

SCHEME OF ARRANGEMENT

**pursuant to section 425 of
the Companies Act 1985 of Great Britain and, in addition, in relation to
Mutual Reinsurance Company Limited only,
Section 99 of the Companies Act 1981
of Bermuda**

between

**KINGSCROFT INSURANCE COMPANY LIMITED
(formerly Kraft Insurance Company Limited,
Dart and Kraft Insurance Company Limited
and Dart Insurance Company Limited)**

and between

WALBROOK INSURANCE COMPANY LIMITED

and between

EL PASO INSURANCE COMPANY LIMITED

and between

**LIME STREET INSURANCE COMPANY LIMITED
(formerly Louisville Insurance Company Limited)**

and between

MUTUAL REINSURANCE COMPANY LIMITED

**and their respective
SCHEME CREDITORS
(as defined in the Restated Scheme)**

CLEAN VERSION OF THE RESTATED SCHEME

This Clean Version of the Restated Scheme incorporates the changes to the Original Scheme without underlining, deletions or italics. It is hoped that this less cluttered document will assist Scheme Creditors in their reading of the Restated Scheme.

Legal Disclaimer

This document is derived from, but not identical to the "Restated Scheme" at Schedule 1 to the Amending Scheme of Arrangement dated 5 December 2003 which was approved by the requisite majorities of the Scheme Creditors of each KWELM Company and sanctioned by the English and Bermudian Courts. Accordingly, in the event of any inconsistencies between this document and the Restated Scheme, the provisions of the latter shall prevail.

Neither the Scheme Companies, KMS nor any other of the Released Parties (as defined at clause 10.3 of this document) shall be liable in any way for any loss or damage caused by the reliance of any person on this document.

IN THE HIGH COURT OF JUSTICE
(ENGLAND)
Chancery Division
IN THE MATTERS of the companies
referred to below
and
IN THE MATTER of
THE COMPANIES ACT 1985

IN THE SUPREME COURT OF BERMUDA
IN THE MATTER of Mutual Reinsurance
Company Limited
and
IN THE MATTER of
THE COMPANIES ACT 1981

SCHEME OF ARRANGEMENT

**(pursuant to section 425 of the above-mentioned Companies Act 1985 and,
in addition, in relation to Mutual Reinsurance Company Limited only,
section 99 of the above-mentioned Companies Act 1981)**

between

KINGSCROFT INSURANCE COMPANY LIMITED

**(formerly Kraft Insurance Company Limited, Dart and Kraft Insurance
Company Limited and Dart Insurance Company Limited) and
(1) the Kingscroft Scheme Creditors other than Protected Scheme Creditors or
Excluded Scheme Creditors (all as defined in the Scheme) and
(2) the Kingscroft Protected Scheme Creditors**

and between

WALBROOK INSURANCE COMPANY LIMITED

**and (1) the Walbrook Scheme Creditors other than Protected Scheme Creditors or
Excluded Scheme Creditors (all as defined in the Scheme) and
(2) the Walbrook Protected Scheme Creditors**

and between

EL PASO INSURANCE COMPANY LIMITED

**and (1) the El Paso Scheme Creditors other than Protected Scheme Creditors or
Excluded Scheme Creditors (all as defined in the Scheme) and
(2) the El Paso Protected Scheme Creditors**

and between

LIME STREET INSURANCE COMPANY LIMITED

(formerly Louisville Insurance Company Limited)
and (1) the Lime Street Scheme Creditors other than Protected Scheme Creditors or
Excluded Scheme Creditors (all as defined in the Scheme) and
(2) the Lime Street Protected Scheme Creditors

and between

MUTUAL REINSURANCE COMPANY LIMITED

and (1) the Mutual Re Scheme Creditors other than Protected Scheme Creditors or
Excluded Scheme Creditors (all as defined in the Scheme) and
(2) the Mutual Re Protected Scheme Creditors

and to be binding on

The current legal and beneficial **SHAREHOLDERS** of each of such companies

and

The **EXCLUDED SCHEME CREDITORS** (as defined in the Scheme)

and

The **FINANCIAL SERVICES COMPENSATION SCHEME LIMITED**
(as successor to the Policyholders Protection Board)

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PART I

PRELIMINARY

1.1 Definitions

1.1.1 In the Scheme, unless the context otherwise requires or otherwise expressly provided for, the following expressions shall bear the meanings set opposite them:

"Accepted Protected Liability"	any liability of a Scheme Company to a Scheme Creditor if and when FSCS has agreed under Clause 9.6.1 that such liability would be a Protected Liability if it became an Established Scheme Liability in the normal course under Clause 2.6 and which, having been submitted as a Notified Scheme Claim before the Bar Date, does not become a Protected Liability before the date as at which the Scheme Actuary calculates the FSCS Amount in accordance with Clause 9.6.4;
"Adjusting Payment"	shall have the meaning given to such expression in Clause 3.3.1(b)(ii);
"Agreed Liability"	any Scheme Claim where liability and quantum have been agreed by or on behalf of the Scheme Administrators but which, for whatever reason including, but not limited to, the lack of complete details of the name and address of the Scheme Creditor concerned or the absence of any agreement in relation to set-off under Clause 2.5 has not, as at the Amending Scheme Effective Date, become an Established Scheme Liability under Clause 2.6;
"Amended Trust Deed"	the Trust Deed as amended with effect from the Amending Scheme Effective Date;
"Amending Scheme"	the Amending Scheme in respect of the Scheme Companies and their respective Scheme Creditors dated 5 December 2003 in the form in which it became effective;

"Amending Scheme Effective Date"	the date on which the Scheme (in this amended and restated form) shall become effective in relation to a Scheme Company;
"Amending Scheme Explanatory Statement"	the statement dated 5 December 2003 (and the appendices thereto) explaining the effect of the Amending Scheme, in compliance with section 426 of the English Companies Act and, in addition, in relation to Mutual Re only, section 100 of the Bermudian Companies Act;
"Bar Date"	11.59pm (Greenwich Mean Time) on such day falling 180 days after the Amending Scheme Effective Date (not counting that date) or if that day falls on a weekend or public holiday in England, the United States of America or Bermuda, 11.59pm (Greenwich Mean Time) on the first common working day thereafter or as extended pursuant to Clause 9.9.10;
"Bermudian Companies Act"	The Companies Act 1981 of Bermuda;
"Bermudian Court"	the Supreme Court of Bermuda;
"Board"	in relation to a Scheme Company, its board of directors from time to time;
"business day"	any day that is not a weekend or public holiday in England;
"Cash Assets"	in relation to each Scheme Company, the aggregate at any time of (a) any cash deposits of such Scheme Company and (b) those other assets of such Scheme Company at that time which are invested in accordance with the provisions of Clause 2.13 (excluding any investments in subsidiaries or investments made for the purposes of effecting the run-off of such Scheme Company's business);
"Claim Form"	a claim form as is referred to in Clause 9.4.3 and in substantively the same form as appears at Appendix 2 to the Scheme;
"Claim Form Guidance Notes"	the Guidance Notes accompanying the Claim Form in substantially the same

	form as appears at Appendix 2 to the Scheme;
"Co-Insurer"	any insurer or reinsurer (apart from any Scheme Company) co-insuring with a Scheme Company;
"Common Liability"	any liability (including, but not limited to, any liability for compensatory damage, consequential damage, contractual damage, extra-contractual damage and damage provided for under statute or other law) arising under or otherwise in connection with a contract (whether of insurance, reinsurance, retrocession or otherwise) made between a Scheme Company, a Scheme Creditor and one or more Co-Insurers (whether by way of a single multi-lateral contract or by way of a number of contracts, on substantially identical terms, made variously between the Scheme Company, the Scheme Creditor and one or more Co-Insurers), such that the Scheme Company's and the Co-Insurers' rights and liabilities under the said contract relate to the same layer of cover (where the contract in question is of insurance, reinsurance or retrocession and where the risk giving rise to the liability is insured in layers) and are substantially identical, whether they are joint, several or differing in quantum;
"Courts"	the English Court and the Bermudian Court;
"Creditors Committee"	the committee established pursuant to Clause 6.1;
"Default judgment"	any order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is obtained or entered by virtue only of a Co-Insurer having omitted to take a procedural step or steps in relation to a Proceeding brought by a Scheme Creditor, including any such order, judgment, decision or award which has been obtained by virtue of the Co-Insurer having failed:

	(a) to acknowledge the commencement and/or service of the process whereby the Scheme Creditor commenced such Proceeding;
	(b) to serve a defence, answer or other response to the Scheme Creditor's claim; or
	(c) to comply with any order or direction of the court or tribunal which was interlocutory, procedural or intermediate in nature, or with any procedural rules of the court or tribunal;
"Departing Company"	shall have the meaning given to such expression in Clause 10.1.2;
"Designated Representative"	shall have the meaning given to such expression in Clause 6.2.2(c);
"Disputed Matters"	shall have the meaning given to such expression in Clause 9.4.18;
"Drivers"	CR Driver & Co Limited (in liquidation) (incorporated in England under the Companies Act 1948 with registered number 687207);
"Effective Date"	the date on which copies of the orders sanctioning the Original Scheme were delivered to the registrar of companies in England and Wales and the registrar of companies in Bermuda for registration, being 15 December 1993;
"El Paso"	El Paso Insurance Company Limited (incorporated in England under the Companies Acts 1948 to 1976 with registered number 1324414);
"El Paso Scheme Creditors"	Scheme Creditors of El Paso in respect of Scheme Claims;
"English Companies Act"	the Companies Act 1985 of England, Scotland and Wales;
"English Court"	the High Court of Justice in England;

"Established Scheme Liability"	a liability of a Scheme Company which has become an Established Scheme Liability whether under the Original Scheme or this Scheme in accordance with Clause 2.6 or under Part 9 of this Scheme;
"Estimation Methodology"	the method of estimation of Agreed Liabilities, Outstanding Losses, IBNR, Outwards Unpaid Losses and Outwards Reserves and IBNR described at Appendix 1 to the Scheme and applied in accordance with Part 9. For the avoidance of doubt, the provisions of this Scheme shall prevail in the event of any conflict between such provisions and Appendix 1;
"Excluded Scheme Creditors"	creditors of Scheme Companies in respect of Inter-company Claims;
"Explanatory Statement"	the statement dated 8 September 1993 (and the appendices thereto) explaining the effect of the Original Scheme, in compliance with section 426 of the English Companies Act and, in addition, in relation to Mutual Re only, section 100 of the Bermudian Companies Act;
"Final Settlement"	a binding agreement, evidenced in writing, which of itself determines the obligations of a Co-Insurer under the contract or contracts in question (either as to liability or as to quantum);
"FSCS"	the Financial Services Compensation Scheme Limited (company number 03943048), established pursuant to Part XV of FSMA (being the current statutory successor to the Policyholders Protection Board as defined in the Original Scheme) and to include any statutory successor of it;
"FSCS Amount"	the amount calculated by the Scheme Actuary in accordance with Clauses 9.6.4 and 9.6.5;
"FSCS Director"	in relation to each Board, the director (if any) nominated by FSCS pursuant to Clause 7.1.1(a);

"FSMA"	the Financial Services and Markets Act 2000 and, if the context so permits, any applicable rules of FSCS made pursuant to Section 213 of FSMA;
"IBNR"	a Scheme Claim in respect of a liability which, at the Amending Scheme Effective Date, has been incurred but which has not at that date been reported by the relevant Scheme Creditor;
"Insolvency Act"	the Insolvency Act 1986 of England, Scotland and Wales;
"Inter-company Claims"	all Scheme Claims between Scheme Companies which are outstanding on the Record Date or which arise out of obligations incurred by Scheme Companies prior to the Record Date;
"Kingscroft"	Kingscroft Insurance Company Limited (incorporated in England under the Companies Acts 1948 to 1967 with registered number 1277975);
"Kingscroft Scheme Creditors"	Scheme Creditors of Kingscroft in respect of Scheme Claims;
"KMS"	KWELM Management Services Limited (incorporated in England under the Companies Act 1948 to 1976 with registered number 2766300) whose registered office is at John Stow House, 18 Bevis Marks, London, EC3A 7JB, retained by the Scheme Administrators in respect of the run-off of the business of each of the Scheme Companies and to include successor organisations howsoever retained to conduct such run-off;
"liability"	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, Bermuda or in any other jurisdiction, or in any other manner whatsoever, but such expression does not include any

liability which is barred by statute or otherwise unenforceable; and, 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;

"Lime Street"

Lime Street Insurance Company Limited (incorporated in England under the Companies Acts 1948 to 1976 with registered number 1449248);

"Lime Street Scheme Creditors"

Scheme Creditors of Lime Street in respect of Scheme Claims;

"Liquidation Event"

in the case of Kingscroft, Walbrook, El Paso or Lime Street, either a compulsory winding up, provisional liquidation or administration order of the English Court (including an out of court administration) or the commencement of a creditors' voluntary liquidation pursuant to the Insolvency Act or (in the case of Mutual Re) a compulsory winding up or provisional liquidation order of either of the Courts, an administration order of the English Court (including an out of court administration) or the commencement of a creditors' voluntary liquidation;

"LUI"

London United Investments PLC (in administration) (incorporated in England under the Companies Act 1929 with registered number 322537);

"Mutual Re"

Mutual Reinsurance Company Limited (incorporated in Bermuda under the Companies (Incorporation by Registration) Act 1970 with registered number 03071 on 7 December 1972 and registered in England as an overseas company under the Companies Acts 1948 to 1967 with registered number F7776);

"Mutual Re Scheme Creditors"

Scheme Creditors of Mutual Re in respect of Scheme Claims;

"Net Statement"	a statement produced in accordance with Clauses 9.4.37 to 9.4.42;
"Nominated Representative"	shall have the meaning given to such expression in Clause 6.2.3;
"Non Insurance/Reinsurance Scheme Claim"	a Scheme Claim which arises otherwise than under a contract of insurance, reinsurance or retrocession or any claim for brokerage;
"Notified Scheme Claim"	a Scheme Claim which has been notified by a Scheme Creditor to the Scheme Administrators on a Claim Form in accordance with Clause 9.4.4 and, if appropriate, Clauses 9.4.6 and 9.4.11;
"Offset Scheme Creditor"	any person whose Net Statement calculated under Clauses 9.4.37 to 9.4.42 in respect of any Scheme Company shows under Clause 9.4.37(f) a sum which is or which falls to be treated as nil;
"Original Scheme"	the Scheme of Arrangement dated 8 September 1993, which became effective on 15 December 1993 and which governed Scheme Creditors' rights and obligations prior to the Amending Scheme Effective Date;
"Outstanding Loss"	any liability which is a Scheme Claim and which, at the Amending Scheme Effective Date, has been notified by a Scheme Creditor to the Scheme Administrators but which has not, at that date, become an Established Scheme Liability pursuant to Clause 2.6 and, for the avoidance of doubt, excluding any Agreed Liability;
"Outwards Reserves and IBNR"	any liability of a Scheme Creditor (as a reinsurer or retrocessionaire) to a Scheme Company under a contract of reinsurance or retrocession, the obligation in respect of which was in existence at the Record Date and which, as at the Amending Scheme Effective Date, was not in respect of Outwards Unpaid Losses;

"Outwards Reserves and IBNR Statement"

the statement referred to in Clause 9.4.14, together with any accompanying explanatory note;

"Outwards Unpaid Losses"

any liability of a Scheme Creditor (as reinsurer or retrocessionaire) to a Scheme Company under a contract of reinsurance or retrocession, the obligation in respect of which was in existence at the Record Date which, as at the Amending Scheme Effective Date, has been notified by the Scheme Administrators under the terms of the relevant agreement as due but, in respect of which, liability and/or quantum has not at that time been agreed by the Scheme Creditor, together with any interest thereon as may be allowed by law whensoever arising;

"Payment Percentage"

in relation to an Established Scheme Liability of a particular Scheme Company, the percentage of such Established Scheme Liability which is payable by such Scheme Company from time to time under the Scheme, as the same is from time to time set under Clause 3.2;

"Petition Date"

in relation to Kingscroft, El Paso, Lime Street and Mutual Re, 30 August 1990, being the date of presentation of the Winding-up Petitions in relation to such Scheme Companies and, in relation to Walbrook, 23 June 1992, being the date of presentation of the Winding-up Petition in relation to Walbrook;

"Policyholders Protection Act"

the Policyholders Protection Act 1975 of the United Kingdom as amended and in force on the Record Date;

"Preferential Claim"

any claim against a Scheme Company which would have been preferential under (in the case of Kingscroft, Walbrook, El Paso or Lime Street) section 386 of the Insolvency Act or under (in the case of Mutual Re) section 236 of the Bermudian Companies Act if that Scheme Company were being

wound up and the Provisional Liquidation Date were the relevant date for the purposes of section 387 of the Insolvency Act or, as applicable, section 236 of the Bermudian Companies Act;

"Pre-Scheme Costs"

all such costs, charges, expenses, disbursements and remuneration as are referred to in Clause 11.2.1;

"Proceedings"

any action or other legal proceeding (a) including, for the avoidance of doubt, (i) arbitration (insofar as the same is provided for under the terms of a contract giving rise to a Scheme Claim), and (ii) any judicial action or proceeding, but (b) excluding (i) arbitration (insofar as not provided for under the terms of a contract giving rise to a Scheme Claim) and (ii) any other dispute resolution procedure which does not involve submission to the courts;

"Protected Agreed Liability"

an Agreed Liability which, if it became an Established Scheme Liability under Clause 2.6 in the normal course, would be a Protected Liability;

"Protected IBNR"

IBNR which, if it became an Established Scheme Liability under Clause 2.6 in the normal course, would be a Protected Liability;

"Protected Liability"

any Established Scheme Liability of a Scheme Company in respect of which and to the extent to which FSCS would owe a duty under sections 6 to 8 of the Policyholders Protection Act if that Scheme Company were a "company in liquidation" and the Record Date were the "beginning of the liquidation", in each case within the meaning of the Policyholders Protection Act and references in those sections to the amount of any liability were references to the amount as established in the case of an Established Scheme Liability in accordance with Clause 2.6 of the Scheme (and, for the avoidance of doubt but without limitation, where such a duty would be owed under that Act in respect

of a liability towards a "private policyholder" or under the terms of a "United Kingdom policy", as those expressions are respectively defined in that Act, or a liability of some other description, only an Established Scheme Liability which is also such a liability shall be capable of qualifying as a Protected Liability) provided that for the avoidance of doubt, a Protected Liability shall not include any liability which has been assigned to FSCS pursuant to Clause 4.3 of this Scheme or the identical provision of the Original Scheme;

"Protected Outstanding Loss"

an Outstanding Loss which, if it became an Established Scheme Liability under Clause 2.6 in the normal course, would be a Protected Liability;

"Protected Percentage"

in relation to a Protected Liability, that percentage of such Protected Liability which FSCS would have a duty to pay under sections 6 to 8 of the Policyholders Protection Act;

"Protected Policyholder"

in relation to a Protected Liability, any Scheme Creditor to whom the relevant Scheme Company owes that Protected Liability and who, in addition, is eligible for protection under section 16(9) of the Policyholders Protection Act;

"Protected Scheme Claims"

those Scheme Claims of a Scheme Creditor (other than FSCS) which comprise Protected Liabilities, Protected Agreed Liabilities, Protected Outstanding Losses or Protected IBNR;

"Protected Scheme Creditor"

a Scheme Creditor in respect of a Protected Scheme Claim;

"Provisional Liquidation Date"

in relation to Kingscroft, El Paso, Lime Street and Mutual Re, 2 March 1992, being the date of the appointment in England of the Provisional Liquidators (other than Gareth Howard Hughes) of each of such Scheme Companies, and, in relation to Walbrook, 4 August 1992, being the date of the appointment in

	England of the Provisional Liquidators of Walbrook;
"Provisional Liquidators"	Ian Douglas Barker Bond, Christopher John Hughes and, in the case of Walbrook and Mutual Re only, Gareth Howard Hughes, in their capacity as joint provisional liquidators of each of such Scheme Companies;
"Record Date"	8 September 1993, being the date of the Original Scheme;
"Review Date"	the Effective Date and 31 December of each year (commencing on 31 December 1994) or such other date in relation to any Scheme Company as the Scheme Administrators may from time to time, in consultation with the Creditors Committee, in their absolute discretion decide;
"Scheme"	this restated scheme of arrangement in its present form subject to any modification, term or condition which the Courts may think fit to approve or impose in accordance with Clause 11.3.1;
"Scheme Actuary"	Mr Mark Allen as the initial Scheme Actuary or such other person or persons as may be appointed as a successor to the Scheme Actuary pursuant to Part 9;
"Scheme Adjudicator"	Mr Ivor Kiverstein, as the initial Scheme Adjudicator or such other person or persons as may be appointed as a successor or an alternate to a Scheme Adjudicator pursuant to Part 9;
"Scheme Administrators"	Ian Douglas Barker Bond and Christopher John Hughes or such other person or persons as may be appointed as a Scheme Administrator in accordance with the provisions of the Scheme;
"Scheme Claim"	any claim against a Scheme Company (not being a Preferential Claim and not being a claim in respect of Pre-Scheme Costs) in respect of a liability to which a

Scheme Company is subject at the Record Date or to which a Scheme Company may become subject after the Record Date by reason of an obligation incurred before that date; save that for the avoidance of doubt such a liability shall not be a Scheme Claim if, and to the extent that, after the Record Date, (a) whether by agreement with the Scheme Administrators (including policy buy-backs) or by Proceedings (which are not subject to any appeal) it has been agreed or determined (as the case may be) that the relevant Scheme Company is not or is no longer subject to such liability or (b)(i) any liability or purported liability or (ii) any Protected Liability (or purported Protected Liability) has been assigned, in the case of such liability or purported liability as is referred to in (b)(i) of this definition, to another person and in the case of such Protected Liability or purported Protected Liability, as is referred to in (b)(ii) of this definition, to FSCS pursuant to the Policyholders Protection Act under Part 4 of this Scheme or the identical Part of the Original Scheme, whereupon, in each case, the Scheme Creditor assigning such liability (or purported liability) or Protected Liability (or purported Protected Liability) (as the case may be) shall cease to be a Scheme Creditor in respect of and to the extent of such liability or purported liability or Protected Liability or purported Protected Liability (as the case may be) and, in substitution therefor, the person or FSCS (as the case may be) shall be treated as having a Scheme Claim in an equivalent amount;

"Scheme Companies"

Kingscroft, Walbrook, El Paso, Lime Street and Mutual Re or any two or more of them and "Scheme Company" shall mean any one of them;

"Scheme Conflicts Administrator"

Gareth Howard Hughes or such other person as may be appointed as a Scheme

Conflicts Administrator in accordance with the provisions of the Scheme;

"Scheme Costs"

all such costs, charges, expenses, disbursements and remuneration as are referred to in Clause 11.2.2;

"Scheme Creditors"

creditors of the Scheme Companies in respect of Scheme Claims (and such expression includes any Offset Scheme Creditors, any assignees (including FSCS) or other persons entitled to claim in succession to or in substitution for any such Scheme Creditor in respect of the same Scheme Claim).

For the avoidance of doubt a person shall not be a Scheme Creditor in respect of and to the extent of any liability or purported liability of a Scheme Company if (a) whether by agreement with the Scheme Administrators (including policy buy-backs) or by Proceedings (which are not subject to any appeal), it has been agreed or determined (as the case may be) that the relevant Scheme Company is not or is no longer subject to such liability or (b)(i) any liability or purported liability or (ii) any Protected Liability or purported Protected Liability has been assigned in the case of such liability or purported liability as is referred to in (b)(i) of this definition to another person and in the case of such Protected Liability or purported Protected Liability as is referred to in (b)(ii) of this definition to FSCS pursuant to the Policyholders Protection Act under Part 4 of the Scheme or the identical Part in the Original Scheme, whereupon in each case the Scheme Creditor assigning such liability (or purported liability) or Protected Liability (or purported Protected Liability) (as the case may be) shall cease to be a Scheme Creditor in respect of and to the extent of such assigned liability or purported liability or Protected Liability (or purported Protected Liability) (as the case may be)

at the time of such assignment and in substitution therefor the person or FSCS (as the case may be) shall be treated as having a Scheme Claim in an equivalent amount;

"sterling"

pounds sterling in the lawful currency of the United Kingdom for the time being, provided that in the event that any other unit of currency shall from time to time be the lawful currency of the United Kingdom, references in the Scheme to and to payments being made under the Scheme in "Pound Sterling" and "£" shall be deemed to refer to that currency at such rate of exchange from the Pound Sterling as may be specified in the legislation introducing the new unit of currency;

"Substantive Closure Distribution"

shall have the meaning given to such expression in Clause 9.8.2(a);

"Substantive Judgment"

in relation to a Common Liability, an order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is:

- (a) final and conclusive in relation to the merits of a Scheme Creditor's rights against a Co-Insurer under the contract or contracts in question, in that the tribunal has established certain facts as proved or as not in dispute, identified the relevant principles of law applicable to such facts and reached its decision by applying those principles to such facts, such that the Co-Insurer's obligations under the contract or contracts in question (either as to liability or as to quantum) have been determined;
- (b) not subject to any pending appeal or to any right of appeal; and
- (c) not a Default judgment;

"Supporting Information"

all relevant information and documentation (including the identity of

the Scheme Creditor concerned and the Scheme Creditor's own specific estimates of any liabilities) to be supplied to the Scheme Administrators in accordance with Part 9 in support of (i) Notified Scheme Claims and/or Outwards Unpaid Losses, as required by the Claim Form and the Claim Form Guidance Notes; and/or (ii) any amendment, alteration or addition to any Outwards Reserves and IBNR, as required by the Outwards Reserves and IBNR Statement and any accompanying explanatory note and in addition, the term "Supporting Information" will include any information supplied by the Scheme Administrators to a Scheme Creditor in support of the amounts of Outwards Reserves and IBNR which they state the Scheme Creditor owes a Scheme Company pursuant to Clause 9.4.14 for the purposes of agreeing those amounts under Clause 9.4.15; and/or (iii) any Protected Agreed Liability, Protected IBNR and/or Protected Outstanding Loss, in each case, as required by the Claim Form and the Claim Form Guidance Notes;

"Suspended Scheme Liability"

any Notified Scheme Claim which, pursuant to Clause 9.4.29 (and subject to Clauses 9.4.30 to 9.4.36), the Scheme Administrators have suspended from the procedure for determining and quantifying Notified Scheme Claims as provided for in Part 9;

"Trust Deed"

the deed executed by the Trustee, each Scheme Company, LUI and the joint administrators of LUI on 16 December 1993 and having effect from the Effective Date;

"Trustee"

The Law Debenture Trust Corporation p.l.c (incorporated in England under the Companies Acts 1948 to 1981 with registered number 1675231) or such other trustee for the time being under or by virtue of the Trust Deed;

"Ultimate Distribution"	shall have the meaning given to such expression in Clause 9.8.2(b);
"US dollars"	dollars in the lawful currency of the United States of America for the time being;
"Valuation Date"	31 December 2003;
"Walbrook"	Walbrook Insurance Company Limited (incorporated in England under the Companies Acts 1948 to 1967 with registered number 1044810);
"Walbrook Scheme Creditors"	Scheme Creditors of Walbrook in respect of Scheme Claims;
"Website"	in respect of each Scheme Company, the website at www.kwclm.com ; and
"Winding-up Petitions"	<p>(a) the petitions to wind up Kingscroft, El Paso, Lime Street and Mutual Re respectively numbered 007203K, 007213E, 007204L and 007202M of 1990 presented in the English Court on 30 August 1990 and which were dismissed on 15 December 1993,</p> <p>(b) the petition to wind up Walbrook numbered 006259W of 1992 presented in the English Court on 23 June 1992 and which was dismissed on 15 December 1993 and</p> <p>(c) the petition to wind up Mutual Re numbered 303 of 1990 presented in the Bermudian Court on 30 August 1990 and which was dismissed on 15 December 1993.</p>

1.1.2 Clause and Part headings and the index to the Scheme are inserted for convenience of reference only and shall be ignored in the interpretation of the Scheme.

1.1.3 In the Scheme, unless the context otherwise requires or otherwise expressly provided for:

- (a) references to Clauses and Parts are to be construed as references to the clauses and the parts respectively of the Scheme;

- (b) references to (or to any specified provision of) the Scheme shall be construed as references to the Scheme (or that provision) as in force for the time being and as modified in accordance with the terms of the Scheme;
- (c) words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- (d) except in relation to the definitions of "Protected Liability", "Protected Agreed Liability", "Protected Outstanding Loss", "Protected IBNR", "Protected Scheme Creditor" and "Protected Policyholder", references to a person shall be construed as including references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or any state agency;-
- (e) references to any enactment or other legislative provision shall be deemed to include references to such enactment as re-enacted, amended or extended; and
- (f) references in the Scheme to a firm or company (including KMS) shall include any predecessor or successor of that firm or company whether by merger, demerger, amalgamation or otherwise.

1.2 The Scheme Companies

1.2.1 Kingscroft

Kingscroft was incorporated in England on 21 September 1976 under the name Dart Insurance Company Limited. Its name was changed to Dart and Kraft Insurance Company Limited on 1 April 1982, to Kraft Insurance Company Limited on 27 November 1986 and to Kingscroft Insurance Company Limited on 4 November 1988. Its authorised share capital is £11,000,000, divided into 11,000,000 shares of £1 each, of which 9,200,000 have been issued and are fully paid and the remainder are unissued. With effect from the Effective Date, the Trustee became the registered holder of the 9,200,000 shares in issue in the capital of Kingscroft and, with effect from the Amending Scheme Effective Date, such shares will be held on trust pursuant to the terms of the Amended Trust Deed for LUI (subject to the provisions of the Scheme and the rights of the Kingscroft Scheme Creditors thereunder).

1.2.2 Walbrook

Walbrook was incorporated in England on 3 March 1972 under the name Walbrook Insurance Company Limited. Its authorised share capital is £60,000,000, divided into 60,000,000 shares of £1 each, of which 52,416,667 have been issued and are fully paid and the remainder are unissued. With effect from the Effective Date, the Trustee became the registered holder of the 52,416,667 shares in issue in the capital of Walbrook and, with effect from the Amending Scheme Effective Date, such shares will be held on trust pursuant to the terms of the Amended Trust Deed for LUI (subject to the provisions of the Scheme and the rights of the Walbrook Scheme Creditors thereunder).

1.2.3 El Paso

El Paso was incorporated in England on 5 August 1977 under the name El Paso Insurance Company Limited. Its authorised share capital is £10,000,000, divided into 10,000,000 shares of £1 each, of which 7,800,000 have been issued and are fully paid and the remainder are unissued. With effect from the Effective Date, the Trustee became the registered holder of the 7,800,000 shares in issue in the capital of El Paso and, with effect from the Amending Scheme Effective Date, such shares will be held on trust pursuant to the terms of the Amended Trust Deed for Walbrook (subject to the provisions of the Scheme and the rights of the El Paso Scheme Creditors thereunder).

1.2.4 Lime Street

Lime Street was incorporated in England on 19 September 1979 under the name Louisville Insurance Company Limited. Its name was changed to Lime Street Insurance Company Limited on 4 November 1988. Its authorised share capital is £10,000,000, divided into 10,000,000 shares of £1 each, of which 5,600,000 have been issued and are fully paid and the remainder are unissued. With effect from the Effective Date, the Trustee became the registered holder of the 5,600,000 shares in issue in the capital of Lime Street and, with effect from the Amending Scheme Effective Date, such shares will be held on trust pursuant to the terms of the Amended Trust Deed for LUI (subject to the provisions of the Scheme and the rights of the Lime Street Scheme Creditors thereunder).

1.2.5 Mutual Re

Mutual Re was incorporated in Bermuda on 7 December 1972 under the name Mutual Reinsurance Company Limited, and registered in England as an overseas company on 29 May 1973. Its authorised share capital is US\$11,500,000, divided into 11,500,000 shares of US\$1 each, all of which have been issued and are fully paid. With effect from 30 April 2003, the Trustee became the registered holder of the 11,500,000 shares in issue in the capital of Mutual Re (all of which, with effect from the Amending Scheme Effective Date, will be held on trust pursuant to the terms of the Amended Trust Deed for LUI subject to the provisions of the Scheme and the rights of the Mutual Re Scheme Creditors thereunder).

1.3 Inter-company Claims

Each of the Scheme Companies has agreed with each of the other Scheme Companies and the Scheme Administrators to appear by Counsel on the hearings of the petitions to sanction the Amending Scheme insofar as it relates to the other Scheme Companies and to the Inter-company Claims, to undertake to the Courts to be bound thereby, to execute or do, or procure to be executed or done, all such documents, acts or things as may be necessary or as the Courts may consider desirable to be executed or done by it or on its behalf for the purpose of giving effect to the Amending Scheme and, subject to the Amending Scheme becoming effective, to be bound thereby.

1.4 Parties other than the Scheme Companies and the Scheme Creditors

- 1.4.1 Each of the Trustee, FSCS and LUI has agreed with each of the Scheme Companies and the Scheme Administrators to appear by Counsel on the hearings of the petitions

to sanction the Amending Scheme, to undertake to the Courts to be bound thereby, to execute or do, or procure to be executed or done, all such documents, acts or things as may be necessary or as the Courts may consider desirable to be executed or done by it or on its behalf for the purpose of giving effect to the Amending Scheme and, subject to the Amending Scheme becoming effective, to be bound thereby. The agreement of The Law Debenture Trust Corporation p.l.c. as the proposed Trustee under the Amended Trust Deed is subject to no fact or matter arising prior to the Amending Scheme Effective Date which in its opinion would prevent it from acting as the Trustee under the Amended Trust Deed.

1.4.2 The Trustee carries on business as a trust corporation under the laws of England and Wales and has its principal office at 5th Floor, 100 Wood Street, London EC2V 7EX.

1.4.3 Each of Ian Douglas Barker Bond and Christopher John Hughes has given and has not withdrawn his consent to act as a Scheme Administrator from the Effective Date.

1.4.4 Gareth Howard Hughes has given and has not withdrawn his consent to act as the Scheme Conflicts Administrator from the Effective Date.

1.4.5 Each of the persons whose name is set out below has given and has not withdrawn its consent to serve as a member of the Creditors Committee from the Amending Scheme Effective Date:

TIG Insurance Company
Dow Corning Corporation
FOJP Service Corporation
The Hartford Insurance Group
The International Policyholders Association
Financial Services Compensation Scheme Limited
Transit Casualty Company (in Receivership)

1.4.6 Each of the persons whose name is set out below has given and has not withdrawn their consent to serve as a member of each Board from the Amending Scheme Effective Date:

Ian Douglas Barker Bond
William Frank Goodier
Nigel James Hamilton
Christopher John Hughes
Christopher Glenn Reynolds

and, in addition, in relation to Mutual Re only,
Dianna Penelope Kempe.

1.4.7 Mr Ivor Kiverstein has given and has not withdrawn his consent to act as the initial Scheme Adjudicator from the Amending Scheme Effective Date.

1.4.8 Mr Mark Allen has given and has not withdrawn his consent to act as the Scheme Actuary from the Amending Scheme Effective Date.

1.5 Purpose of the Scheme

1.5.1 The purpose of the Scheme is:

- (a) (subject to certain restrictions on the taking or continuing of any action or other legal proceedings against the Scheme Companies) to enable the liabilities of each Scheme Company in respect of Scheme Claims to be established and ascertained;
- (b) to provide for the payment of dividends by each Scheme Company to those of its creditors whose Scheme Claims have from time to time become established; whilst
- (c) providing for the retention by each Scheme Company of Cash Assets considered to be sufficient to enable the same dividends to be paid by that Scheme Company to those of its creditors whose Scheme Claims become established at a later date;
- (d) to provide a mechanism for closure of the Scheme by utilisation of a Bar Date for submission of claims together with an actuarial based estimation methodology, where appropriate, to evaluate and quantify liabilities notified under the Scheme owed by and to Scheme Companies in order to effect a Substantive Closure Distribution and one or more small Ultimate Distributions; and
- (e) to provide those persons involved in the preparation, implementation, administration and operation of the Original Scheme, the Amending Scheme and the Scheme with releases from any related liability.

1.5.2 FSCS (as statutory successor to the Policyholders Protection Board) has agreed to join in the Scheme and to make payments in accordance with the Scheme to Protected Policyholders.

PART 2

THE SCHEME

2.1 Application of the Scheme

The Scheme shall apply to all liabilities of the Scheme Companies in respect of Scheme Claims including all liabilities which have been established before or may be established after the Record Date in respect of obligations incurred before that date.

2.2 Stay of proceedings

2.2.1 Without prejudice to Clauses 2.2.2 and 2.2.3, no Scheme Creditor shall institute or continue any Proceedings or other judicial, quasi-judicial, administrative or regulatory process whatsoever against a Scheme Company to establish the existence or amount of a Scheme Claim unless the Scheme Creditor shall first have given to the Scheme Company concerned notice of such Scheme Claim in accordance with Clause 11.4, which notice shall include:

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

2.2.2 Subject to Clauses 2.2.1 and 2.2.8, no Scheme Creditor shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to this Clause 2.2.2), institute or continue any Proceedings or other judicial, quasi-judicial, administrative or regulatory process whatsoever against a Scheme Company to establish the existence or amount of a Scheme Claim in relation to which there is a Common Liability until the later of (A) the expiration of a period of six months after having given notice of its claim in the manner prescribed in Clause 2.2.1, and (B) the expiration of a period of six months after notice by the Scheme Creditor to the Scheme Company concerned in accordance with Clause 2.2.4 of the occurrence of any one or more of the following events:

- (a) a Substantive Judgment having been obtained in any Proceedings between the Scheme Creditor and a Co-Insurer in relation to the Common Liability giving rise to such Scheme Claim; or
- (b) such Scheme Creditor having entered into a Final Settlement or Settlements with a majority in value of the Co-Insurers in relation to the Common Liability giving rise to such Scheme Claim (a "majority in value" being calculated by comparing the aggregate total of all Co-Insurers' proportionate shares in relation to the relevant contract or contracts (but leaving out of

account those Co-Insurers against whom Proceedings have been stayed or restrained or have resulted in a Default judgment in the manner described in Clause 2.2.2(c)) with the aggregate of the proportionate shares of the Co-Insurers with whom such Scheme Creditor has entered into the Final Settlement or Settlements in question); or

- (c) all Proceedings between such Scheme Creditor and all Co-Insurers in relation to the same Common Liability giving rise to such Scheme Claim having:
 - (i) been stayed or restrained by operation of law (other than by virtue of an agreement between such Scheme Creditor and Co-Insurers or any of them); and/or
 - (ii) resulted in such Scheme Creditor entering or obtaining a Default Judgment;

as against all such Co-Insurers.

Upon the expiration of the later of the two six month periods referred to in this Clause 2.2.2, and provided that such expiration shall not fall after the Bar Date, a Scheme Creditor shall be entitled to institute or continue appropriate legal proceedings against a Scheme Company in relation to the Scheme Claim in question, save that the Scheme Creditor shall not be entitled to institute or continue such proceedings to establish the amount of its Scheme Claim unless:

- (A) the relevant Substantive Judgment or Final Settlement determined the quantum of the Co-Insurer's liability; or
- (B) the relevant Substantive Judgment or Final Settlement determined the Co-Insurer's liability and the Scheme Creditor can demonstrate, to the Scheme Administrators' reasonable satisfaction, that the quantum of the Co-Insurer's liability is not and will not be in dispute as between the Scheme Creditor and the Co-Insurer.

2.2.3 Subject to Clause 2.2.8, no Scheme Creditor in relation to whose Scheme Claim there is no Common Liability shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to this Clause 2.2.3), institute or continue any Proceedings or other judicial, quasi-judicial, administrative or regulatory process whatsoever against a Scheme Company to establish the existence or amount of such Scheme Claim until the expiration of a period of six months after having given notice of its claim in the manner prescribed in Clause 2.2.1 provided that such expiration does not fall after the Bar Date.

2.2.4 For the purposes of Clause 2.2.2 and subject to the Scheme Administrators' discretion conferred by Clause 2.2.5, notice shall take effect only upon delivery by the Scheme Creditor concerned to the Scheme Company concerned of;

- (a) in the case of notice of an event under Clause 2.2.2(a), either:

- (i) a legible copy of the Substantive Judgment, certified by the issuing tribunal; or
 - (ii) a legible copy of the Substantive Judgment, certified as accurate by such Scheme Creditor; or
 - (iii) a legible copy of the transcript of the Substantive Judgment, either certified by the tribunal which issued the judgment or certified as accurate by such Scheme Creditor; or
 - (iv) a written certification from such Scheme Creditor's lawyer or attorney as to the fact of the Substantive Judgment and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators;
- (b) in the case of notice of an event under Clause 2.2.2(b), a copy of the Final Settlement or Settlements, signed by or on behalf of all the parties thereto, certified as accurate by such Scheme Creditor, or, where no such document exists, such other documentary evidence as is available, certified as accurate by such Scheme Creditor, of the Final Settlement and its terms, together with legible copies of any orders, judgments, decisions or awards made by a court or tribunal in proceedings between such Scheme Creditor and the relevant Co-Insurers relating to the claim in question; and
- (c) in the case of notice of an event under Clause 2.2.2(c), either:
- (i) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified by the issuing tribunal; or
 - (ii) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified as accurate by such Scheme Creditor; or
 - (iii) (where applicable) a legible copy of the transcript of the relevant order, judgment, decision or award, either certified by the issuing tribunal or certified as accurate by such Scheme Creditor; or
 - (iv) a written certification from such Scheme Creditor's lawyer or attorney as to the fact of the stay, restraint or Default Judgment in question and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators.

The items set out in paragraphs (i) to (iv) of paragraphs (a) and (c) above are in order of priority, so that (subject to the Scheme Administrators' discretion conferred by Clause 2.2.5) the delivery to the Scheme Company concerned by the Scheme Creditor concerned of one of these items will suffice for the purposes of this Clause 2.2.4 only if none of the preceding items is available.

- 2.2.5 Notwithstanding the provisions of Clause 2.2.4, the Scheme Administrators shall have absolute discretion to acknowledge that any of the events referred to in Clause 2.2.2 has occurred, even if none of the items referred to in Clause 2.2.4 has been delivered to them, if they consider it reasonable to do so. In such a case, the six

month period referred to in Clause 2.2.2 shall be deemed to commence as at the date when the Scheme Administrators give such an acknowledgement in writing to the Scheme Creditor concerned, which acknowledgment, to be binding, must refer expressly to this Clause 2.2.5.

- 2.2.6 Subject to Clause 2.2.5, where a Substantive Judgment has been obtained as is referred to in Clause 2.2.2(a) or a Final Settlement has been entered into as is referred to in Clause 2.2.2(b) and following receipt of the documents and information referred to in Clauses 2.2.1 and 2.2.4, the Scheme Company concerned shall make all reasonable efforts to reach agreement with the Scheme Creditor concerned as to such Scheme Creditor's Scheme Claim on the basis of the Substantive Judgment or Final Settlement, provided that, in so doing, such Scheme Company will take into account:
- (a) the similarity of interests of such Scheme Company and Co-Insurer(s) party to the Substantive Judgment or Final Settlement;
 - (b) any material difference in the defences relied on by or claims made by the Co-Insurer(s) in the relevant Proceedings and the defences or claims which would or might be available to such Scheme Company in relation to such Scheme Claim; and
 - (c) the best interests of the Scheme Creditors of such Scheme Company generally.
- 2.2.7 If and to the extent that a Scheme Creditor obtains against a Scheme Company in relation to a Scheme Claim an order, judgment, decision or award of a court or tribunal in contravention of Clauses 2.2.1, 2.2.2, 2.2.3 or 2.2.9, such order, judgment, decision or award shall not give rise to an Established Scheme Liability in respect of such Scheme Claim and shall be disregarded when determining the liability of such Scheme Company in respect of such Scheme Claim.
- 2.2.8 Nothing in the Scheme shall preclude a Scheme Company from either:
- (a) commencing or continuing any Proceedings against a Scheme Creditor; or
 - (b) seeking to be joined into any subsisting Proceedings between a Scheme Creditor and a Co-Insurer as an additional party thereto.

Where a Scheme Company commences, continues or is joined into any Proceedings against a Scheme Creditor as aforesaid, and without prejudice to the Scheme Creditor's rights of set-off referred to in Clause 2.5 and the Scheme Creditor's right to argue that the Proceedings in question have been commenced in an inappropriate forum, nothing in the Scheme shall preclude such Scheme Creditor from asserting and prosecuting against such Scheme Company in those Proceedings (whether by way of claim or counterclaim) a Scheme Claim so long as:

- (i) 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

- (ii) such Scheme Claim does not require for its adjudication the presence of third parties over whom the court or tribunal in question cannot acquire jurisdiction.

For the purposes of this Clause 2.2.8, the Scheme Company shall not be deemed to be continuing any Proceedings which commenced prior to the Effective Date and in which such Scheme Company is not actively prosecuting its claims.

- 2.2.9 (a) Subject to Clauses 2.2.8, 2.2.9(c) and 2.3.1, notwithstanding anything to the contrary in the Scheme, after the Bar Date, but without prejudice to any rights under Clauses 2.4 and 2.5, no Scheme Creditor shall institute or continue any Proceedings (which for the purposes of this Clause 2.2.9 will include those matters referred to in (b)(i) and (ii) of the definition of "Proceedings" in Clause 1.1.1 and any suit, proceeding, demand, arbitration alternative dispute resolution, adjudication, mediation, seizure, distraint, forfeiture re-entry, execution or enforcement or judgment or any step taken for the purpose of creating or enforcing a lien) or other judicial, quasi-judicial, administrative or regulatory process whatsoever or wheresoever against or in respect of a Scheme Company or its assets to establish the existence, priority and/or amount of a Scheme Claim (which, for the avoidance of doubt, shall include any Notified Scheme Claim and whether or not in relation to a Common Liability) of such Scheme Creditor or for the purpose of obtaining or securing payment of any such Scheme Claim and/or any part thereof, except as expressly provided in Part 9.
- (b) No Scheme Creditor shall, in any event, initiate or take any steps to initiate a Liquidation Event in respect of a Scheme Company in any circumstance whatsoever.
- (c) Nothing in this Clause 2.2.9 shall affect the right of a Protected Policyholder to commence or continue any Proceedings against a Scheme Company to the extent and subject to the provisions set out in the other clauses of this Clause 2.2 for the purpose of determining the existence, amount and/or protected status of an Established Scheme Liability as a precondition to entitlement to claim compensation from FSCS under Clause 9.6.

2.3 Enforcement of Scheme Claims

- 2.3.1 Except to the extent that a Scheme Company has failed to perform any obligation to make a payment to a Scheme Creditor under the provisions of Part 3 and subject to the rights of Scheme Creditors under Clauses 2.2, 2.4 and 2.5, no Scheme Creditor shall be entitled to take any step or proceeding against a Scheme Company or its property (whether by way of demand, legal proceedings, execution of judgment, arbitration proceedings or otherwise howsoever) in any jurisdiction whatsoever for the purpose of enforcing payment of any Scheme Claim or any part thereof.
- 2.3.2 If any Scheme Creditor takes any such action as is prohibited by Clause 2.3.1 after the Effective Date it shall be treated as having received, on account of its Scheme Claim, an advance payment under Clause 3.3 equal to the amount or gross value of any money, property, benefit or advantage obtained by it at the expense of the relevant Scheme Company as the result of such action; and the extent, if any, to

which it is entitled to any payment under Clauses 3.3.1(a) or 3.3.1(b)(i) shall be reduced accordingly. For this purpose, the gross value of any such property, benefit or advantage shall be conclusively determined by the Scheme Administrators and, without limitation, may include such amount as the Scheme Administrators may consider to be appropriate by way of interest or costs, charges or expenses incurred by such Scheme Company as a consequence thereof.

2.4 Security, letters of credit and trusts

2.4.1 Nothing in the Scheme shall affect the right of any person to take any appropriate action to enforce:

- (a) any security over the property of a Scheme Company which could have been enforced if such Scheme Company were being wound up pursuant to the Winding-up Petition (or, in the case of Mutual Re, the Winding-up Petitions) which related to it and the order that such Scheme Company be wound up had been made on the Effective Date or which has been created after the Effective Date in accordance with Clause 2.11.3; or
- (b) any letter of credit or trust issued or created (expressly, by implication or by operation of law) in respect of a Scheme Company and of which he is a beneficiary, if such letter of credit or trust was issued or created before the Record Date or has been issued or created after the Effective Date in accordance with Clause 2.11.3.

2.4.2 Nothing in the Scheme shall affect the right of any Scheme Company against any person in respect of any wrongful drawdown or enforcement of any letter of credit or trust issued or created in respect of that Scheme Company.

2.5 Set-off

2.5.1 Subject to Clause 2.5.2, a Scheme Creditor which is under a liability to a Scheme Company may in relation to that Scheme Company rely on any set-off or cross claim upon which it could have relied if such Scheme Company were being wound up pursuant to the Winding-up Petition (or, in the case of Mutual Re, the Winding-up Petitions) which related to it and the order that such Scheme Company be wound up had been made on the Effective Date.

2.5.2 For the avoidance of doubt:

- (a) no Scheme Claim against a Scheme Company which has been assigned to a person after the Effective Date or which was assigned to him prior to that date but after it had notice of the Winding-up Petition (or, in the case of Mutual Re, either of the Winding-up Petitions) which related to that Scheme Company may be applied in extinguishing or reducing any liability of that person to the Scheme Company concerned;
- (b) no liability of a Scheme Creditor to a Scheme Company which arises out of an obligation incurred by such Scheme Creditor after the Effective Date may be extinguished or reduced by any Scheme Claim which such Scheme Creditor has against the Scheme Company concerned; and

- (c) a Scheme Company may, in relation to a Scheme Claim, also rely on any set-off or cross claim upon which it could have relied in any winding up as referred to in Clause 2.5.1.

2.5.3 When quantifying the amount of a Scheme Creditor's Established Scheme Liabilities (but not otherwise), such Established Scheme Liabilities shall be reduced or eliminated by set-off of the amount agreed and/or determined in accordance with Part 9 of any contingent and/or prospective liabilities of the Scheme Creditor to the relevant Scheme Company.

2.6 Established Scheme Liabilities

2.6.1 Subject to Clauses 2.2, 2.3, 2.6.2, 2.7 and 2.12.1(a)(ii), a liability of a Scheme Company in respect of a Scheme Claim shall be an Established Scheme Liability, (A) when there has been established (whether (i) by agreement or (ii) by Proceedings which are not subject to any appeal) in relation thereto a present obligation of the Scheme Company concerned to pay an ascertained sum of money and/or (B) when a Scheme Creditor's Established Scheme Liability has been calculated in accordance with Part 9, in either such case after account has been taken (by agreement or by Proceedings or under Part 9 as aforesaid) of:

- (a) any security over the property of that Scheme Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with Clause 2.4.1(a);
- (b) any letter of credit or trust issued or created in respect of that Scheme Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with Clause 2.4.1(b); and
- (c) any set-off or cross claim which may be taken into account in accordance with Clause 2.5.

2.6.2 For the purposes of the Scheme, the amount of an Established Scheme Liability shall be the amount at which it was established and/or calculated in accordance with Clause 2.6.1, notwithstanding any payment which has been made (or is treated as having been made) under the Scheme.

2.7 Interest

For the purpose of paying or providing for payments under the Scheme, there shall not be included as part of an Established Scheme Liability (save as is provided for in Clause 3.3.3) any interest except interest (hereinafter called "admissible interest") to which a Scheme Creditor is entitled by reason of contract, judgment against the Scheme Company concerned, decree or otherwise for a period or periods ending on the Record Date. No payment shall be made under the Scheme in respect of any part of a Scheme Claim which represents interest which is not admissible interest.

2.8 Payment of Preferential Claims

As soon as practicable after the Effective Date each Scheme Company shall pay all debts due from it in respect of Preferential Claims but nothing herein shall oblige any

Scheme Company to pay any such debt at any time before the date on which such debt would, apart from the Scheme, otherwise have become due and payable.

2.9 Currency of payment

- 2.9.1 Any amount payable to a Scheme Creditor under the Scheme in respect of an Established Scheme Liability owed to such Scheme Creditor (whether by a Scheme Company under Part 3 or, without prejudice to the provisions of Clause 4.2.3, by FSCS under Part 4) shall be paid in the currency in which such Established Scheme Liability was incurred (or where the relevant insurance or reinsurance contract allows such Scheme Creditor to elect to make a claim or claims in any other currency, and any such election is made in accordance with the terms of such contract (but not after an amount in respect of such Established Scheme Liability has already been paid under the Scheme), in that currency).
- 2.9.2 In determining any set-off or cross claim in relation to a Scheme Claim, where the set-off or cross claim is expressed in a currency other than that of the relevant Scheme Claim, the set-off or cross claim shall, in the absence of agreement otherwise between the Scheme Creditor and the Scheme Company concerned, be converted into the currency of the relevant Scheme Claim at the rate of exchange specified in the insurance or reinsurance contract to which the Scheme Claim relates or, if there is no such rate specified, the rate of exchange published in the Financial Times for the purchase of such currency at close of business (London time) on the date upon which the Scheme Administrators accept that the set-off or cross claim is available to the relevant Scheme Creditor or the set-off or cross claim is otherwise determined, or, if no such rate is published in the Financial Times in respect of that currency on that date, the mid-market rate for that currency on such date quoted by Lloyds Bank Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators.

2.10 Method of payment

- 2.10.1 Payments to a Scheme Creditor under the Scheme may be made, in the absolute discretion of the Scheme Administrators or, in the case of payments to be made by FSCS, of FSCS:
- (a) by cheque in favour of the Scheme Creditor concerned or as such Scheme Creditor may direct and sent through the post at the risk of such Scheme Creditor to the last known address of such Scheme Creditor or to such other address as such Scheme Creditor may from time to time notify to a Scheme Company (or, as the case may be, FSCS);
 - (b) by telegraphic transfer to such bank account as the Scheme Creditor concerned may from time to time notify to a Scheme Company (or, as the case may be, FSCS); or
 - (c) in such other manner as the Scheme Administrators or, as the case may be, FSCS may from time to time determine.

The cost of using any such payment method in a particular case shall be an expense of the Scheme Creditor concerned.

- 2.10.2 Payment under the Scheme shall be deemed to have been made on the day that the cheque is posted or telegraphic transfer instruction given to the relevant bank (as the case may be). Payment of any such cheque by the banker on whom it is drawn shall be satisfaction of the moneys in respect of which it was drawn and receipt of the amount of such telegraphic transfer into such account shall be satisfaction of the moneys in respect of which it was paid.
- 2.10.3 The Scheme Administrators may determine that any payment under the Scheme (when aggregated with any amounts to be paid to the same Scheme Creditor under Part 4) of less than a certain amount (not being greater than £50 or its equivalent in any other currency from time to time or such greater amount as the Scheme Administrators may reasonably determine from time to time (the "de minimis amount")) shall not be sent to a Scheme Creditor because of the costs involved in making and/or receiving such payment, in which case any such amount shall be retained for the benefit of such Scheme Creditor, such Scheme Creditor shall be notified by the relevant Scheme Company of any such retention and such amount shall be paid to such Scheme Creditor upon the earlier, of demand made by that Scheme Creditor or such time as the aggregate of sums owed to such Scheme Creditor under the Scheme exceeds the de minimis amount.

2.11 Carrying on of insurance business

2.11.1 No Scheme Company shall:

- (a) enter into any further, or renew, replace or extend any existing contracts of insurance or reinsurance or vary the same in a manner which would increase the total amount of any liability of that Scheme Company to any person under such a contract except:
 - (i) contracts of insurance protecting the Scheme Company or its directors, officers, employees or agents including the Released Parties under Clause 10.3 against risks incurred in the run-off or closure of the Scheme Company's business; and
 - (ii) contracts of reinsurance in relation to liabilities of the Scheme Company arising out of obligations incurred by the Scheme Company concerned prior to the Record Date; nor
- (b) carry on any other business except in connection with the carrying out of the Scheme and all other matters which are incidental thereto; nor
- (c) without prejudice to Clause 2.11.3, create or cause or permit to be created any trust of or in relation to any of its assets (including, without limitation, any cash deposit) or appropriate or set aside any asset to meet a liability of such Scheme Company (otherwise than in accordance with Clause 2.10.3 or Clauses 3.2.4 and 3.2.5 or Clause 10.3.2).

- 2.11.2 A Scheme Company may, after consultation with FSCS, enter into, vary or terminate arrangements with an agent for the provision of such services to such Scheme Company as it may require for the run-off of its existing insurance business (including agreeing and adjusting claims under any insurance contracts).

2.11.3 If the Scheme Administrators consider that to do so would be in the best interests of the Scheme Creditors of a Scheme Company, such Scheme Company may arrange for the issue or creation of new letters of credit, trusts, bonds or other instruments or security over any of its assets:

- (a) to replace existing letters of credit or trusts;
- (b) to secure liabilities incurred after the Record Date; or
- (c) to provide security for the purposes of any Proceedings in relation to any liabilities of such Scheme Company;

but not otherwise and such Scheme Company may renew or permit to be renewed any existing letter of credit.

2.12 Commutations, settlements and other agreements

2.12.1 Subject to Clause 2.12.2, if the Scheme Administrators consider that to do so would be in the best interests of the Scheme Creditors (excluding in the case of contractual arrangements entered into pursuant to paragraph (a) below, the Scheme Creditor with whom such contractual arrangements are made) of a Scheme Company, such Scheme Company may enter into contractual arrangements:

- (a) with a Scheme Creditor under which:
 - (i) all or part of the liability (which may include, without limitation, a liability to provide or fund the costs of that Scheme Creditor's defence) of that Scheme Company to that Scheme Creditor is discharged in full in consideration of a cash payment made by that Scheme Company; or
 - (ii) all or part of the liability of that Scheme Company to that Scheme Creditor becomes an Established Scheme Liability otherwise than as a result of an obligation to pay an ascertained sum of money being established in accordance with Clause 2.6.1; or
- (b) with any of its reinsurers for the discharge of any of such reinsurer's liabilities to such Scheme Company under reinsurance contracts in consideration for a cash payment to the Scheme Company concerned.

2.12.2 No Scheme Company may enter into a contractual arrangement of the nature described in Clause 2.12.1 (a) unless either:

- (a) FSCS has consented in writing to such arrangement; or,
- (b) the Scheme Creditor concerned has confirmed, in a legally binding form satisfactory to FSCS, that he is not a Protected Policyholder in relation to the liability concerned or that he waives any rights which he may have against FSCS in relation to that liability and agrees to the discharge of the liability.

- 2.12.3 Without prejudice to Clauses 2.12.1 and 2.12.2, at any time prior to the Bar Date the Scheme Administrators shall consider any request made by a Scheme Creditor, supported by appropriate actuarial information, for a Scheme Company to enter into any such contractual arrangements as are referred to in Clause 2.12.1 with such Scheme Creditor.

2.13 Investment

Each Scheme Company shall have power to invest all or any of its assets in such manner as the Scheme Administrators consider prudent from time to time, with full power from time to time to vary or transpose any such investments into others of any nature hereby authorised.

2.14 Current Policies

- 2.14.1 In this Clause 2.14, "Current Policy" means a policy of insurance issued by a Scheme Company in respect of which the policy period has not expired on the Effective Date. For the avoidance of doubt, any "extended discovery" or "extended claims reporting" period shall not count as part of the policy period.
- 2.14.2 Notwithstanding any other provision of the Scheme, the liability of a Scheme Company under the Scheme in relation to that part of the policy period of a Current Policy which has not expired on the Effective Date shall be calculated as if a winding-up order had been made in relation to that Scheme Company on the Effective Date and, for the avoidance of doubt, (a) any claim in respect of such liability shall be a Scheme Claim, and (b) any Established Scheme Liability in respect of such a liability shall not give rise to a Protected Liability.

PART 3

PAYMENTS TO SCHEME CREDITORS

3.1 Application of assets of the Scheme Companies

On and from the Amending Scheme Effective Date the assets of each Scheme Company shall be applied for the benefit of its Scheme Creditors in accordance with the provisions of the Scheme (as restated).

3.2 Computation of the Payment Percentages

3.2.1 Subject as hereinafter provided in this Part 3, the Scheme Administrators shall from time to time in relation to each Scheme Company:

- (a) set the Payment Percentage in relation to that Scheme Company; and
- (b) revise a Payment Percentage previously set in relation to that Scheme Company by setting a new Payment Percentage of a greater or lesser amount.

3.2.2 As soon as practicable after each Review Date before an initial Payment Percentage has been set in relation to a Scheme Company the Scheme Administrators shall consider, in the light of Clauses 3.2.4, 3.2.5 and 3.2.6, whether an initial Payment Percentage should be set in relation to that Scheme Company.

3.2.3 As soon as practicable after each Review Date after the initial Payment Percentage has been set in relation to a Scheme Company the Scheme Administrators shall review the Payment Percentage in relation to that Scheme Company and consider, in the light of Clauses 3.2.4, 3.2.5 and 3.2.6, whether it should be revised.

3.2.4 The Scheme Administrators shall not set a Payment Percentage in relation to a Scheme Company unless they consider, on the basis of the information and advice referred to in Clause 3.2.8, that after:

- (a) that Scheme Company has (by reference to a Payment Percentage at that rate) complied with the provisions of Clause 3.3 in relation to all Established Scheme Liabilities owed by it as at the Review Date concerned; and
- (b) subject to Clause 3.2.5, such reserves have been created by such Scheme Company as they consider to be prudent to enable such Scheme Company to meet its liabilities for Pre-Scheme Costs, Preferential Claims and Scheme Costs as and when they fall due;

such Scheme Company will retain Cash Assets of an amount which the Scheme Administrators consider sufficient to enable that Scheme Company to comply with the provisions of Clause 3.3 (by reference to a Payment Percentage at that rate) in relation to all liabilities of that Scheme Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned.

- 3.2.5 In considering whether sufficient reserves have been created in accordance with Clause 3.2.4(b), the Scheme Administrators shall be entitled to take into account:
- (a) all assets of the Scheme Company concerned including, without limitation, its rights against reinsurers and retrocessionaires whether actual, prospective or contingent (and the prospects of actually successfully enforcing such rights); and
 - (b) the prospect of future income, including income derived from Cash Assets retained in accordance with Clause 3.2.4.
- 3.2.6 Subject to Clause 3.2.4, for the purposes of Clause 3.2.2 or Clause 3.2.3, the Payment Percentage, if set, in relation to a Scheme Company shall be set at, or increased to, such rate as the Scheme Administrators consider will ensure that all the Cash Assets of that Scheme Company remaining after:
- (a) such Scheme Company has retained Cash Assets of an amount which the Scheme Administrators consider sufficient to enable it to comply with the provisions of Clause 3.3 (by reference to a Payment Percentage at that rate) in relation to all liabilities of that Scheme Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned; and
 - (b) the creation of the reserves referred to in Clause 3.2.4 (b);
- are distributed proportionately in respect of all the Established Scheme Liabilities owed by that Scheme Company as at the Review Date concerned.
- 3.2.7 If on considering the current Payment Percentage in relation to a Scheme Company pursuant to Clause 3.2.3 the Scheme Administrators shall consider that there are not sufficient Cash Assets for such Payment Percentage to be set at that level and for the provisions of Clause 3.2.4 to be complied with, they shall reduce such Payment Percentage to such level as they consider appropriate to comply with the provisions of Clause 3.2.6 but provided that the provisions of Clause 3.2.4 are not infringed.
- 3.2.8 For the purpose of setting the Payment Percentage in relation to each Scheme Company as at a particular Review Date the Scheme Administrators shall obtain and consider such financial and/or actuarial information and advice as the Scheme Administrators, following consultation with the Creditors Committee, shall consider appropriate.
- 3.2.9 If the Scheme Administrators conclude at any time from the information available to them concerning the financial position of any Scheme Company that the then current Payment Percentage in relation to that Scheme Company would be:
- (a) decreased by one percentage point or more; or
 - (b) increased by five percentage points or more;

if it were to be set by reference to the amount of the Cash Assets and the liabilities of that Scheme Company at that time, the Scheme Administrators shall, in relation to such Scheme Company, set a revised Payment Percentage in accordance with the provisions of Clauses 3.2.4, 3.2.5, 3.2.6 and 3.2.8 by reference to the amount of such Cash Assets and liabilities at that time except that Clauses 3.2.4, 3.2.6 and 3.2.8 shall be applied as though references to the Review Date concerned were references to such date as the Scheme Administrators may select for the purpose.

3.3 Payments to Scheme Creditors

3.3.1 In respect of each Established Scheme Liability of a Scheme Company, that Scheme Company shall, subject to Clauses 2.3.2 and 3.3.2:

- (a) as soon as reasonably practicable, but in any event within ninety days following the date on which it becomes an Established Scheme Liability or on which the relevant initial Payment Percentage has been set (whichever is the later), pay to the Scheme Creditor concerned an amount equal to the then current Payment Percentage of such Established Scheme Liability;
- (b) as soon as reasonably practicable, but in any event within ninety days following an increase in the Payment Percentage under Clause 3.2, pay to the Scheme Creditor concerned (whether or not the same person who received payment under Clause 3.3.1(a)):
 - (i) a further amount equal to the difference between (A) the Payment Percentage (as increased) of such Established Scheme Liability and (B) the amount of such Established Scheme Liability which has previously been discharged by such Scheme Company or is treated as having been discharged under Clause 2.3.2 but excluding for this purpose any previous Adjusting Payments (as defined in Clause 3.3.1(b)(ii)); and
 - (ii) save as provided in Clause 9.8.2(a) an "Adjusting Payment" calculated by reference to a notional rate of interest applied to a notional principal amount equivalent to the further sum paid pursuant to Clause 3.3.1(b)(i) for the period from the first date on which the relevant Scheme Creditor received payment under Clause 3.3.1(a) in respect of such Established Scheme Liability (or, if earlier, the later of the dates falling (A) ninety days after the date on which such Scheme Claim became an Established Scheme Liability and (B) ninety days after the date on which a relevant Payment Percentage is first set) until the date of payment of such increased amount, and assuming such notional rate as the Scheme Administrators may in their absolute discretion determine from time to time for this purpose (taking into account, inter alia, the currency in which such Established Scheme Liability is payable and the currencies in which the assets of the Scheme Company concerned are held).

3.3.2 No Scheme Company shall be liable to make any payment to a Scheme Creditor under Clause 3.3.1 (b) in respect of any Established Scheme Liability to the extent that such payment would, when aggregated with all payments previously made to that

Scheme Creditor under Clauses 3.3.1 (a) and (b) in respect of that Established Scheme Liability, exceed the amount of that Established Scheme Liability of that Scheme Creditor.

- 3.3.3 Notwithstanding Clause 2.7, if all liabilities of a Scheme Company in respect of Scheme Claims shall have become Established Scheme Liabilities and been paid in full (including for this purpose only liabilities for interest, other than admissible interest referred to in Clause 2.7, which shall then become payable), such Scheme Company shall pay additional interest in respect of each such Established Scheme Liability in accordance with this Clause 3.3.3. The amount of such additional interest shall be an amount equal to fifteen per cent. per annum (or such higher rate of interest as may be from time to time prescribed pursuant to section 17 of the Judgments Act 1838) on the unpaid amount of such Established Scheme Liability from time to time (such additional interest to be calculated on a daily basis from the later of the Effective Date and the date on which the liability of the Scheme Company in respect of the relevant Scheme Claim became an Established Scheme Liability up to the date of payment of such additional interest), provided that the amount of such additional interest shall not exceed the surplus assets of such Scheme Company after adequate provision has been made for all other liabilities of such Scheme Company (otherwise than in respect of share capital) in existence at the time of payment of such additional interest (and so that the amount of additional interest payable in respect of each such Established Scheme Liability shall, if necessary, be reduced pro rata accordingly).
- 3.3.4 The Scheme Administrators shall suspend payments under Clause 3.3.1 in relation to a Scheme Company for such period (not exceeding six months) as they consider appropriate if information becomes available to them concerning the financial position of the Scheme Company as a result of which they require to consider whether or not to set a reduced Payment Percentage in relation to that Scheme Company in accordance with the provisions of Clause 3.2.9. As soon as practicable during, and in any event at the end of, such period the Scheme Administrators shall set a revised Payment Percentage in relation to that Scheme Company in accordance with the provisions of Clause 3.2.9 or conclude that the Payment Percentage in relation to that Scheme Company need not be revised, and thereupon the suspension of payments shall be lifted.

PART 4

PAYMENTS TO PROTECTED POLICYHOLDERS

4.1 Payments by FSCS

4.1.1 Subject to the following provisions of this Part 4 and Clause 9.6, FSCS shall pay to each Protected Policyholder in respect of each Protected Liability owed to him an amount equal to:

- (a) the Protected Percentage of that Protected Liability; less
- (b) the aggregate of:
 - (i) whichever is the greater of the Payment Percentage of that Protected Liability already paid, or treated as having been paid, by the Scheme Company concerned and the Payment Percentage of that Protected Liability in force at the time when FSCS makes its payment;
 - (ii) any Adjusting Payments already paid or payable at that time in respect of that Protected Liability under Clause 3.3.1(b)(ii);
 - (iii) the amount of any admissible interest paid or payable at that time pursuant to Clause 2.7, save to the extent that it arises under the terms of the relevant policy; and
 - (iv) the amount of any payment previously made by FSCS pursuant to section 15 of the Policyholders Protection Act or pursuant to Clause 4.1.3 in respect of that Protected Liability

4.1.2 Payment under Clause 4.1.1 in respect of a Protected Liability shall be made as soon as reasonably practicable following whichever is the later of

- (a) the date on which the Scheme Company concerned notifies FSCS that the liability is an Established Scheme Liability;
- (b) the date on which FSCS agrees or it is otherwise determined (so as to bind FSCS) that the Established Scheme Liability concerned is a Protected Liability;
- (c) if there is a Payment Percentage in respect of the Scheme Company concerned which is in excess of zero, the date of payment by that company of all amounts payable in respect of the Protected Liability under Clause 3.3.1; and
- (d) if there is no Payment Percentage in respect of the Scheme Company, or if the Payment Percentage in respect of that Scheme Company is zero, the date which is sixty days after the Effective Date;

and, if at any time payments in relation to such Scheme Company have been suspended under Clause 3.3.4, such payment under Clause 4.1.1 in respect of a Protected Liability (other than a Protected Liability in respect of which the period for payment by the relevant Scheme Company under Clause 3.3.1 shall have expired on or prior to the date on which payments are suspended without payment having been made by the Scheme Company) shall be made as soon as reasonably practicable following whichever is the later of the dates referred to in this Clause 4.1.2(a), (b) or (d) in relation to the liability in question.

- 4.1.3 At any time prior to its payment obligation in relation to a Protected Policyholder under Clause 4.1 having arisen, FSCS may elect to make a payment to or on behalf of a Protected Policyholder in respect of a Protected Liability on such terms (including terms requiring repayment and terms as to assignment of rights in respect of that Protected Liability) and on such conditions as FSCS thinks fit.

4.2 Limitations on FSCS's obligations

- 4.2.1 Any obligation of FSCS to a Protected Policyholder under this Part 4 in respect of a Protected Liability shall be subject to the same conditions, limitations, qualifications and other provisions (mutatis mutandis) contained or referred to in, or capable of being imposed under, sections 9, 13(1) to (3) and 14 of the Policyholders Protection Act as the duty which FSCS would have had under sections 6 to 8 of that Act in respect of that Protected Liability if the relevant Scheme Company were a company in liquidation (as defined in that Act).
- 4.2.2 Any obligation of FSCS to make a payment under Clause 4.1.1 in respect of a Protected Liability shall:
- (a) if there is a Payment Percentage in respect of the Scheme Company concerned which is in excess of zero and save during any period when payments in relation to such Scheme Company have been suspended under Clause 3.3.4 (other than where the Protected Liability in question is one in respect of which the period for payment by the relevant Scheme Company under Clause 3.3.1 shall have expired on or prior to the date on which payments are suspended without payment having been made by the Scheme Company), be conditional on payment by such Scheme Company of all amounts payable in respect of that Protected Liability under Clause 3.3.1 before the time when the payment by FSCS falls, or would but for this Clause 4.2.2 fall, to be made; and
 - (b) unless FSCS otherwise consents in any case be conditional on the Protected Policyholder being entitled and able to assign to FSCS all the rights and claims mentioned in Clause 4.3.1, as originally arising and free from any lien, charge, prior assignment, equity, encumbrance or other third party right.
- 4.2.3 (a) Any sum payable in respect of any Protected Liability by FSCS under Clause 4.1.1 in a currency other than sterling (the "Non-Sterling Amount") shall not exceed its Capped Sterling Equivalent.

- (b) For the purpose of Clause 4.2.3(a) the "Capped Sterling Equivalent" in relation to any Non-Sterling Amount means the amount in the currency in which such Non-Sterling Amount is denominated determined as follows: convert the equivalent of the Non-Sterling Amount in sterling at the Specified Exchange Rate into the currency in which the Non-Sterling Amount is denominated at the exchange rate prevailing on the business day (the "Relevant Date") falling immediately prior to the date of payment under Clause 4.1.1 in respect of the relevant Protected Liability.
- (c) For the purpose of this Clause 4.2.3:
 - (i) the Specified Exchange Rate shall be that rate which is twelve and a half per cent below the exchange rate into sterling for the currency in which the Non-Sterling Amount is denominated prevailing on the Effective Date;
 - (ii) the exchange rate prevailing on the Effective Date shall be taken, in relation to any currency, as the average daily exchange rate over the period from three months prior to the Effective Date until one month after the Effective Date taken from the rates published on each business day during that period in the Financial Times or, if on any such business day no such rate is published in the Financial Times in respect of that currency, as the mid-market rate for that currency on such date quoted by Lloyds Bank Plc, or if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and FSCS; and
 - (iii) the exchange rate prevailing on the Relevant Date shall be taken, in relation to any currency, as the exchange rate for that date published in the Financial Times or, if no such rate is published in the Financial Times for that date in respect of that currency, as the mid-market rate for that currency on the Relevant Date quoted by Lloyds Bank Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and FSCS.

4.2.4 (a) Subject to Clause 4.2.4(b), FSCS shall not be under any greater obligation under the Scheme in respect of any Scheme Creditor or liability of any Scheme Company than it would have had if that Scheme Company had been a company in liquidation (as defined in the Policyholders Protection Act), the beginning of the liquidation (as so defined) had been on the Record Date, and the payment to be made by FSCS in respect of each Protected Liability had been reduced by the amounts referred to in Clause 4.1.1(b); and no right of, or condition imposed by, FSCS under the Scheme in relation to any Scheme Creditor shall be limited or restricted by virtue of any obligation of FSCS to that Scheme Creditor under the Scheme being less than the obligation which FSCS would have had to it if the relevant Scheme Company had been a company in liquidation (as so defined).

- (b) For the purpose of Clause 4.2.4(a) it shall be assumed that:

- (i) the currency of payment by FSCS in respect of any liability (and where that currency is not sterling its rate of exchange) would be the same on a liquidation of the relevant Scheme Company as under the Scheme (including for these purposes the exchange rate limit set out in Clause 4.2.3); and
- (ii) the amount of any liability of a Scheme Company in liquidation would be as established in the case of an Established Scheme Liability in accordance with the Scheme.

4.2.5 For the avoidance of doubt FSCS shall not be liable in respect of any interest payable in relation to a Scheme Claim to the extent that it is payable in respect of any period after the Record Date.

4.2.6 FSCS shall not have an obligation to make a payment in respect of an Established Scheme Liability:

- (a) to any Scheme Company; or
- (b) if it appears to FSCS that such a payment would result in a benefit being conferred on either:
 - (i) any person who was a member of a Scheme Company at the Petition Date relating to that Scheme Company; or
 - (ii) any person who had any responsibility for or who may have profited from the circumstances giving rise to the financial difficulties of a Scheme Company;

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

4.3 Assignments to FSCS

4.3.1 Immediately upon any payment being made by FSCS to a Protected Policyholder pursuant to Clause 4.1 in respect of a Protected Liability, there shall automatically be assigned to FSCS absolutely, without any further act or document:

- (a) all rights of the Protected Policyholder in respect of that Protected Liability (including in respect of the debt or claim constituted by or arising out of or relating to that Protected Liability) under or in respect of the policy relating to that Protected Liability and the Scheme;
- (b) any rights and claims such Protected Policyholder may have in respect of payments made by him by way of premiums under the policy relating to that Protected Liability; and
- (c) any rights and claims such Protected Policyholder may have against any other persons in respect of any event giving rise to that Protected Liability (other than another insurer which has insured the Protected Policyholder in respect

of the same event, but without prejudice to the application of this Clause 4.3.1 in relation to any Protected Liability of another Scheme Company to which the event has also given rise) or by reference to or in connection with the policy relating to that Protected Liability, to the intent that the assignment in their entirety under this Clause 4.3.1 of rights and claims to which this Clause 4.3.1(c) refers will be by way of security for payment to FSCS of the amount of the Protected Liability, whether, in any such case, those rights or claims arise under or in respect of the policy relating to that Protected Liability, under or in respect of the Scheme, by virtue of any trust or legislation (primary or subordinate) or otherwise howsoever, and whatever the nature of those rights or claims. If, before making payment pursuant to Clause 4.1 in any particular case, FSCS in its absolute discretion determines that the terms of the assignment of rights and claims which would otherwise apply under Clause 4.3.1(c) should be varied in that case, then subject to the consent of the Protected Policyholder concerned to the variation, Clause 4.3.1(c) shall have effect as if those terms of assignment as so varied applied in that case. If any question arises as to the identification of any Protected Liability, and accordingly as to whether that liability is or is not the subject of an assignment to FSCS under this Clause 4.3.1, a certificate from FSCS that it has made a payment in respect of that liability shall be binding and conclusive on all persons for all purposes. Without prejudice to the provisions of Clause 4.3.5, FSCS shall provide to a Scheme Company such information relating to the date and amount of payments it makes to Protected Policyholders in respect of Protected Liabilities of that Scheme Company and relating to the form of any variation of the assignment of rights and claims provided for by this Clause 4.3.1 as such Scheme Company may from time to time reasonably request.

4.3.2 Following an assignment pursuant to Clause 4.3.1 and without prejudice to the generality of its terms, FSCS shall have a right to payment by the relevant Scheme Company, in accordance with the terms of the Scheme, of all sums subsequently due or payable in respect of the Protected Liability to which the assignment relates or in respect of any other of the rights and claims so assigned, whether those sums are due and payable under the Scheme or under or in respect of the policy to which the Protected Liability relates, and accordingly:

- (a) FSCS shall (subject to Clause 10.2) be admitted as a creditor in respect of such sums on any winding up of such Scheme Company; and
- (b) the receipt of FSCS shall constitute a valid discharge of such Scheme Company in respect of such sums;

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

4.3.3 Without prejudice to Clause 4.3.1, a Protected Policyholder to whom a payment is made pursuant to Clause 4.1 shall do such acts and things and execute such deeds and documents, and in particular such forms of assignment, transfer or assurance, as FSCS may from time to time request to vest in it fully and effectively all rights and claims of that Protected Policyholder against the relevant Scheme Company or other

persons under or in respect of the Protected Liability to which such payment relates, or to perfect or evidence the vesting in it of the same. Each Protected Policyholder hereby irrevocably and unconditionally appoints the Chairman of FSCS for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such acts and things and execute such deeds and documents as may be required to give effect to this Clause 4.3.3, if such Protected Policyholder fails to comply promptly with his obligations hereunder.

- 4.3.4 Without prejudice to Clause 4.3.1, any obligation of FSCS to make a payment to a Protected Policyholder under Clause 4.1 in respect of a Protected Liability shall, if FSCS so elects, be conditional on there first being assigned to it, in such form as it may request, all such rights and claims as are mentioned in Clause 4.3.1(a) to (c) (but as if the references there to Protected Policyholder or to Protected Liability were references to the Protected Policyholder or Protected Liability in respect of whom or which the election is made) or such of those rights and claims as FSCS may determine. Where any such obligation is so conditional, Clause 4.1.2 shall apply as if after Clause 4.1.2(d) there were added "; and (e) the date when the condition imposed under Clause 4.3.4 is satisfied;" and the word "and" were deleted from the end of Clause 4.1.2 (c), and the reference to the later of the dates referred to in Clause 4.1.2(a), (b) or (d) were deleted and replaced by a reference to the later of the dates referred to in Clause 4.1.2(a), (b), (d) or (e).
- 4.3.5 Clause 4.3.1 shall be deemed to constitute for all purposes express notice in writing to the relevant Scheme Company of all assignments effected pursuant to its provisions and relating to liabilities of such Scheme Company.
- 4.3.6 For the avoidance of doubt, rights and claims to which Clause 4.3.1 applies include all rights and claims which a Protected Policyholder may have in respect of a Protected Liability to any payment out of or interest in, or otherwise by virtue of, any such trust fund as is described in paragraph 27 of Part IV of the Explanatory Statement.

4.4 Information to be provided to FSCS

- 4.4.1 Whether before or after the termination of the Scheme and until the relevant Scheme Company is dissolved, each Scheme Company and the Scheme Administrators shall promptly provide FSCS with all such information in their respective possession or under their respective control or the control of their respective agents as FSCS may from time to time request in order to establish whether (or the extent to which) any Established Scheme Liability is, or any Scheme Claim may become, a Protected Liability or whether (or the extent to which) a Scheme Creditor is a Protected Policyholder or otherwise for the purpose of enabling or assisting FSCS to perform its obligations or exercise its rights under the Scheme or to carry out its functions or responsibilities under the Policyholders Protection Act as from time to time in force. Such Scheme Company or as the case may be the Scheme Administrators shall, so far as it or they are able, authorise and instruct any third party with any such information to disclose it to FSCS. FSCS shall pay the reasonable costs of such Scheme Company, the Scheme Administrators, their respective agents and such third parties in providing such information. A Scheme Company's and the Scheme Administrators' obligations set out in this Clause 4.4.1 shall not extend to any information which the

Scheme Company concerned or as the case may be the Scheme Administrators are under a legal duty not to disclose, but neither a Scheme Company nor the Scheme Administrators shall, without the prior written consent of FSCS, enter into any agreement or incur any obligation which precludes or restricts disclosure to FSCS of any such information as is reasonably capable of being the subject matter of a request under this Clause 4.4.1.

4.4.2 Subject to receiving reasonable notice in any case, each Scheme Company shall, for the purpose referred to in Clause 4.4.1, permit (and, so far as it is able, authorise and instruct its agents to permit) any person authorised by FSCS to have access to, and to be provided with copies of, all or any of the books and records of such Scheme Company and, in so far as they relate to such Scheme Company, of such agents, during normal business hours. Such obligation shall not extend to any such information which such Scheme Company or any such agent is under a legal duty not to disclose. FSCS shall pay the reasonable costs of providing such copies.

4.4.3 Without limitation to Clause 4.4.1, a Scheme Company shall, as soon as reasonably practicable after payment of any amount to a Scheme Creditor under Clause 3.3.1, give notice of such payment to FSCS to the extent required by FSCS in order to fulfil its obligations under the Scheme.

4.5 Other provisions applicable to FSCS

4.5.1 References in this Part 4 to FSCS paying or making payment of any sum include references to FSCS securing the payment of that sum; and references to the securing of payment in sections 9, 13 and 14 of the Policyholders Protection Act, as they apply by virtue of Clause 4.2.1 to the obligations of FSCS under this Part 4, shall be construed accordingly.

4.5.2 A payment by FSCS under the Scheme shall not operate to reduce or discharge any liability of any Scheme Company or any part of such liability.

4.5.3 Without prejudice to any other rights and remedies which FSCS may have, any person receiving a payment under Clauses 4.1.1 or 4.1.3 in respect of a liability who has knowingly provided false, misleading or incomplete information to FSCS in support of an application for that payment shall be bound on demand to repay to FSCS all such amounts as have been paid by FSCS in respect of that liability, together with interest at fifteen per cent. per annum (or such higher rate of interest as may be from time to time prescribed pursuant to section 17 of the Judgments Act 1838 (or such other rate as a court of competent jurisdiction may specify for the purpose of this Clause 4.5.3)) calculated on a daily basis from the date of payment to the date of repayment.

4.5.4 Where, in relation to any policy, FSCS would be required or entitled under the Policyholders Protection Act to make a payment to any person other than, or instead of, the policyholder, if the relevant Scheme Company were in liquidation, FSCS may similarly perform any obligation to make a payment under the Scheme in relation to that policy and references to a Protected Policyholder shall be construed accordingly.

4.5.5 The Scheme Companies shall use all reasonable endeavours to procure that any agent appointed by them to administer the run-off of the Scheme Companies' existing

insurance business will, at or before the time of its appointment, offer to FSCS such services as it shall reasonably require in order to enable it to perform its obligations under the Scheme on terms as to payment no less favourable than those obtained by the Scheme Companies.

PART 5

THE SCHEME ADMINISTRATORS

5.1 Qualification, appointment and resignation

- 5.1.1 At least one Scheme Administrator shall be an individual qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act. The initial Scheme Administrators shall be Ian Douglas Barker Bond and Christopher John Hughes.
- 5.1.2 Subject to Clause 6.9.2(b), a Scheme Administrator may resign his appointment at any time by giving not less than six months notice in writing to the Scheme Companies and to the Creditors Committee.
- 5.1.3 The Scheme Administrators shall, with effect from the Effective Date, ensure that there is in force in relation to each Scheme Company such bond as would have had to be in force if each Scheme Company had been wound up in England on such date and they had been appointed its liquidators.

5.2 Power to act jointly or severally

Where more than one person has been appointed as a Scheme Administrator, the functions and powers of the Scheme Administrators under the Scheme may be performed and exercised jointly or severally and any act required to be done by the Scheme Administrators pursuant to the Scheme may be done by all or any one or more of them.

5.3 Functions and powers

- 5.3.1 The Scheme Administrators shall in relation to each Scheme Company:
 - (a) manage the run-off and closure of that Scheme Company's business;
 - (b) realise the assets of that Scheme Company and apply them for the benefit of its Scheme Creditors in accordance with the Scheme; and
 - (c) supervise and ensure the carrying out of the Scheme in relation to that Scheme Company;and for these purposes shall in relation to each Scheme Company:
 - (i) have power in the name and on behalf of that Scheme Company to manage the affairs, business and property of that Scheme Company; and
 - (ii) without prejudice to the generality of the foregoing, have the powers specified in Clause 5.3.3.
- 5.3.2 Any function of or power conferred on any Scheme Company or its officers, whether by statute or by its memorandum or articles of association (or, in the case of Mutual

Re, its bye-laws), which could be exercised in such a way as to interfere with the exercise by the Scheme Administrators of their functions and powers in relation to that Scheme Company shall not be exercisable except with the consent of the Scheme Administrators, which may be given either generally or in relation to particular cases (provided however that nothing in this Clause 5.3.2 shall relieve the directors of Kingscroft, Walbrook, El Paso or Lime Street from their duty to act in accordance with the English Companies Act or the directors of Mutual Re from their duty to act in accordance with the Bermudian Companies Act).

- 5.3.3 Without prejudice to the generality of Clause 5.3.1, in carrying out their functions and powers under the Scheme the Scheme Administrators shall be entitled:
- (a) to agree claims and process reinsurance recoveries as part of the run-off of the Scheme Companies' businesses;
 - (b) to take possession of, collect and get in all the property and assets (of whatever nature) to which the Scheme Companies are or appear to be entitled and to do all such things as may be necessary for the realisation of any such property or assets;
 - (c) to have full access at all times to all books, papers and other documents of the Scheme Companies, to receive all such information as they may require in relation to their affairs and to receive notice of and attend all meetings of the Boards;
 - (d) to do all things which may be necessary or expedient for the protection of the Scheme Companies' assets (or of any assets that appear to belong to the Scheme Companies);
 - (e) to bring or defend any action or other legal proceedings in the name and on behalf of any Scheme Company or otherwise;
 - (f) to be remunerated in accordance with Clause 6.4.5 for the carrying out of such functions and powers and to be reimbursed for all expenses properly incurred by them in connection therewith;
 - (g) to employ or retain and remunerate accountants, actuaries, lawyers and other professional advisers or agents in connection with the conduct of their functions and powers under the Scheme;
 - (h) to give directions to the Boards and the shareholders of each Scheme Company in relation to the exercise by them of their rights and powers in connection with the Scheme Companies;
 - (i) to do all acts and to execute in the name and on behalf of any Scheme Company any deed, receipt or other document and to use such Scheme Company's seal;
 - (j) to borrow and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received by any Scheme Company;

- (k) to delegate to any person approved for the time being by the Creditors Committee for the purposes of this Clause 5.3.3(k), all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under the Scheme and from time to time to revoke any such delegation (other than in the case of delegation to the Scheme Conflicts Administrator which shall be, subject to the provisions of any such agreement as is referred to in Clause 5.5, irrevocable), provided that (other than in the case of delegation to the Scheme Conflicts Administrator) the Scheme Administrators shall be personally responsible for any act or omission of any such delegate to the same extent as if they had expressly authorised it;
- (l) to the extent that the court has jurisdiction, to apply, or to cause any Scheme Company to apply, to the court for directions in relation to any particular matter arising in the course of the Scheme but no such application shall be made for directions concerning the interpretation or construction of any provision of the Policyholders Protection Act or FSMA (as in force at any time) whether as such or as it applies to the obligations of FSCS under, or as otherwise incorporated into, the Scheme, unless FSCS, in its absolute discretion, consents;
- (m) to attend meetings of the- Creditors Committee (subject to the provisions of Clause 6.3.4); and
- (n) to do all other things incidental so the exercise of the functions and powers referred to in this Clause 5.3.3 and in Clause 5.3.1.

5.3.4 In carrying out their functions and exercising their powers under the Scheme the Scheme Administrators shall consult with, and take account of the views expressed by, the Creditors Committee on any matter material to the Scheme, which for the avoidance of doubt shall include, without limitation, the setting of and revisions to a Payment Percentage pursuant to Clause 3.2.

5.4 Responsibility and indemnity

5.4.1 In carrying out their functions and exercising their powers under the Scheme in relation to each Scheme Company, the Scheme Administrators shall act bona fide and with due care and diligence in the interests of that Scheme Company's Scheme Creditors as a whole and shall use their powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

5.4.2 In this Clause 5.4:

- (a) **"Employee"** means:
 - (i) any partner or director in the same firm or company as a Scheme Administrator, or any individual employed by either or both of them or such firm or company or by any company owned by such firm or company, who is employed by the Scheme Administrators in consequence of the Scheme Administrators acting in accordance with

Clause 5.3.3(g) in connection with the conduct of their functions and powers under the Scheme, or

(ii) any individual (whether directly or indirectly) employed or retained by the Scheme Companies or KMS, (and any other companies owned by the Scheme Companies at the date of the Scheme) to include any such companies' successor organisation, howsoever structured, for the purposes of concluding the run-off and

(b) **"Delegate"** means any person to whom the Scheme Administrators may delegate any of their functions and powers under Clause 5.3.3(k).

For the purposes of Clause 5.4.2(a) the term "employed" shall refer to employment whether under a contract of service or a contract for services.

5.4.3 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by the Scheme Administrators in accordance with and to implement the provisions of the Scheme or the exercise by the Scheme Administrators in good faith and with due care of any power conferred upon them for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and the Scheme Administrators shall not be liable for any loss unless such loss is attributable to their own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee or Delegate other than the Scheme Conflicts Administrator).

5.4.4 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Employee in accordance with and to implement the provisions of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no Employee shall be liable for any loss unless such loss is attributable to his or her own negligence, default, breach of duty, breach of trust, fraud or dishonesty.

5.4.5 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Delegate in accordance with and to implement the provisions of the Scheme or the exercise by such Delegate in good faith and with due care of any power conferred upon the Scheme Administrators for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no Delegate shall be liable for any loss unless such loss is attributable to his or her own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee).

5.4.6 Subject (in the case of Kingscroft, Walbrook, El Paso and Lime Street) to the English Companies Act and subject (in the case of Mutual Re) to the Bermudian Companies Act, each Scheme Administrator (in his capacity as such) (and each Employee and Delegate) shall in relation to each Scheme Company be entitled to an indemnity out of the assets of that Scheme Company against:

(a) all actions, claims, proceedings and demands brought or made against such Scheme Administrator (or Employee or Delegate) in respect of any act done or omitted to be done in relation to that Scheme Company by such Scheme Administrator (or Employee or Delegate) in good faith without negligence,

default, breach of duty, breach of trust, fraud or dishonesty in the course of implementing the Scheme in relation to that Scheme Company in accordance with its terms; and

- (b) all expenses and liabilities properly incurred by such Scheme Administrator (or Employee or Delegate) in carrying out his functions and powers (or the functions for which such Employee is employed by the Scheme Administrators or any Delegate) in relation to that Scheme Company in the course of implementing the Scheme in relation to that Scheme Company in accordance with its terms.

5.4.7 Without prejudice to the generality of Clause 5.4.6, each such person as is expressed to be entitled to an indemnity in accordance with that Clause (in the capacity in which he is entitled to such an indemnity) shall in relation to each Scheme Company be entitled to an indemnity out of the assets of that Scheme Company:

- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to that Scheme Company in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of that Scheme Company.

5.4.8 Each Scheme Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase and maintain for any such person as is referred to in Clause 5.4.7 insurance against any liability in respect of which that Scheme Company would be obliged to indemnify that person in accordance with Clause 5.4.7; and
- (b) pay costs incurred by any such person as is referred to in Clause 5.4.7 in defending proceedings of the nature described in Clause 5.4.7 which relate to that Scheme Company provided that such Scheme Company obtains from a Scheme Administrator an obligation to reimburse that Scheme Company (with interest) in respect of any sum which would not, in the event, have been payable by that Scheme Company under Clause 5.4.7.

5.5 Procedure for the resolution of conflicts

5.5.1 The Scheme Companies and the Scheme Administrators may from time to time, and after consultation with the Creditors Committee, enter into such agreement as they consider appropriate to deal with disputes or conflicts that arise or may arise during the course of the Scheme, whether between or for the Scheme Companies or the Scheme Administrators themselves, which agreement may provide for the delegation in relation to a particular dispute or conflict of the Scheme Administrators' functions, powers, rights, authorities and discretion pursuant to Clause 5.3.3(k) to a Scheme

Conflicts Administrator (who shall not be an Employee as defined in Clause 5.4.2(a))
to represent one or more of the parties to the dispute or conflict in question.



PART 6

THE CREDITORS COMMITTEE

6.1 Establishment

There shall be a single Creditors Committee under the Scheme consisting of (a) not less than four nor more than ten of the Scheme Creditors (or their Designated Representatives) and (b) FSCS.

6.2 Members

6.2.1 The members of the Creditors Committee at the Amending Scheme Effective Date shall be the persons whose names are set out in Clause 1.4.5.

6.2.2 (a) FSCS shall be entitled to appoint one person to represent it on the Creditors Committee (who may be, but need not be, the FSCS Director) and may from time to time remove such representative and appoint another person in his place by written notice to the Chairman of the Creditors Committee signed by the Chairman of FSCS. The Chairman of FSCS or such representative shall be entitled to appoint any person as an alternate to such representative to attend and vote at any meeting of the Creditors Committee in his place, or to revoke such appointment, by way of written notice to the Chairman of the Creditors Committee. Any such alternate shall have the same powers and be subject to the same duties and limitations as such representative.

(b) Any individual, body corporate or partnership who or which is a Scheme Creditor shall be eligible for appointment as a member of the Creditors Committee. If a partnership is appointed as a member, the appointment shall be treated as though the partnership were a body corporate and no person shall be entitled to act as a member of the Creditors Committee on behalf of (or by reason of being a partner in) such partnership except a person appointed by such partnership to represent it in accordance with Clause 6.2.3 or a person appointed as the alternate of such person in accordance with that Clause.

(c) Any body corporate or partnership (which may but need not be a Scheme Creditor) designated by notice in writing to the Chairman of the Creditors Committee by any two or more Scheme Creditors to act as a member of the Creditors Committee as their "Designated Representative" shall be eligible for appointment as a member of the Creditors Committee.

(d) The Creditors Committee may resolve, by at least two-thirds of the members present, to appoint any eligible person to be a member, either to fill a vacancy or as an additional member, subject to the maximum number of members provided for in the Scheme (and a resolution requiring ratification of such appointment shall be put before the next meeting of the Scheme Creditors pending which the appointee shall have full power to act as a member of the Creditors Committee).

- (e) In appointing additional members, the Creditors Committee shall endeavour to ensure that the composition of the Creditors Committee is such as to secure a proper balance of the interests of the Scheme Creditors as between themselves and in relation to each Scheme Company.
- 6.2.3 Each member of the Creditors Committee which is a body corporate (other than FSCS) or a partnership may, by notice in writing to the Chairman of the Creditors Committee, appoint a director, senior executive, partner or professional adviser as its "Nominated Representative" to represent that member at meetings of the Creditors Committee. Each Nominated Representative may, by notice in writing to the Chairman of the Creditors Committee, appoint any person qualified to act as a Nominated Representative as his alternate to attend and vote at any meeting of the Creditors Committee in his place. Any such alternate shall have the powers and shall be subject to the same duties and limitations as the Nominated Representative who has appointed him. Any person entitled to appoint a Nominated Representative or an alternate may from time to time revoke that appointment and appoint another person qualified to act as a Nominated Representative as a replacement by notice in writing to the Chairman of the Creditors Committee.
- 6.2.4 An individual shall cease to be a member of the Creditors Committee upon the occurrence of any of the following events:
- (a) if he ceases to be, or is found never to have been, a Scheme Creditor;
 - (b) if he resigns by notice in writing addressed to the Chairman of the Creditors Committee;
 - (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales or Bermuda; or
 - (d) if he fails to attend three consecutive meetings of the Creditors Committee and the Creditors Committee resolves, by a majority of two-thirds of the members present, that he be removed.
- 6.2.5 (a) A body corporate (other than FSCS) or partnership shall cease to be a member of the Creditors Committee upon the occurrence of any of the following events:
- (i) (other than in the case of a member which is a Designated Representative) if it ceases to be, or is found never to have been, a Scheme Creditor;
 - (ii) if it is a Designated Representative of two or more Scheme Creditors, if it ceases to represent at least two Scheme Creditors as a result of persons it represents ceasing to be, or being found never to have been, Scheme Creditors and/or as a result of persons it represents notifying the Chairman of the Creditors Committee in writing that such member has ceased to be their Designated Representative;

- (iii) if it resigns by notice in writing addressed to the Chairman of the Creditors Committee;
 - (iv) if it is dissolved; or
 - (v) if it fails to attend (by its duly appointed Nominated Representative or his alternate) three consecutive meetings of the Creditors Committee and the Creditors Committee resolves, by a majority of two-thirds of the members present that it be removed.
- (b) FSCS shall cease to be a member of the Creditors Committee if it resigns by notice in writing to the Chairman of the Creditors Committee signed by its representative or by its Chairman.

6.2.6 The appointment of a Nominated Representative or his alternate shall terminate automatically upon the occurrence of any of the following events:

- (a) if the person whom that Nominated Representative or alternate represents ceases to be a member of the Creditors Committee;
- (b) if he ceases to be a senior executive or a professional adviser to the member of the Creditors Committee whom he represents;
- (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales or Bermuda;
- (d) in the case of an alternate, upon termination of the appointment of the Nominated representative who appointed him;
- (e) if his appointment is revoked by his appointor; or
- (f) if the Creditors Committee resolves, by a majority of two-thirds of all the members of the Creditors Committee for the time being (excluding the member who has appointed such Nominated Representative or whose Nominated Representative has appointed such alternate), that such appointment shall terminate.

6.3 Proceedings

6.3.1 Save as otherwise specifically provided in the Scheme, the Creditors Committee may convene, adjourn and otherwise regulate its meetings in such manner as it shall consider appropriate. The quorum at any meeting of the Creditors Committee shall be at least two-thirds of the members, provided that if a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as the Chairman of the meeting may determine and the members present at any such adjourned meeting shall constitute a quorum. Each member of the Creditors Committee shall have one vote and, except as otherwise provided in the Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting.

- 6.3.2 The Creditors Committee shall appoint one of its members as Chairman from time to time and may revoke any such appointment at any time. Such person shall have a vote but shall not have any additional vote by reason of such person being Chairman. The Chairman may from time to time, delegate to the Scheme Administrators such of his administrative functions (other than, without the consent of the Creditors Committee, his power to call meetings of the Creditors Committee) under this Part 6 as he thinks fit and on such terms as he thinks fit and he may at any time revoke such delegation. Notice of any such delegation or revocation of delegation shall be given by the Scheme Administrators as soon as practicable to all members of the Creditors Committee.
- 6.3.3 The Creditors Committee shall meet once in each calendar year for the purpose of receiving a report from the Scheme Administrators on the progress of the Scheme. The Creditors Committee shall hold such further meetings as it shall consider desirable for the purpose of performing its functions under the Scheme. The Chairman of the Creditors Committee shall call a meeting of the Creditors Committee as soon as reasonably practicable if so requested by at least three members of the Creditors Committee or if he or the Scheme Administrators otherwise consider it appropriate. Except with the consent of all members of the Creditors Committee and the Scheme Administrators, no meeting of the Creditors Committee may be called upon less than fourteen clear days notice and, except with the consent of all members of the Creditors Committee, no business may be transacted at any such meeting other than that set out in the notice of that meeting.
- 6.3.4 Each member of the Creditors Committee and the Scheme Administrators (or their representative) shall be entitled to receive notice of all meetings of the Creditors Committee. The Scheme Administrators shall be entitled to attend and speak, but not to vote, at all meetings of the Creditors Committee. If so requested by the Creditors Committee, a Scheme Administrator (or his representative) shall absent himself from such part of a meeting of the Creditors Committee as the Creditors Committee may specify.
- 6.3.5 The Chairman of the Creditors Committee shall cause proper minutes to be kept of all proceedings of the Creditors Committee and such minutes shall at all reasonable times be open to inspection by (subject to Clause 6.5.2) any member of the Creditors Committee. Copies of such minutes shall be sent as soon as practicable after their preparation to the Scheme Administrators.
- 6.3.6 A member of the Creditors Committee and a Scheme Administrator may participate in a meeting of the Creditors Committee through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person participating in this way is deemed to be present in person at the meeting and, in the case of a member of the Creditors Committee, is counted in a quorum and entitled to vote. All business transacted in this way by the Creditors Committee is deemed to be validly and effectively transacted at a meeting of the Creditors Committee although fewer than two-thirds of the members of the Creditors Committee are physically present at the same place.
- 6.3.7 Other than in relation to such a resolution as is referred to in Clause 6.4.4(a), a resolution in writing signed by all members of the Creditors Committee for the time

being (or their Nominated Representatives or in the case of FSCS its representative) shall be as valid and effective as if passed at a meeting of the Creditors Committee duly convened and held.

6.4 Functions

- 6.4.1 Without prejudice to the specific provisions of this Clause 6.4, the Creditors Committee shall monitor the carrying out of the Scheme and supervise the Scheme Administrators in the exercise of their functions under the Scheme.
- 6.4.2 Before each meeting of Scheme Creditors convened pursuant to Clause 8.1.1(a), the Scheme Administrators shall submit to the Creditors Committee a report on the conduct of the affairs of the Scheme Companies and the operation of the Scheme during the period since the last such report was prepared (or, in the case of the first such meeting, since the Effective Date) and shall (or shall appoint a representative to) attend at any meeting of the Creditors Committee at which that report is considered for the purpose of giving such explanations and information as the Creditors Committee may require. A copy of that report, incorporating such amendments (if any) as may be agreed by the Scheme Administrators and the Creditors Committee or such comments (if any) of the Creditors Committee as the Chairman of the Creditors Committee on behalf of the Committee may specify, shall be made available to Scheme Creditors in accordance with Clauses 8.1.2 and 8.1.3.
- 6.4.3 The Creditors Committee may from time to time resolve what information it is desirable to seek from the Scheme Administrators concerning the affairs of the Scheme Companies or the operation of the Scheme, and may depute any one member of the Creditors Committee to apply in writing to and receive from the Scheme Administrators all such information. The Scheme Administrators shall promptly give to the Creditors Committee all such information concerning the affairs of the Scheme Companies or the operation of the Scheme as the Creditors Committee shall from time to time resolve to seek and in respect of which a written request shall have been received by the Scheme Administrators. Each member of the Creditors Committee shall be entitled at any time to raise questions or to request a meeting with the Scheme Administrators in connection with the performance of his responsibilities as a member of the Creditors Committee and, subject to their duties under the Scheme, the Scheme Administrators shall use reasonable endeavours to respond to such questions or to comply with any such request for a meeting. Notwithstanding the preceding provisions of this Clause 6.4.3, the Scheme Administrators shall not be obliged to disclose any confidential information of a Scheme Company to a member of the Creditors Committee if the information relates to any matter where such member (and, where such member is a Designated Representative, its appointors) has an interest in conflict with that Scheme Company (other than a general conflict arising as a result of the status of the members of the Creditors Committee (or appointors) as creditors of the Scheme Companies).
- 6.4.4 The Creditors Committee shall be entitled:
- (a) by a resolution passed by at least three-quarters of all of the members of the Creditors Committee for the time being at any time to call upon a Scheme Administrator to resign, provided that such Scheme Administrator has been given at least twenty-eight days notice of the proposed resolution and of the

reasons why the resolution is to be put to the Creditors Committee and has been given a reasonable opportunity to make representations at the meeting at which the resolution is proposed (and if such Scheme Administrator declines to resign a resolution requiring his removal shall be put before the next meeting of Scheme Creditors); and

- (b) upon removal of a Scheme Administrator or if a Scheme Administrator ceases to hold office for any other reason, to appoint any person qualified to act under Clause 5.1.1 to be a Scheme Administrator in his place (and a resolution requiring ratification of such appointment shall be put before the next meeting of Scheme Creditors pending which the appointee shall have full power to act as a Scheme Administrator) save that if a resolution is passed at a meeting of Scheme Creditors requiring the removal of a Scheme Administrator pursuant to Clause 6.4.4(a) such appointment may be made by the Scheme Creditors at such meeting.

6.4.5 The Creditors Committee shall consider and, if thought fit, approve (such approval not to be unreasonably withheld or delayed), on behalf of the Scheme Companies, the level and payment of the fees and expenses of the Scheme Administrators from time to time (and so that such function may, with the prior written consent of the Scheme Administrators, be delegated to one or more members of the Creditors Committee).

6.4.6 The Creditors Committee and the Scheme Administrators may from time to time agree between themselves how they intend the monitoring and supervisory role of the Creditors Committee and the relationship between the Scheme Administrators and the Creditors Committee under the Scheme to operate in practice. No person may become a member of the Creditors Committee or a Scheme Administrator unless it or he has first agreed with the then current members of the Creditors Committee and the then current Scheme Administrator or Scheme Administrators to abide by any then current agreement between the Creditors Committee and the Scheme Administrator under this Clause 6.4.6.

6.4.7 The Creditors Committee shall, so far as it is able, ensure that there is a Scheme Administrator in office at all times.

6.5 Duties

6.5.1 Each member of the Creditors Committee, each Nominated Representative, the representative of FSCS and their respective alternates shall, in performing their functions as such in relation to each Scheme Company, act bona fide in the interests of that Scheme Company's Scheme Creditors as a whole.

6.5.2 It shall be the duty of each member of the Creditors Committee who is in any way, whether directly or indirectly, interested or, where such member is a Designated Representative, any of whose appointors is, whether directly or indirectly, interested in a contract or proposed contract with any Scheme Company (other than any which arises as a result of the provisions of the Scheme) to declare (or procure that its Nominated Representative shall declare) the nature of his, its or such appointor's interest at a meeting of the Creditors Committee. For this purpose a general notice given to the Creditors Committee to the effect that a member or an appointor of a Designated Representative is associated (within the meaning of section 435 of the

Insolvency Act) with a specified company or firm and is to be regarded as interested in any contract with that company or firm is deemed a sufficient declaration of interest in relation to any such contract. Such a member of the Creditors Committee shall not be counted in the quorum, shall not be entitled to vote in relation to any matter relating specifically to any such contract, shall retire from the meeting for so long as the matter is discussed and voted upon and shall not receive any information, nor be entitled to inspect any part of the minutes of a meeting of the Creditors Committee, relating thereto.

6.5.3 Each Nominated Representative shall be entitled to report to the member appointing him, and each Designated Representative shall be entitled to report to the Scheme Creditors appointing it, on the proceedings of the Creditors Committee and, so far as necessary for that purpose, to disclose confidential information of a Scheme Company to those officers, employees and professional advisers of that member or appointor who need to know it in connection with (where a Nominated Representative is disclosing information) the performance of its responsibilities as a member of the Creditors Committee or (where a Designated Representative is disclosing information) the performance of the Designated Representative's responsibilities as a member of the Creditors Committee, provided that such information does not to his or its knowledge (after due enquiry) relate to any matter where any such appointor has an interest in conflict with that Scheme Company (other than a general conflict arising as the result of the status of the members of the Creditors Committee or the appointors of a Designated Representative as creditors of the Scheme Companies). Each member of the Creditors Committee other than FSCS shall, and shall procure that its Nominated Representative and its officers, employees and professional advisers shall, and where such member is a Designated Representative shall procure that its appointors and their officers, employees and professional advisers shall, preserve the confidentiality of such information and shall use such information only for the purposes of their performing their responsibilities and functions (or their Designated Representative's responsibilities and functions) in relation to the Creditors Committee.

6.5.4 Each representative of FSCS shall be entitled to report to FSCS on the proceedings of the Creditors Committee and, so far as necessary for that purpose, to disclose confidential information of a Scheme Company to the members of FSCS, provided that such information does not to his knowledge (after due enquiry) relate to any matter where FSCS has an interest in conflict with that Scheme Company (other than a general conflict arising as a result of the status of FSCS as a creditor of the Scheme Companies). Without prejudice to Clauses 4.4.1 and 4.4.2, FSCS shall, and shall procure that its representative and the individual members of FSCS shall, preserve the confidentiality of such information and shall use such information only for the purposes of performing its responsibilities and functions in relation to the Creditors Committee.

6.6 Responsibilities and indemnity

6.6.1 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any member of the Creditors Committee (or Nominated Representative, representative of FSCS or alternate) in accordance with and to implement the provisions of the Scheme or the exercise by

any such person in good faith and with due care of any power conferred upon it or him for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no such person shall be liable for any loss unless such loss is attributable to its or his own wilful default, fraud, dishonesty or wilful breach of duty or trust.

- 6.6.2 Subject (in the case of Kingscroft, Walbrook, El Paso and Lime Street) to the English Companies Act and subject (in the case of Mutual Re) to the Bermudian Companies Act, each member of the Creditors Committee (and each Nominated Representative, representative of FSCS and alternate) (in each case in their capacity as such) shall in relation to each Scheme Company be entitled to an indemnity out of the assets of that Scheme Company against all actions, claims, proceedings and demands brought or made against it or him in respect of any act done or omitted to be done in relation to that Scheme Company by such person in good faith without wilful default, fraud, dishonesty or wilful breach of duty or trust in the course of implementing the Scheme in relation to that Scheme Company in accordance with its terms.
- 6.6.3 Without prejudice to the generality of Clause 6.6.2, each such person as is expressed to be entitled to an indemnity in accordance with that Clause (in the capacity in which it or he is entitled to such an indemnity) shall in relation to each Scheme Company be entitled to an indemnity out of the assets of that Scheme Company:
- (a) against any liability incurred by it or him in defending any proceedings, whether civil or criminal, in respect of any wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to that Scheme Company in which judgment is given in its or his favour or in which it or he is acquitted; or
 - (b) in connection with any application in any such proceedings in which relief is granted to it or him by a court from liability for wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the affairs of that Scheme Company.
- 6.6.4 Each Scheme Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):
- (a) purchase and maintain for any such person as is referred to in Clauses 6.6.2 and 6.6.3 insurance against any liability in respect of which that Scheme Company would be obliged to indemnify that person in accordance with those Clauses; and
 - (b) pay costs incurred by any such person as is referred to in Clauses 6.6.2 and 6.6.3 in defending any actions, claims, proceedings and demands of the nature described in those Clauses which relate to that Scheme Company provided that such Scheme Company obtains from such person (or, where such person is a Nominated Representative, representative of FSCS or an alternate the member of the Creditors Committee which such person represents) an obligation to reimburse that Scheme Company (with interest) in respect of any sum which would not, in the event, have been payable by that Scheme Company under those Clauses.

6.7 Validation of acts

- 6.7.1 All acts done by the Creditors Committee or any meeting of the Creditors Committee or any person acting as the Chairman or as a member of the Creditors Committee or as a Nominated Representative or alternate shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a member of the Creditors Committee or person acting as aforesaid, or that any of them were disqualified, be valid as if every such person had been duly appointed and qualified.

6.8 Expenses

- 6.8.1 The members of the Creditors Committee and their Nominated Representatives (and the representative of FSCS and their respective alternates) shall be entitled to be reimbursed by the Scheme Companies for their reasonable expenses of attending meetings of the Creditors Committee, provided that such meetings are held in London or New York or in such other place as the Scheme Administrators may from time to time agree.

6.9 No Creditors Committee

- 6.9.1 If at any time there are less than five members of the Creditors Committee then the Creditors Committee may continue to exercise all its functions under the Scheme (other than those provided for in Clauses 6.4.4(a), 8.1.1(b), 8.4.1 and 10.1.1(a) and (c)) for a period of twenty-eight days, during which time the remaining members of the Creditors Committee shall endeavour to fill the vacancies on the Creditors Committee. If they shall fail to do so within such period of twenty-eight days, the Scheme Administrators shall, within a further fourteen days, appoint such additional Scheme Creditors ("interim appointees") as are required to fill such vacancies. In appointing any such interim appointees, the Scheme Administrators shall endeavour to ensure that the composition of the Creditors Committee including such interim appointees is such as to secure a proper balance of the interests of the Scheme Creditors as between themselves and in relation to each Scheme Company. In the event of such vacancies being filled, whether by appointees of the Creditors Committee or by interim appointees, the full powers and functions of the Creditors Committee under the Scheme will be restored, provided that no interim appointee shall be entitled to vote in relation to any, resolution to appoint an additional member of the Creditors Committee. Any interim appointee will be liable to be removed as a member of the Creditors Committee at any time without notice if the Creditors Committee (excluding any interim appointees) appoints a Scheme Creditor to fill the vacancy which had been filled by such interim appointee (and the members of the Creditors Committee (excluding any interim appointees) shall use their reasonable endeavours to fill any such vacancy accordingly as soon as possible).
- 6.9.2 If, following the procedure set out in Clause 6.9.1, there are less than five members of the Creditors Committee (including interim appointees appointed under Clause 6.9.1) then, for so long as that is the case, the Creditors Committee shall not exercise any functions or have any powers under the Scheme and the following provisions shall apply:

- (a) the Scheme Administrators shall use all reasonable endeavours to find additional members of the Creditors Committee to enable it to function;
- (b) a Scheme Administrator may resign under Clause 5.1.2, and a new Scheme Administrator may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by the Scheme Administrators;
- (c) a Scheme Administrator may be removed, and a new Scheme Administrator may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by the Scheme Administrators or any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any one hundred Scheme Creditors;
- (d) the remuneration of the Scheme Administrators shall be payable at the same rate at which it had been last been set by the Creditors Committee unless and until varied by the Scheme Creditors; and
- (e) the requirements for obtaining the consent, approval or agreement of and for consulting with or notifying the Creditors Committee contained in Clauses 1.1.1, 3.2.8, 5.1.2, 5.3.3(k), 5.3.4, 5.4.8, 5.5, 6.6.4, 6.6.5, 7.1.9, 7.2.3, 7.2.5, 8.1.1(a), 9.8.2, 10.1.1(a) and 10.1.1(c) and for submitting a report to the Creditors Committee pursuant to Clause 6.4.2 shall be suspended.

PART 7

THE BOARDS AND THE SHAREHOLDERS OF THE SCHEME COMPANIES

7.1 The Boards

7.1.1 Each Board shall consist of:

- (a) such one director (if any) as shall have been nominated from time to time by FSCS; and
- (b) such other directors as shall have been nominated from time to time by the Scheme Administrators.

7.1.2 The Scheme Administrators shall ensure that the composition of each Board complies (in the case of Kingscroft, Walbrook, El Paso and Lime Street) with the English Companies Act and (in the case of Mutual Re) with the Bermudian Companies Act.

7.1.3 The Trustee shall in relation to each Scheme Company:

- (a) when called upon to do so by the Scheme Administrators, forthwith take such steps as lie within its power to appoint or remove (as the Scheme Administrators may direct) any director of that Scheme Company who has been nominated (or is to be treated as having been nominated) by the Scheme Administrators; and
- (b) when called upon to do so by FSCS, forthwith take such steps as lie within its power to appoint or remove (as FSCS may direct) any director of that Scheme Company who has been nominated (or is to be treated as having been nominated) by FSCS.

7.1.4 The members of each Board at the Amending Scheme Effective Date shall be the persons whose names are set out in Clause 1.4.6 of whom:

- (a) Nigel James Hamilton shall be treated as having been nominated by FSCS; and
- (b) the remainder shall be treated as having been nominated by the Scheme Administrators.

7.1.5 The powers of the Boards shall be restricted in the manner described in Clause 5.3.2.

7.1.6 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any member of a Board in accordance with and to implement the provisions of the Scheme or the exercise by any such person in good faith and with due care of any power conferred upon him for the purposes of the Scheme if exercised in accordance with and to implement those provisions and no such person shall be liable for any loss unless such loss is attributable to:

- (a) in the case of a member of a Board of Kingscroft, Walbrook, El Paso or Lime Street, his negligence, default, breach of duty or breach of trust; or
- (b) in the case of a member of the Board of Mutual Re, his wilful negligence, wilful default, fraud or dishonesty.

7.1.7 Subject (in the case of Kingscroft, Walbrook, El Paso and Lime Street) to the English Companies Act and subject (in the case of Mutual Re) to the Bermudian Companies Act, each director of a Scheme Company (in his capacity as such) shall be entitled to an indemnity out of the assets of that Scheme Company against:

- (a) all actions, claims, proceedings and demands brought or made against him in respect of any act done or omitted to be done in relation to that Scheme Company in good faith and (in the case of a director of Kingscroft, Walbrook, El Paso or Lime Street) without negligence, default, breach of duty or breach of trust, fraud or dishonesty and (in the case of a director of Mutual Re) without wilful negligence, wilful default, fraud or dishonesty by such director in the course of implementing the Scheme in relation to that Scheme Company in accordance with its terms; and
- (b) all expenses and liabilities properly incurred by such director in carrying out his functions in relation to that Scheme Company in the course of implementing the Scheme in relation to that Scheme Company in accordance with its terms.

7.1.8 Without prejudice to the generality of Clause 7.1.7, each director of a Scheme Company (in his capacity as such) shall be entitled to an indemnity out of the assets of that Scheme Company:

- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to that Scheme Company in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of that Scheme Company.

7.1.9 Each Scheme Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase and maintain for any director of that Scheme Company insurance against any liability in respect of which that Scheme Company would be obliged to indemnify him in accordance with Clause 7.1.8; and
- (b) pay costs incurred by a director of that Scheme Company in defending proceedings of the nature described in Clause 7.1.8 which relate to that Scheme Company provided that such Scheme Company obtains from such director an obligation to reimburse that Scheme Company (with interest) in

respect of any sum which would not, in the event, have been payable by that Scheme Company under Clause 7.1.8.

7.2 The shareholders

7.2.1 Forthwith upon the Scheme becoming effective, each of the Scheme Companies will enter into the Amended Trust Deed.

7.2.2 Save in relation to its rights and powers to appoint and remove directors of Scheme Companies nominated by FSCS (which shall be exercised only in accordance with the directions of FSCS) and subject to the terms and provisions of the Trust Deed and subject to Clauses 7.2.3, 7.2.4 and 7.2.5, the Trustee:

- (a) upon being called upon to do so, shall take such steps as lie within its power to exercise or to have exercised on its behalf all rights and powers to which it or any nominee is entitled in relation to the shares in a Scheme Company (including, without limitation, rights and powers to appoint and dismiss directors, to vote at general meetings and to present a petition asking for an order that the Scheme Company be wound up by the court) as the Scheme Administrators may direct; and
- (b) shall not exercise any of such rights and powers to which it is entitled, and shall direct any nominee not to exercise on its behalf such rights and powers, except at the direction of the Scheme Administrators.

7.2.3 Save with the consent of the Scheme Administrators and the Creditors Committee (and, in relation to the shares in any of Kingscroft, Walbrook, Lime Street or Mutual Re, if and whilst it is a beneficiary under the Trust Deed in relation to such shares, of LUI), the Trustee shall not sell, transfer or otherwise dispose of, encumber or create any interest in or deal with any of the shares in the Scheme Companies.

7.2.4 If in relation to a Scheme Company either:

- (a) the Scheme Administrators give notice in accordance with Clause 10.1.1(c); or
- (b) a resolution is passed by the Scheme Creditors of that Scheme Company in accordance with Clause 10.1.1(d);

the Trustee shall (subject to the terms and provisions of the Trust Deed) forthwith take such steps as lie within its power to place such Scheme Company in voluntary liquidation pursuant (in the case of Kingscroft, Walbrook, El Paso or Lime Street) to section 84 of the Insolvency Act or (in the case of Mutual Re) to section 201 of the Bermudian Companies Act.

7.2.5 The Trustee shall, until termination of the Scheme in relation to such Scheme Company, in relation to shares in a Scheme Company which it holds ensure, and in relation to shares in a Scheme Company held on its behalf by a nominee direct the nominee to ensure, that no resolution for the voluntary winding up of the Scheme Company shall be passed without the prior written consent of, save for the purposes of complying with Clause 7.2.4, the Creditors Committee and, in relation to

Kingscroft, Walbrook, Lime Street and Mutual Re, if and whilst it is a beneficiary under the Trust Deed in relation to the shares of such Scheme Company, of LUI.



PART 8

MEETINGS OF SCHEME CREDITORS

8.1 Convening of meetings

8.1.1 Meetings of Scheme Creditors are to be convened as follows:

- (a) The Scheme Administrators shall convene a meeting of the Scheme Creditors at least once in every year, the first such meeting being held in 1994 and thereafter not more than fifteen months elapsing between one meeting and the next, unless the Scheme Administrators and the Creditors Committee agree that any such meeting should not be held.
- (b) The Creditors Committee may at any time convene a meeting of the Scheme Creditors to consider a resolution:
 - (i) for the removal of a Scheme Administrator pursuant to Clause 6.4.4(a);
 - (ii) for the appointment of a Scheme Administrator pursuant to Clause 6.4.4(b); or
 - (iii) for such other purpose (other than that referred to in Clause 8.4.1) as it thinks fit.
- (c) The Scheme Administrators may at any time convene a meeting of the Scheme Creditors for such purpose (other than that referred to in Clause 8.4.1) as they think fit.
- (d) Any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent. of all Scheme Claims or any one hundred Scheme Creditors may by notice in writing signed by them or on their behalf and deposited at the registered office of the Scheme Companies require the Scheme Administrators to convene a meeting of Scheme Creditors for such purpose (other than that referred to in Clause 8.4.1) as they think fit. The notice must specify the purpose for which the meeting is required and it shall be the duty of the Scheme Administrators forthwith to summon a meeting of Scheme Creditors for that purpose and to give such notice of the meeting as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme. FSCS shall, for the purposes of convening a meeting of Scheme Creditors, be counted as a separate Scheme Creditor in respect of each Established Scheme Liability assigned to it (provided that where more than one Established Scheme Liability has been assigned to it by the same Protected Policyholder, such Established Scheme Liabilities shall be counted as one for such purposes).

8.1.2 There shall be laid before each meeting of Scheme Creditors convened pursuant to Clause 8.1.1(a) the report referred to in Clause 6.4.2.

8.1.3 At least twenty-eight days notice shall be given of a meeting of Scheme Creditors. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall (in the case of a meeting convened pursuant to Clause 8.1.1(a)) specify the place and time of the meeting and the place from which a copy of the report referred to in Clause 6.4.2 can be obtained by Scheme Creditors free of charge prior to the meeting.

8.1.4 Notice of a meeting of Scheme Creditors shall be given:

- (a) to each Scheme Creditor to whom a Scheme Company owes an Established Scheme Liability, and to any other Scheme Creditor who has applied in writing to a Scheme Company to receive notice of such meetings, by sending notice by pre-paid post to such Scheme Creditor at his last known address; and
- (b) to all other Scheme Creditors by placing advertisements containing the requisite information in such newspaper or newspapers as the Scheme Administrators shall consider appropriate.

Any such notice shall be deemed to have been served on the date on which it is posted or, as the case may be, the latest date on which the advertisement appears.

8.1.5 The accidental omission to give notice of a meeting of Scheme Creditors to, or the non-receipt of a notice of such a meeting by, any Scheme Creditor entitled to receive notice shall not invalidate the proceedings at that meeting.

8.2 Resolutions

8.2.1 If a meeting of Scheme Creditors is convened at a time when a resolution is to be put to the next meeting of Scheme Creditors pursuant to Clauses 6.2.2(d) or 6.4.4(a), the business of the meeting shall include the resolution concerned, and in the case of a resolution to remove a Scheme Administrator pursuant to Clause 6.4.4(a) which, if passed, would result in there being no Scheme Administrators in office, shall also include a resolution that a named person qualified to act under Clause 5.1.1, and willing to be appointed, be appointed as a Scheme Administrator in his place.

8.2.2 No meeting shall be convened unless the notice of the meeting sets out the text of each resolution, or an adequate summary thereof, which is to be proposed at the meeting (or if no resolution is to be proposed at the meeting, the nature of the business to be discussed thereat) and (in the case of a notice which is sent by post) is accompanied by a letter explaining (in relation to each such resolution) why the meeting is being convened.

8.3 Voting

8.3.1 A resolution put to a meeting of Scheme Creditors shall be effective only if it is approved by a majority in number representing at least twenty-six Scheme Creditors and three-quarters in value of the Scheme Creditors present and voting either in person or by proxy at the meeting.

- 8.3.2 Every Scheme Creditor entitled to vote shall have the right to appoint any person as his proxy to attend and vote instead of him. The instrument appointing a proxy may be in any form which the Scheme Administrators may approve and must be lodged at the place specified in the notice of meeting for the lodging of proxies not less than forty-eight hours before the meeting (or adjourned meeting) at which it is to be used.
- 8.3.3 No business shall be transacted at any meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Fifty Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum. All resolutions put to the vote of any meeting shall be decided on a poll (rather than on a show of hands). FSCS shall, for the purposes of calculating whether a quorum is present and for voting on a resolution of Scheme Creditors, be counted as a separate Scheme Creditor in respect of each Established Scheme Liability assigned to it (provided that where more than one Established Scheme Liability has been assigned to it by the same Protected Policyholder, such Established Scheme Liabilities shall be counted as one for such purposes).
- 8.3.4 A Scheme Administrator shall preside (or shall nominate a representative to preside) at each meeting of the Scheme Creditors (other than at a meeting at which a resolution to remove a Scheme Administrator is proposed, when the Scheme Conflicts Administrator shall preside), but if a Scheme Administrator (or his nominated representative) or, if relevant, the Scheme Conflicts Administrator is not present within thirty minutes after the time appointed for opening the meeting or is unwilling to preside, the Scheme Creditors present in person or by proxy shall choose some member of the Creditors Committee, or, if no such member is present or if all such members present decline to preside, one of themselves, to be chairman of the meeting. If no person is willing to preside as chairman of the meeting, the meeting shall be adjourned for seven days, and, if no person is willing to preside as chairman of the adjourned meeting, the meeting shall be dissolved.

8.4 Separate meetings

- 8.4.1 The Creditors Committee or the Scheme Administrators may at any time convene separate meetings of the Scheme Creditors of a particular Scheme Company who are Protected Policyholders and of those who are not Protected Policyholders for the purpose of considering a resolution that the Scheme be terminated in relation to that Scheme Company and that that Scheme Company be wound up. Any twenty Scheme Creditors of a Scheme Company who have Scheme Claims against such Scheme Company of an aggregate value in excess of ten per cent. of all Scheme Claims owed by such Scheme Company or any one hundred Scheme Creditors of such Scheme Company may also by notice in writing signed by them or on their behalf and deposited at the registered office of such Scheme Company require the Scheme Administrators to convene such separate meetings of Scheme Creditors of such Scheme Company for such purpose. It shall be the duty of the Scheme Administrators forthwith to summon such separate meetings of Scheme Creditors of such Scheme Company for such purpose and to give such notice of the meetings as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme.

- 8.4.2 To every such separate meeting the provisions of Clauses 8.1.3, 8.1.4, 8.1.5, 8.2.2 and 8.3 shall apply (*mutatis mutandis*) but so that the resolution shall only be effective if:
- (a) it is approved by a majority in number representing the Scheme Creditors of such Scheme Company who are Protected Policyholders and three-quarters in value of the Scheme Creditors with Scheme Claims against that Scheme Company who are Protected Policyholders present and voting either in person or by proxy at the separate meeting; and
 - (b) it is approved by a majority in number representing at least twenty-six Scheme Creditors of such Scheme Company who are not Protected Policyholders and three-quarters in value of the Scheme Creditors with Scheme Claims against that Scheme Company who are not Protected Policyholders present and voting either in person or by proxy at the separate meeting.

8.5 Valuation of Scheme Claims for the purposes of meetings

- 8.5.1 For the purposes of valuing any Scheme Claim for any of the purposes referred to in Clauses 8.1.1(d), 8.3.1, 8.4.1 and 8.4.2, and subject to Clause 8.5.3, the value of the Scheme Claim shall, in the case of a Scheme Claim which has become an Established Scheme Liability, be the amount of the liability so established (less the amount of any payments paid, or treated as having been paid, by a Scheme Company under the Scheme in respect thereof), and, in the case of any other Scheme Claim, be such amount as may, for the purposes of such meeting only, be estimated as the value of such Scheme Claim by the Scheme Administrators.
- 8.5.2 In the event that a Scheme Creditor disputes the value which has been put on its Scheme Claim pursuant to Clause 8.5.1 or otherwise the amount for which its vote should be counted, the dispute shall be referred to the President for the time being of the trade association of insolvency practitioners referred to as "R3" (or, if a Scheme Administrator or the Scheme Conflicts Administrator or any of their partners at such time occupies such office, the President at that time of the Institute of Chartered Accountants in England and Wales or, if a Scheme Administrator or the Scheme Conflicts Administrator or any of their partners at such time occupies both such offices, the President of the Law Society of England and Wales), or such other individual or individuals qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act as he may nominate who shall consult with such relevant experts as he thinks appropriate and who shall act as an expert not an arbitrator and whose decision (including as to who should bear the costs of such referral) shall be final (but only as regards the convening of the meeting or the vote on that occasion).
- 8.5.3 For the purposes of ascertaining whether or not the requisite percentage for the convening of any meeting of Scheme Creditors or the requisite majority at any meeting of Scheme Creditors has been obtained, the amount of each Scheme Claim which is denominated in a currency other than US dollars shall be converted into US dollars at the rate of exchange published in the Financial Times for the purchase of US dollars with such currency at close of business (London time) on the last business day preceding the date for which the meeting has been convened, or, in the case of an adjourned meeting, the date to which the meeting has been adjourned (or, if no such

rate is published in the Financial Times on that date, the mid-market rate for US dollars on such date quoted by Lloyds Bank Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators).

PART 9

CLOSURE PROVISIONS

9.1 The Bar Date

- 9.1.1 With effect from the Amending Scheme Effective Date and without prejudice to the following provisions of this Part 9, no Scheme Creditor shall be entitled to receive any payments under the Scheme from any Scheme Company in respect of any Scheme Claim which is not, at the Amending Scheme Effective Date, an Established Scheme Liability (but in all other respects any such Scheme Creditor shall be bound by the Scheme) unless, before the Bar Date, (a) the Scheme Administrators shall have received from or on behalf of such Scheme Creditor a Claim Form and Supporting Information in respect of such Scheme Claim in accordance with Clause 9.9, or (b) the Scheme Claim shall have become an Established Scheme Liability under Part 2 of the Scheme. For the avoidance of doubt, from the Amending Scheme Effective Date, the entitlement of Scheme Creditors to receive payments under the Original Scheme shall be replaced by their entitlement to receive payments under this Scheme. Any payments previously made to Scheme Creditors under the Original Scheme shall be deemed to have been made under this Scheme.
- 9.1.2 Without prejudice to the generality of Clause 9.1.1 and the following provisions of this Part 9, Scheme Creditors shall not be entitled to receive any payments under the Scheme in respect of any Agreed Liability (where the reason for it being an Agreed Liability is that the Scheme Administrators do not have the name and address of the relevant Scheme Creditor) unless, before the Bar Date, the Scheme Administrators shall have received a Claim Form and Supporting Information delivered in accordance with Clause 9.9 which specifies the name and address of the Scheme Creditor concerned to the reasonable satisfaction of the Scheme Administrators.
- 9.1.3 No Scheme Creditor shall have any right after the Bar Date to revise or provide further Supporting Information in respect of any Scheme Claim and/or Outwards Unpaid Losses (including any amount of such liabilities) except in response to a specific request for such further information by the Scheme Administrators or the Scheme Adjudicator under this Part 9. Accordingly, subject to such exceptions, for the purposes of seeking to agree or adjudicating a Notified Scheme Claim or Outwards Unpaid Losses, neither the Scheme Administrators nor the Scheme Adjudicator shall be obliged to take into account any Supporting Information which has not been supplied to the Scheme Administrators before the Bar Date and, where appropriate, shall be entitled to treat such Notified Scheme Claim or Outwards Unpaid Losses in accordance with Clause 9.4.5. For the purposes of seeking such agreement or adjudication, the Scheme Administrators and the Scheme Adjudicator may, at any time, take into account market information and/or market development.
- 9.1.4 Subject to Clause 9.1.5, Scheme Creditors in respect of any liability which they consider is or may be a Protected Agreed Liability and/or Protected IBNR and/or a Protected Outstanding Loss as at the Amending Scheme Effective Date, must submit a Claim Form and Supporting Information to the Scheme Administrators in accordance with Clause 9.9 in respect of such liability before the Bar Date. Such

Claim Form must include a statement, where indicated in the Claim Form, that they consider that any such liability would (upon becoming an Established Scheme Liability in the normal course) be a Protected Liability. Subject to Clause 9.6, any such Scheme Creditor that does not so submit a Claim Form to the Scheme Administrators before the Bar Date will not under any circumstances be entitled to receive any payments under the Scheme from the Scheme Companies in respect of such liability and if such liability upon becoming an actual present liability is subsequently determined by FSCS (or by a court of competent jurisdiction so as to bind FSCS) not to be a Protected Liability, such liability will not qualify for any payment from FSCS.

- 9.1.5 In the case of a Scheme Creditor whose Claim Form sent or made available to them under Clause 9.4.1 contains a statement of Agreed Liabilities, the Scheme Creditor, if they consider that any of the Agreed Liabilities is or may be a Protected Agreed Liability as at the Amending Scheme Effective Date, must submit the Claim Form and Supporting Information to the Scheme Administrators in accordance with Clause 9.9 before the Bar Date stating, where indicated in the Claim Form, that they consider such liability would (upon becoming an Established Scheme Liability in the normal course) be a Protected Liability, whereupon any such Agreed Liability will be treated for the purposes of Clause 9.6.4(a) as a Notified Scheme Claim in respect of a Protected Agreed Liability.

9.2 Appointment of the Scheme Adjudicator

- 9.2.1 There shall be a Scheme Adjudicator appointed for the purposes of and having the powers, rights, duties and functions conferred upon him by this Part.
- 9.2.2 A Scheme Adjudicator shall be an individual who, in the reasonable opinion of the Scheme Administrators, is qualified to discharge that function. The initial Scheme Adjudicator shall be Mr Ivor Kiverstein.
- 9.2.3 A Scheme Adjudicator shall cease to hold that office upon the occurrence of any of the following events:
- (a) if he dies or becomes bankrupt or mentally disordered or becomes disqualified by any professional body of which he is a member;
 - (b) if he resigns his appointment at any time by giving not less than two months' notice in writing (or less in the Scheme Administrators' discretion) to the Scheme Administrators and the Creditors Committee;
 - (c) if he is convicted of an indictable offence;
 - (d) if he is disqualified from acting as a director of a company under the Company Directors Disqualification Act 1986; or
 - (e) if he is removed for good cause by the Scheme Administrators.
- 9.2.4 In the event that there is a vacancy in the office of the Scheme Adjudicator, the Scheme Administrators may fill the vacated office by appointing another person as Scheme Adjudicator.

- 9.2.5 In the event that the Scheme Adjudicator shall become aware that he has a conflict of interest in relation to any matter referred to him under this Part 9, he shall inform the Scheme Administrators of such conflict forthwith. In the event of such notification by the Scheme Adjudicator or notification by the Scheme Creditor pursuant to Clause 9.5.2(e), the Scheme Administrators may, at their discretion, appoint an alternate Scheme Adjudicator, for the purpose of adjudicating on the relevant matter only. For the avoidance of doubt, the Scheme Adjudicator's appointment shall, subject to Clause 9.2.3, continue during the appointment of the alternate, and he shall continue to adjudicate on all other matters referred to in this Part 9, unless a conflict shall arise in respect of any of those matters, in which case this Clause 9.2.5 shall apply.
- 9.2.6 Without prejudice to the generality of Clause 9.5 and as more particularly provided in Clauses 9.4.33 and 9.5.3, the Scheme Adjudicator shall be responsible for the adjudication of:
- (a) any issues of fact or law directly or indirectly necessary to adjudicate on any Disputed Matters (as defined in Clause 9.4.18) which directly or indirectly relate to information underlying the quantification of a Notified Scheme Claim, Outwards Unpaid Losses, and Outwards Reserves and IBNR (including disputes relating to the Supporting Information to be used to determine the level of net present value discounting to be applied as referred to in the Estimation Methodology) (but not (i) the principles, policies or assumptions comprised within the Estimation Methodology; or (ii) the application of the principles, policies or assumptions comprised within the Estimation Methodology to the Disputed Matters once the Disputed Matters have been determined by adjudication in accordance with Clause 9.5; or (iii) any amounts of Notified Scheme Claims, Outwards Unpaid Losses, and Outwards Reserves and IBNR, except as a consequential result of such adjudication of matters of fact and law) (with the exception of any Non Insurance/Reinsurance Scheme Claim, the amount in respect of which the Scheme Adjudicator shall be entitled to determine upon having adjudicated any Disputed Matters relating to such Scheme Claim);
 - (b) whether a Notified Scheme Claim should have been designated as a Suspended Scheme Liability by the Scheme Administrators pursuant to Clauses 9.4.33 and 9.4.36; and
 - (c) any disputes relating to Net Statements pursuant to Clause 9.4.41.
- 9.2.7 Subject to any directions which may be given by any Scheme Adjudicator in accordance with Clauses 9.5.7 and 9.5.9, the relevant Scheme Company shall pay such reasonable remuneration to the Scheme Adjudicator for the exercise and performance of his powers, duties and functions under the Scheme as may be agreed between the Scheme Administrators and Scheme Adjudicator and the Scheme Administrators shall pay all such amounts in full out of the assets of the relevant Scheme Company as Scheme Costs. Subject to Clauses 9.5.7 and 9.5.9, the Scheme Companies shall pay all costs, charges and expenses reasonably incurred by the Scheme Adjudicator including, subject to the prior agreement of the Scheme Administrators and Clause 9.5.2(c), the cost of any retained legal advisers or experts in the course of exercising and performing his powers, duties and functions under the Scheme.

9.2.8 In carrying out his functions and exercising his powers under the Scheme, in relation to each Scheme Company, the Scheme Adjudicator shall act bona fide and with due care and diligence and shall use his powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms. The provisions of Clause 5.4.3 to 5.4.8 (both inclusive), in particular the protections, indemnities and provision for insurance referred to therein, shall apply with all necessary changes to any Scheme Adjudicator.

9.3 Appointment of the Scheme Actuary

9.3.1 There shall be one Scheme Actuary appointed for the purposes of and having the powers, rights, duties and functions conferred upon him by this Part. The Scheme Actuary shall be an individual who is a member of an actuarial body affiliated to the International Actuarial Association and who has a suitable number of years of continuous experience of relevant actuarial work. The initial Scheme Actuary shall be Mr Mark Allen.

9.3.2 The Scheme Actuary shall cease to hold that office upon the occurrence of any of the following events:

- (a) if he dies or becomes bankrupt or mentally disordered or ceases to be a member of an actuarial body which is affiliated to the International Actuarial Association;
- (b) if he resigns his appointment at any time by giving not less than two months' notice in writing (or less in the Scheme Administrators' discretion) to the Scheme Administrators and the Creditors Committee;
- (c) if he is convicted of an indictable offence;
- (d) if he is disqualified from acting as a director of a company under the Company Directors Disqualification Act 1986; or
- (e) if he is removed for good cause by the Scheme Administrators.

9.3.3 In the event that there is a vacancy in the office of the Scheme Actuary the Scheme Administrators may fill the vacancy by appointing another person as Scheme Actuary.

9.3.4 In the event that the Scheme Actuary shall become aware that he has a conflict of interest in relation to any matter referred to him under this Part 9, he shall inform the Scheme Administrators of such conflict forthwith, and the Scheme Administrators may, at their discretion, appoint an alternate Scheme Actuary, for the purpose of fulfilling the relevant functions in relation to the relevant matter only. For the avoidance of doubt, the Scheme Actuary's appointment shall, subject to Clause 9.3.2, continue during the appointment of the alternate, and he shall continue to fulfil the relevant functions in relation to all other matters referred to him under this Part 9, unless a conflict shall arise in respect of any of those matters, in which case this Clause 9.3.4 shall apply.

- 9.3.5 The Scheme Actuary shall perform the functions referred to in this Part 9 for which purposes the Scheme Administrators shall provide the Scheme Actuary with access to all books and records and work product available to the Scheme Companies and the Scheme Administrators. In particular,
- (a) the Scheme Actuary must, if so required by the Scheme Administrators, assist the Scheme Administrators in considering amounts and information supplied to the Scheme Administrators on (i) Claim Forms and/or Supporting Information relating to Agreed Liabilities, Outstanding Losses, IBNR, and Outwards Unpaid Losses (but not Non Insurance/Reinsurance Scheme Claims) supplied before the Bar Date in accordance with Clauses 9.4.4 and (if appropriate) 9.4.6 and 9.4.11 or after the Bar Date if the Scheme Administrators have expressly requested the same from the Scheme Creditor in accordance with Clause 9.4.11 and (ii) Outwards Reserves and IBNR Statements and/or Supporting Information supplied to the Scheme Administrators in accordance with Clause 9.4.16; and
 - (b) The Scheme Actuary shall assist the Scheme Adjudicator if the Scheme Adjudicator thinks appropriate, in adjudicating Disputed Matters (except in connection with Non Insurance/Reinsurance Scheme Claims) and disputes concerning the designation of Suspended Scheme Liabilities under this Part 9; and
 - (c) Following such adjudication of Disputed Matters, the Scheme Actuary shall, upon reference from the Scheme Adjudicator, apply the principles, policies and assumptions comprised within the Estimation Methodology to such information as determined by such adjudication for the purpose of enabling the production of the Scheme Adjudicator's certificate in accordance with Clause 9.5.5, save that the Scheme Actuary shall not apply the principles, policies and assumptions comprised within the Estimation Methodology to information (whether or not subject to adjudication) relating to Non Insurance/Reinsurance Scheme Claims for the purpose of valuing the same.
- 9.3.6 Subject to any directions which may be given by the Scheme Adjudicator in accordance with Clauses 9.5.7 and 9.5.9, the relevant Scheme Company shall pay such reasonable remuneration to the Scheme Actuary for the exercise and performance of his powers, duties and functions under the Scheme as may be agreed between the Scheme Actuary and the Scheme Administrators and the Scheme Administrators shall pay all such amounts in full out of the assets of the relevant Scheme Company as Scheme Costs.
- 9.3.7 In carrying out his functions and exercising his powers under the Scheme, in relation to each Scheme Company, the Scheme Actuary shall act bona fide and with due care and diligence in the interests of that Scheme Company's Scheme Creditors as a whole and shall use his powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms. The provisions of Clauses 5.4.3 to 5.4.8 (both inclusive), in particular the protections, indemnities and provision for insurance referred to therein, shall apply with all necessary changes in respect of any Scheme Actuary. For the avoidance of doubt, this does not include any claims by any Scheme Company.

9.4 Determination of Notified Scheme Claims, Outwards Unpaid Losses and Outwards Reserves and IBNR by the Scheme Administrators

Accessing Claim Forms by Scheme Creditors

9.4.1 Within six weeks after the Amending Scheme Effective Date, the Scheme Administrators shall by post in accordance with Clause 9.9:

- (a) give notice to:
 - (i) every Scheme Creditor to whom written notice was given of the meetings of each class of Scheme Creditors convened by the Courts in respect of each Scheme Company for the purpose of considering the Scheme under section 425 of the English Companies Act and section 99 of the Bermudian Companies Act ("Scheme Meetings") and
 - (ii) any other person whom the Scheme Administrators believe to be a Scheme Creditor and
 - (iii) FSCSstating that the Scheme has become effective, the Amending Scheme Effective Date, the Bar Date and the rates of interest to be used for the present value discounting of Scheme Claims in accordance with the Estimation Methodology;
- (b) send to any such Scheme Creditor or person as is referred to in Clause 9.4.1(a) for whom, at the date of sending, the Scheme Administrators possess verified contact details, details of their unique identification number, password and instructions on how to access their Claim Form and Claim Form Guidance Notes on the Website;
- (c) send to:
 - (i) any such Scheme Creditor or person as is referred to in Clause 9.4.1(a)(i) and (ii) for whom at the date of sending, the Scheme Administrators do not possess verified contact details, a notice requesting that if they wish to make a claim under the Scheme that they make urgent contact with the Scheme Administrators in accordance with Clause 9.9 in order to obtain details of their unique identification number, password and instructions on how to access their Claim Form and Claim Form Guidance Notes on the Website and;
 - (ii) any broker or other person known by the Scheme Administrators to be duly authorised to accept service on behalf of such a Scheme Creditor as is referred to in Clause 9.4.1(c)(i) and in respect of which the Scheme Administrators have verified contact details, a copy of the notice referred to in Clause 9.4.1(c)(i) together with a request that such broker or other person pass the same onto the Scheme Creditor; and

- (d) whether before or after the six weeks referred to in this Clause 9.4.1 (but before the Bar Date) promptly send to any such Scheme Creditor or person who requests the same, a hard copy of their Claim Form and Claim Form Guidance Notes by post in accordance with Clause 9.9.

9.4.2 Within six weeks of the Amending Scheme Effective Date, the Scheme Administrators shall also cause to be published once in each of the same newspapers and publications in which the Scheme Meetings were advertised, an advertisement stating those matters in Clause 9.4.1(a) and calling for:

- (a) any person believing himself to be a Scheme Creditor and who has not received any of the notices or details referred to in Clause 9.4.1 to contact the Scheme Administrators as soon as possible; and
- (b) Scheme Creditors to complete and return their Claim Form and Supporting Information to the Scheme Administrators before the Bar Date in accordance with Clause 9.9.

9.4.3 The Claim Forms and Claim Form Guidance Notes made available to Scheme Creditors on the Website or, if requested, sent by post to Scheme Creditors under Clause 9.4.1 shall be in substantially the form set out at Appendix 2. Any Claim Form so made available or sent out to Scheme Creditors shall contain such statements as to quantum as is known by the Scheme Administrators at the Amending Scheme Effective Date in respect of any:

- (a) Established Scheme Liabilities, (including in respect of Non Insurance/Reinsurance Scheme Claims),
- (b) Agreed Liabilities,
- (c) Outwards Unpaid Losses and
- (d) any security, letters of credit, trust, set-off or cross claims under Clauses 2.6.1(a), (b) and (c) in respect of the relevant Scheme Creditor.

The Requirement to Return Claim Forms Before the Bar Date

9.4.4 At any time before (but not after) the Bar Date, a Scheme Creditor shall be entitled to amend, add to or alter any Claim Form made available or sent to it under Clause 9.4.1 in accordance with the Claim Form Guidance Notes, provided that they shall return the Claim Form together with all Supporting Information to the Scheme Administrators in accordance with Clause 9.9 so as to be received by them before the Bar Date. Any such amendment, addition or alteration may relate to:

- (a) any dispute as to the accuracy or completeness of the Scheme Administrators' statement as to quantum of an Established Scheme Liability (including in respect of any Non Insurance/Reinsurance Scheme Claim) or the Scheme Claim element of an Agreed Liability shown on the Claim Form made available or sent to a Scheme Creditor under Clause 9.4.1;

- (b) any dispute as to the accuracy or completeness of the Scheme Administrators' statement as to quantum of any security, letters of credit, trust, set-off or cross claim under Clause 2.6.1(a), (b) and (c) shown on such Claim Form;
- (c) any Outstanding Loss claimed by the Scheme Creditor, valued as at the Valuation Date, without discounting to net present value;
- (d) IBNR claimed by the Scheme Creditor, valued as at the Valuation Date, without discounting to net present value, and/or;
- (e) any dispute as to the accuracy or completeness of the Scheme Administrators' statement as to quantum of that Scheme Creditor's Outwards Unpaid Losses shown on such Claim Form.

(any amendments, additions, alterations and matters referred to in this Clause 9.4.4 (a) to (d) above, being referred to in this Part 9 as the Scheme Creditor's, "Notified Scheme Claim").

9.4.5 For the avoidance of doubt, any such Claim Form returned to the Scheme Administrators under Clause 9.4.4 must be accompanied by all Supporting Information including the specific amount that the Scheme Creditor seeks to claim for in respect of any Notified Scheme Claim or attribute in respect of Outwards Unpaid Losses. To the extent that the Scheme Administrators reasonably determine that a Scheme Creditor has not so included such amounts, the Scheme Creditor shall not be deemed to have notified any such Notified Scheme Claim before the Bar Date or shall be deemed to have accepted the Scheme Administrators' valuation of the Outwards Unpaid Losses set out in the Claim Form (as the case may be).

9.4.6 At any time before the Bar Date, a Scheme Creditor (provided they give full reasons for doing so) may, in accordance with Clause 9.9, request one or more further Claim Forms to be sent to them by the Scheme Administrators in accordance with that Clause. The Scheme Administrators shall send new details of the Scheme Creditor's unique identification number, password and instructions on how to access such further Claim Form and Claim Form Guidance Notes from the Website or, if requested a hard copy of the same. For the avoidance of doubt, the provisions of Clauses 9.4.4 and 9.4.5 shall apply to such Claim Form with any necessary changes. For the avoidance of doubt, nothing contained in this Clause shall ameliorate the Scheme Creditor's obligation to submit a Claim Form (and Supporting Information) as provided for under Clause 9.4.4.

Agreeing Claim Forms Made Available by the Scheme Administrators

9.4.7 A Scheme Creditor shall be deemed to have agreed as accurate and complete such amounts or information as appears on any Claim Form sent or made available to them under Clause 9.4.1 unless that Scheme Creditor amends, alters and/or adds to and returns the relevant Claim Form and Supporting Information to the Scheme Administrators in accordance with Clauses 9.4.4 and 9.4.5. Such information and amounts contained in the Claim Form shall thereafter be binding on the Scheme Creditor for the purposes of the following provisions of this Part 9.

9.4.8 For the avoidance of doubt and without prejudice to the other provisions of this Part 9, the Claim Form shall not be deemed to have been returned to the Scheme Administrators in accordance with Clauses 9.4.4 and 9.4.5 before the Bar Date unless the Claim Form includes the relevant details of the identity and contact details for the Scheme Creditor concerned to the reasonable satisfaction of the Scheme Administrators or unless the Scheme Administrators shall otherwise be in possession of such information.

9.4.9 If any Scheme Creditor:

- (a) wishes to agree the information and amounts contained on the Claim Form made available or sent by the Scheme Administrators under Clause 9.4.1 and
- (b) either (i) does not have or (ii) does not wish to make any amendment, alterations or additions to the Claim Form whether in respect of any Outstanding Loss and/or IBNR or otherwise,

such Scheme Creditor may notify the Scheme Administrators in accordance with Clause 9.9 before the Bar Date of this fact, whereupon such information and amounts contained in the Claim Form shall thereafter be binding on the Scheme Creditor for the purposes of the following provisions of this Part 9.

Agreeing Notified Scheme Claims and Outwards Unpaid Losses with Scheme Creditors

9.4.10 Subject to Clauses 9.4.7, 9.4.9 and 9.4.29 to 9.4.36, the Scheme Administrators shall as soon as reasonably possible after the receipt by them of a Claim Form and Supporting Information, use their reasonable endeavours to reach agreement with the Scheme Creditor concerned with regard to the information and amounts contained in such Claim Forms and Supporting Information in relation to each Notified Scheme Claim or Outwards Unpaid Losses of a Scheme Creditor (which agreement in the case of any Outstanding Loss and IBNR will be as to both undiscounted amounts and such amounts discounted to net present value as referred to in the Estimation Methodology).

9.4.11 Whether before or after the Bar Date, the Scheme Administrators shall be entitled, upon request made in accordance with Clause 9.9, to seek from the Scheme Creditor concerned (and the Scheme Creditor shall be obliged to provide in the same manner within a reasonable period) such further information or require the production to them of such documentary or other evidence relating to any such Notified Scheme Claim or Outwards Unpaid Losses as they consider necessary for the purpose of reaching such agreement as is referred to in Clause 9.4.10. In default of such Scheme Creditor providing such information and/or documentary or other evidence so requested within a reasonable period (which, subject to Clause 9.9.9, shall in no case be later than 30 days after such request) the Scheme Administrators shall be entitled to seek agreement in accordance with Clause 9.4.10. In the absence of agreement the Scheme Administrators shall be entitled to refer for adjudication, in accordance with Clauses 9.4.18 to 9.4.24, such Notified Scheme Claim or Outwards Unpaid Losses in respect of which the information and/or documentary or other evidence was so requested, without taking into account such information.

- 9.4.12 In any case where a Claim Form returned by the Scheme Creditor concerned, pursuant to Clause 9.4.4 or (if appropriate) Clause 9.4.6, contains amendments, alterations or additions relating to any Outstanding Loss and/or IBNR and/or the Scheme Creditor has disputed whether in whole or in part the Scheme Administrators' valuation of their Outwards Unpaid Losses in the Claim Form made available or sent to the Scheme Creditor under Clause 9.4.1, the Scheme Administrators may consult with the Scheme Actuary (for which purpose the Scheme Administrators shall make all their and the relevant Scheme Companies' books and records and work product available to the Scheme Actuary) with a view to agreeing such amounts as provided by the Scheme Creditor in such returned Claim Form and/or any Supporting Information.
- 9.4.13 In the event that (as anticipated in Clause 9.4.10) the Scheme Administrators reach agreement with a particular Scheme Creditor of the whole or part of the amounts and/or information contained in a Claim Form and/or Supporting Information returned by the Scheme Creditor, in accordance with Clause 9.4.4 (and Clause 9.4.6, if appropriate), in respect of the whole or part of any Notified Scheme Claim and/or Outwards Unpaid Losses, they shall, as soon as reasonably practicable, notify the relevant Scheme Creditor, in accordance with Clause 9.9, of such agreement. For the avoidance of doubt, such agreement shall in the case of any Outstanding Loss and IBNR include both undiscounted and discounted net present value amounts. The relevant Scheme Company and the Scheme Creditor will thereafter treat such amounts and/or information as valid and binding as to such matters and/or amounts.

Outwards Reserves and IBNR Statement

- 9.4.14 Provided the Scheme Administrators reasonably determine in their discretion that such action is in the best interests of the relevant Scheme Company, the Scheme Administrators will, as soon as practicable after the Bar Date, send a statement to each Scheme Creditor who is also a reinsurer or retrocessionaire of that Scheme Company, setting out the Scheme Administrators' statement of the quantum of that Scheme Creditor's Outwards Reserves and IBNR in the form of an Outwards Reserves and IBNR Statement.
- 9.4.15 The Scheme Administrators shall, as soon as practicable, use their reasonable endeavours to agree with the particular Scheme Creditor concerned any amounts of Outwards Reserves and IBNR stated on the Outwards Reserves and IBNR Statement sent to them under Clause 9.4.14.
- 9.4.16 In the event that the Scheme Creditor disputes any amounts of Outwards Reserves and IBNR so stated they shall return the Outwards Reserves and IBNR Statement to the Scheme Administrators as soon as possible in accordance with Clause 9.9, together with the amounts of Outwards Reserves and Outwards IBNR they are prepared to agree with Supporting Information.
- 9.4.17 The provisions of Clauses 9.4.10 to 9.4.13 shall apply with necessary changes as appropriate, to the agreeing of the amounts and/or information contained in a Scheme Creditor's Outwards Reserves and IBNR Statement and Supporting Information, excluding any reference to the Bar Date.

Disputed Notified Scheme Claims, Outwards Unpaid Losses and Outwards Reserves and IBNR

9.4.18 In the event that the Scheme Administrators have been unable to reach agreement with a particular Scheme Creditor pursuant to Clause 9.4.10 and/or Clause 9.4.17 in respect of the

- (a) whole or part of the amounts and/or information contained in a Claim Form and/or Supporting Information returned by a Scheme Creditor in accordance with Clause 9.4.4 (and Clauses 9.4.6 and 9.4.11, if appropriate) in respect of the whole or part of any Notified Scheme Claim and/or Outwards Unpaid Losses for the purposes of Clause 9.4.13; and/or
- (b) whole or part of the amounts and/or information contained in an Outwards Reserves and IBNR Statement and/or Supporting Information returned by a Scheme Creditor in accordance with Clause 9.4.16

(the amounts and/or matters in dispute under this Clause 9.4.18(a) and (b) being together referred to as that Scheme Creditor's "**Disputed Matters**") within what the Scheme Administrators consider, in all the circumstances, to be a reasonable time (and, subject to Clause 9.9.9(a), in any event no later than six months after the Bar Date), the Scheme Administrators will thereupon send to the Scheme Creditor concerned, in the manner set out in Clause 9.9, a statement setting out the undiscounted and, where appropriate, the discounted net present value of the Scheme Creditor's Notified Scheme Claim and Outwards Reserves and IBNR that the Scheme Administrators are willing to accept. For the avoidance of doubt such statement will include those agreed amounts in respect of those items referred to in Clauses 9.4.3(a), (b), (c) and (d). The Scheme Administrators will invite such Scheme Creditor to agree the disputed amounts in that statement within 30 days of deemed receipt of the same by the Scheme Creditor.

9.4.19 If the Scheme Creditor concerned does not, within 30 days of deemed receipt of the statement referred to in Clause 9.4.18, give notice of objection to the Scheme Administrators in accordance with Clause 9.9 to the effect of requiring the whole or any part of the Disputed Matters being submitted to the Scheme Adjudicator for adjudication in accordance with Clause 9.5, the amounts stated in such statement as sent to the Scheme Creditor under Clause 9.4.18 shall thereupon become binding on the Scheme Creditor concerned.

9.4.20 If the Scheme Creditor replies to the Scheme Administrators in the manner set out in Clause 9.9 within 30 days of deemed receipt of such statement as is referred to in Clause 9.4.18, to the effect that it does not agree the Disputed Matters, the Scheme Creditor concerned shall be deemed to have agreed to the Scheme Administrators referring the Disputed Matters to the Scheme Adjudicator for adjudication in accordance with Clause 9.5. For the avoidance of doubt, any dispute between the Scheme Administrators and a Scheme Creditor as to the Supporting Information to be used to determine the discounted amounts owed to that Scheme Creditor (as reflected in the discounted net present value amounts in the statement referred to in Clause 9.4.18) shall be a Disputed Matter notwithstanding that the Scheme Creditor may agree the quantum of the undiscounted amount. In notifying the Scheme

Administrators under this Clause 9.4.20, the Scheme Creditor shall specify (where appropriate) whether it disputes the undiscounted amount and/or the Supporting Information used in determining the discounted net present value amount as set out in the statement sent to them under Clause 9.4.18.

- 9.4.21 The Scheme Administrators shall send a notice in accordance with Clause 9.9 to the relevant Scheme Creditor to the effect that the Disputed Matters have been referred to the Scheme Adjudicator for adjudication, and the nature of the Disputed Matters.
- 9.4.22 No Scheme Creditor may submit a Claim Form or Outwards Reserves and IBNR Statement directly to the Scheme Adjudicator for adjudication of the Disputed Matters.
- 9.4.23 In no circumstances shall any amounts comprised in the Disputed Matters referred to the Scheme Adjudicator in accordance with Clauses 9.4.18 to 9.4.21 exceed:
- (a) in respect of any Notified Scheme Claim, the relevant amounts notified by the Scheme Creditor in a Claim Form under Clause 9.4.4 and (if appropriate) Clauses 9.4.6 and 9.4.11 and
 - (b) in respect of Outwards Unpaid Losses and/or Outwards Reserves and IBNR, the relevant amount notified by the Scheme Administrators in the relevant Claim Form and/or Outwards Reserves and IBNR Statement under Clauses 9.4.1 and/or 9.4.14 (as the case may be).
- 9.4.24 The fact that there are, in respect of a Claim Form and/or Outwards Reserves and IBNR Statement and/or Supporting Information, Disputed Matters which have been submitted to the Scheme Adjudicator under Clauses 9.4.18 to 9.4.21, shall not prevent other information and/or amounts in the Claim Form and/or Outwards Reserves and IBNR Statement and/or Supporting Information which have been agreed or deemed to have been agreed between the Scheme Administrators and the Scheme Creditor under Clauses 9.4.13 and 9.4.15 from being binding on the Scheme Creditor and the relevant Scheme Company concerned as to such amounts and/or information. No Net Statement shall be prepared in relation to any Scheme Creditor under Clause 9.4.37 until all Disputed Matters have been adjudicated upon in accordance with Clause 9.5.5 and Suspended Scheme Liabilities with that Scheme Creditor have been agreed or, if necessary, adjudicated upon in accordance with that Clause 9.5.5.

Estimation Methodology

- 9.4.25 Subject to Clauses 9.4.29 to 9.4.36, for the purpose of:
- (a) the Scheme Administrators seeking agreement with Scheme Creditors in respect of any Notified Scheme Claim (with the exception of any Notified Scheme Claim relating to any Non Insurance/Reinsurance Scheme Claim), Outwards Unpaid Losses and/or Outwards Reserves and IBNR under Clauses 9.4.10 and/or 9.4.15 and
 - (b) the Scheme Adjudicator providing his certificate pursuant to Clause 9.5.5,

the Scheme Administrators, in the former case may, if they so wish, with the assistance of the Scheme Actuary and the Scheme Adjudicator shall in the latter case, with the assistance of the Scheme Actuary, apply the principles, policies and assumptions comprised within the Estimation Methodology to the information (in the latter case, once that information relating directly or indirectly to Disputed Matters has been adjudicated upon under Clause 9.5) on:

- (i) the Claim Forms and any Supporting Information supplied by the Scheme Creditor to the Scheme Administrators in accordance with Clauses 9.4.4 and (if appropriate) 9.4.6 and Clause 9.4.11 (with the exception of any Notified Scheme Claim relating to any Non Insurance/Reinsurance Scheme Claim); and/or
- (ii) the Outwards Reserves and IBNR Statement and Supporting Information supplied by the Scheme Creditor to the Scheme Administrators in accordance with Clause 9.4.16 and any Supporting Information provided by the Scheme Administrators to the Scheme Creditor in the circumstances referred to in (ii) of the definition of "Supporting Information",

The application of the principles, policies and assumptions comprised within the Estimation Methodology, in each case referred to above, is to determine the amount (discounted, where appropriate) of the Scheme Creditor's Notified Scheme Claims, Outwards Unpaid Losses and Outwards Reserves and IBNR (as the case may be). All Scheme Creditors shall be bound by the principles, policies and assumptions comprised within the Estimation Methodology for the purposes of calculating their Outstanding Losses, IBNR, Outwards Unpaid Losses, Outwards Reserves and IBNR and, insofar as appropriate, Agreed Liabilities and shall not in any circumstances raise any dispute as to the application of the principles, policies or assumptions comprised within the Estimation Methodology to establish such amounts (discounted, where appropriate). For the avoidance of doubt, the Estimation Methodology shall have no relevance to the valuation of any Non Insurance/Reinsurance Scheme Claim.

- 9.4.26 In seeking such agreement with the Scheme Creditor as is referred to in Clause 9.4.10 or in adjudicating on Disputed Matters under Clause 9.5, the Scheme Administrators or Scheme Adjudicator (as the case may be) may, in their discretion, take account of information other than that supplied by the Scheme Creditor (including, but without limitation, market information and developments and those matters and issues set out in Clause 2.2.2(a) to (c), subject to those matters set out in Clause 2.2.6(a) to (c)).
- 9.4.27 All Outstanding Losses, IBNR and Outwards Reserves and IBNR (and, insofar as appropriate, Agreed Liabilities and Outwards Unpaid Losses) shall be valued as at the Valuation Date.
- 9.4.28 In seeking to agree or, if necessary, adjudicating the amounts of Outwards Reserves and IBNR in an Outwards Reserves and IBNR Statement, the Scheme Administrators or Scheme Adjudicator and Scheme Actuary (as the case may be) are entitled to take into account (and the Scheme Creditor shall raise no objection thereto) any information and/or amounts concerning Notified Scheme Claims and/or Outwards Unpaid Losses submitted by Scheme Creditors in Claim Forms and Supporting

Information returned to Scheme Administrators in accordance with Clauses 9.4.4, 9.4.6 and 9.4.11. In particular, for the purposes of calculating a Scheme Creditor's Outwards Reserves and IBNR, the Scheme Creditor shall be bound by:

- (a) the value of any Notified Scheme Claim agreed or determined by adjudication in accordance with this Part 9; and
- (b) the value of any Scheme Claim determined by an agreement reached between the Scheme Administrators and any person who is no longer a Scheme Creditor but to whom the Scheme Company owed such Scheme Claim.

Suspended Scheme Liabilities

- 9.4.29 Where it appears to the Scheme Administrators, in their discretion, that the amount of a Notified Scheme Claim (including the amount of any Outwards Unpaid Losses) may be materially affected by any Proceedings (as defined in Clause 2.2.9(a)) in respect of a Common Liability or any litigation or dispute resolution brought by a Scheme Company, they may suspend the operation of the process of determining the amount due in accordance with Clauses 9.4.7 to 9.4.13 above in relation to that Notified Scheme Claim for such period as the Scheme Administrators, in their discretion, reasonably deem appropriate. Such Notified Scheme Claim shall, thereupon, become a Suspended Scheme Liability.
- 9.4.30 In the event that the Scheme Administrators designate a Notified Scheme Claim as a Suspended Scheme Liability, the Scheme Administrators shall, as soon as reasonably practicable, after such designation, send to the relevant Scheme Creditor a notice in the manner provided for in Clause 9.9. That notice shall state that the relevant Notified Scheme Claim has become a Suspended Scheme Liability and the reasons for such designation.
- 9.4.31 The relevant Scheme Creditor may within 14 days of receiving the notice referred to in Clause 9.4.30 object to the Scheme Administrators' designation by delivering a notice of objection pursuant to Clause 9.9 containing full reasons for their objection. If within a further reasonable period (to be determined by the Scheme Administrators in their discretion) from receipt of such notice of objection by the Scheme Administrators, the Scheme Creditor and the Scheme Administrators have not reached agreement as to the treatment of the Suspended Scheme Liability, the matter shall be referred to the Scheme Adjudicator and the Scheme Creditor shall be notified of such referral.
- 9.4.32 In making such referral, the Scheme Administrators will provide to the Scheme Adjudicator a copy of the notices of designation and objection referred to in Clauses 9.4.30 and 9.4.31 and, to the extent the Scheme Administrators deem relevant, the relevant Claim Forms and Supporting Information and a copy of any other notice, statement and correspondence relating to the Suspended Scheme Liability.
- 9.4.33 In adjudicating whether the Suspended Scheme Liability should continue to be treated as such by the Scheme Administrators, the provisions of Clause 9.5 shall apply with all necessary changes (including the Scheme Adjudicator's obligation to consult with the Scheme Actuary on the matter if the Scheme Adjudicator believes appropriate) save that:

- (a) the Scheme Adjudicator shall only be concerned with the issue of whether the Scheme Administrators properly designated the Scheme Creditor's Notified Scheme Claim as a Suspended Scheme Liability; and
- (b) the Scheme Adjudicator shall make his determination within 28 days of the matter being referred to him.

9.4.34 If the Scheme Adjudicator determines that the Scheme Administrators were justified in making such designation, the Suspended Scheme Liability shall continue to be governed by Clause 9.4.29.

9.4.35 If the Scheme Adjudicator determines that the Scheme Administrators were not justified in making such designation or, if at any time, the Scheme Administrators determine that it is appropriate to revoke such designation the Scheme Administrators will seek to agree or, if necessary, refer for adjudication such Suspended Scheme Liabilities in the same way as Notified Scheme Claims in accordance with Clauses 9.4 and 9.5. In such a case, any relevant time periods after the Bar Date shall commence from the date of such determination.

9.4.36 At the request of the relevant Scheme Creditor, and in addition to the provision at Clause 9.4.31, the Scheme Administrators will review the designation, or re-designation under this Clause, of a Notified Scheme Claim as a Suspended Scheme Liability. Such a request for review cannot be made earlier than 180 days after the claim was last designated by the Scheme Administrators or, if later, last determined by the Scheme Adjudicator to be so designated. The Scheme Administrators shall thereafter notify the Scheme Creditor of the result of their review whereupon the provisions of Clauses 9.4.30 to 9.4.35 (inclusive) shall apply with all necessary changes.

Calculation of Scheme Creditors' Established Scheme Liabilities

9.4.37 The Scheme Administrators shall, as soon as practicable following the determination, whether by agreement or adjudication of the amounts (discounted, where appropriate) of all Notified Scheme Claims (including any Non Insurance/Reinsurance Scheme Claims), Outwards Unpaid Losses, and Outwards Reserves and IBNR due to and by the Scheme Company and any particular Scheme Creditor in accordance with this Part 9, calculate that Scheme Creditor's overall Established Scheme Liability in relation to each Scheme Company, (which for the avoidance of doubt may be nil as a result of the calculation carried out under this Clause), setting out the calculation in the form of a Net Statement for each Scheme Creditor of each Scheme Company which the Scheme Administrators shall send in accordance with Clause 9.9 to the Scheme Creditor. The Net Statement shall contain, in respect of each Scheme Company, the Scheme Creditor's:

- (a) Established Scheme Liabilities under Clause 2.6 of the Scheme or the identical provision of the Original Scheme (including, in respect of Non Insurance/Reinsurance Scheme Claims);
- (b) Agreed Liabilities, at the value agreed or adjudicated upon under Part 9;

- (c) Notified Scheme Claim, at the value agreed or adjudicated upon under Part 9 which, for the avoidance of doubt (and where relevant), shall be discounted to net present value in accordance with the Estimation Methodology;
- (d) Outwards Unpaid Losses and Outwards Reserves and IBNR, at the value agreed or adjudicated upon under Part 9, which, for the avoidance of doubt (and where relevant), shall be discounted to net present value in accordance with the Estimation Methodology;
- (e) Amount of any security which has been or may be deducted from the sum due from the Scheme Company to the Scheme Creditor and/or the effect of any of the other matters referred to in Clause 2.4, in each case as agreed or adjudicated upon under Part 9; and
- (f) The amount, if any, resulting from the subtraction of the total of (d) and (e) from the total of (a), (b) and (c) in respect of such Scheme Creditor, provided that if such subtraction gives rise to a negative amount, the figure shall be treated as nil for the purpose of calculating the overall Established Scheme Liability under Part 9.

The amount that the Scheme Administrators so calculate in respect of each Scheme Company as being due by the Scheme Company to the Scheme Creditor concerned in accordance with this Clause 9.4.37 (and for the avoidance of doubt after effecting set off under Clause 2.5 and subject to Clauses 9.4.38 to 9.4.42) shall be the Scheme Creditor's overall Established Scheme Liability (if any) in respect of that Scheme Company. For the avoidance of doubt, this overall Established Scheme Liability comprises the Scheme Creditor's existing Established Scheme Liabilities under Clause 2.6 and any additional Established Scheme Liability determined under Part 9. Subject to Clauses 9.4.38 to 9.4.42, a Scheme Creditor shall become an Offset Scheme Creditor in respect of a Scheme Company if the Scheme Administrators determine that no overall Established Scheme Liability is due to such person by the Scheme Company under this Clause 9.4.37 or, if relevant, the Scheme Adjudicator makes a determination to that effect under Clause 9.4.42.

- 9.4.38 For the avoidance of doubt, in calculating a Scheme Creditor's overall Established Scheme Liability in accordance with Clause 9.4.37, the Scheme Administrators shall be entitled to take into account, for the purpose of effecting the set off referred to in that Clause, the value of Agreed Liabilities (if appropriate), Outstanding Losses, IBNR, Outwards Unpaid Losses and Outwards Reserves and IBNR in the amounts calculated under this Part 9 (including, in particular, by the application of the principles, policies and assumptions comprised within the Estimation Methodology).
- 9.4.39 Each Scheme Creditor may, by notice in writing under Clause 9.9 to be received by the Scheme Administrators within 30 days after deemed receipt by the Scheme Creditor of the Net Statement sent to them, object to the amount calculated in accordance with Clause 9.4.37. Such objection may only be on the grounds of arithmetical or other manifest error on the face of the Net Statement and shall give full reasons for such objection. Such Scheme Creditor shall not object to the principles, policies or assumptions comprised within the Estimation Methodology or their application to its Notified Scheme Claim, Outwards Unpaid Losses or Outwards Reserves and IBNR. If no objection has been received by the Scheme Administrators

from the relevant Scheme Creditor within the above 30 day period, the amount set out in accordance with Clause 9.4.37 in the Net Statement shall be the Scheme Creditor's overall Established Scheme Liability.

- 9.4.40 In the event that the Scheme Administrators agree with the objections of a Scheme Creditor received within the period referred to in Clause 9.4.39, the relevant Net Statement shall be amended and sent to the relevant Scheme Creditor under Clause 9.9 within 60 days of the date of the first Net Statement. The provisions of Clauses 9.4.37 to this Clause 9.4.40 shall apply, with necessary changes, to the amended Net Statement as if it were the Net Statement first mentioned with any necessary changes to dates to reflect successive 30 day periods for the sending and objecting to subsequent Net Statements.
- 9.4.41 In the event that the Scheme Administrators do not agree with the objections of the Scheme Creditor received within the period allowed by Clause 9.4.39, they shall notify the Scheme Creditor of their disagreement in the manner set out in Clause 9.9 as soon as possible. Unless the Scheme Creditor informs the Scheme Administrators that they accept the accuracy of the Net Statement, within 30 days of the deemed receipt of such notification in the manner set out in Clause 9.9 the disputed matter (which shall be limited to a dispute on the grounds of arithmetical or other manifest error on the face of the Net Statement) and all relevant information and documents shall be referred by the Scheme Administrators to the Scheme Adjudicator to be adjudicated upon in accordance with Clause 9.5 and the Scheme Creditor shall be notified of such referral.
- 9.4.42 The amount determined by the adjudication of the Scheme Adjudicator under Clause 9.4.41 shall be binding upon the Scheme Company, the Scheme Administrators, the relevant Scheme Creditor and all Scheme Creditors and shall be that Scheme Creditor's overall Established Scheme Liability.

No Waiver or Release

- 9.4.43 Subject to Clause 10.3 and the provisions of this Clause 9.4.43, nothing in the Scheme shall be construed as resulting in any release, extinguishment, modification, compromise or waiver of any liability owed by each of the Scheme Companies, save that, upon determination under this Part 9 of all of a Scheme Creditor's Established Scheme Liabilities, those Established Scheme Liabilities shall constitute each Scheme Company's total aggregate liability to the Scheme Creditor concerned for the purposes of making payments under Part 3 only. For the purposes of the Scheme, the amount of a Scheme Company's aggregate liability to a Scheme Creditor shall be calculated by reference to the undiscounted amount, where appropriate, of such Scheme Creditor's Notified Scheme Claim and the difference between such undiscounted and discounted amounts shall be treated by the Scheme Creditor as having been released under the Scheme.

FSCS

9.4.44 For the avoidance of doubt, any value of a Notified Scheme Claim determined under this Part 9, whether by adjudication or agreement, shall not be binding on FSCS. Further, any such determination pursuant to this Part 9 shall not be considered a commutation requiring FSCS consent in accordance with Clause 2.12.2.

9.5 Determination of Disputed Matters and Suspended Scheme Liabilities by the Scheme Adjudicator

9.5.1 Without prejudice to the generality of the foregoing, in referring:

- (a) any Disputed Matter relating to a Notified Scheme Claim, Outwards Unpaid Losses and Outwards Reserves and IBNR to the Scheme Adjudicator in accordance with Clause 9.4.18 or
- (b) any dispute as to the Scheme Administrators' designation of a Notified Scheme Claim as a Suspended Scheme Liability under Clause 9.4.31 (but only in this latter case to the extent the Scheme Administrators deem appropriate)

the Scheme Administrators will provide to the Scheme Adjudicator a copy of the relevant Claim Forms and/or Outwards Reserves and IBNR Statements and Supporting Information and a copy of any other notice, statement or correspondence relating to the Notified Scheme Claim, Outwards Unpaid Losses, Outwards Reserves and IBNR or Suspended Scheme Liability (as the case may be). The Scheme Adjudicator shall have full and unrestricted access to all of the Scheme Companies' and Scheme Administrators' records and information and work product in the possession or under the control of the Scheme Administrators and any relevant work product of the Scheme Actuary produced in accordance with Clause 9.4.12 which the Scheme Adjudicator considers are needed to resolve the Disputed Matters concerning the Notified Scheme Claim, Outwards Unpaid Losses, Outwards Reserves and IBNR or the matters in dispute as to the designation of the Suspended Scheme Liability (as the case may be).

9.5.2 In relation to any matter which is referred to the Scheme Adjudicator:

- (a) the Scheme Adjudicator shall consider the papers and documents before him and shall, within 30 days of receipt of the records and information referred to in Clause 9.5.1, send a notice in accordance with Clause 9.9 to the person concerned stating whether he requires further written explanations, documents, data or information from the Scheme Creditor, the Scheme Administrators, the Scheme Actuary or the Scheme Companies, in which case the relevant person or persons shall, within 30 days after receipt of such request, provide the Scheme Adjudicator with the required written explanation, documents or data or information. In no circumstances whatsoever shall the Scheme Creditor (or their duly authorised representative) be entitled to appear before and address the Scheme Adjudicator on any matter and any submissions which the Scheme Creditor, the Scheme Administrators (or their duly authorised representatives) shall be

entitled under the terms of this Clause 9.5 to make shall be made solely in writing.

- (b) the Scheme Adjudicator shall be entitled to prescribe and lay down such procedures or provisions as he in his discretion deems appropriate for the purposes of assisting him in reaching his decision and shall be entitled to call upon any party to the adjudication for such written explanation, evidence, documents, data and information as he may require. In no circumstances shall the Scheme Adjudicator request submissions to be made by the Scheme Administrators, a Scheme Creditor (or their duly appointed representative) otherwise than in writing;
- (c) Without prejudice to the generality of Clause 9.2.6:
 - (i) in relation to adjudicating upon Disputed Matters and disputes concerning the designation of Suspended Scheme Liabilities under this Part 9, the Scheme Adjudicator shall, if appropriate, consult with the Scheme Actuary and with such advisers, including US coverage attorneys, other legal advisers and experts as he may deem appropriate, including for the purpose of obtaining legal advice or legal opinion in connection with any Disputed Matters or matters in dispute regarding the designation of Suspended Scheme Liabilities; and
 - (ii) in relation to the application of the principles, policies and assumptions comprised within the Estimation Methodology pursuant to Clauses 9.4.25 and 9.5.5 (which shall, for the avoidance of doubt, exclude any Non Insurance/Reinsurance Scheme Claim) the Scheme Adjudicator must refer the matter to the Scheme Actuary;
- (d) if, after the expiry of 30 days from the deemed receipt of the request for further information pursuant to Clause 9.5.2(a), some or all has not been provided then the Scheme Adjudicator shall make such determination as he sees fit on the basis of the information then available to him; and
- (e) in the event that the Scheme Creditor considers that the Scheme Adjudicator has a conflict of interest in relation to any matter referred to him under this Part 9, the Scheme Creditor shall within 14 days of deemed receipt of a notice of referral in accordance with Clause 9.4.21 notify the Scheme Administrator of such conflict and its nature whereupon the provisions of Clause 9.2.5 shall apply.

9.5.3 The Scheme Adjudicator's powers under this Clause 9.5 shall:

- (a) be to determine any issues of fact or law directly or indirectly necessary to adjudicate on any Disputed Matters (including disputes relating to the Supporting Information used in determining the discounted net present value) and the designation of Suspended Scheme Liabilities (to the extent the Scheme Adjudicator has been unsuccessful in obtaining any agreement in respect of the same between the Scheme Administrators and the relevant Scheme Creditor); and

- (b) include the application of the principles, policies and assumptions comprised within the Estimation Methodology to such liabilities with the assistance of the Scheme Actuary once the Disputed Matters have been adjudicated upon (and in doing so the provisions of Clauses 9.4.25 to 9.4.28 shall apply with necessary changes) but
- (c) not include adjudicating upon any disputes as to (i) the principles, policies or assumptions comprised within such Estimation Methodology or the application of such principles, policies or assumptions to the Disputed Matters once determined by him in accordance with this Clause 9.5 and (ii) any amounts of Notified Scheme Claims, Outwards Unpaid Losses, Outwards Reserves and IBNR, except as a consequential result of his adjudication of matters of fact and law referred to in Clause 9.5.3(a) (with the exception of any Non Insurance/Reinsurance Scheme Claim, the amount in respect of which the Scheme Adjudicator shall be entitled to determine upon having adjudicated any Disputed Matters relating to such Scheme Claim).

9.5.4 Without prejudice to the generality of the Scheme Adjudicator's powers to determine disputes as to the Scheme Administrators designation of a Notified Scheme Claim as a Suspended Scheme Liability, where there is a Common Liability in relation to such claim, the Scheme Adjudicator shall, subject to those matters and issues set out at Clause 2.2.6(a) to (c) take into account those matters set out in Clause 2.2.2(a) to (c).

9.5.5 Subject to Clause 9.9.9(b), the Scheme Adjudicator shall, before the expiration of 90 days from the date on which he receives the records and information and work product referred to in Clause 9.5.1, certify in writing to the Scheme Administrators and to the Scheme Creditor concerned pursuant to Clause 9.9 their determination in respect of:

- (a) the Disputed Matters concerning the Notified Scheme Claim, Outwards Unpaid Losses and Outwards Reserves and IBNR and;
- (b) the amounts (discounted, where appropriate) of such liabilities, following adjudication of the Disputed Matters by applying, with the assistance of the Scheme Actuary, the principles, policies and assumptions comprised within the Estimation Methodology to the Scheme Creditor's adjudicated Notified Scheme Claim, Outwards Unpaid Losses and Outwards Reserves and IBNR.

Upon those matters being finally determined by the Scheme Adjudicator, the Scheme Administrators shall prepare a Net Statement under Clause 9.4.37 for the purposes of calculating the amount of the relevant Scheme Creditor's overall Established Scheme Liability. The application of the principles, policies and assumptions comprised within the Estimation Methodology to a Scheme Creditor's adjudicated Notified Scheme Claim, Outwards Unpaid Losses and Outwards Reserves and IBNR by the Scheme Actuary for the purpose of calculating such amounts (discounted, where appropriate) shall be binding on the Scheme Companies, the Scheme Administrators, the Scheme Creditor concerned and all Scheme Creditors except in the case of any mathematical or other manifest error. In no circumstances shall the amounts (discounted, where appropriate) of such adjudicated liabilities as are referred to in this Clause 9.5.5 exceed (i) in respect of a Notified Scheme Claim, the relevant amounts notified by the Scheme Creditor in their Claim Form and Supporting Information

pursuant to Clauses 9.4.4 and (if appropriate) 9.4.6 and 9.4.11 and/or (ii) in respect of Outwards Unpaid Losses and/or Outwards Reserves and IBNR, the relevant amount notified by the Scheme Administrators in the relevant Claim Form and/or Outwards Reserves and IBNR Statement under Clause 9.4.14 (as the case may be).

- 9.5.6 In determining the Disputed Matters in relation to a Notified Scheme Claim, Outwards Unpaid Losses and/or Outwards Reserves and IBNR or the matters in respect of which the Scheme Administrators designated such Notified Scheme Claim as a Suspended Scheme Liability, the Scheme Adjudicator shall act as expert and not as arbitrator. A certificate given by the Scheme Adjudicator in relation to a Notified Scheme Claim, Outwards Unpaid Losses and/or Outwards Reserves and IBNR or a Suspended Scheme Liability under Clause 9.5.5 shall be final and binding on the Scheme Companies, the Scheme Administrators, the relevant Scheme Creditor and all Scheme Creditors. Except as required by law or in the case of any mathematical or other manifest error, no Scheme Creditor nor the Scheme Administrators shall have any right to appeal therefrom or any claim against the Scheme Adjudicator in respect thereof. Once such certificate has been given the provisions of Clauses 9.4.37 to 9.4.42 shall then apply.
- 9.5.7 At the time of the giving of any such certificate as is referred to in Clause 9.5.5 above in relation to a Notified Scheme Claim, Outwards Unpaid Losses and/or Outwards Reserves and IBNR or Suspended Scheme Liability, the Scheme Adjudicator may make such directions in respect of his remuneration and in respect of the costs, charges and expenses incurred by him, by the Scheme Administrators, or by the Scheme Creditor or Scheme Creditors concerned, as he shall think just.
- 9.5.8 If the Scheme Adjudicator shall direct that any such remuneration, costs, charges and expenses be paid by the Scheme Administrators the same shall forthwith be paid in full by the Scheme Administrators out of the assets of the relevant Scheme Company as Scheme Costs.
- 9.5.9 If the Scheme Adjudicator shall direct that any such remuneration, costs, charges and expenses be payable by a Scheme Creditor and the Scheme Creditor does not pay the same in full within one month after such directions the relevant Scheme Company shall pay any unpaid balance thereof in full out of its assets. In any such case, for the purposes of determining whether such Scheme Creditor is entitled to receive any payments pursuant to Clause 3.2 of the Scheme from the relevant Scheme Company, they shall be treated as having received on account of all Established Scheme Liabilities in respect of which they are so entitled an amount equal to the unpaid balance so paid by the Scheme Company and the extent, if any, to which they are entitled to any payment pursuant to Clause 3.2 of the Scheme shall be reduced accordingly. Where the Scheme Creditor is not entitled to receive a payment pursuant to the Scheme or the amount of such remuneration, costs and expenses exceeds their entitlement to a payment under the Scheme, such amount or such excess shall be a debt owed by the Scheme Creditor to the Scheme Company.

9.6 Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR

9.6.1 In accordance with Clauses 9.1.4 and 9.1.5, all Scheme Creditors who consider that the whole or part of any Agreed Liability stated in their Claim Form sent or made available to them under Clause 9.4.1 and/or their Notified Scheme Claim consists of a Protected Agreed Liability and/or a Protected Outstanding Loss and/or Protected IBNR, shall state this on the Claim Form to be submitted to the Scheme Administrators before the Bar Date in accordance with those Clauses. For the avoidance of doubt, Clause 9.4.6 and the first sentence of Clause 9.4.11 shall apply to all Scheme Creditors in respect of all Scheme Claims referred to in this Clause 9.6.1. Such Claim Forms and any Supporting Information submitted under Clauses 9.1.4, 9.1.5 and (if appropriate) 9.4.6 and 9.4.11 will be referred to FSCS (for which purpose such Scheme Creditors hereby consent to such referral). FSCS may agree, in whole or in part, that the relevant Notified Scheme Claim is a Protected Agreed Liability and/or a Protected Outstanding Loss and/or Protected IBNR (as the case may be) in which case such liabilities will become Accepted Protected Liabilities. Such agreement of FSCS is solely for the purpose of calculating the FSCS Amount and shall not be binding on FSCS for determining the eligibility and/or amount of any claim for compensation by a Protected Policyholder in respect of a Protected Liability. To the extent that FSCS so agrees, so that such a Notified Scheme Claim is an Accepted Protected Liability, the provisions of Clauses 9.4, 9.5 and 9.8 shall have no application to such Notified Scheme Claim (so that the relevant Scheme Creditor shall not receive any payments from the Scheme Company concerned in respect of such Accepted Protected Liability) and such Notified Scheme Claim will instead be treated in accordance with Clauses 9.6.4 to 9.6.13 inclusive. In the event that FSCS does not agree that the whole or any part of such Notified Scheme Claim is a Protected Agreed Liability or a Protected Outstanding Loss or Protected IBNR (as the case may be), then notice will be given to the relevant Scheme Creditor of such determination. Any such whole or part of a Notified Scheme Claim that is so determined not to be a Protected Agreed Liability or a Protected Outstanding Loss or Protected IBNR (as the case may be) will then be dealt with in accordance with Clauses 9.4, 9.5 and 9.8.

9.6.2 In the event that:

- (a) FSCS is unable to agree with the Scheme Creditor whether the whole or any part of a Notified Scheme Claim is made up of Protected Agreed Liabilities or Protected Outstanding Losses and/or Protected IBNR, then the Scheme Administrators may, at their discretion (but subject to the last sentence of Clause 9.6.1), reach an agreement with FSCS and the Scheme Creditor as to how such Notified Scheme Claim should be dealt with. This agreement will include the manner in which sums may be paid under the terms of the Scheme, and any appropriate reservation of rights as between FSCS and the Scheme Creditor. This will include the way in which the Scheme Creditor either will give credit to FSCS for any amounts received by the Scheme Creditor from the Scheme Companies in respect of that liability should it become a Protected Liability or will not receive any payment from the Scheme Company in respect of any such Notified Scheme Claim (or part thereof); and

- (b) FSCS determines or it is otherwise so determined (so as to bind FSCS), in relation to an Accepted Protected Liability which becomes an actual present liability owed to the Scheme Creditor under Part 2, that such liability is not in fact protected under Policyholders Protection Act, then the provisions of this Clause 9.6.2(b) shall apply in relation to that liability. FSCS shall pay that part of the distributions it receives under Clause 9.6.6 that relate to such Accepted Protected Liability to the relevant Scheme Creditor, together with interest from the respective distribution dates to the date of payment.

9.6.3 If in the Scheme Administrators' reasonable opinion, a Scheme Creditor has not, but should have, stated on their Claim Form that any Agreed Liability and/or Notified Scheme Claim consists of a Protected Agreed Liability and/or Protected Outstanding Loss and/or a Protected IBNR as required by Clause 9.6.1, the Scheme Administrators shall refer the matter to FSCS together with the relevant Claim Form and any Supporting Information submitted by that Scheme Creditor under Clause 9.4.4 and (if appropriate) Clauses 9.4.6 and 9.4.11 (for which purpose the Scheme Creditor hereby consents to such referral). If, after consideration of such Claim Form, Supporting Information and any other relevant circumstances FSCS are of the opinion that the Scheme Creditor would be protected under the Policyholders Protection Act, FSCS shall give notice of this fact to the Scheme Administrators who shall, in turn, give such notice to the Scheme Creditor, together with a requirement for the Scheme Creditor to show good cause as to their unprotected status which is reasonably satisfactory to the Scheme Administrators and FSCS. Thereafter:

- (a) if at that stage the Scheme Creditor agrees to the amendment to their Claim Form in respect of the relevant liability to indicate that the Notified Scheme Claim consists of a Protected Agreed Liability and/or a Protected Outstanding Loss and/or Protected IBNR, they shall be dealt with as if they had originally so indicated their protected status on their Claim Form in accordance with Clause 9.6.1;
- (b) if the Scheme Creditor shows good cause as to their unprotected status, they shall be dealt with in accordance with Clauses 9.4, 9.5 and 9.8.;
- (c) in the absence of showing good cause as to their unprotected status, the Scheme Creditor shall be dealt with in accordance with Clauses 9.4 and 9.5. Prior to receiving any distribution under Clause 9.8, unless otherwise agreed by FSCS, the Scheme Creditor shall confirm in a legally binding form satisfactory to FSCS that they are not a Protected Policyholder in relation to the liability concerned and that they waive any rights they may have against FSCS under the Policyholders Protection Act, the Restated Scheme or otherwise in relation to that liability.

9.6.4 The Scheme Actuary shall consult with the Scheme Administrators and with FSCS as to the process for calculating any increase under Clause 9.6.4(c) and the weight to be given to the information and/or documents submitted to or available to the Scheme Administrators (including, but not limited to, that under Clause 9.6.3). Thereafter, for the purpose stated in Clause 9.6.6, the Scheme Actuary shall calculate in accordance with the principles, policies and assumptions comprised within the Estimation Methodology, both the respective values and the total aggregate value of:

- (a) all Notified Scheme Claims which Scheme Creditors have stated in accordance with Clauses 9.1.4, 9.1.5 and 9.6.1 that they consider to be Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR and which FSCS has agreed are to be treated as Accepted Protected Liabilities (under Clause 9.6.1) and which do not cease to be Accepted Protected Liabilities before the date of such calculation by virtue of such Notified Scheme Claims becoming Protected Liabilities;
- (b) all other Protected Agreed Liabilities, and Protected Outstanding Losses and Protected IBNR of the Scheme Companies including that which the Scheme Administrators are aware from the books and records of the Scheme Companies, the Scheme Administrators and KMS in respect of which the relevant Scheme Creditors have not returned or are treated as not having returned Claim Forms in accordance with Clauses 9.1.4, 9.1.5 and 9.6.1; and
- (c) any increase the Scheme Actuary considers appropriate as a result of any payments made to a Scheme Creditor under Clause 9.6.3.

The Scheme Administrators will notify FSCS of the total aggregate valuation of liabilities referred to in Clause 9.6.4(a), (b) and (c) and will, upon FSCS's request, give reasonable details in support of that calculation. The Scheme Actuary and the Scheme Administrators shall, insofar as they are able, deal promptly with any queries raised by FSCS as to the calculation and on the reasonable details provided pursuant to this Clause. FSCS shall not be entitled to request information or raise further queries after 60 days from receipt by it of the notice of the total aggregate valuation of liabilities made pursuant to this Clause.

- 9.6.5 FSCS shall within 60 days from the date upon which all its queries have been properly answered and it has received all information requested by it and which is reasonably capable of being provided to it, be entitled to either require that a recalculation be carried out to take into account any such further reasonable information which has been provided to it or which has otherwise become available to FSCS or declare that no recalculation is required. If such a request for recalculation is made, the Scheme Actuary shall, after consultation with FSCS and taking into account any comments from the Scheme Administrators, perform a recalculation of such total aggregate value on the basis specified in Clause 9.6.4. The Scheme Administrators shall notify FSCS of the recalculation and FSCS shall not be entitled to request that a further calculation is undertaken unless it is able to establish to the reasonable satisfaction of the Scheme Administrators that there has been a manifest or arithmetic error in the recalculation. The Scheme Actuary will, at the appropriate time, certify in writing to FSCS that the calculation of the FSCS Amount has been performed in accordance with the principles, policies and assumptions comprised within the Estimation Methodology. For the purposes of undertaking their obligations under Clauses 9.6.4, 9.6.5 and 9.6.6, the Scheme Companies, the Scheme Administrators, KMS and the Scheme Actuary shall not in any way be liable to FSCS for any mistake of fact, law or otherwise in identifying such liabilities.
- 9.6.6 FSCS shall be entitled to receive Payment Percentages as if the FSCS Amount had been an Established Scheme Liability under Parts 2 and 3 following the production of the Scheme Actuary's certificate under Clause 9.6.5. At the Substantive Closure Distribution Date and any Ultimate Distribution Date, the appropriate Scheme

Companies shall make payments to FSCS. Such payments are to be in full and final settlement of the Scheme Companies' liability to make payments to FSCS in respect of any Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR (except for any payments to which FSCS is entitled from a Scheme Company as Scheme Creditor pursuant to an assignment under Clause 4.3 without double counting) (in each case whether under the Scheme, in any liquidation or otherwise). The payments shall be in an amount equal to the Substantive Closure Distribution and Ultimate Distribution (as appropriate) calculated on the FSCS Amount and after taking into account any amounts previously paid. No payment shall be made by any Scheme Company to FSCS under this Clause 9.6.6 in respect of any Protected Agreed Liability, Protected Outstanding Loss and/or Protected IBNR which, being a Notified Scheme Claim submitted to the Scheme Administrators in accordance with Clause 9.9, becomes a Protected Liability established under Part 2 prior to the date as at which the Scheme Actuary calculates the FSCS Amount or which becomes a Protected Liability before the Bar Date. In such cases the respective rights and obligations of the appropriate Scheme Company, the Protected Policyholder and FSCS are determined in accordance with Part 4, notwithstanding that such Notified Scheme Claim may have become an Accepted Protected Liability in accordance with Clause 9.6.1 (so that, for the avoidance of doubt, such Notified Scheme Claim shall not be treated in accordance with Clauses 9.6.4 to 9.6.13 inclusive, nor shall it be treated in accordance with Clauses 9.4, 9.5 or 9.8).

- 9.6.7 In consideration of the payments to be made by the Scheme Companies to FSCS as provided for in Clause 9.6.6:
- (a) Subject to this Clause 9.6.7, FSCS agrees to pay to each Scheme Creditor the Protected Percentage of any Protected Liability if and to the extent the Scheme Creditor becomes a Protected Policyholder in respect of any such liability. Such payment will be made by FSCS whether before or after the termination of the Scheme or a Liquidation Event in relation to any Scheme Company. Any such payment will only be in respect of any Protected Agreed Liability, Protected Outstanding Loss and Protected IBNR for which, by the terms of this Part 9, the Scheme Creditor is not entitled to any payment from the Scheme Companies. Such payment will be made in accordance with and subject to the provisions of Part 2 and Part 4 as amended, in each case, by this Clause 9.6 (which shall, for the avoidance of doubt, exclude Clause 4.1.1(b)(i), (ii) and (iii)). Such provisions shall, as amended, survive any such termination or Liquidation Event of any Scheme Company; and
 - (b) the Scheme Creditor agrees that with respect to any such liabilities referred to in the third sentence of Clause 9.6.7(a) or Clause 9.6.2(b), the Scheme Creditor shall have no further claim for payment under the Scheme or any liquidation against the Scheme Companies and consents to the treatment of such claim in accordance with Clauses 9.6.4 to 9.6.13 (inclusive).
- 9.6.8 Such payment, as is referred to in Clause 9.6.7(a) will be made in each case (and notwithstanding anything to the contrary in Clause 4.1.2) by FSCS as soon as practicable (but may at the discretion of FSCS be made at any time after the Accepted Protected Liability has matured into a Protected Liability) following whichever is the later of the date on which:

- (a) the Scheme Company notifies FSCS that the Accepted Protected Liability is an Established Scheme Liability under Part 2;
- (b) FSCS agrees or it is otherwise determined (so as to bind FSCS) in accordance with Part 2 and Part 4, that such Accepted Protected Liability is a Protected Liability (before or after termination of the Scheme, whether or not there shall be a Liquidation Event in respect of the Scheme Company) or (where the Scheme Company is a co-insurer under the policy giving rise to the claim) that the lead co-insurer has properly approved the claim and that there are no circumstances which could result in the Scheme Company or FSCS forming a different view on the merits, liability or quantum of the claim;
- (c) FSCS first receives a Payment Percentage under Part 3 in relation to the FSCS Amount or receives the Substantive Closure Distribution in accordance with Clause 9.6.6, and
- (d) it appears to FSCS that its funds are then adequate to make the payment in question and to meet its responsibilities pursuant to the Policyholders Protection Act and FSMA or otherwise, where previously, FSCS considered that it did not have sufficient funds for those purposes.

Nothing in this Clause 9.6.8 shall alter the treatment (including the amount and timing of any payment by any Scheme Company and FSCS to a Protected Policyholder) under Part 4 of any Protected Agreed Liability, Protected Outstanding Loss and/or Protected IBNR which, having been a Notified Scheme Claim submitted before the Bar Date becomes a Protected Liability under Part 2 before the date as at which the Scheme Actuary calculates the FSCS Amount (notwithstanding that such Notified Scheme Claim shall have become an Accepted Protected Liability in accordance with Clause 9.6.1) or which becomes such a Protected Liability before the Bar Date.

- 9.6.9 Notwithstanding any other provision of the Scheme (including but without limitation Clauses 9.6.7 and 9.6.8), no Scheme Creditor shall be entitled to make any claim against FSCS under the Policyholders Protection Act, this Scheme or any other applicable law, whether before or after the termination of the Scheme and notwithstanding a Liquidation Event, otherwise than in respect of a Protected Liability and only then in accordance with Parts 2 and 4, as amended, (if at all) in any given circumstances, by this Clause 9.6. Nothing in this Scheme shall prevent a Protected Policyholder from claiming an entitlement from FSCS and being paid a Protected Percentage in respect of a Protected Liability, subject to the provisions of Parts 2 and 4 (as amended by this Clause 9.6) notwithstanding that such Protected Policyholder is not entitled to receive a Payment Percentage or any other amount referred to in Clause 3.3.1(b) from a Scheme Company by virtue of this Part 9. Any Established Scheme Liability established in respect of a Scheme Claim under Clauses 9.4 and 9.5 shall not bind FSCS (either as to liability or quantum) in determining the existence or amount of any claim made against it by a Protected Policyholder in respect of a Protected Liability so that the provisions of Parts 2 and 4 of the Scheme (as amended by this Clause 9.6) shall apply to the establishment of an Established Scheme Liability. Further, nothing in this Clause 9.6 shall entitle a Scheme Creditor to any payment under Clause 3.3.1 from a Scheme Company which it is not otherwise

entitled to under this Part 9. This Clause 9.6.9 will survive any termination of the Scheme or Liquidation Event in respect of the Scheme Companies.

- 9.6.10 FSCS shall have no obligation to make any payments to a Protected Policyholder otherwise than on the basis of, and in accordance with and to the extent of, its duties and obligations under the Policyholders Protection Act. Without prejudice to Clause 9.6.2(b), no Scheme Creditor, in respect of any Accepted Protected Liability, shall be entitled to make any claim against FSCS in respect of a Protected Liability on the basis of the value of that liability as determined in accordance with the terms of Part 9 of the Scheme and, in particular, the application of the principles, policies and assumptions comprised within the Estimation Methodology. The Estimation Methodology shall not apply to or affect FSCS other than insofar as the principles, policies and assumptions comprised within the Estimation Methodology are used to calculate the FSCS Amount. FSCS shall not, for the purposes of assessing eligibility under the Policyholders Protection Act, or whether an Accepted Protected Liability is a Protected Liability, be bound by any information as to that claim and the Scheme Creditor accepts that claims in respect of such matters are not eligible for protection by FSCS unless and until any such claim matures into a present obligation of a Scheme Company and has become a Protected Liability. An estimate of a claim in respect of an Accepted Protected Liability, whether by the Scheme Company or any liquidator appointed to it, shall not and does not constitute an actual liability of the Scheme Company under a policy.
- 9.6.11 Subject to Clause 9.6.6, in the case of any Protected Agreed Liability, Protected Outstanding Loss and Protected IBNR in respect of which a Scheme Creditor does receive a payment under the Scheme from the Scheme Companies, any assignment by a Protected Policyholder to FSCS as is referred to in Clause 4.3 (which shall be a condition of a Protected Policyholder receiving the Protected Percentage in respect of their Protected Liability (less any amounts referred to in Clause 4.1.1(b))) shall only (and in respect of entitlement to payments from the Scheme Company only) entitle FSCS, as Scheme Creditor, by virtue of such assignment to any Substantive Closure Distribution and/or Ultimate Distribution which remain to be paid by the relevant Scheme Company at the date of such assignment and shall be calculated by reference to the amount of that assigned Protected Liability.
- 9.6.12 Until the termination of the Scheme, the Scheme Companies and Scheme Administrators shall (subject to the penultimate sentence of Clause 9.6.9), continue to comply with their claims handling responsibilities, duties and obligations in Clauses 2.2, 2.3 and 2.6 insofar as is necessary for establishing a Protected Policyholder's Established Scheme Liability for the purposes of FSCS determining whether such Established Scheme Liability under Part 2 is a Protected Liability. Upon, and to facilitate the termination of the Scheme, FSCS shall, from the termination of the Scheme, arrange for such responsibilities, duties and obligations to be complied with for the purpose of determining the existence and quantum of Protected Liabilities.
- 9.6.13 In the event of any conflict between the provisions of this Clause 9.6 and Parts 2 and 4, the provisions of this Clause 9.6 shall prevail.

9.7 Inter-company Claims

- 9.7.1 The provisions of Clause 9.7.2 to 9.7.4 shall apply to the determination of Inter-company Claims.
- 9.7.2 Each of the Scheme Companies has agreed with each of the other Scheme Companies and their respective Scheme Administrators as soon as practicable after the Bar Date to estimate the value of any Inter-company Claims (including each Scheme Company's Agreed Liabilities, Outstanding Losses, IBNR, Outwards Unpaid Losses and Outwards Reserves and IBNR and Non Insurance/Reinsurance Scheme Claims) as at the Valuation Date. The principles, policies and assumptions comprised within the Estimation Methodology shall be applied with the assistance of the Scheme Actuary where appropriate to such Inter-company Claims for the purpose of producing a statement in respect of each Scheme Company substantially in the form of the Net Statement referred to in Clause 9.4.37 ("Net Inter-company Statement").
- 9.7.3 Each of the Scheme Companies and their respective Scheme Administrators have agreed to make a payment at the relevant Payment Percentage to the relevant Scheme Company as soon as reasonably practicable after the Bar Date to discharge any liability of it arising under such Net Inter-company Statement and after taking due account of any sums that in the Scheme Administrators' discretion should be retained in respect of any Suspended Scheme Liability of a particular Scheme Company. Once the amount of such Suspended Scheme Liability has been agreed or determined in accordance with this Part 9, the Scheme Administrators shall update the relevant Scheme Companies' Net Inter-company Statement as appropriate and discharge or give credit for the effect of any such ascertained Suspended Scheme Liability as between the Scheme Companies affected.
- 9.7.4 In the event that a dispute arises in connection with the Net Inter-company Statement prepared by each Scheme Company and any payment to be made in accordance with Clause 9.7.3, such dispute shall be referred to the Scheme Adjudicator for determination whereupon all the provisions and procedures relating to the adjudication of Notified Scheme Claims, Outwards Unpaid Losses and Outwards Reserves and IBNR in Clause 9.4 and 9.5 shall be applicable with all necessary changes. The Scheme Adjudicator's decision shall be final and binding on all parties concerned.

9.8 Payment to Scheme Creditors

- 9.8.1 For the avoidance of doubt, any Scheme Creditor's additional Established Scheme Liability as determined under this Part 9 shall be an Established Scheme Liability within the meaning of Clause 2.6 and shall be treated as such for all purposes of the Scheme, including the setting and receiving of Payment Percentages under Parts 2 and 3.
- 9.8.2 The Scheme Administrators shall:
- (a) determine, with the consent of the Creditors' Committee, the date in relation to each Scheme Company (the "**Substantive Closure Distribution Date**") on which they intend to pay (and subsequently do pay), subject to Clause 9.5.9, a substantive closure distribution to Scheme Creditors with Established Scheme

Liabilities at the Substantive Closure Distribution Date. The substantive closure distribution in respect of each Scheme Creditor will be comprised of a payment in respect of a substantive closure Payment Percentage under Clause 3.3.1(b)(i) (at a rate determined with the consent of the Creditors Committee) and an Adjusting Payment calculated up until, but not after, the Substantive Closure Distribution Date under Clause 3.3.1(b)(ii) (such aggregate amount being referred to in this Clause 9.8 as the "**Substantive Closure Distribution**"); and

- (b) in their discretion determine such date in relation to each Scheme Company ("**Ultimate Distribution Date**") on which they shall (subject to Clause 9.5.9) pay an amount by way of ultimate distribution to all Scheme Creditors with Established Scheme Liabilities being an amount ("**Ultimate Distribution**") equal to the ultimate Payment Percentage (under Clause 3.3.1(b)(i)) but not any amounts by way of Adjusting Payments (under Clause 3.3.1(b)(ii)), which calculation of the Payment Percentage shall take into account, for the avoidance of doubt, any sums accruing from the settlement of any Suspended Scheme Liabilities, Unclaimed Distributions and any assets received after the Substantive Closure Distribution Date and after reserving for all Scheme Costs involved in making an Ultimate Distribution and all closing costs of the Scheme and of any liquidation of the Scheme Companies and for satisfying all continuing obligations of the Scheme Companies and Scheme Administrators under the Scheme (notwithstanding the termination of the Scheme) which the Scheme Administrators consider it is prudent to make and shall if not already paid (and subject to Clauses 9.8.5 and 9.8.6) include in respect of any relevant Scheme Creditor amounts retained for their benefit under Clause 2.10.3.

For the avoidance of doubt, in declaring and paying any Substantive Closure Distribution and/or Ultimate Distribution, the Scheme Administrators shall be entitled to make such reserves for present and future Scheme Costs.

- 9.8.3 For the avoidance of doubt, on the Substantive Closure Distribution Date and on the date or dates of any Ultimate Distribution, the Scheme Administrators shall comply with their obligations to make the relevant payments to FSCS under Clause 9.6.6.
- 9.8.4 The Payment Percentage of the Substantive Closure Distribution and Substantive Closure Distribution Date shall be notified to the Scheme Creditors once by advertisement in each of those newspapers and publications in which notice of the Scheme Meetings was advertised. Such Substantive Closure Distribution Date shall be no earlier than 28 days after the Substantive Closure Distribution Date was so advertised in the last such newspaper or journal.
- 9.8.5 If a Scheme Creditor to whom a cheque for distribution has been dispatched in accordance with Clause 2.10, in respect of a Substantive Closure Distribution and/or Ultimate Distribution, has not presented it for payment within 6 months from the date the cheque is issued then the sums representing such unclaimed distributions ("**Unclaimed Distributions**") shall be repaid into the assets of the relevant Scheme Company to be made available to its Scheme Creditors (subject to the provisions of Clause 9.8.6) and the Scheme Creditor shall be deemed to have waived their right to the Unclaimed Distribution.

- 9.8.6 Where a Scheme Creditor is entitled to a Substantive Closure Distribution or an Ultimate Distribution in respect of more than one Scheme Company, the Scheme Administrators may aggregate any such payments due in a single cheque or telegraphic transfer for the purposes of Clauses 2.10.1 and 2.10.2. In the event that the aggregate amount of any Ultimate Distribution payable to a Scheme Creditor is less than £20, Clause 2.10.3 shall be amended so that the Scheme Administrators may, at their discretion, reasonably determine that no future payment shall be made in respect of such Scheme Creditor whether or not requested by that Scheme Creditor. If the Scheme Administrators so determine, they shall, at their discretion, and at such time as they deem appropriate, either make available to the Scheme Creditors or one or more charities established in the United Kingdom (or to their order) or any duly appointed liquidator of the relevant Scheme Company acting as agent of that Scheme Company (to be applied for the benefit of the relevant liquidation estate), the sums representing such Ultimate Distributions or any Unclaimed Distribution of an Ultimate Distribution as defined in Clause 9.8.5. Any charity shall be selected by the Scheme Administrators. In the event that such sums are made available to a charity, the Scheme Administrators may make payment to a charitable trust or set up a trust at that time. The Scheme Administrators may do any act or thing or enter into any arrangements to give effect to this Clause 9.8.6.
- 9.8.7 This Clause applies for the purpose of determining the relevant date for currency conversion in relation to set-off or cross-claims for all purposes relating to the preparation of Net Statements and Outwards Reserves and IBNR Statements under this Part 9. For such purpose, in determining the value of any set-off or cross-claim that is expressed in a currency other than that of the relevant Scheme Claim, the currency of payment provision at Clause 2.9.2 shall apply with the following modification. The relevant date for the Scheme Administrators' acceptance or other determination that set-off or cross-claim is available (being the date on which the appropriate rate of exchange shall be selected) shall, in the absence of agreement or contractual provision as referred to in Clause 2.9.2, be the Valuation Date. In any event, the Valuation Date will also be deemed to be the date of settlement of any original loss for the purposes of determining any relevant Outwards Reserves and IBNR.
- 9.8.8 If any currency in which a Scheme Claim, Outwards Unpaid Loss or Outwards Reserves and IBNR is denominated has ceased to be legal tender at the date of any payment to a Scheme Creditor or set-off under the Scheme, then subject to the Scheme Creditor's right to make election under Clause 2.9.1, the following provisions shall apply. In the case of any such liability being denominated in a currency which has been superseded by the Euro, the amount of such liability (and any amount payable under the Scheme in relation to such liability) will be calculated in accordance with the relevant measures of the European Council relating to the change-over operation of a single European currency. The conversion rate to be applied to determine any other such liability or payment shall be at the Scheme Administrators' discretion.

9.9 Communications under this Part 9 and extension of time limits

Communications

9.9.1 Notwithstanding anything to the contrary in this Part or in the remainder of the Scheme (but subject to the provisions of Clause 9.4.1 and 9.9.7) for the purposes of this Part, information, forms, statement documents, notices or other written communications required to be or capable of being given or sent under this Part 9 concerning Notified Scheme Claims, Outwards Unpaid Losses, Outwards Reserves and IBNR (including any Claim Form, Outwards Reserves and IBNR Statement or Supporting Information (but not including copies of any relevant Supporting Information which was not originally produced in electronic form)) may be given or sent by the Scheme Administrators or the Scheme Creditor concerned (as appropriate) in electronic form:

- (i) in the case of any of the Scheme Companies and Scheme Administrators to the Website or e-mail address scheme.administrator@kwelm.com;
- (ii) in the case of Scheme Creditors to the e-mail address specified or provided (either explicitly or in the course of previous communications) by the Scheme Creditor concerned (the use of which the Scheme Creditors hereby consent to);
- (iii) in the case of the Scheme Actuary, to the e-mail address scheme.actuary@kwelm.com; and
- (iv) in the case of the Scheme Adjudicator to the e-mail address scheme.adjudicator@kwelm.com

9.9.2 Notwithstanding any provision in the Scheme (but subject to the provisions of Clause 9.9.7) for the purposes of this Part 9, any such information, forms, statements, documents, notices or other written communications referred to in Clause 9.9.1 to individual Scheme Creditors, the Scheme Companies, the Scheme Administrators, the Scheme Actuary or the Scheme Adjudicator (as the case may be) may also be given either:

- (a) by delivering the same by hand (including by courier); or
- (b) by posting the same by first class post or airmail, as appropriate,

in each case

- (i) in the case of the Scheme Creditors, to such Scheme Creditor's last known address of which the Scheme Administrators or Scheme Companies are aware;
- (ii) in the case of the Scheme Companies or Scheme Administrators, to John Stow House, 18 Bevis Marks, London EC3A 7JB marked for the attention of the "KWELM Scheme Administrators" or such other

address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this Clause 9.9;

- (iii) in the case of the Scheme Adjudicator to John Stow House, 18 Bevis Marks, London EC3A 7JB marked for the attention of the "KWELM Scheme Adjudicator"; and
- (iv) in the case of the Scheme Actuary to John Stow House, 18 Bevis Marks, London EC3A 7JB marked for the attention of the "KWELM Scheme Actuary".

- 9.9.3 Any notice (except such notice as is referred to in Clause 9.4.1(a)) to be given under or in relation to this Part to Scheme Creditors generally will be deemed to have been duly given to Scheme Creditors if it is advertised once in each of those newspapers and other publications in which the notice of the Scheme Meetings was advertised.
- 9.9.4 Any such information, forms, statements, documentation, notices or other communication referred to in Clause 9.9.1 to be given under this Part shall be deemed to have been served and received;
- (a) if delivered by hand or by courier pursuant to Clause 9.9.2(a), at the time of such delivery;
 - (b) if sent by post pursuant to Clause 9.9.2(b), on the second business day after posting if the recipient is in the country of dispatch, otherwise on the seventh business day after posting;
 - (c) if advertised, when advertised in accordance with 9.9.3; and
 - (d) if given in electronic form, at the time the Scheme Administrators' or Scheme Creditor's (as appropriate) computerised records so specify that such communication was successfully sent.
- 9.9.5 Subject to Clause 9.9.6, in proving service by post the party seeking to rely upon such effective service must supply reasonable proof of having placed into the post a properly stamped and addressed envelope containing the relevant notice, statement, documentation, information, form or other written communication.
- 9.9.6 The accidental omission by the Scheme Administrators to send or make available any notice, written communication or other document in accordance with this Part 9 (including the notice referred to in Clause 9.4.1, Claim Form and Outwards Reserves and IBNR Statement), or the non receipt of the same by any Scheme Creditor shall not affect the provisions or operation of the Scheme either generally or with regard to the particular Scheme Creditor and where such accidental omission results in a Scheme Creditor being disqualified from receiving any payments in respect of the whole or any part of their Scheme Claim under the Scheme, such Scheme Creditor although bound by the terms of the Scheme shall not be entitled to participate in any distributions that may be paid to Scheme Creditors in respect of that Scheme Claim.
- 9.9.7 For communication purposes only, the Scheme Administrators may, at their discretion, treat those acting on behalf of Scheme Creditors in the ordinary course

(including, but not limited to professional advisers, managing general agents, the managers of underwriting pools, the holders of line slips or binding authorities or similar representative bodies ("Representatives")) on the basis that those Representatives are fully authorised to represent the Scheme Creditor concerned. Further, the Scheme Administrators may at their discretion treat those Representatives as if they were a single Scheme Creditor or, as the case may be, Offset Scheme Creditor in place of their principal or principals.

- 9.9.8 Where under this Part 9, the consent or agreement of the Creditors Committee is required, such consent or agreement shall be deemed to have been given if a majority in number of the Creditors Committee so consent or agree at a meeting in accordance with Clause 6.3.

Extension of Time Limits

- 9.9.9 Except in relation to the Bar Date, the Scheme Administrators may, in their discretion, at the request of a Scheme Creditor or otherwise, either generally or in respect of any particular Notified Scheme Claim, Outwards Unpaid Losses, Outwards Reserves and IBNR or Suspended Scheme Liability, extend any time period referred to in Part 9, including the time:

- (a) within which the Scheme Administrators are required to refer Disputed Matters in relation to a Notified Scheme Claim, Outwards Unpaid Losses, Outwards Reserves and IBNR or the designation of Suspended Scheme Liabilities to the Scheme Adjudicator pursuant to Clauses 9.4.18 to 9.4.20 and 9.4.30, 9.4.31 and 9.4.36 (as the case may be); and
- (b) within which the Scheme Adjudicator is to provide his certificate pursuant to Clause 9.5.5.

- 9.9.10 If at any time before the Bar Date, there has been a substantive failure of the Website, in the reasonable opinion of the Scheme Administrators, then they may (but are not obliged to) extend the Bar Date to such date as they deem appropriate. The Scheme Administrators shall notify such Scheme Creditors as have received a unique identification number and password pursuant to Clauses 9.4.1(b) or (c) of the date of such extended Bar Date. They will also give notice to all other Scheme Creditors of the date of the extended Bar Date by advertising once in those newspapers and journals in which notice of the Scheme Meetings was given.

PART 10

TERMINATION OF THE SCHEME

10.1 Termination events

10.1.1 Subject to Clauses 7.2.4, 9.6, 10.2 and 10.3 and Part 4, and 11.2.2 (which shall survive such termination), the Scheme shall terminate in relation to a Scheme Company if:

- (a) over the period of two years from the Effective Date the aggregate payment made by that Scheme Company in respect of Established Scheme Liabilities is less than would have been made if the Payment Percentage in respect of that Scheme Company had been set at the Effective Date and maintained for two years thereafter at a level, in relation to Kingscroft, El Paso and Lime Street, of one and a half per cent., or, in relation to Walbrook and Mutual Re, of one per cent. (unless prior to the expiration of the said period:
 - (i) the Scheme Administrators shall have agreed otherwise and given written notice of such agreement to each Scheme Company; and
 - (ii) the Creditors Committee shall have agreed otherwise by a resolution passed by a majority which includes FSCS); or
- (b) all the liabilities of that Scheme Company (including liabilities arising pursuant to Clause 3.3.3) have been discharged in full; or
- (c) the Scheme Administrators, with the agreement of the Creditors Committee, give notice in writing to that 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 of that Scheme Company and that such Scheme Company should be wound up (provided that, in reaching such conclusion, no account shall be taken of changes in currency exchange rates after the Record Date); or
- (d) a resolution that the Scheme should be terminated in relation to that Scheme Company and that that Scheme Company should be wound up is passed at separate meetings of the Scheme Creditors of that Scheme Company convened and held in accordance with the provisions of Clause 8.4.

10.1.2 If the Scheme terminates in relation to a Scheme Company or two or more Scheme Companies, the following provisions shall apply:

- (a) as regards each Scheme Company in respect of which the Scheme terminates (a "Departing Company"):
 - (i) subject to paragraph (a)(ii) below and Clauses 7.2.4, 9.6, 10.2, 10.3, 11.2.2 and Part 4, the provisions of Parts 2 to 9 (both inclusive) of the Scheme shall cease to have effect and for the purposes of the Scheme insofar as it remains in force in relation to other Scheme Companies the Departing Company shall cease to be a Scheme Company and the

Scheme Creditors of the Departing Company shall cease to be Scheme Creditors;

- (ii) subject to Clause 10.3.1, termination of the Scheme shall be without prejudice to any right or obligation which shall have arisen under the Scheme as a result of any act or omission which took place prior to the termination of the Scheme including, without limitation, (A) any right to an indemnity out of the assets of that Scheme Company as a result of an act or omission which took place, or as a result of liabilities or expenses which were incurred, prior to the termination of the Scheme and Clause 10.3.2; and (B) any rights of FSCS arising by reason of Clauses 4.3.1, 4.3.2, 4.3.3 and 4.3.4;
- (b) subject to Clause 10.1.2(a), as regards each Scheme Company which is not a Departing Company the Scheme shall continue in full force and effect; and
- (c) as soon as practicable following termination, the Scheme Administrators shall cause notices stating that the Scheme has terminated in relation to such Scheme Company or Scheme Companies to be placed in such newspaper or newspapers as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks following such termination.

10.2 Effect of winding up

- 10.2.1 If a Scheme Company shall become subject to a Liquidation Event and the Scheme has not otherwise terminated in accordance with Clause 10.1.1, the Scheme shall not terminate but rather shall continue in full force and effect.
- 10.2.2 In the event of a conflict or inconsistency between the provisions of the Scheme and the Insolvency Act and/or the Insolvency Rules and/or the Insurance Companies Act 1982 and/or the Insurers (Winding Up) Rules 2001 and/or FSMA and/or the Companies Act 1981 of Bermuda and/or the Companies (Winding Up) Rules 1981 of Bermuda and/or Insurance Act 1978 of Bermuda and/or the Insurers (Reorganisation and Winding Up) Regulations 2003 and/or the EU Directive on the Reorganisation and Winding Up of Insurance Undertakings in each case as amended as they apply to the Scheme Company following the Liquidation Event, for the purposes of the Scheme the provisions of the Scheme shall prevail.
- 10.2.3 Subject to Clauses 7.2.4, 9.6, 10.2, 10.3, 11.2.2 and Part 4, if the Scheme is terminated and the Scheme Company is subject to a compulsory liquidation or creditors' voluntary liquidation either before (notwithstanding Clause 2.2.9) or immediately after such termination the following provisions shall apply in relation to that Scheme Company:
 - (a) the assets of such Scheme Company shall be applied in discharge of:
 - (i) all liabilities of such Scheme Company that are given preference in the winding up of such Scheme Company by virtue of the Insolvency Act or, in relation to Mutual Re, the statute or statutes pursuant to which the winding up is conducted;

(ii) all liabilities proved in the winding up of such Scheme Company in respect of all claims against such Scheme Company (which shall include, without limitation, Pre-Scheme Costs and Scheme Costs) other than Scheme Claims; and

(iii) Scheme Claims;

and to the extent that any such liabilities are in excess of the amount of such Scheme Company's assets, they shall be paid in the order set out in this Clause 10.2.3(a) and rateably within each category of liabilities referred to in paragraphs (i), (ii) and (iii) above;

(b) the entitlement to dividends in the winding up of such Scheme Company of each Scheme Creditor of such Scheme Company who has received a payment or payments under the Scheme in respect of a Scheme Claim against such Scheme Company shall be determined as follows:

(i) such Scheme Creditor shall be treated as having proved in the winding up for the amount for which he actually proves in the winding up increased by the aggregate amount (the "**Scheme Amount**") of payments, converted into sterling (or, in the case of Mutual Re, the applicable currency) at the rate of exchange prevailing in the winding up, received by him in respect of the Scheme Claim under Clause 3.3.1(a) or (b) or treated as having been so received under Clause 2.3.2 or otherwise; and

(ii) such Scheme Creditor 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; but subject thereto

(iii) such Scheme Creditor shall be entitled to receive dividends in the winding up of such Scheme Company (calculated by reference to the amount for which he is treated as having proved as aforesaid) *pari passu* with all the Scheme Creditors of such Scheme Company; and

(c) accordingly:

(i) for the purposes of any duty which FSCS may owe under sections 6 to 8 of the Policyholders Protection Act (as then in force) in respect of any liability of a Scheme Company towards a policyholder or other person arising out of a Scheme Claim, the amount of that liability shall be the amount for which that person shall be treated as having proved in the winding up in respect of such Scheme Claim, calculated in accordance with Clause 10.2.3(b)(i); and

(ii) any amount treated as having been received by that person under Clause 10.2.3(b)(ii) shall, for the purposes of section 14 of the Policyholders Protection Act, be treated as a payment referable to

such liability towards that person and as reducing any sum payable by FSCS under that Act by reference to such liability.

10.3 Releases

- 10.3.1 Subject to Clause 10.3.5, with effect from the Substantive Closure Distribution Date, any then existing or former Scheme Administrators, Scheme Conflicts Administrators, Scheme Actuary, Scheme Adjudicator, members of the Creditors Committee, Nominated Representatives and representatives of FSCS (and their respective alternates), Designated Representatives, directors of each Board, Employees and Delegates (within the meaning of Clause 5.4.2), the Trustee and any person who may be held liable in law for the actions or omissions of such persons in each case in their capacity as such (collectively referred to as the "Released Parties") shall be released absolutely and unconditionally from any claims by any Scheme Creditor howsoever relating to the Released Parties, save those notified in writing to the Scheme Administrators (who shall act as agent for service in respect of claims against third parties (but without attracting any liability in so doing)) by that date, in respect of any loss or liability relating to or arising out of any act done or omitted to be done in the course of or in connection with the preparation, implementation, administration and operation of the Original Scheme, the Amending Scheme and the Scheme or the exercise by any such person of any power, right, duty or obligation conferred upon it or him thereunder howsoever or wheresoever caused and whether any such claims are attributable to his or her negligence, default, breach of duty or breach of trust (but not fraud or dishonesty). For the avoidance of doubt, in this Clause 10.3, (a) Scheme Creditor includes Offset Scheme Creditor and (b) the persons comprised within the definition of "Released Parties" will include those persons who are holding, or held, at any time the relevant position under the Original Scheme.
- 10.3.2 In relation to any claim or potential claim against any of the Released Parties whether or not notified prior to the Substantive Closure Distribution Date under Clause 10.3.1, each of the Scheme Companies will set aside or place in trust, at such time as they see fit, such sums by way of reserves as are deemed appropriate to meet any obligation that it may at some future date have to pay. Any amounts so set aside or placed in trust which, in the Scheme Administrators' opinion, are not required to meet any such obligation, shall be available for distribution to Scheme Creditors pursuant to the Scheme. Each of the Scheme Companies may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed) purchase and maintain for the benefit of the Released Parties insurance against any liability, which they might incur notwithstanding the release in Clause 10.3.1 above or any liability that they might incur in relation to fulfilling their functions under the Scheme howsoever arising, save in respect of any such Released Parties' fraud or dishonesty. For the avoidance of doubt any such obligation or liability referred to in this Clause shall include without limitation, costs of defence.
- 10.3.3 Subject to Clause 10.3.5, each of the Scheme Creditors hereby authorises any one of the Scheme Administrators (acting alone) to enter into, execute and deliver as a deed on behalf of each such Scheme Creditor, the Deed of Release in substantially the form at Appendix 3 between the Scheme Creditors and the Scheme Administrators on the one hand and each of the Released Parties on the other.

- 10.3.4 Subject to Clause 10.3.5, on the Substantive Closure Distribution Date (or as soon as practicable thereafter), the Scheme Administrators shall cause one of their number to enter into and deliver the Deed of Release on behalf of all Scheme Creditors pursuant to the authority conferred by Clause 10.3.3.
- 10.3.5 For the purposes of Clauses 10.3.1, 10.3.3 and 10.3.4, Released Parties shall include any third party retained to assist or advise in relation to those matters referred to in Clause 10.3.1 and to the extent only of such advice or assistance. For the avoidance of doubt, such third party shall not have the benefit of Clause 10.3.2, any indemnification under the Scheme nor shall they be released from any claim that any Scheme Company may have.

PART 11

GENERAL SCHEME PROVISIONS

11.1 Effective Date

- 11.1.1 Subject to Clause 11.1.2, the Scheme shall become effective as soon as a copy of the order of the English Court sanctioning the Scheme in relation to each Scheme Company shall have been delivered for registration to the registrar of companies in England and Wales as required by section 425(3) of the English Companies Act and a copy of the order of the Bermudian Court sanctioning the Scheme in relation to Mutual Re shall have been delivered to the registrar of companies in Bermuda as required by section 99(3) of the Bermudian Companies Act.
- 11.1.2 The final step to make the Scheme effective shall not be taken unless the Winding-up Petitions shall have previously been dismissed, which occurred on 15 December 1993.

11.2 Scheme costs

- 11.2.1 As soon as practicable after the Effective Date and Amending Scheme Effective Date there shall be paid by each Scheme Company:
- (a) all costs, charges, expenses and disbursements reasonably incurred by that Scheme Company on or after the Provisional Liquidation Date relating to it, but prior to the Effective Date and, where appropriate, the Amending Scheme Effective Date in connection with the negotiation, preparation and implementation of the Scheme, including the costs of holding the meetings of its Scheme Creditors convened to consider the Scheme and the costs of obtaining the sanction of the English Court (or, in the case of Mutual Re, the Courts) thereto;
 - (b) insofar as they do not fall within Clause 11.2.1(a), all costs, charges, expenses and disbursements reasonably incurred by, and the remuneration of, the Provisional Liquidators (including, without limitation, all such expenses as are payable to the Provisional Liquidators out of the property of that Scheme Company pursuant to Rule 4.30(3) of the Insolvency Rules 1986 made pursuant to the Insolvency Act) which are payable by that Scheme Company to the Provisional Liquidators as provisional liquidators of that Scheme Company; and
 - (c) the costs incurred by the Trustee prior to the Effective Date and Amending Scheme Effective Date in connection with the negotiation, preparation and implementation of the Scheme for that Scheme Company.
- 11.2.2 There shall be paid in full out of the assets of such Scheme Company (and notwithstanding the termination of the Scheme):
- (a) all costs, charges, expenses and disbursements incurred by such Scheme Company in the course of carrying out the Scheme and of complying with the

provisions of (in the case of Kingscroft, Walbrook, El Paso and Lime Street) the English Companies Act and (in the case of Mutual Re) the Bermudian Companies Act including convening the Scheme Meetings;

- (b) insofar as they do not fall within Clause 11.2.2(a), and without prejudice to the provisions of Clause 6.4.5, all costs, charges, expenses, and disbursements incurred by, and the remuneration of, the Scheme Administrators, to the extent that such costs, charges, expenses, disbursements and remuneration are referable to the affairs of that Scheme Company;
- (c) such proportion as between the Scheme Companies as the Scheme Administrators shall consider to be appropriate of:
 - (i) the expenses payable under Clause 6.8; and
 - (ii) the costs, charges, expenses and disbursements incurred by, and the remuneration of the Trustee in its capacity as trustee of the trusts constituted by the Trust Deed;
- (d) insofar as it does not fall within Clause 11.2.2(a) or (b), any sum which such Scheme Company is obliged or may in the future be obliged to pay by reason of the obligations imposed on such Scheme Company by Clauses 2.11.3, 5.4.6, 5.4.7, 5.4.8, 6.6.2, 6.6.3, 6.6.4, 7.1.7, 7.1.8, 7.1.9, 9.2.8, 9.3.7, 9.5.7, 9.5.9 and 10.3; and
- (e) the costs of placing the notices required by Clause 10.1.2(c).

11.3 Modification of the Scheme

- 11.3.1 Subject to Clause 11.3.2, each Scheme Company may, at any hearing to sanction the Scheme, consent on behalf of all those concerned to any modification of the Scheme or any terms or conditions which the relevant Court may think fit to approve or impose and which would not directly or indirectly have a materially adverse effect on the interests of any Scheme Creditor under the Scheme.
- 11.3.2 Any modification, term or condition as is referred to in Clause 11.3.1 which, in the opinion of FSCS, would directly or indirectly adversely affect the interest of FSCS in the Scheme shall not take effect unless approved in writing by FSCS.

11.4 Notice

Save as provided for in Part 9, any notice to be given to a Scheme Company or Scheme Administrators under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand or sent by pre-paid first class post, and by air mail where it is addressed to a different country from that in which it is posted, to the Scheme Company concerned at, John Stow House, 18 Bevis Marks, London, EC3A 7JB, England (or at such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this Clause ~~10-4~~11.4 in such newspaper or newspapers as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks), and any notice posted as aforesaid shall be given also by telefax to the Scheme Company concerned at such address and shall be deemed to have been given on the seventh (or, if by airmail, the fourteenth) day following the date on which it is posted.

11.5 Governing law and jurisdiction

Save, for the avoidance of doubt, as otherwise provided by Part 9, the Scheme shall be governed by, and construed in accordance with, English law and the Scheme Creditors hereby agree that the English Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or Amending Scheme Explanatory Statement or any provision of the Scheme, 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 English Court provided, however, that this would be inconsistent with the provisions of Part 9 of the Scheme, nothing in this Clause 11.5 shall affect the validity of other provisions determining governing law and jurisdiction as between a Scheme Company and any of its Scheme Creditors, whether contained in any contract or otherwise.

Dated this 5th day of December 2003