterward.**

## PART A – FORM OF PROXY

I/We<sup>(Note 1)</sup> .....

(Enter the name of the Scheme Creditor including all former names)

of .....

(Enter the address of the Scheme Creditor)

Being a Scheme Creditor of the Scheme Company in the sum of <sup>(Note 2)</sup>:

..... currency ..... sum

HEREBY APPOINT the chairman of the Scheme Meeting or<sup>(Note 3)</sup>

.....

as my/our proxy to act for me/us at the Scheme Meeting for Scheme Creditors in respect of claims other than Existing Scheme ESLs for the purpose of considering and, if thought fit, approving (with or without modification) the Scheme, referred to in the notice summoning the Scheme Meeting, and at such Scheme Meeting, or any adjournment thereof, to vote for me/us and in my/our name for the Scheme or against the Scheme (either with or without modification as my proxy may approve) as hereinafter indicated.

**If you wish to vote for the Scheme, sign in the box marked "FOR the Scheme". If you wish to vote against the Scheme, sign in the box marked "AGAINST the Scheme". If you appoint the chairman as proxy they will be entitled to appoint another person to act as proxy in their place. If you do not sign in any of the boxes this form of proxy will not operate as a valid appointment of your proxy.**

NUMBERING ON THIS PAGE RELATES TO THE INSTRUCTIONS FOR COMPLETION OF THE FORM OF PROXY OVERLEAF

FOR the Scheme <sup>(Note 4)</sup> ..... Signature	AGAINST the Scheme ..... Signature
Name.....	
Position/Capacity <sup>(Note 5)</sup> ..... Date.....	
For completion by the Scheme Company : Admitted to vote for US\$	

When completed please return the proxy form to PRO Insurance Solutions Limited marked for the attention of Stephanie Wilton either by: (a) mail to Southgate House, Southgate Street, Gloucester, GL1 1UB, United Kingdom; or (b) email to stephanie.wilton@pro-global.com, to be received by 5:00 p.m. (London time) on 15 December 2023.

## **INSTRUCTIONS FOR COMPLETION OF THE FORM OF PROXY**

The numbered notes below correspond to the note numbers on the proxy form.

- Note 1: Enter the name and address of the Scheme Creditor in block capitals. If you are the duly authorised agent and/or attorney of a number of Scheme Creditors, complete a separate form of proxy in respect of each Scheme Creditor, and provide evidence (which must be satisfactory to the chairman of the Scheme Meeting) of your authority to execute the form of proxy on their behalf. Failure to provide evidence of such authority may invalidate this form of proxy.
- Note 2: Enter the estimated amount of your Scheme Claim against the Scheme Company for voting purposes after carefully reading the Claims Table and Instructions for Completion at Part 4 of this document.
- Note 3: If you wish to appoint a person other than the chairman of the Scheme Meeting as your proxy, delete the words "chairman of the Scheme Meeting" and enter the name of the person to be appointed. The person to be appointed as your proxy need not be a Scheme Creditor. If you have appointed a person other than the chairman of the Scheme Meeting as your proxy, in order to represent you, that person must attend in person at the Scheme Meeting.
- Note 4: Please select one box as appropriate, either: "FOR the Scheme" or "AGAINST the Scheme".
- Note 5: If you are the duly authorised representative of a corporation or a partnership or other unincorporated body or person, or the duly authorised agent and/or attorney of a number of Scheme Creditors, enter the capacity in which you have signed the form of proxy (for example, director, partner, or agent and/or attorney). Please note that if you are the duly authorised representative of a number of Scheme Creditors a separate form of proxy should be completed in respect of each Scheme Creditor. You must also provide evidence (which must be satisfactory to the chairman of the Scheme Meeting) of your authority to execute the form of proxy on behalf of the Scheme Creditor. Failure to provide evidence of such authority may invalidate this form of proxy.



## PART B – Claims Table

You should read this Claims Table including the instructions carefully. This Claims Table is divided into 4 sections:

- Section A: Claim Valuation
- Section B: Supporting Schedules and Continuation Sheet
- Section C: Election to treat Claims Table as Claim Form
- Section D: Signature of Authorised Signatory

Guidance notes for completion are included in each section.

### SECTION A: SCHEME CLAIMS VALUATION

CURRENCY \_\_\_\_\_

Description	Outstanding Claims	IBNR Claims
Undiscounted Outstanding Claims		N/A
Time value of discount (Outstanding Claims)		N/A
Undiscounted IBNR Claims	N/A	
Time value of discount (IBNR Claims)	N/A	
Gross claim		
Less: Set-off amounts		
Less: Security		
Claim		
Total of Outstanding Claims and IBNR Claim		

## **NOTES TO SECTION A**

1. Please enter your total Outstanding Claims and IBNR Claims for the relevant currency under all your Insurance Contracts with the Scheme Company. Outstanding Claims are Scheme Claims in respect of losses notified to you for which you assert that an amount will become due for payment to you by the Scheme Company. IBNR Claims are Scheme Claims in respect of losses which have been incurred by, but not notified to, you for which you assert that an amount will become due for payment by the Scheme Company.
2. Completed claims supporting schedules which detail claims under each Insurance Contract (see Section B below), should be attached to and returned with the Claims Table. Failure to provide completed claim supporting schedules may result in your claim being disputed.
3. Particulars as to estimates of the amount of any Outstanding Claims or IBNR Claims provided by a Scheme Creditor may not be protected by privilege under English law (or other relevant laws) and may be discoverable by a third party with a claim against the Scheme Creditor in any action or proceeding to which the Scheme Creditor may be a party. You should consult your legal adviser as to the consequences for you of providing such particulars in relation to any litigation in which you are or may be involved.

## Section B

### Scheme Claims – Supporting Schedule

**CURRENCY** \_\_\_\_\_

(1) Insurance Contract reference number (where applicable)	(2) Participation %	(3) Inception date	(4) Broker	(5) Broker reference	(6) Undiscounted Outstanding Claims	(7) Time value discount value on Outstanding Claims	(8) Undiscounted IBNR Claims	(9) Time value discount on IBNR Claims	(10) Security	(11) Set-off
<b>(12) Claims (currency) total</b>										
<b>(13) Continuation sheets total (in the same currency)</b>										
<b>(14) Total for this page plus any continuation sheets (in the same currency)</b>										

# SCHEME CLAIMS - CONTINUATION SHEET

CURRENCY \_\_\_\_\_

(1) Insurance Contract reference number (where applicable)	(2) Participation %	(3) Inception date	(4) Broker	(5) Broker reference	(6) Undiscounted Outstanding Claims	(7) Time value discount value on Outstanding Claims	(8) Undiscounted IBNR Claims	(9) Time value discount on IBNR Claims	(10) Security	(11) Set-off
(12) Claims (currency) total										

## NOTES TO SECTION B

If you have claims in more than one currency, a separate claims supporting schedule should be used for each currency, specifying in the space provided the relevant currency. If there are insufficient lines for any one currency, complete the continuation sheet as many times as is necessary. Additional copies of the claims supporting schedule and continuation sheets may be obtained from the Website at [www.eaic.co.uk](http://www.eaic.co.uk) or by contacting the Scheme Manager by email or telephone as follows:

Contact: Stephanie Wilton  
Mobile: +44 (0) 7795848215  
Email: [stephanie.wilton@pro-global.com](mailto:stephanie.wilton@pro-global.com)

Numbering below relates to the column numbers on the claims supporting schedule.

**Currency.** Please enter the relevant currency of the information being submitted.

1. **Insurance Contract reference number.** Specify the Insurance Contract reference number in relation to each of the policies under which you have claims against the Scheme Company in the Scheme. Your insurance broker, intermediary or other agent should be able to assist you in confirming or identifying Insurance Contracts and reference numbers. Please then insert the Insurance Contract reference numbers onto the inwards claims supporting schedule using a separate line for each Insurance Contract.
2. **Participation percentage.** The participation percentage for each Insurance Contract represents the percentage line underwritten or assumed by the Scheme Company under the Insurance Contract. Apply the relevant participation percentage to each Insurance Contract to apportion the value of each of your claims against the Scheme Company when completing columns (6), (7) and (9).
3. **Inception date.** Specify the date when each Insurance Contract commenced. In the case of continuous Insurance Contracts or Insurance Contracts of more than 12 months, each annual renewal should be shown as a separate Insurance Contract.
4. **Broker.** Specify the name of the broker who placed the Insurance Contract or, if the placing broker is not known, any other broker, agent or intermediary (if known) who acted on your behalf in relation to the Insurance Contract.
5. **Broker reference.** Specify the broker's (or agent's or intermediary's) contract reference for each Insurance Contract.
6. **Outstanding Claims (Undiscounted).** Specify the estimated amount of any claim or (where there is more than one claim) the aggregate estimated amount of any claims which are Outstanding Claims arising under each Insurance Contract.
7. **Time value discount on Outstanding Claims.** Scheme Creditors must apply discount rate of 3.48% for the time value of money of Outstanding Claims being the 10-year yield, as at 31 March 2023, on US Treasury bonds (or, in the case where the underlying Scheme Claim owed to a Scheme Creditor is predominantly payable in a currency other than US Dollars, equivalent government securities of the country as at 31 March 2023 in whose currency the Scheme Claims are payable). You must provide details of the claims development (i.e. payment) patterns for each of the main claim types comprised in your Outstanding Claims and the assumed average time to settlement of each such claim type on a separate sheet.

8. **IBNR Claims (Undiscounted).** Specify the estimated amount of any claim or (where there is more than one claim) the aggregate estimated amount of any claims which you have classed as IBNR Claims arising under each Insurance Contract. An "IBNR Claim" is an incurred but not reported claim arising under or in respect of an Insurance Contract for the amount payable by the Scheme Company in respect of a loss which has been incurred but has not been reported to or discovered by a Scheme Creditor, plus the amount payable in respect of losses which have been notified to the Scheme Company which are not yet certain in amount and to the extent that the current notified amount may prove to be inadequate.
9. **Time value discount on IBNR Claims.** Scheme Creditors must apply a discount rate of 3.48% applied for the time value of money of IBNR Claims being the 10-year yield, as at 31 March 2023, on US Treasury bonds or, in the case where the underlying Scheme Claim owed to a Scheme Creditor is predominantly payable in a currency other than US Dollars, equivalent government securities of the country as at 31 March 2023 in whose currency the Scheme Claims are payable. You must provide details of the claims development (i.e. payment) patterns for each of the main claim types comprised in your Outstanding Claims and the assumed average time to settlement of each such claim type on a separate sheet.
10. **Security total.** Enter the amount of any Security held in relation to the Insurance Contract, other than the Marsh Mac LOC.
11. **Set-off amounts total.** Enter the amounts to be deducted by way of set-off.
12. **Claims (currency) total.** Enter the totals, where applicable, under each column (6), (7), (8), (9), (10) and (11), in the original currency.
13. **Continuation sheet total (in the same currency).** If any continuation sheets for the same currency have been used, insert here the total claim values in that same currency from all continuation sheets.
14. **Total for this page plus any continuation sheets.** Aggregate the claims total and the continuation sheet total to arrive at a total value, where applicable, under columns (6), (7), (8), (9), (10) and (11). Transfer these amounts to the corresponding lines on the Claims Table on pages 92 and 93.

### SECTION C: ELECTION TO TREAT CLAIMS TABLE AS CLAIM FORM

☐ I/We elect that this Claims Table should be used as my/our Claim Form for the purposes of the Scheme, should it become effective.

#### NOTES TO SECTION C

Please check the box above if you wish your Claims Table to be used as your Claim Form under the Scheme. Making this election means that you will not need to complete and return a Claim Form by the Bar Date in order for your claims to be considered for payment under the Scheme, although you may still do so if you wish.

Please also provide below details of the bank account into which the sum, if any, payable to you pursuant to the Scheme should be paid.

Account Name: .....  
Bank: .....  
Account Number: .....  
Sort Code: .....  
IBAN: .....

### SECTION D: SIGNATURE OF AUTHORISED SIGNATORY

Signature: .....  
Name.....  
Position/Capacity ..... Date.....  
Telephone Number .....  
Email: .....

#### NOTES TO SECTION D

If you are the duly authorised representative of the Scheme Creditor or the duly authorised agent and/or attorney of the Scheme Creditor, enter the capacity in which you have signed this Claim Form (for example director, partner or agent and/or attorney) below. A signature on this form shall constitute a warranty that the signatory has been duly authorised by the relevant Scheme Creditor to sign the form on its behalf.