

**IMPORTANT NOTICE:**

**SAVE IN RESPECT OF THE AMENDMENTS MADE TO REFLECT GEORGE MAHER'S RESIGNATION FROM THE ROLES OF VOTE ASSESSOR AND SCHEME ADJUDICATOR AND HIS REPLACEMENT BY JOHN BIRKENHEAD. THIS DOCUMENT OTHERWISE REMAINS UNCHANGED FROM THE 3 DECEMBER 2010 VERSION MADE AVAILABLE TO SCHEME CREDITORS.**

**PART II - THE SCHEME**

**CLAIM NO. 9791 of 2010**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF TOKIO MARINE EUROPE INSURANCE LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 2006**

**SCHEME OF ARRANGEMENT  
(pursuant to Part 26 of the Companies Act 2006)**

**BETWEEN**

**TOKIO MARINE EUROPE INSURANCE LIMITED**

**(incorporated in England and Wales with registered number 989421)  
(formerly known as The Tokio Marine & Fire Insurance Company (U.K.)  
Limited)**

**AND ITS**

**SCHEME CREDITORS**

**(AS DEFINED IN THE SCHEME)**

**For full details of the business included in the Scheme and the company names under which the business included in the Scheme was written, please see Appendix A to the Scheme at pages 70 to 73 and the description in the Explanatory Statement at pages 9 to 10.**

**Scheme Website: [www.TMEIScheme.com](http://www.TMEIScheme.com)**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Scheme, unless the context otherwise requires or otherwise expressly provides, the following words shall have the following meanings:

**"Additional Unpaid Claims"** the value, as at the Reference Date, of Scheme Claims that the Scheme Creditor asserts on a Claim Form have been settled by it and are due for payment to it by TMEI, excluding any amounts already included in Unpaid Agreed Claims;

**"Adjudication"** the procedure for the resolution of disputes by a Scheme Adjudicator;

**"Admissible Interest"** any interest provided for in a Scheme Reinsurance Contract or any relevant statute or any other relevant law from the date provided for therein up to the last Business Day of the month prior to the date of the Valuation Statement;

**"Advertise"** the placing of advertisements in the same publications as notice of the Meeting was placed, or, if that is not practicable, in such other publications or forums as the Scheme Manager shall reasonably deem appropriate;

**"Agreed Claim"** the final and binding amount of the valuation of a Scheme Claim determined by the process set out at clauses 2.2 to 2.8 inclusive;

**"Appendices"** the appendices to the Scheme referred to in the contents page and set out at pages 71 to 116 of the Scheme when printed in its entirety;

**"Australian Dollars"** Australian dollars, being the lawful currency of Australia;

**"Bank Base Rate"** in respect of each day of a calendar month:

- (a) the official bank rate set by the Bank of England as in force on the last Business Day of the preceding calendar month, for the Scheme Currency or other currency save that if the Bank of England changes the name of the Bank Base Rate or substitutes an equivalent rate, then "Bank Base Rate" will mean the rate as renamed or substituted (as applicable); or
- (b) if no such rate exists then "Bank Base Rate" will mean the average of the base rates of the four largest clearing banks in London from time to time;

**"Bar Date"** 11.59pm London Time on the date falling 180 days after (and not including) the Effective Date or, if that date is not a Business Day, then the next Business Day;

**"Binding Authority"** a binding contractual agreement pursuant to which TMEI gave a broker authority to bind risks on its behalf in respect of a Scheme Reinsurance Contract;

**"Blocked Monies"** any monies payable to a Scheme Creditor under the Scheme the payment of which is prohibited by an applicable law or regulation referred to in clause 8.7;

**"Board"** the board of directors of TMEI from time to time;

**"Broker's Cover"** a binding contractual agreement pursuant to which TMEI gave the holder the authority to perform the functions specified therein in respect of a Scheme Reinsurance Contract;

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

"**Canadian Dollars**" Canadian dollars, being the lawful currency of Canada;

"**Chairman**" the chairman of the Meeting;

"**Charity**" the British Red Cross Society of 44 Moorfields, London EC2Y 9AL, United Kingdom, Registered Charity Number 220949;

"**Claim Form**" the document entitled Claim Form, including all guidance notes and instructions, to be completed by Scheme Creditors (or their duly authorised agents) detailing Scheme Claims against TMEI, an example of which is at Appendix C;

"**Companies Act**" the Companies Act 2006 as amended and in force on the Effective Date;

"**Company Directors Disqualification Act**" the Company Directors Disqualification Act 1986;

"**Complaint**" shall have the meaning given to it in clause 7.2.4;

"**Completion Date**" in respect of a Scheme Creditor, the date upon which the Scheme is certified to have been completed in accordance with clause 8.3.1;

"**Court**" the High Court of Justice of England and Wales;

"**Deed of Release**" a deed in the form or substantially in the form set out in Appendix F;

**"Delegate"** any person to whom the Scheme Manager delegates any of its powers, rights, duties or functions;

**"Dispute Notice"** a notice sent to the Scheme Manager pursuant to clause 2.8.3 containing the information referred to in clause 2.8.4;

**"Disputed Claim"** an amount set out on an Inwards Valuation Form which is disputed in accordance with clause 2.8.3 and/or a disputed matter referred to a Scheme Adjudicator pursuant to clause 2.15.3. For the avoidance of doubt, any claim which has become an Agreed Claim prior to referral to the Scheme Adjudicator shall not form part of a Disputed Claim;

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

**"E-mail"** delivery, where permitted by the terms of the Scheme and where a Scheme Creditor has provided an E-mail address, by electronic mail;

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

**"Estimation Methodology"** the estimation methodology which is set out at Appendix B;

**"Euro"** the currency adopted by participating Member States in furtherance of economic and monetary union under Article 109 of the Treaty of the European Union;

**"Explanatory Statement"** the explanatory statement prepared in accordance with Section 897 of the Companies Act in relation to the Scheme;

**"Foreign Representative"** David McGuigan of PO Box 683, Redhill, RH1 9BY, United Kingdom or such other person as may be appointed as foreign representative of TMEI in relation to its application for a permanent injunction pursuant to Chapter 15 of the United States Bankruptcy Code;

**"IBNR"** the value, as at the Reference Date, of Scheme Claims in respect of losses which have been incurred by a Scheme Creditor but not notified to it, for which it asserts on a Claim Form that an amount will become due for payment by TMEI, excluding any amounts already included in Additional Unpaid Claims, and/or Outstanding Claims and/or Unpaid Agreed Claims;

**"Insolvency Act"** the Insolvency Act 1986 as amended and in force at the Effective Date;

**"Insolvency Event"**

- (a) the making of an order by the Court to wind up a company or limited liability partnership compulsorily pursuant to the Insolvency Act; or
- (b) the commencement of a creditors' voluntary liquidation in respect of a company or limited liability partnership in accordance with the provisions of the Insolvency Act; or
- (c) a company or limited liability partnership entering into a company voluntary arrangement with its creditors in accordance with the provisions of the Insolvency Act; or

- (d) the appointment of an administrator, administrative receiver, receiver or provisional liquidator in respect of a company or limited liability partnership in accordance with the provisions of the Insolvency Act; or
- (e) a determination by the company or limited liability partnership that the value of its assets is less than the value of its liabilities; or
- (f) the occurrence in relation to a company or limited liability partnership of any analogous event in any other jurisdiction;

**"Institute of Actuaries"** the Institute of Actuaries established by Royal Charter dated 29 July 1884, having its principal place of business at Staple Inn Hall, High Holborn, London WC1V 7QJ, United Kingdom;

**"Inwards Valuation Form"** a form to be prepared in accordance with clause 2.8.1;

**"Japanese Yen"** Japanese yen, being the lawful currency of Japan;

**"Letter of Credit"** any valid letter of credit issued to or for the benefit of a Scheme Creditor in respect of any Scheme Reinsurance Contract;

**"Liability"** any debt or liability (being a liability to pay money or money's worth) of a person, whether it is present or future, certain or contingent, whether or not its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion whether or not it involves the payment of money and whether it arises at common law, in equity, by contract or by statute, in England and Wales or in any other jurisdiction or in any manner whatsoever, but excluding any liability which, subject to the proviso below, is barred at the Effective Date by statute or is otherwise

unenforceable or which is claimed to arise in respect of a contract which is void or, being voidable, has duly been avoided.

Provided, however, that any sum representing an Unpaid Agreed Claim inserted by the Scheme Manager on a schedule accompanying the Claim Form pursuant to clause 2.2.4.2 shall constitute a Liability notwithstanding any statutory bar or unenforceability which would otherwise apply to it subject always to the provisions of clause 3.2.2;

**"Lineslip"** a binding contractual agreement pursuant to which TMEI gave authority to perform the functions specified therein in respect of a Scheme Reinsurance Contract;

**"Lloyd's"** the society incorporated by the Lloyd's Act 1871 by the name of Lloyd's and situated at One Lime Street, London EC3M 7HA, United Kingdom;

**"Lloyd's Syndicate"** a group of underwriting members of Lloyd's to which a number is assigned on behalf of the Council of Lloyd's in respect of an underwriting year;

**"London Time"** means the time at the relevant date in London, England;

**"Loss Reserve"** the amount reserved to meet known losses on a Scheme Reinsurance Contract which have not been settled;

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

**"Meeting"** the meeting of Scheme Creditors convened by TMEI with the leave of the Court for the purpose of considering and, if thought fit, approving the Scheme;

**"Net Ascertained Claim"** the final balance shown as due to a Scheme Creditor in a Valuation Statement;

**"Net Debt"** the final balance shown as due to TMEI in a Valuation Statement;

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

**"Outstanding Claims"** the value, as at the Reference Date, of Scheme Claims in respect of losses notified to the Scheme Creditor for which it asserts on a Claim Form that an amount will become due for payment to it by TMEI, excluding any amounts already included in Additional Unpaid Claims and/or Unpaid Agreed Claims;

**"Post"** delivered by hand (including by a generally recognised commercial courier service), prepaid post or airmail;

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

**"Premium Reserve"** the amount withheld by a Scheme Creditor intended to represent unearned premium;

**"Proceedings"** any form of proceedings in any jurisdiction or forum including, without limitation, any demand, legal proceedings, regulatory proceedings, insolvency proceedings, arbitration, alternative dispute resolution, judicial review, adjudication, mediation, seizure, distraint, forfeiture, re-entry, execution or enforcement of judgment or enforcement of any Security or any step taken for the purpose of creating or enforcing a lien;

**"Property"** all forms of property including money, goods, things in action, land and every description of property wherever situated and also any obligation or interest,

whether present or future or vested or contingent, arising out of, or incidental to, property;

**"Reference Date"** the date selected by the Scheme Creditor, to be not earlier than 31 December 2008, as at which the Scheme Creditor has calculated its Scheme Claims;

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

**"Released Parties"** TMEI, the Foreign Representative, any person who holds or has held the position of President of the Institute of Actuaries, any person holding, or who has at any time held, the position of Scheme Appointee, Chairman, Vote Assessor and any past or present director of TMEI, including any Delegate, Employee, partner or alternate of any of the foregoing persons, in each case in their capacity as such;

**"Relevant Currency"** the currency elected by a Scheme Creditor on its Claim Form pursuant to clause 2.3 or, in the event that a Scheme Creditor does not so elect, Pounds Sterling;

**"Scheme"** the scheme of arrangement in the form herein contained, together with any modification thereof or addition thereto approved or imposed by the Court;

**"Scheme Adjudicator"** the person referred to as such in accordance with clause 6.1.2 and any person appointed in substitution for him pursuant to the provisions of the Scheme or as an alternate pursuant to clause 6.2.1;

**"Scheme Adviser"** the person referred to in clause 7.1 or such other person or persons as may be appointed as such pursuant to the Scheme;

**"Scheme Appointees"** any person holding or who has at any time held the position of Scheme Manager, Scheme Adviser or Scheme Adjudicator including any Employee, partner and alternate of such person;

**"Scheme Claim"** save as excluded below, Scheme Claims shall comprise:

- (a) any claim against TMEI in respect of all or part of a Liability arising under or in relation to a Scheme Reinsurance Contract as at the Effective Date;
- (b) all Liabilities of TMEI arising under any agreement entered into before the Effective Date by which TMEI has commuted, settled or compromised all or part of its Liability under any such Scheme Reinsurance Contract;
- (c) all Liabilities of TMEI arising under any agreement pursuant to which an insurance broker is entitled to brokerage or commission from TMEI in respect of the placing of a Scheme Reinsurance Contract; and
- (d) Liabilities of TMEI arising under rights of contribution and subrogation in respect of a Scheme Reinsurance Contract;

after the application of any relevant counterclaim or right of contribution but in each case prior to the application of any amounts referred to in clauses 2.14.1.1 to 2.14.1.8 inclusive in accordance with the Scheme.

Scheme Claims shall not include:

- (a) save to the extent provided for in a Scheme Reinsurance Contract, Liabilities in respect of fees, costs and expenses (including any tax thereon), in respect of services or advice, payable to service providers, excluding brokers, but including, without limitation, lawyers and loss adjusters;

- (b) in the case of underwriting stamp T0502, all Engineering/CAR reinsurances with policy reference numbers commencing "3500";
- (c) Liabilities arising from the business assumed by TMEI as a participating company in the Willis Faber Underwriting Limited ("WFUM") Pools, which was subject to a separate scheme of arrangement;
- (d) the whole or part of any policy of reinsurance or retrocession underwritten by TMEI to the extent that it reinsured, as at the Effective Date, any liability required under any of the following enactments to be covered by insurance or (as the case may be) by some other provisions for securing its discharge:
  - (i) Section 1(4A)(d) of the Riding Establishments Act 1964 (or any corresponding enactment for the time being in force in Northern Ireland);
  - (ii) Section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 or Article 5 of the Employers' Liability Order (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972;
  - (iii) Part VI of the Road Traffic Act 1988 or Part VIII of the Road Traffic (Northern Ireland) Order 1981;
  - (iv) Section 19 of the Nuclear Installations Act 1965;

**"Scheme Creditor"** a creditor of TMEI in respect of a Scheme Claim;

## **"Scheme Currency"**

- (a) for the purposes of Scheme Claims submitted in any currency other than those listed in (b) to (g) below, Pounds Sterling;
- (b) for the purposes of Scheme Claims submitted in Australian dollars, Australian Dollars;
- (c) for the purposes of Scheme Claims submitted in Canadian dollars, Canadian Dollars;
- (d) for the purposes of Scheme Claims submitted in Euros, Euros;
- (e) for the purposes of Scheme Claims submitted in Japanese yen, Japanese Yen;
- (f) for the purposes of Scheme Claims submitted in pounds sterling, Pounds Sterling;
- (g) for the purposes of Scheme Claims submitted in US dollars, US Dollars;

in the event that a Scheme Currency is replaced by another unit of currency, references to that Scheme Currency shall, where appropriate, be deemed to refer to such replacement unit of currency and any amounts denominated in the original Scheme Currency shall be converted into the replacement unit of currency at the rate of exchange specified in the legislation introducing the replacement unit of currency;

**"Scheme Debt"** a Liability which is or may become payable to TMEI arising in connection with a Scheme Reinsurance Contract including, without limitation, reinstatement premiums, claim reserve deposits, refunds, rights of subrogation and reinsurance recoverables, and also including (for the avoidance of doubt) any such

Liability arising by virtue of the application of Agreed Claims to reinsurance contracts;

"**Scheme Manager**" PRO Insurance Solutions Limited and any Delegate thereof, or such other person as may be appointed in substitution or replacement of PRO Insurance Solutions Limited pursuant to the Scheme, and any Delegate thereof;

"**Scheme Rate**" the closing mid-point rate of exchange for the Relevant Currency quoted in the Financial Times for the last Business Day of the month preceding the date of the relevant Inwards Valuation Form or Valuation Statement or if no such rate is published, such rate as may reasonably be selected by the Scheme Manager;

"**Scheme Reinsurance Contract**" any contract or policy of reinsurance or retrocession comprised in the business referred to in paragraph 2.1 of Appendix A;

"**Security**" any effective deposit or reserve of funds, escrow, cash reserves, trust fund or assets established by TMEI, including any Letter of Credit, Loss Reserve or Premium Reserve, to the extent only that it relates to business covered by the Scheme;

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

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

**"Termination Event"** in respect of a company, limited liability partnership or partnership, on the occurrence of an Insolvency Event in respect of such company, limited liability partnership or partnership; or

in respect of an individual, the point at which such individual:

- (a) dies;
- (b) is convicted of an indictable offence;
- (c) becomes bankrupt or enters into any composition or arrangement with one or more of their creditors;
- (d) is disqualified from acting as a director of a company under the Company Directors Disqualification Act or is disqualified by any professional body of which he is a member; or
- (e) is admitted to hospital because of a mental disorder or is the subject of an order concerning his mental disorder made by a court having jurisdiction in such matters in England and Wales or elsewhere;

**"TMEI"** Tokio Marine Europe Insurance Limited (company number 989421), a company incorporated in England and Wales;

**"Unpaid Agreed Claim"** any claim arising under or balance in relation to a Scheme Reinsurance Contract which, as at the Effective Date, is valid and due having been agreed by or on behalf of TMEI and the party to which it is due, but which has not been paid or discharged by the operation of set-off or otherwise;

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

**"Valuation Statement"** the statement to be prepared in accordance with clause 2.13.2 (setting out only the amount of the Net Ascertained Claim or Net Debt as agreed) or clause 2.14.1 (setting out the amount of the Net Ascertained Claim or Net Debt and the calculation thereof), as the case may be, in substantially the form set out in Appendix D;

**"Vote Assessor"** the person appointed as such by the Court in relation to the Meeting and any person appointed in substitution for him;

**"Website"** the website at [www.TMEISCHEME.com](http://www.TMEISCHEME.com).

## 1.2 Interpretation

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

1.2.1 references to clauses, sub-clauses and Appendices are references to the clauses, sub-clauses and Appendices, respectively, of the Scheme;

1.2.2 references to months are to calendar months;

1.2.3 references to a person include an individual, firm, limited partnership, partnership, company, unincorporated body of persons and any state or state agency;

1.2.4 references to "insurance" shall include "reinsurance" and "retrocession", except where the context otherwise requires;

- 1.2.5 references to any enactment or other legislative provision shall be deemed to include the same as re-enacted, amended or extended save where expressly provided to the contrary;
- 1.2.6 the singular includes the plural and vice versa;
- 1.2.7 time periods laid down by the Scheme shall, unless otherwise expressly stated, be calculated by reference to elapsed days and not Business Days, and, in the event that a time period expires on a day which is not a Business Day, such period shall be deemed not to expire until 11.59pm London Time on the next Business Day. Any time period expressed to run from a fixed date shall not include such date;
- 1.2.8 references to the date of a document sent by the Scheme Manager are to the date expressed as such on the relevant document;
- 1.2.9 words importing one gender include all genders; and
- 1.2.10 headings are for ease of reference only and shall not affect the interpretation of the Scheme.

## **2. VALUATION OF SCHEME CLAIMS**

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

- 2.1.1 The Scheme shall become effective on the Effective Date whereupon it shall apply to all Scheme Claims and be binding on TMEI and all Scheme Creditors.

2.1.2 The purpose of the Scheme shall be to value each Scheme Creditor's Scheme Claims in accordance with this clause 2 and to discharge any resulting Net Ascertained Claim in full in accordance with clause 3.

2.1.2.1 Except in relation to the Bar Date, the Scheme Manager may, at any time prior to completion or termination of the Scheme, in its sole discretion, extend any unexpired period of time or deadline referred to in the Scheme in relation to a specific Scheme Claim or Scheme Creditor or generally provided that, in the case of an exercise of such discretion, the total period of any such extensions shall not exceed the aggregate of: (i) the length of the original maximum period of time specified in the Scheme for the taking of the relevant step(s); together with (ii) the time, if any, taken to replace a Scheme Adjudicator or Scheme Manager during the relevant period. Specifically affected Scheme Creditors shall be given written notice of such extension but in the event that Scheme Creditors generally are affected, such notice shall instead be placed on the Website.

2.1.3 If the relevant Scheme Creditor so agrees in writing, the Scheme Manager may at any time prior to the termination or completion of the Scheme, extend any unexpired period of time or deadline referred to in the Scheme (save the Bar Date) without limitation.

2.1.4 In the event that the Scheme Manager exercises such discretion pursuant to clause 2.1.2.1 or 2.1.3, references to any relevant period of time or deadline

elsewhere in the Scheme shall be construed accordingly, provided that the Bar Date once determined shall not be changed.

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

- 2.2.1 As soon as reasonably practicable after the Effective Date, the Scheme Manager shall Advertise and place a notice on the Website calling for Scheme Creditors to complete and return Claim Forms and notifying them of the Effective Date and the Bar Date.
- 2.2.2 The Scheme Manager shall ensure that notification of the Effective Date and of the Bar Date together with a Claim Form is sent by Post or E-mail to the last known address of each Scheme Creditor of which it is aware and for which it possesses what it reasonably believes to be a current address, as soon as reasonably practicable and, in any event, within 14 days of the Effective Date.
- 2.2.3 Prior to the Bar Date, the Scheme Manager shall be obliged to make available a blank copy Claim Form on the Website and shall, upon the written request of any Scheme Creditor who has not received a Claim Form pursuant to clause 2.2, send such Claim Form by Post or E-mail to the relevant Scheme Creditor as soon as reasonably practicable.
- 2.2.4 Each Claim Form provided pursuant to clause 2.2.2 or pursuant to clause 2.2.3 will contain or provide, as the case may be, to the extent that the Scheme Manager has such information in its possession, details of:

2.2.4.1 all known Scheme Reinsurance Contracts which, in the reasonable opinion of the Scheme Manager, might give rise to the relevant Scheme Creditor having a Scheme Claim; and

2.2.4.2 a schedule of all known Unpaid Agreed Claims arising under such Scheme Reinsurance Contracts.

### **2.3 Currencies**

Scheme Claims shall be submitted in one or more Scheme Currency or, if different, the currency of the original contract. A Scheme Creditor may elect on its Claim Form for its Net Ascertained Claim or Net Debt to be denominated in a single Scheme Currency. In the event that a Scheme Creditor does not so elect, its Net Ascertained Claim or, as the case may be, Net Debt shall be denominated on the Valuation Statement in Pounds Sterling.

### **2.4 Effects of Bar Date**

Save as provided in clause 2.5, if the Scheme Manager has not received a completed Claim Form from a Scheme Creditor on or before the Bar Date, that Scheme Creditor shall not be entitled to assert any Scheme Claim and shall not be entitled to any payment pursuant to the Scheme or otherwise from TMEI in respect of a Scheme Claim. After the Bar Date no Scheme Creditor shall be entitled to amend the values submitted on a Claim Form, or to assert Scheme Claims other than those detailed on a Claim Form which has been duly submitted prior to the Bar Date.

## 2.5 Unpaid Agreed Claims

Notwithstanding the other provisions of the Scheme, any Unpaid Agreed Claims referred to in clause 2.2.4.2 shall be deemed to be included in a Claim Form sent to and received by the Scheme Manager before the Bar Date and each Scheme Creditor will be entitled to receive payment under the Scheme in respect of the amounts of such Unpaid Agreed Claims. For the avoidance of doubt, a Scheme Debt may arise even if a Claim Form is not submitted.

## 2.6 Returning, amending and providing supporting evidence for Claim Forms

Each Scheme Creditor shall (to the extent that it wishes to assert Scheme Claims additional to the Unpaid Agreed Claims referred to in clause 2.2.4.2) complete and return its Claim Form by Post, E-mail or facsimile to be received by the Scheme Manager by the Bar Date in accordance with the instructions upon the Claim Form, and:

- 2.6.1 without prejudice to the generality of the foregoing, a Scheme Creditor must submit its Scheme Claim(s) and supporting evidence at policy level, with each claim made by reference to a specific Scheme Reinsurance Contract. In the event that a single claim impacts more than one Scheme Reinsurance Contract, the Scheme Creditor must set out on its Claim Form a separate claim for each Scheme Reinsurance Contract under which it wishes to claim. The Scheme Creditor must state on the Claim Form the Reference Date which it has selected;
- 2.6.2 a Scheme Creditor which amends or adds to the information set out on its Claim Form shall attach such supporting evidence as is reasonably necessary

to support it in accordance with the instructions on the Claim Form. Supporting evidence may be sent by the Scheme Creditor to the Scheme Manager by Post, E mail or facsimile and, for the avoidance of doubt, must be received by the Scheme Manager prior to the Bar Date;

2.6.3 save where a Valuation Statement is issued prior to the Bar Date pursuant to clause 2.13.2, each Scheme Creditor shall be entitled to submit further or revised data on its Claim Form prior to the Bar Date in accordance with its guidance notes and instructions and the provisions of this clause 2.6;

2.6.4 in the event that the Scheme Manager receives more than one Claim Form from a Scheme Creditor in relation to the same Scheme Claim, the last to be submitted by the Scheme Creditor and received by the Scheme Manager prior to the Bar Date shall prevail;

2.6.5 a Scheme Creditor returning a completed Claim Form shall bear all of the costs of preparing and returning it and any supporting evidence submitted in connection with it; and

2.6.6 each Scheme Creditor shall be deemed to have represented and warranted to TMEI and the Scheme Manager that the information added to or amended on the Claim Form and all supporting evidence provided by it or on its behalf to the Scheme Manager, including, without limitation, supporting evidence and information supplied after the Bar Date pursuant to clause 2.10.1.3, is, to the best of its knowledge and belief, true, correct, complete and fair.

## **2.7 Agreement of Scheme Claim values within 180 days**

2.7.1 Following the Bar Date, there shall be a 180 day period during which the Scheme Manager and each Scheme Creditor shall attempt in good faith to reach a mutually agreed value for the Scheme Creditor's Scheme Claim(s). The Scheme Manager and the Scheme Creditor shall conduct such negotiations by reference to the Estimation Methodology. In pursuing such negotiations, the Scheme Manager will consider the submitted claim information along with any reasonable and supported estimation methodology provided by the Scheme Creditor, in conjunction with the Estimation Methodology.

2.7.2 In the event that the Scheme Manager and a Scheme Creditor reach agreement as to the value(s) of some or all of such Scheme Creditor's Scheme Claim(s) within 180 days of the Bar Date, the agreed value(s) shall be Agreed Claim(s) of such Scheme Creditor and shall be final and binding on TMEI and the Scheme Creditor. For the purposes of this clause 2.7.2, the agreement must be confirmed by both parties in writing (which may be by E-mail) but is not required to be made by way of separate contract or deed.

## **2.8 Procedure for non agreement and referrals to Adjudication**

2.8.1 In the event that agreement has not been or, in the reasonable opinion of the Scheme Manager, cannot be reached within 180 days of the Bar Date, the Scheme Manager shall send the relevant Scheme Creditor an Inwards Valuation Form setting out either (i) the amount which the Scheme Manager believes is due in respect of each of that Scheme Creditor's unagreed Scheme

Claims or (ii) the total amount which the Scheme Manager believes is due to that Scheme Creditor (including any Agreed Claims). For the avoidance of doubt, the Inwards Valuation Form shall not include any amounts which are to be deducted from Agreed Claims.

2.8.2 The Inwards Valuation Form shall be denominated in the Relevant Currency converted, if necessary, at the Scheme Rate.

2.8.3 A Scheme Creditor may dispute any amount set out in an Inwards Valuation Form by sending a Dispute Notice to the Scheme Manager to be received by it within 56 days of the date of the Inwards Valuation Form. For the avoidance of doubt, if, notwithstanding the provisions of clause 2.8.1, such disputed amount includes sums attributable to Agreed Claims, such Agreed Claims shall not form part of the Disputed Claim. Any amounts shown on an Inwards Valuation Form for which the Scheme Manager does not receive a Dispute Notice shall, upon the expiry of such 56 day period, be final and binding upon the Scheme Company and relevant Scheme Creditor as Agreed Claims or, as the case may be, the total amount due to that Scheme Creditor in respect of its Scheme Claims.

2.8.4 In a Dispute Notice, the Scheme Creditor shall indicate for any disputed amount: (1) the amount it believes to be correct; and (2) any specific items of supporting evidence previously supplied in relation to its Scheme Claims which it does not require the Scheme Manager to supply to the Scheme Adjudicator for the purposes of Adjudication.

2.8.5 Within 28 days of receipt of a Dispute Notice, the Scheme Manager shall refer the Disputed Claim(s) to Adjudication.

## 2.9 Rules governing Adjudication by the Scheme Adjudicator

2.9.1 Where a Scheme Claim has been referred to the Scheme Adjudicator as a Disputed Claim, the Scheme Adjudicator shall, where the dispute relates to actuarial matters, either apply the Estimation Methodology to that Disputed Claim or adopt (in whole or in part) the methodology used by the relevant Scheme Creditor if, in his reasonable opinion, that Scheme Creditor's methodology is more appropriate for valuing the Disputed Claim.

2.9.2 In any Adjudication upon a dispute as to fact or law, where the Scheme Adjudicator believes that there is uncertainty surrounding the outcome of the matter in dispute, he may adopt an approach that involves the use of probabilities assigned to different possible outcomes, if, in his absolute discretion, he believes that the matters in dispute are susceptible to the application of such an approach.

2.9.3 The following rules shall apply to the Adjudication process:

2.9.3.1 all oral representations or written communications made for the purposes of Adjudication under the Scheme, shall be in English;

2.9.3.2 the Scheme Creditor's Claim Form (other than items which the Scheme Creditor has indicated need not be supplied to the Scheme Adjudicator pursuant to clause 2.8.4(2) unless the Scheme Manager believes any such items to be relevant) and any

supporting evidence provided to the Scheme Manager before the Bar Date shall be treated as its initial written submission for the purposes of this clause 2.9. TMEI shall have the right to comment on such submission provided that its comments are received by the Scheme Adjudicator at the same time as the relevant matter is referred to him;

2.9.3.3 every document to be provided for the purposes of a matter referred to the Scheme Adjudicator shall be in English or accompanied by an English translation of it certified as accurate by a notary public admitted to the roll of notaries by the United Kingdom Facility Office or such other person as is acceptable to the Scheme Manager;

2.9.3.4 all documents referred to in clauses 2.9.3.1 to 2.9.3.3 inclusive and clause 2.10.1.3 shall, as far as reasonably practicable, be made available to each of the parties to an Adjudication simultaneously;

2.9.3.5 if there is a conflict in meaning or interpretation between the English language version of any such document or written communication and the original version, then the original version shall prevail; and

2.9.3.6 for the avoidance of doubt, a Scheme Creditor shall be solely responsible for all and any translation, interpretation and other costs incurred by it pursuant to the application of clauses 2.9.3 and 2.10.1.3.

## 2.10 Adjudication procedures and timescale

2.10.1 In considering and making decisions in respect of matters referred to him, the Scheme Adjudicator shall:

2.10.1.1 act as an expert, not as an arbitrator;

2.10.1.2 be entitled to lay down such reasonable provisions and prescribe such reasonable procedures as he in his absolute discretion may consider appropriate for the purposes of assisting him in reaching his decision;

2.10.1.3 be entitled to request the Scheme Manager and/or the relevant Scheme Creditor to provide him, within 35 days of his request, with such further supporting evidence as he may reasonably require at the expense of the party to whom the request is made:

(a) in each case where further information is provided pursuant to a request within the 35 day period referred to in clause 2.10.1.3, the other parties to the dispute shall have the right to respond to that information by written submissions thereon within 14 days of receipt of the relevant information;

(b) the provisions of clause 2.6.6 shall apply to further information and supporting evidence provided by a Scheme Creditor pursuant to clause 2.10.1.3, and in the case of information and supporting evidence provided by the

Scheme Manager and/or TMEI, it shall be deemed to have warranted to the relevant Scheme Creditor that such information and supporting evidence is, to the best of its knowledge and belief, as the case may be, true, correct, complete and fair. Any further supporting evidence received pursuant to clause 2.10.1.3 shall not result in the amendment of any amount determined pursuant to clause 2.2 or previously determined pursuant to this clause 2.10 and nothing in clause 2.10 shall give rise to a Scheme Claim being asserted which had not been notified to the Scheme Manager by the Bar Date;

2.10.1.4 base his determination on the evidence available to him, provided that if supporting evidence requested pursuant to clause 2.10.1.3 is not received by him within the 35 days of his request (and no extension of this period has taken place in accordance with clause 2.1.2.1 or 2.1.3) he shall be entitled to make his determination on the basis of the evidence before him and to disregard any evidence received by him after the deadline for providing the further evidence;

2.10.1.5 be entitled to consult with and take advice from such experts, including legal experts and advisers, as he may deem appropriate provided that the cost of consulting such experts has been authorised in writing by the Scheme Manager prior to such costs

being incurred, which authorisation shall not be unreasonably withheld;

2.10.1.6 be entitled to use his general knowledge and experience of the insurance market; and

2.10.1.7 be entitled to remuneration and reimbursement of his reasonable costs and expenses (including, without limitation, the costs and fees of any experts or advisers consulted by him in connection with a Disputed Claim pursuant to clause 2.10.1.5 and any applicable Value Added Tax) in carrying out his duties under the Scheme in amounts determined in accordance with clauses 2.12.1 and 2.12.2.

## **2.11 Adjudication final and binding**

2.11.1 The Scheme Adjudicator shall, within 91 days of the matter being referred to him, notify the Scheme Manager and the relevant Scheme Creditor in writing of his determination in respect of the disputed matter and his direction as to costs (if any) pursuant to clause 2.12.2.

2.11.2 So far as the law permits, a Scheme Adjudicator's determination in respect of the matter referred to him shall, in the absence of Manifest Error, be final and binding on TMEI and the relevant Scheme Creditor and there shall be no right of appeal or review thereof or to make any claim in respect thereof.

2.11.3 In the event that the Scheme Manager or relevant Scheme Creditor considers that there is a Manifest Error in a determination of the Scheme Adjudicator it shall inform the Scheme Adjudicator and the other party(ies) to the

Adjudication of such Manifest Error by notice in writing within 7 days of receiving such determination. The Scheme Adjudicator shall investigate and if necessary, correct any Manifest Error within 14 days of receiving such notice and (if necessary) shall revise his determination accordingly. Clause 2.11.2 shall apply to any such revised determination save that there shall be no further right to appeal the determination on the basis of Manifest Error.

2.11.4 The Scheme Adjudicator's determination in relation to a Disputed Claim shall not result in its value exceeding the total amount asserted by a Scheme Creditor in respect of the relevant Scheme Reinsurance Contract in his Claim Form received or deemed to have been received by the Scheme Manager in accordance with clause 2.2 (and to the extent that it does, any such excess shall be disregarded) and shall not result in the recognition of any Scheme Claim not included on such Claim Form.

## **2.12 Costs of adjudication**

2.12.1 Subject to clause 2.11.2, TMEI and the relevant Scheme Creditor shall each be responsible for paying half of the Scheme Adjudicator's remuneration and reasonable costs and expenses referred to in clause 2.10.1.7.

2.12.2 In the event that the Scheme Adjudicator determines that either the Scheme Manager acting on TMEI's behalf, or the Scheme Creditor in respect of whose Scheme Claim the dispute has arisen has:

2.12.2.1 acted in bad faith, vexatiously, or for oppressive reasons in respect of a matter subject to Adjudication; or

- 2.12.2.2 unreasonably failed to provide appropriate supporting evidence pursuant to clause 2.10.1.3 and such failure or unreasonable behaviour has resulted in the need for, or an increase in the time and costs of the Adjudication; or
- 2.12.2.3 supplied supporting evidence in such a way as unreasonably to cause an increase in the time and costs of the Adjudication;

he shall be entitled to direct (at the same time as he communicates his decision on the subject of the Adjudication), that such other proportion of the remuneration, costs and expenses properly incurred by him (including, without limitation, the costs of any advisers or experts referred to in clause 2.10.1.5) as he shall direct, shall be paid by TMEI and/or the Scheme Creditor in respect of whose Scheme Claim the dispute has arisen.

2.12.3 The sums due under clauses 2.12.1 and 2.12.2 shall be paid by TMEI forthwith and, in any event, within 42 days of the Scheme Adjudicator notifying it of his direction. The amount of the relevant Scheme Creditor's share of such remuneration, costs and expenses shall be dealt with in accordance with clause 2.12.4.

2.12.4 The relevant Scheme Creditor shall pay any amount due from it pursuant to clause 2.12.1 or clause 2.12.2 within 42 days of being notified of it, provided, however, that if the Scheme Creditor does not make such payment within 42 days, TMEI shall pay such amount on its behalf and the Scheme Manager shall, following such payment by TMEI, either:

- 2.12.4.1 deduct the same, converted where appropriate at the Scheme Rate, from any amount which may be, or may become, payable to the Scheme Creditor pursuant to the Scheme (including, for the avoidance of doubt, any amount payable pursuant to clause 2.13.1), such Scheme Creditor being treated for these purposes as having received, on account, an advance under the Scheme equal to the amount which it has been directed to pay; or
- 2.12.4.2 where the Scheme Creditor is not entitled to receive a payment pursuant to the Scheme, or is subsequently found to be a Net Debtor, or the amount of such remuneration, costs and expenses exceeds its entitlement to a payment pursuant to the Scheme, treat such amount or excess as a debt owed by the Scheme Creditor as a Net Debtor to TMEI, which shall be payable forthwith.

## **2.13 Scheme Manager's power to commute**

2.13.1 At any time prior to the Completion Date, the Scheme Manager may enter into an agreement in writing with a Scheme Creditor for the full and final release and discharge, commutation, compromise, waiver or settlement of one or more Scheme Claims and to treat any sum agreed as being due from TMEI to the Scheme Creditor as an Agreed Claim or as a sum payable outside the terms of the Scheme. For the avoidance of doubt, following agreement to make such a payment outside the Scheme, the right to receive any such sum shall not constitute a Scheme Claim or a Net Ascertained Claim and following payment in respect of it, TMEI shall have no further obligations to

the relevant Scheme Creditor in respect of such sum, or the Scheme Claim(s) that gave rise to it.

2.13.2 Alternatively, without limitation, the Scheme Manager and a Scheme Creditor may agree in writing the amount of the Net Ascertained Claim or Net Debt which shall appear on that Scheme Creditor's Valuation Statement. In the event that any such agreement is reached, the Scheme Manager shall, as soon as reasonably practicable, send the Scheme Creditor a Valuation Statement setting out only the amount of the Net Ascertained Claim or Net Debt so agreed. Such Valuation Statement shall be final and binding upon TMEI and the relevant Scheme Creditor whether it is issued before or after the Bar Date. Clauses 2.14 and 2.15.2 to 2.15.4 shall not apply to a Valuation Statement issued pursuant to this clause 2.13.2.

## **2.14 Determination of Net Ascertained Claims**

2.14.1 Save when clause 2.13 shall apply, as soon as reasonably practicable following completion of the steps referred to in clauses 2.2 to 2.11 (or such of them as apply to the valuation of a Scheme Creditor's Scheme Claims), the Scheme Manager shall send to each such Scheme Creditor a Valuation Statement setting out in the Relevant Currency (converted, if necessary, at the Scheme Rate):

2.14.1.1 the total of the Scheme Creditor's Agreed Claims;

2.14.1.2 the amount of adjustments reflecting payment by or to TMEI and transactions effecting netting off or set-off in respect of a Scheme Creditor's Agreed Claims and/or Scheme Debts;

- 2.14.1.3 the amount of any Scheme Debt owed by the Scheme Creditor to TMEI;
  - 2.14.1.4 the amount of any Scheme Claims which have been satisfied by the application of Security since the Effective Date and the amount of any remaining Security to be deducted from the total of such Scheme Creditor's Agreed Claims with the intention that the Scheme Creditor will draw down or realise the Security in that amount;
  - 2.14.1.5 any amount in respect of the Scheme Adjudicator's remuneration, costs and expenses which fell due for payment by the Scheme Creditor pursuant to clause 2.12.1 or clause 2.12.2;
  - 2.14.1.6 the amount of any advance payment treated as having been received by the Scheme Creditor for the purposes of clause 4.1.2 or 4.1.3 which is to be deducted from the total of such Scheme Creditor's Agreed Claims;
  - 2.14.1.7 any amounts which are required to be deducted or withheld by TMEI for, or on account of, Tax in respect of Admissible Interest or otherwise;
  - 2.14.1.8 any other amounts not expressly referred to in clause 2.14.1.1 to 2.14.1.7 above which the Scheme Manager considers ought to be taken into account for the purpose of calculating the Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be;
- and

2.14.1.9 the final balance following aggregation of the amounts referred to in this clause 2.14.1 which shall be the Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be.

2.14.2 Net Ascertained Claims will be paid in the Relevant Currency.

## 2.15 Disputes as to amounts on Valuation Statements

2.15.1 A Scheme Creditor may not dispute:

2.15.1.1 any amount shown on a Valuation Statement prepared in accordance with clause 2.13.2; or

2.15.1.2 the value of Agreed Claims shown on a Valuation Statement prepared in accordance with clause 2.14.1,

except for Manifest Error in accordance with clause 2.15.5.

2.15.2 Subject to clauses 2.15.1 and 2.15.7, a Scheme Creditor may dispute the calculation or determination of any amount shown on its Valuation Statement on substantive grounds. It shall inform the Scheme Manager of such a dispute by notice in writing to be received by the Scheme Manager within 42 days of the date of the Valuation Statement, setting out those matters which are not agreed and the reasons for failing to agree such matters and provide any relevant additional information to support its position. The Scheme Manager and the Scheme Creditor shall endeavour to agree the disputed matters and the relevant Net Ascertained Claim or Net Debt within 70 days of the date of the Valuation Statement. In the event that a valuation can be agreed between them during this period, the Scheme Manager shall, as soon

as reasonably practicable, issue a revised Valuation Statement to that Scheme Creditor incorporating the agreed valuation. Such revised Valuation Statement may only be disputed in relation to Manifest Error in accordance with clause 2.15.5.

2.15.3 If the disputed matters and the relevant Net Ascertained Claim or Net Debt cannot be resolved between the Scheme Creditor and the Scheme Manager within the deadline imposed by clause 2.15.2, or the Scheme Manager reasonably considers that they cannot be so resolved, the Scheme Manager shall refer the disputed matters and the relevant Net Ascertained Claim or Net Debt to the Scheme Adjudicator as a Disputed Claim. For the avoidance of doubt, a Disputed Claim so referred shall not include the Agreed Claims on a Valuation Statement. Following determination of all Disputed Claims for a Scheme Creditor the Scheme Manager shall, as soon as reasonably practicable, issue a revised Valuation Statement to that Scheme Creditor incorporating the amount(s) determined by the Scheme Adjudicator. Such revised Valuation Statement may only be disputed in relation to Manifest Error in accordance with clause 2.15.5.

2.15.4 The Scheme Adjudicator's adjudication of Disputed Claims shall be conducted in accordance with the procedures set out in clauses 2.10.1 and 2.11 which provisions shall apply, save for the following differences:

2.15.4.1 the deadline for compliance with a request for further supporting evidence by the Scheme Adjudicator pursuant to clause 2.10.1.3 shall be reduced to 14 days; and

- 2.15.4.2 the time period referred to in clause 2.11.1 within which the Scheme Adjudicator shall notify the relevant Scheme Creditor and the Scheme Manager of his determination in respect of the Disputed Claim shall be reduced to 35 days.
- 2.15.5 A Scheme Creditor may dispute any amount or matter set out on its Valuation Statement on the grounds of Manifest Error and it shall notify the Scheme Manager of any such dispute within 42 days of the date of the Valuation Statement or revised Valuation Statement. The notice shall set out such details of the alleged Manifest Error as are reasonably necessary for the Scheme Manager to investigate it and, if necessary, correct it. The Scheme Manager shall investigate and, if necessary, correct the alleged Manifest Error within 63 days of the date of the Valuation Statement or revised Valuation Statement.
- 2.15.6 Having investigated an alleged Manifest Error in accordance with clause 2.15.5, the Scheme Manager shall either send the Scheme Creditor a revised Valuation Statement setting out the corrected amounts or other matters, or shall send notice in writing to the Scheme Creditor stating that preparation of a revised Valuation Statement is not necessary (and giving reasons therefor).
- 2.15.7 Without prejudice to a Scheme Creditor's ability to dispute the mathematical calculation of the reinsurance recovery offset, nothing in this clause 2.15.7 shall entitle a Scheme Creditor to dispute, or a Scheme Adjudicator to alter, the set-off of Agreed Claims of a Scheme Creditor against amounts due to TMEI pursuant to contracts by which TMEI is reinsured in respect of Scheme Claims, by such Scheme Creditor. For the avoidance of doubt, and without

prejudice to the generality of the foregoing, a Scheme Creditor cannot dispute the principle that claims valued through the Scheme are recoverable by offset under the reinsurance programme, or the amount of the Agreed Claims used to calculate the reinsurance recoverables.

## **2.16 Valuation Statement becoming binding**

If a Valuation Statement or revised Valuation Statement is not disputed pursuant to clause 2.15, it shall, so far as the law permits, become final and binding on TMEI and the relevant Scheme Creditor as the amount of that Scheme Creditor's Net Ascertained Claim on the first to occur of the following:

2.16.1 the date upon which the Scheme Manager receives a copy of the Valuation Statement signed by the relevant Scheme Creditor to confirm that it accepts that the Valuation Statement has become final and binding; or

2.16.2 the date falling 43 days after the date of the Valuation Statement, in which event there shall be no right of appeal.

## **2.17 Effect of the Scheme**

2.17.1 Each Scheme Creditor shall be deemed to agree that:

2.17.1.1 its Net Ascertained Claim shown on a Valuation Statement which has become binding in accordance with clause 2.16 shall constitute TMEI's entire remaining Liability to the relevant Scheme Creditor in respect of all of its Scheme Claims and that the terms of all Scheme Reinsurance Contracts giving rise to Scheme Claims are amended accordingly;

- 2.17.1.2 notwithstanding the terms of clause 3.4, the sending of a cheque or making of a bank transfer (or any other means of payment or discharge including, without limitation, any application of Security and any application of set-off in accordance with the terms of the Scheme) by TMEI, in the amount of the Net Ascertained Claim shown on a Valuation Statement which has become binding, shall be deemed to constitute payment in full and final settlement of all and any Scheme Claims of that Scheme Creditor against TMEI;
- 2.17.1.3 such deemed payment in full and final discharge of all and any Scheme Claims and/or the discharge of Scheme Claims by offset pursuant to the Scheme shall also be deemed to be in full and final discharge of all sums and obligations due to it under any guarantee, trust fund or reinsurance that may exist in respect of such Scheme Claims; and
- 2.17.1.4 any Liability shown on a Valuation Statement which has become binding as a Net Debt shall be deemed to have extinguished all of the relevant Scheme Creditor's Scheme Claims and TMEI shall not owe any amount or have any liability in respect of them.
- 2.17.2 Nothing in the Scheme shall result in any Liability which is not a Scheme Claim forming part of a Net Ascertained Claim.

### **3. PAYMENT OF NET ASCERTAINED CLAIMS**

#### **3.1 Timing of payment**

The Scheme Manager shall procure that payment be made in the amount of each Net Ascertained Claim to the relevant Scheme Creditor as soon as reasonably practicable after the date on which such Scheme Creditor's Valuation Statement has become final and binding on TMEI and the Scheme Creditor in accordance with clause 2.16, and in any event within 42 days thereof.

#### **3.2 Form of payment and consequence of loss of contact with Scheme Creditors**

3.2.1 Payments due from TMEI pursuant to the Scheme shall be made by bank transfer, at the expense of TMEI, to an account for which the Scheme Creditor has provided details on its Claim Form. However, if the Scheme Creditor so requests, and the Scheme Manager at his sole discretion agrees, or if the Scheme Manager in its reasonable opinion considers the cost of making payment by bank transfer is unreasonably large, payment will be made by cheque sent by Post at the risk of the Scheme Creditor, to the Scheme Creditor at the address specified on the Claim Form or to such other person as is directed to receive payment under this clause 3.2.

3.2.2 In the event that the Scheme Manager is unable to contact a Scheme Creditor to which a payment is due pursuant to the Scheme, and does not have details of a current account or correct address details sufficient to enable a payment to be made to a Scheme Creditor pursuant to clause 3.2.1, for the avoidance of doubt, there shall be no obligation to make such payment unless, prior to the Completion Date, current account details or a valid address are notified to

or discovered by the Scheme Manager. The Scheme Manager shall use reasonable endeavours to contact the relevant Scheme Creditor in the six month period following the first date on which the Scheme Manager attempted to make payment to the Scheme Creditor pursuant to clause 3.1. Any amounts due to Scheme Creditors which the Scheme Manager has not been able to pay for the reasons set out in this clause shall be paid by the Scheme Manager to the Charity as soon as reasonably practicable after the Completion Date.

### **3.3 Payment a good discharge**

A payment made to a Scheme Creditor in respect of its Net Ascertained Claim or offset pursuant to the Scheme resulting in a Net Debt in respect of a Scheme Creditor shall be good discharge of all of TMEI's obligations to that Scheme Creditor in respect of its Scheme Claims. Payment shall be deemed to have been made when:

- 3.3.1 in the event that the payment is by cheque, the cheque is sent by Post to the Scheme Creditor; and
- 3.3.2 in the event that the payment is by bank transfer, the relevant bank account is debited with the payment.

### **3.4 Lost or mislaid cheques and unclaimed payments**

- 3.4.1 Without prejudice to the effect of clause 3.3, in the event that a Scheme Creditor to whom a cheque is sent pursuant to clause 3.2 notifies the Scheme Manager within six months of the date on which it was sent that the cheque has been lost or mislaid, the Scheme Manager shall, if satisfied that the

cheque has not been cashed and can be cancelled, send a replacement cheque to the Scheme Creditor concerned at the address notified by the Scheme Creditor.

3.4.2 If the Scheme Manager at any point within six months of making a payment pursuant to clause 3.2 becomes aware that a bank transfer has not been effected or a cheque not presented, it shall use reasonable endeavours to contact the relevant Scheme Creditor and resolve this before the Completion Date.

### **3.5 Payments made on the basis of Misrepresentation or Fraud**

For the avoidance of doubt, TMEI and the Scheme Manager shall be entitled to recover any amount which either or both has paid on the basis of misrepresentation, breach of warranty or fraud.

## **4. SCHEME CLAIMS**

### **4.1 Stay of Proceedings and Consequences of Acting in Breach of the Stay**

4.1.1 No Scheme Creditor nor any party acting on its behalf or deriving title from it, shall be entitled to take or continue any step, or do or continue any act, by way of Proceedings or otherwise in any jurisdiction whatsoever after the Effective Date:

4.1.1.1 against, or in respect of, TMEI or its Property for the purpose of obtaining payment, or establishing the existence or quantum, of any Scheme Claims;

4.1.1.2 save as permitted by clause 8.1, against or in respect of any of the Released Parties, either individually or collectively, in connection with their duties and obligations under the Scheme;

unless TMEI has failed to perform any obligation to make payment to a Scheme Creditor in respect of a Net Ascertained Claim and then only in respect of such failure.

4.1.2 If any Scheme Creditor or other party acting on its behalf or deriving title from it takes any action which is prohibited by clause 4.1.1 after the Effective Date, then:

4.1.2.1 it shall be deemed to have received an advance payment under the Scheme equal to the amount or gross value of any Property or advantage obtained by it from or at the expense of TMEI and/or the Released Party as a result of such action, and the extent, if any, to which it is entitled to any other payment from TMEI shall be determined accordingly. Each Scheme Creditor shall be deemed to agree that in the event that the amount of any such deemed receipts exceed the total of all sums which it would otherwise be entitled to receive pursuant to the Scheme, it shall be treated as a debtor of TMEI in respect of such excess; and

4.1.2.2 the process of valuing its Scheme Claim(s) may, at the discretion of the Scheme Manager, be suspended, and the process of making payment in respect of them shall be suspended, until such action is discontinued.

4.1.3 If the amount of advance payment, which a Scheme Creditor is treated as having received pursuant to clause 4.1.2, exceeds the total amount the relevant Scheme Creditor would otherwise be entitled to receive pursuant to the Scheme, then without prejudice to any other rights of TMEI:

4.1.3.1 the Scheme Creditor shall immediately repay the excess to TMEI, failing which interest shall accrue on such excess for the period from the date upon which the Scheme Creditor's Valuation Statement becomes binding under the Scheme to the date of repayment of such excess, at a rate equal to the Bank Base Rate plus four per cent from time to time. Interest shall accrue from day to day for the duration of such period (from and including the first day thereof) and shall be payable on the last day of such period. Such excess shall be held on trust for TMEI by the relevant Scheme Creditor until it is paid to TMEI; and

4.1.3.2 TMEI shall be deemed to have satisfied the full amount of its liability in respect of all of such Scheme Creditor's Scheme Claims including any which have been sold or otherwise transferred to other parties.

4.1.4 For the purpose of clause 4.1.2, the value of any Property or advantage obtained as aforesaid shall be conclusively determined by the Scheme Manager and (without prejudice to the generality of the foregoing) shall include such amount as the Scheme Manager may in its absolute discretion consider to be appropriate in respect of costs, charges and expenses incurred

by TMEI or the Scheme Manager as a consequence of the action taken by the Scheme Creditor in breach of clause 4.1.1.

4.1.5 Each Scheme Creditor is deemed to acknowledge that if it or any party acting on its behalf or deriving title from it brings or continues Proceedings against TMEI and/or any of the Released Parties in breach of clause 4.1.1, TMEI or the Released Party (as appropriate) shall be entitled to obtain or procure the obtaining of an order staying or dismissing those Proceedings and providing for payment by the Scheme Creditor concerned of any interest and of any costs, charges and expenses incurred by TMEI or the Released Party as a result of those Proceedings.

## 4.2 **Interest**

No interest other than Admissible Interest shall form part of a Scheme Claim or Agreed Claim.

## 4.3 **Security**

4.3.1 After a Net Ascertained Claim has been agreed or determined in accordance with clause 2.13.2 or clause 2.14 and has become binding on TMEI and the Scheme Creditor or an amount due outside the Scheme pursuant to clause 2.13.1 has been agreed, a Scheme Creditor may obtain payment thereof by means of its Security, provided that this is done strictly in accordance with the terms of the contract pursuant to which such Security was established and the terms (if any) of the Security or as agreed in writing with the Scheme Manager.

- 4.3.2 In addition, when a Scheme Creditor's Net Ascertained Claim has become final and binding pursuant to clause 2.16 and to the extent that it takes account of the deduction of Security, the Scheme Creditor shall draw the applicable amount from the relevant Security notwithstanding any provision to the contrary in the terms on which the Security was established.
- 4.3.3 Nothing in the Scheme shall affect the rights of TMEI under any applicable law against any person in respect of any wrongful or excessive enforcement, drawdown or withdrawal of funds in respect of any Security.
- 4.3.4 Where a Scheme Creditor has exhausted its rights to apply its Security against Scheme Claims but the Security is not exhausted, each Scheme Creditor in whose favour such Security was established shall provide such co-operation and assistance as TMEI may require in order to obtain the release of the balance of any remaining funds deposited as, or as collateral in respect of, such Security to TMEI. Each Scheme Creditor is deemed to acknowledge that, in the event that its Net Ascertained Claim has been satisfied or it becomes a Net Debtor, it shall continue to be obliged to provide assistance to TMEI in accordance with this clause 4.3.4.

#### 4.4 **Broker and other third party funding**

- 4.4.1 Claims against TMEI by a third party in respect of amounts paid by that third party to a Scheme Creditor in relation to sums due from TMEI to that Scheme Creditor will not be admitted as Scheme Claims nor shall that third party be acknowledged to be a Scheme Creditor in lieu of the Scheme Creditor to whom the payment was made unless either:

4.4.1.1 the third party asserting that it has made the payment has acquired a valid assignment of the Scheme Claim or the said Scheme Creditor shall have provided a letter to the Scheme Manager confirming that (1) it accepts the payment received from that person in full and final settlement as between TMEI and itself of its claim against TMEI for the Liability in respect of which that payment was made and (2) irrevocably acknowledging that third party's right to assert that it has a Scheme Claim in respect of that Liability; such assignment or letter to be in a form acceptable to the Scheme Manager and to be submitted to them by the third party asserting the relevant Scheme Claim; or

4.4.1.2 the payment was made pursuant to a contractual obligation of such person to TMEI or at the written request of TMEI.

4.4.2 For the avoidance of doubt, any sum in respect of which a person is submitting a claim in accordance with clause 4.4.1.1 or 4.4.1.2 shall be included in the calculation of that person's Net Ascertained Claim or Net Debt pursuant to clause 2.14.1.

#### **4.5 Lloyd's Syndicates**

4.5.1 The Scheme Manager shall treat the members of a Lloyd's Syndicate which has Scheme Claims as if they were a single Scheme Creditor of TMEI in respect of all such Scheme Claims and any Scheme Debt or contingent Scheme Debt which has fallen due or which may fall due to TMEI from that Lloyd's Syndicate.

4.5.2 For the purposes of the Scheme, where the year of account of a Lloyd's Syndicate has been closed by means of a reinsurance to close into the year of account of another Lloyd's Syndicate or Equitas, the rights and Liabilities of the former Lloyd's Syndicate, including any deemed to be its rights and Liabilities pursuant to this clause 4.5, shall be deemed to be the rights and Liabilities of Equitas or the latter Lloyd's Syndicate as the case may be.

#### 4.6 **Managing General Agents, Lineslip holders, Managers of Underwriting Pools**

4.6.1 The Scheme Manager shall have the power, the exercise of which shall bind Scheme Creditors, to treat those acting, or believed to be acting, on behalf of Scheme Creditors insured or reinsured by TMEI or who reinsured TMEI, including but not limited to, managers of underwriting pools, managing general agents and the holders of Lineslips, Broker's Covers or binding authorities (together, the "**Agency Managers**"), as if they were a Scheme Creditor or debtor in place of the underlying Scheme Creditors unless, prior to taking steps pursuant to the Scheme in relation to such Scheme Creditor or debtor, the Scheme Manager receives notice in a form satisfactory to it in writing from any such Scheme Creditor or debtor that the relevant party has no authority to act on their behalf, or that the relevant party's authority to act on their behalf has come to an end.

4.6.2 The Scheme Manager shall, as an alternative to clause 4.6.1, be entitled to require any Agency Manager to allocate Scheme Claims submitted by it and, where applicable, Scheme Debts, by reference to each of the underlying Scheme Creditors. If the Scheme Manager does not receive sufficient details of the Scheme Claims allocated to each such Scheme Creditor together with

any necessary supporting evidence supporting the application the Scheme Manager shall, for the avoidance of doubt, be entitled to apply the provisions of clause 4.6.3. All Scheme Creditors affected by such allocation pursuant to this clause 4.6.2 shall be bound by the allocation.

4.6.3 Should the Scheme Manager not receive sufficient details of the Scheme Claims allocated to each underlying Scheme Creditor together with any necessary supporting evidence in a form acceptable to the Scheme Manager, from the relevant Agency Manager within 56 days after the Scheme Manager has required an allocation pursuant to clause 4.6.2, neither such Agency Manager nor any Scheme Creditor on whose behalf such person purports to act shall be entitled to claim in, or receive any payment under, the Scheme in respect of such Scheme Claim(s).

4.6.4 Where the Scheme Manager chooses to exercise its power to require an allocation of Scheme Claims pursuant to clause 4.6.2, it shall not be required to issue any Inwards Valuation Form or Valuation Statement or to make any payment under the Scheme until such time, within the 56 days referred to in clause 4.6.3, as the relevant Agency Manager shall have provided it with the information requested, and the time periods under the Scheme shall be extended accordingly. For the avoidance of doubt, the provisions of clause 4.6.3 shall apply after the 56 day period, in the event that the information requested has not been received by the Scheme Manager within the said 56 days.

4.6.5 In the event of doubt as to which of clauses 4.6.1 and 4.6.2 shall apply to an Agency Manager, the decision of the Scheme Manager in this respect shall, so far as the law permits, be final and binding.

## **5. SCHEME MANAGER**

### **5.1 General Powers and Duties**

5.1.1 The first Scheme Manager shall be PRO Insurance Solutions Limited of Bruton Court, Bruton Way, Gloucester GL1 1DA, United Kingdom, which has given to TMEI, and not withdrawn, its consent to act as Scheme Manager from the Effective Date and has contracted to be bound by the terms of the Scheme to the extent that the same apply to the Scheme Manager.

5.1.2 In exercising its powers and carrying out its duties and functions under the Scheme, the Scheme Manager shall act in good faith, and with due care and diligence and shall exercise its powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms. TMEI undertakes to be bound by the acts and decisions of the Scheme Manager pursuant to the Scheme.

5.1.3 The Scheme Manager shall use any information received by it in its capacity as such only for the purpose of performing its functions under the Scheme and shall not disclose such information to any other person except where necessary for the purposes of the Scheme.

5.1.4 Nothing in the Scheme shall render the Scheme Manager liable for any Liabilities or obligations of TMEI.

5.1.5 Subject to its terms of engagement, the Scheme Manager shall have the power to manage and control the business and affairs of TMEI in relation to, and for the purposes of, implementing the Scheme together with the powers specifically conferred on it by the Scheme.

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

## 5.2 **Specific powers and obligations of the Scheme Manager**

5.2.1 In carrying out its duties and functions under the Scheme, the Scheme Manager shall (without prejudice to the full terms of the Scheme) be empowered:

5.2.1.1 to delegate or employ any person as it sees fit for the carrying out of its powers, rights, duties and functions under the Scheme with the prior written agreement of TMEI;

5.2.1.2 if, for any reason, David McGuigan is unable to fulfil the role of Foreign Representative, to petition the courts of any jurisdiction to obtain recognition or enforcement of the Scheme or, in connection with the Scheme, to bring, commence or defend any Proceedings in the name of and, in so far as permitted by law, on behalf of TMEI, in any matter affecting TMEI, in any jurisdiction, or to prevent the continuation or commencement of any Proceedings against either of TMEI or its Property, or any act or the commencement or continuation of any Proceedings to create or enforce a lien against such Scheme Property, and/or to seek such

other relief as it deems appropriate or which the relevant court, tribunal or body may grant and, for the avoidance of doubt, this shall include the power to make an application under Chapter 15 of the United States Bankruptcy Code;

5.2.1.3 to the extent that the Court has jurisdiction to determine any such application, to apply to the Court for directions in relation to any particular matter arising under, or in the course of the operation of, the Scheme;

5.2.1.4 to do all acts, and to execute in the name and, in so far as permitted by law, on behalf of TMEI in connection with the Scheme, any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for, or incidental to, the full and proper implementation of the Scheme;

5.2.1.5 on behalf of TMEI, to negotiate and enter into agreements for the commutation, compromise, waiver or settlement of Scheme Claims in accordance with clause 2.13;

5.2.1.6 to exercise any other powers necessary for, or incidental to, the full and proper implementation of the Scheme whether in the name of TMEI or otherwise; and

5.2.1.7 to do all other things incidental to the exercise of the foregoing powers.

5.2.2 In the event that the Scheme Manager does not or is unable to exercise any of its powers, TMEI may exercise such powers.

### 5.3 **Vacation of Office**

5.3.1 The office of Scheme Manager shall be vacated forthwith if:

5.3.1.1 a Termination Event occurs in relation to the appointee;

5.3.1.2 the appointee resigns his or its office, as the case may be, by giving 90 days' notice in writing to TMEI or such shorter period of notice as may be agreed by TMEI; or

5.3.1.3 the appointee is removed for good cause by TMEI.

### 5.4 **Appointment of replacement Scheme Manager**

In the event of a vacancy in the office of Scheme Manager, TMEI shall, as soon as reasonably practicable, appoint a replacement Scheme Manager provided that such replacement Scheme Manager is, in the reasonable opinion of TMEI, suitably qualified, has no conflict of interest in relation to the appointment and consents so to act. Without prejudice to the foregoing, in the event of a vacancy in the office of Scheme Manager, pending the appointment of a replacement Scheme Manager, all of the functions of the Scheme Manager shall be exercised by TMEI or such other person or entity as TMEI may designate and a notice confirming the change in identity of the Scheme Manager shall be placed on the Website by TMEI as soon as reasonably practicable.

## 6. THE SCHEME ADJUDICATOR

### 6.1 Role of Scheme Adjudicator

6.1.1 There shall be an independent Scheme Adjudicator having the powers, duties, functions and rights conferred upon him by the Scheme. In exercising his powers and carrying out his duties and functions under the Scheme, the Scheme Adjudicator shall act in good faith and with due care and diligence.

6.1.2 The first Scheme Adjudicator shall be ~~George Maher of Towers Watson, 71 High Holborn, London WC1V 6TP~~[John Birkenhead of HJC Actuarial Consulting Limited, 25 Floral Street, Covent Garden, London WC2E 9DS](#) who has given, and not withdrawn, his consent to act as such pursuant to the Scheme and has contracted to be bound by the terms of the Scheme to the extent that the same apply to the Scheme Adjudicator.

6.1.3 The Scheme Adjudicator shall:

6.1.3.1 have experience of property and casualty business of a kind similar to that comprised within the Scheme Reinsurance Contracts; and

6.1.3.2 not be an individual who has been employed by or who has provided services to TMEI within the two year period prior to the Effective Date.

6.1.4 The Scheme Adjudicator shall adjudicate on all matters submitted to him in accordance with the provisions of the Scheme.

6.1.5 The Scheme Adjudicator shall use any information received by him in his capacity as such only for the purpose of performing his functions under the

Scheme and shall not disclose such information to any other person except where necessary for the purposes of the Scheme.

## 6.2 **Conflicts of interest affecting a Scheme Adjudicator**

6.2.1 The Scheme Adjudicator shall not act in relation to any matter in which he has a conflict of interest. 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 for determination or other good reason why it may be inappropriate for him to act as such, he shall inform the Scheme Manager and the Scheme Creditor concerned of such conflict or objection forthwith, and the Scheme Manager shall, as soon as reasonably practicable, ask the President of the Institute of Actuaries to nominate a suitably qualified substitute Scheme Adjudicator in relation to the relevant matter.

6.2.2 The person nominated pursuant to clause 6.2.1 above shall be appointed as the Scheme Adjudicator by the Scheme Manager in respect of the relevant dispute provided (i) he has no conflict of interest in relation to the dispute to be referred to him, (ii) he is not an individual who has been employed by or provided services to TMEI or the relevant Scheme Creditor in the two year period prior to the Effective Date, and (iii) he consents to act as the Scheme Adjudicator. In the event that the President of the Institute of Actuaries is, for any reason, unable to or does not nominate a substitute Scheme Adjudicator within 30 days of the request from the Scheme Manager to do so, the Scheme Manager shall appoint a replacement Scheme Adjudicator in accordance with this clause 6.2.2, for the purpose only of dealing with the disputed matters which are the subject of the conflict of interest.

6.2.3 In respect of the matter in which the conflict arises, the relevant time period in clause 2.10.1.3 shall be suspended while the process described in clause 6.2.1 is carried out and shall restart on the date that such alternate or replacement Scheme Adjudicator is appointed.

### **6.3 Vacation of office by a Scheme Adjudicator**

6.3.1 The office of Scheme Adjudicator shall be vacated forthwith if:

6.3.1.1 a Termination Event occurs in relation to the appointee;

6.3.1.2 the appointee resigns his or its office, as the case may be, by giving 90 days' notice in writing to the Scheme Manager or such shorter period of notice as may be agreed by TMEI;

6.3.1.3 the appointee is removed for a good cause (which shall include, for an individual, leaving the firm in which he was an Employee at the date on which he became Scheme Adjudicator) by the Scheme Manager; or

6.3.1.4 the appointee becomes an Employee of TMEI or of the Scheme Manager or of a Scheme Creditor.

### **6.4 Appointment of replacement Scheme Adjudicator**

6.4.1 In the event that the office of Scheme Adjudicator is vacated, the provisions of clause 6.2.1 and 6.2.2 with regard to the replacement of the Scheme Adjudicator shall apply.

6.4.2 The relevant time period in clause 2.10.1.3 shall restart on the date such replacement is appointed.

## **6.5 Appointment of additional Scheme Adjudicator**

In the event that in the view of the Scheme Manager, the Scheme Adjudicator is unlikely to be able to complete the Adjudication of one or more matters referred to him within the required timescale, the Scheme Manager may appoint an additional Scheme Adjudicator, in accordance with clause 6.4.1.

## **7. SCHEME ADVISER**

### **7.1 Initial Scheme Adviser**

The first Scheme Adviser shall be David William McGuigan of PO Box 683, Redhill, RH1 9BY, United Kingdom, who has given and not withdrawn his consent to act as such pursuant to the Scheme and has contracted to be bound by the terms of the Scheme to the extent that the same apply to the Scheme Adviser.

### **7.2 Powers, Rights, Duties and Functions of the Scheme Adviser**

7.2.1 The Scheme Adviser shall carry out the duties and functions and exercise the powers and rights conferred on him under the Scheme with the object of facilitating the implementation of the Scheme in accordance with its terms. In performing his duties and functions and exercising his rights and powers under the Scheme, the Scheme Adviser shall exercise reasonable care and skill.

7.2.2 Nothing in this Scheme shall confer upon the Scheme Adviser executive or managerial powers in relation to TMEI. No provision of the Scheme shall constitute the Scheme Adviser as an agent of TMEI.

7.2.3 The Scheme Adviser shall use any information received by him in his capacity as such only for the purpose of performing his functions under the Scheme and shall not disclose such information to any other person except where necessary for the purposes of the Scheme.

7.2.4 If a Scheme Creditor considers that the Scheme is not being operated in accordance with its terms, he may give notice in writing together with any available supporting evidence to the Scheme Adviser (the "Complaint"). The Scheme Adviser shall forthwith review the Complaint, conduct such investigations as he considers appropriate (including the right to seek independent legal/professional advice at the reasonable expense of TMEI) and provide a written statement to that Scheme Creditor, with a copy to the Scheme Manager and TMEI, as soon as is practicable and in any event within 35 days of receipt of the copy of the Complaint, informing the Scheme Manager:

7.2.4.1 that he has concluded that the Complaint is unjustified; or

7.2.4.2 that has concluded that the Complaint is justified,

and in each case the Scheme Adviser shall state his reasons for reaching such conclusion.

- 7.2.5 In the event that the Scheme Adviser has determined that the Complaint is justified he shall provide written advice to TMEI and the Scheme Manager on how the Scheme should be operated in relation to the subject matter of the Complaint and on the steps that should be taken to remedy the Complaint.
- 7.2.6 Within 14 days of receiving the advice referred to in clause 7.2.5, the Scheme Manager shall respond to the Scheme Adviser in writing either:
- 7.2.6.1 stating that the Scheme is in its opinion being properly implemented in accordance with its terms and setting out the basis for this view; or
  - 7.2.6.2 setting out the steps it intends to take to rectify or procure that others take to rectify the position.
- 7.2.7 If requested to do so in writing by the Scheme Adviser, the Scheme Manager shall meet with the Scheme Adviser at a time and place appointed by him to discuss the issues raised in the advice sent pursuant to clause 7.2.5 and the Scheme Manager's response pursuant to clause 7.2.6.
- 7.2.8 In the event that the Scheme Manager does not respond in accordance with clause 7.2.6 or the Scheme Adviser is not satisfied with the Scheme Manager's response pursuant to clause 7.2.6 and his concerns are not resolved during any meeting with the Scheme Manager pursuant to clause 7.2.7, the Scheme Adviser shall send written notice to TMEI, with a copy of the Complaint to the Scheme Creditor, stating that in his view the Scheme is not being operated in accordance with its terms and setting out the reasons for this view.

### **7.3 Vacation of Office**

7.3.1 The office of Scheme Adviser shall be vacated forthwith if:

7.3.1.1 a Termination Event occurs in relation to the appointee;

7.3.1.2 the appointee resigns his or its office, as the case may be, by giving 90 days' notice in writing to the Scheme Manager or such shorter period of notice as may be agreed by the Scheme Manager; or

7.3.1.3 the appointee is removed for good cause by the Scheme Manager.

### **7.4 Appointment of replacement Scheme Adviser**

In the event of a vacancy in the office of Scheme Adviser, TMEI shall, as soon as reasonably practicable, and in any event within 49 days, appoint a replacement Scheme Adviser provided that such replacement Scheme Adviser is, in the reasonable opinion of TMEI, suitably qualified, has no conflict of interest in relation to the appointment and consents so to act.

## **8. COMPLETION AND GENERAL PROVISIONS**

### **8.1 Validity of acts of the Released Parties**

8.1.1 Subject to any applicable provision of the Companies Act or the Insolvency Act and so far as the law permits, no Scheme Creditor shall be entitled to commence or continue any legal or equitable action or proceedings challenging the validity of any act done or omitted to be done by the Released Parties in connection with the Scheme and/or (where appropriate) the Meeting and the Released Parties shall not be liable for any loss suffered by

any Scheme Creditor or third party arising in connection with the Scheme, unless such loss is attributable to their fraud or dishonesty. Accordingly, no Scheme Creditor shall bring or institute any Proceedings, claims or, subject to clause 7.2.4, complaints against the Released Parties save with respect to any such fraud or dishonesty.

8.1.2 Notwithstanding a subsequent discovery that a Released Party was not eligible for his role pursuant to, or in connection with, the provisions of the Scheme, all acts done by them or any of them prior to such discovery shall be valid as if every such person was so eligible.

8.1.3 For the avoidance of doubt, the provisions of clauses 8.1.1 and 8.1.2 apply to alternate, additional and replacement Released Parties.

## **8.2 Notice of impending completion**

8.2.1 When it believes that the Scheme has been implemented in accordance with its terms and that the provisions of clauses 2 and 3 have been complied with, the Scheme Manager shall, at least 56 days prior to the date on which it is proposed that the Scheme be declared complete, send to each Scheme Creditor which was entitled to receive a Valuation Statement pursuant to clause 2.14.1, and cause to be posted on the Website, a notice stating the date on which it is proposed that the Scheme will be declared complete.

8.2.2 Following the posting of the notice referred to in clause 8.2.1, any Scheme Creditor which believes that, in relation to its Scheme Claims, the Scheme has not been implemented in accordance with its terms, may give notice in writing to that effect to the Scheme Adviser and the Scheme Manager.

Where such a notice is received by the Scheme Adviser prior to the proposed Completion Date referred to in clause 8.2.1, he shall investigate the matter in accordance with clause 7.2 and, pending the completion of such investigation, the Scheme shall not be treated as completed for, and the terms of clauses 8.2.3 and 8.3 shall not apply to, that Scheme Creditor.

8.2.3 In respect of all other Scheme Creditors, the Scheme Manager shall, on the date proposed in the notice posted on the Website pursuant to clause 8.2.1, certify in writing to TMEI that the Scheme has been implemented in accordance with its terms.

8.2.4 In relation to any Scheme Creditor which has sent a notice pursuant to clause 8.2.2 received by the Scheme Adviser prior to the proposed Completion Date:

8.2.4.1 in the event that the Scheme Adviser advises that the Scheme has been implemented in accordance with its terms, the Scheme Manager shall, as soon as practicable, certify in writing to TMEI that the Scheme has been implemented in accordance with its terms in relation to that Scheme Creditor, and the Scheme will thereupon be complete in relation to that Scheme Creditor and the provisions of clause 8.3 shall then apply to it;

8.2.4.2 in the event that the Scheme Adviser believes that the Scheme has not been implemented in accordance with its terms, it shall advise the Scheme Manager of its view. The Scheme Manager shall take such steps as may be appropriate in relation to the matter complained of. Following this, the Scheme Manager shall give

written notice to the Scheme Creditor concerned that it believes the Scheme has so far as possible been implemented in accordance with its terms in relation to that Scheme Creditor and the Scheme Manager shall, as soon as practicable, certify in writing to TMEI that the Scheme has been implemented in accordance with its terms in relation to that Scheme Creditor. The Scheme will thereupon be complete in relation to that Scheme Creditor and the provisions of clause 8.3 shall then apply to it.

### **8.3 Completion of the Scheme**

8.3.1 Upon the issue of written certification by the Scheme Manager pursuant to clause 8.2.3 or 8.2.4, then in relation to the Scheme Creditors to whom it relates, the Scheme shall be complete, and, save in relation to any fraud or dishonesty, and so far as the law permits, all obligations and Liabilities of the Released Parties in connection with or pursuant to the Scheme shall cease and be released absolutely. Any such obligation which has not been fulfilled in accordance with the Scheme by the Completion Date shall nonetheless be deemed to have been correctly and fully performed, and no Scheme Creditor shall have any claim in respect of it or any loss arising from it.

8.3.2 Following the Completion Date, no Scheme Creditor shall be entitled to any claim on, recovery from, or interest in, any Security, guarantee or indemnity in respect of a Scheme Claim or otherwise to make any claim or receive payment in respect of a Scheme Claim.

8.3.3 Notwithstanding any other provisions of clause 2.17.1.3:

8.3.3.1 Scheme Creditors shall, if so requested by TMEI, following the Completion Date execute a Deed of Release of the obligations of any guarantor of TMEI's obligations to pay Scheme Claims; and

8.3.3.2 each Scheme Creditor hereby authorises TMEI to execute a Deed of Release in the form of that at Appendix F, on its behalf in the event that TMEI does not receive one within 21 days of requesting it pursuant to clause 8.3.3.1. The authority granted by this clause shall, for all purposes, be treated as having been given by deed.

8.3.4 The benefit of the right to call for a Deed of Release under clause 8.3.3, and the benefit of the rights to enforce the provisions of clause 8.3.2, insofar as they relate to claims or recoveries from guarantors, shall be held on trust by TMEI for each guarantor of its obligations to pay Scheme Claims. These rights shall be enforceable by the beneficiaries of such trust as well as the trustee. The beneficiary shall have sole and irrevocable power to replace the trustee.

#### **8.4 Insolvency Event**

8.4.1 Subject to clause 8.4.2, the occurrence of an Insolvency Event in respect of TMEI shall have no effect on the operation of the Scheme which shall, so far as permitted by law, continue in full force and effect until completed in accordance with clause 8.3, save that the obligation to make payments under clause 3 shall be replaced by an obligation to make such payments as shall be permitted in the insolvency of TMEI and Scheme Creditors shall, insofar as

the law permits, be bound by the calculation of their Net Ascertained Claim or Net Debt as the case may be.

8.4.2 The Board or any liquidator, administrator, provisional liquidator or receiver of TMEI may, following an Insolvency Event, resolve that the Scheme be terminated, and the Scheme shall terminate immediately thereupon.

8.4.3 The termination of the Scheme in accordance with clause 8.4.2 shall be without prejudice to:

8.4.3.1 any Net Ascertained Claim which has become final and binding in accordance with clause 2.16 prior to such termination; and

8.4.3.2 any resulting obligation of TMEI to make payment in accordance with clause 3.

8.4.4 As soon as reasonably practicable after the Scheme has terminated in accordance with clause 8.4.2, TMEI shall Advertise the termination and place a notice of termination on the Website and send notice to that effect to all Scheme Creditors to whom notice of the Meeting was sent.

## 8.5 **Modification of the Scheme**

TMEI may, at any hearing by the Court to sanction the Scheme, consent on behalf of the Scheme Creditors to any addition or amendment to the Scheme, including any terms or conditions which the Court may think fit to approve or impose, provided that any such addition or alteration would not materially adversely affect the rights of any Scheme Creditor pursuant to the Scheme.

## 8.6 **Co-operation between Parties**

The Scheme Creditors, Scheme Manager, Scheme Adviser, Scheme Adjudicator and TMEI shall co-operate with each other and provide such assistance and information as any of them may reasonably require in connection with the Scheme and the enforcement of obligations owed to TMEI pursuant to the Scheme including, but not limited to, the provision of information and documents in connection with Scheme Claims and the operation of the Scheme. Each Scheme Creditor is deemed to acknowledge that its obligations under the Scheme shall continue in the event that it becomes a Net Debtor.

## 8.7 **Prohibited payments**

8.7.1 For the avoidance of doubt, where TMEI is prevented by any law or regulation imposing international sanctions or prohibitions promulgated by the United Kingdom, or any other jurisdiction to which TMEI is subject, from making a payment to a Scheme Creditor or otherwise complying with any term of the Scheme, the requirements of such law or regulation shall override the terms of the Scheme, and for the avoidance of doubt, compliance with such law or regulation will constitute full discharge of such Scheme Creditor's Scheme Claims under the Scheme.

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

8.7.3 In the event that the applicable law or regulation does not contain provisions as to how to deal with Blocked Monies, TMEI shall, prior to the Completion Date, hold them in an account with a United Kingdom clearing bank until such time, prior to the Completion Date, as TMEI is instructed by the relevant authority as to how to deal with the Blocked Monies or it becomes lawful to pay them to the relevant Scheme Creditor. Any interest earned on such account shall follow principal. In the event that no such instruction is received prior to the Completion Date, the Blocked Monies shall be paid to the Charity as soon as reasonably practicable following the Completion Date and the relevant Scheme Creditor shall cease to have any entitlement to them. The Scheme Claim(s) in respect of which such Blocked Monies would otherwise have been payable shall be deemed to be cancelled and the Scheme Creditor shall have no rights in respect of it or them.

## 8.8 Notices

8.8.1 Notices, written communications and documents to be sent to the Scheme Manager and/or TMEI shall be sent either by Post to PRO Insurance Solutions Limited, Bruton Court, Bruton Way, Gloucester GL1 1DA, United Kingdom, addressed to Philip Toft, by E-mail to PRO\_TMEI@pro-ltd.co.uk or by facsimile to +44 (0)1452 523437, or to such other post, E-mail or facsimile address as may be notified on the Website from time to time.

8.8.2 Notices, written communications and documents to be sent to Scheme Creditors (including, for the avoidance of doubt, cheques to be sent pursuant to clause 3.2.1) may be sent to:

- 8.8.2.1 the postal address, E-mail address or facsimile number, as applicable, specified by the Scheme Creditor on its Claim Form or to any other postal address, E-mail address or facsimile number of which the Scheme Manager may receive notification from the Scheme Creditor in a form satisfactory to the Scheme Manager; or
- 8.8.2.2 if no such postal address, E-mail address or facsimile number has been specified or notified, the address of the Scheme Creditor last known to the Scheme Manager.
- 8.8.3 Notices, written communications and documents to be sent to the Scheme Adviser shall be sent by Post to David McGuigan, PO Box 683, Redhill, RH1 9BY, United Kingdom, clearly marked "For the attention of David McGuigan, Scheme Adviser to TMEI", and by E-mail to [dmcguigan@limbo.eu](mailto:dmcguigan@limbo.eu) or such other Post or E-mail address as may be notified on the Website from time to time.
- 8.8.4 Notices, written communications and documents to be sent to the Scheme Adjudicator may be sent by post to ~~George Maher, Towers Watson, 71 High Holborn~~[John Birkenhead, HJC Actuarial Consulting Limited, 25 Floral Street, Covent Garden](mailto:John.Birkenhead@hjcaetuarial.com), London WC1V 6TP2E 9DS, United Kingdom or sent by facsimile to +44 (0)~~207 170 2222~~[800 471 5179](tel:8004715179) marked for the attention of ~~George Maher~~[John Birkenhead](mailto:John.Birkenhead@hjcaetuarial.com) or sent by E-mail to ~~george.maher@towerswatson~~[johnbirkenhead@hjcaetuarial.com](mailto:johnbirkenhead@hjcaetuarial.com), or sent to such other address, fax number or E-mail address as may be notified on the Website from time to time.

- 8.8.5 Subject to clause 8.8.6, notices and any other written communications or documents sent by Post to Scheme Creditors pursuant to the Scheme shall be deemed, in the absence of evidence to the contrary, to have been received by the relevant Scheme Creditor on the third day after despatch, where the Scheme Creditor's address is in the United Kingdom, and on the seventh day after despatch in all other cases, and references to the receipt by a Scheme Creditor of any such notice, communication or document shall be construed accordingly.
- 8.8.6 Any notice or other communication or document delivered by hand or by courier shall be deemed to have been received on delivery provided that the sender has no reasonable grounds for believing it has not been delivered.
- 8.8.7 Any notice or other communication or document delivered by facsimile shall be deemed to have been received on delivery provided that the sender has no reasonable grounds for believing it has not been delivered.
- 8.8.8 Any notice or other communication or document sent by E-mail shall be deemed to have been received 24 hours after it is sent, provided the sender has no reasonable grounds for believing it has not been received.
- 8.8.9 References to a Scheme Creditor's address in this clause are to that Scheme Creditor's address as established in accordance with clause 8.8.2. Notice periods laid down by the Scheme are to be calculated by reference to clear days from the date on which the notice concerned, where applicable, was sent by Post, E-mail or facsimile in accordance with the terms of the Scheme.

8.8.10 A sworn statement by a member of the Scheme Manager's staff, the Scheme Adviser or Scheme Adjudicator that an E-mail was sent or that an envelope containing a notice was sent by Post shall be conclusive evidence that the notice was given.

## 8.9 **Governing Law and jurisdiction**

8.9.1 The Scheme shall be governed by, and construed in accordance with, the law of England and Wales and Scheme Creditors hereby agree that the Court shall (save as provided in clause 8.9.2) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of the Scheme or any associated document or form, including this clause 8.9, 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, Scheme Creditors hereby irrevocably submit to the exclusive jurisdiction of the Court.

8.9.2 Notwithstanding the provisions of clause 8.9.1, TMEI and the Scheme Manager retain the right to bring Proceedings, in the name of TMEI or otherwise, in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

8.9.3 In the event of any inconsistency between the terms of the Scheme and any statutory provision, so far as the law permits, the terms of the Scheme shall prevail.

8.9.4 For the avoidance of doubt, nothing in this clause 8.9 shall affect the validity of provisions determining the governing law and jurisdiction which, as

between TMEI and any Scheme Creditor, are applicable to the construction of a Scheme Reinsurance Contract.

## APPENDIX A

### SCOPE OF SCHEME – LIABILITIES CONSTITUTING SCHEME CLAIMS

#### 1. INTRODUCTION

TMEI was incorporated in September 1970 as the Tokio Marine Fire & Insurance Company (U.K.) Limited. It changed its name to its present style with effect from 17 June 2002.

Between 1970 and 2002, TMEI underwrote non-life insurance and reinsurance in the London Market under the name The Tokio Marine & Insurance Company (U.K.) Limited and, from 2002, under its present name.

TMEI wrote a broad book of international reinsurance business, mainly non-marine, including traditionally long-tail policies exposed to asbestos, pollution and health hazard type risks principally emanating from Europe and the United States.

The Scheme will apply to certain reinsurance business, namely the Scheme Reinsurance Contracts written or assumed by TMEI as described below.

#### 2. SCHEME CLAIMS

2.1 The business covered by the Scheme will be:

- (a) business underwritten by TMEI through underwriting stamp numbers T0304, T0403 and T0502, (subject to the exception at 3.1(b) below in respect of some T0502 stamps); and
- (b) the reinsurance business transferred to TMEI by The Tokio Reinsurance Company Limited (also known as Tokio Rückversicherungs-Gesellschaft AG

and Tokio Compagnie De Reassurance SA) ("**Tokio Re**") by way of two instruments of transfer dated 7 March 1994 and 14 March 1994 each such transfer being deemed to have taken effect on 31 December 1994. The business transferred consisted of all of the contracts entered into by Tokio Re through its UK branch and all such contracts entered into by Tokio Re through its head office in Switzerland.

**2.2 Save as excluded in paragraph 3 below, Scheme Claims shall comprise:**

- (a) any claim against TMEI in respect of all or part of a Liability arising under or in relation to a Scheme Reinsurance Contract as at the Effective Date;
- (b) all Liabilities of TMEI arising under any agreement entered into before the Effective Date by which TMEI has commuted, settled or compromised all or part of its Liability under any such Scheme Reinsurance Contract;
- (c) all Liabilities of TMEI arising under any agreement pursuant to which an insurance broker is entitled to brokerage or commission from TMEI in respect of the placing of a Scheme Reinsurance Contract; and
- (d) Liabilities of TMEI arising under rights of contribution and subrogation in respect of a Scheme Reinsurance Contract;

after the application of any relevant counterclaim or right of contribution but in each case prior to the application of any amounts referred to in clauses 2.14.1.1 to 2.14.1.8 inclusive in accordance with the Scheme.

### 3. **EXCLUDED CLAIMS**

#### 3.1 **Scheme Claims shall not include:**

- (a) save to the extent provided for in a Scheme Reinsurance Contract, Liabilities in respect of fees, costs and expenses (including any tax thereon), in respect of services or advice, payable to service providers, excluding brokers, but including, without limitation, lawyers and loss adjusters;
- (b) in the case of underwriting stamp T0502, all Engineering and CAR reinsurances with policy reference numbers commencing "3500";
- (c) liabilities arising from the business assumed by TMEI as a participating company in the Willis Faber Underwriting Limited ("**WFUM**") Pools, which was subject to a separate scheme of arrangement;
- (d) the whole or part of any policy of reinsurance or retrocession underwritten by TMEI to the extent that it reinsured, as at the Effective Date, any liability required under any of the following enactments to be covered by insurance or (as the case may be) by insurance or by some other provisions for securing its discharge:
  - (i) Section 1(4A)(d) of the Riding Establishments Act 1964 (or any corresponding enactment for the time being in force in Northern Ireland);
  - (ii) Section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 or Article 5 of the Employers' Liability Order (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972;

- (iii) Part VI of the Road Traffic Act 1988 or Part VIII of the Road Traffic (Northern Ireland) Order 1981;
- (iv) Section 19 of the Nuclear Installations Act 1965.

## APPENDIX B

### ESTIMATION METHODOLOGY FOR THE VALUATION OF SCHEME CLAIMS

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## 1. INTRODUCTION

### 1.1 Purpose and Scope

This paper sets out the Estimation Methodology for the assessment of ultimate losses in respect of Scheme Claims.

### 1.2 Context

This Methodology should be read in its entirety along with the Scheme. Individual sections of this document could be misleading if considered in isolation from each other.

### 1.3 Summary

Scheme Claims which are subject to this Methodology will be valued as Best Estimates of TMEI's liabilities in respect of them to each Scheme Creditor. Whilst discounting will not be applied to Scheme Claims in general, any part of a Scheme Claim settled in the form of an annuity payment for the life of a claimant will be valued as an annuity and will reflect the opportunity for investment return during the payment period. In such a case, no discounting would be applied up until the start of the relevant annuity payment. Where reinsurance policies allow for indexation of excess points and limits, the indexation will be applied up to and including the date of the Valuation Statement calculation, based on the most up-to-date index at that time.

For this purpose a Best Estimate will be the Scheme Adjudicator's estimate of the mean of the distribution of possible outcomes for the Scheme Claim.

The Methodology has been devised by Philip Tippin of KPMG LLP ("KPMG") and his colleagues having been retained for the purpose of reviewing the business subject

to the Scheme and preparing a suitable estimation methodology. KPMG have reviewed the reserves of TMEI for a number of years, and have taken the known exposures into account when designing the methodology. Mr Tippin has also taken into account the methodology used in other solvent schemes of arrangement. This Methodology is not prescriptive, in the sense that if a Scheme Creditor has a more appropriate methodology that methodology, or such elements of it as are appropriate, will be adopted.

The Estimation Methodology set out in this document will be binding on Scheme Creditors when the Scheme becomes effective.

## 2. ESTIMATION METHODOLOGY FOR USE IN THE SCHEME IN RELATION TO ADDITIONAL UNPAID CLAIMS, OUTSTANDING CLAIMS OR IBNR CLAIMS

### 2.1 Summary of Methodologies

The methods the Scheme Adjudicator will use are summarised in the following table.

A more detailed explanation of each method is provided in Section 2.2.

Claim Type	Policy Type	Recommended Method	Section	Secondary Method	Section
LMX	London Market excess of loss (“LMX”)	Event Level (involving link ratio and/or curve fitting)	2.2.1	Benchmarking	2.2.5
Bodily Injury (“BI”)	All	Frequency Severity analysis	2.2.2	Benchmarking	2.2.5
Other Liability	All	Exposure analysis	2.2.3	Benchmarking	2.2.5
All other	All	Link ratio approach	2.2.4	Benchmarking	2.2.5

The above table sets out the recommended method by claim type where the data is available.

The secondary method will be used where the data is not available to perform the recommended method.

The benchmark ratios and development link factors will, if the Scheme Adjudicator considers it appropriate, be derived from relevant data supplied by the Scheme Creditor, or from other appropriate data for the relevant claim types and classes of business.

## 2.2 Scheme Methodologies

The methods described below will be modified if alternative, more accurate data and information is supplied by the Scheme Creditor as part of its Scheme Claim.

In all cases limits under the Scheme Creditor's policies will be considered, taking into account erosion of the limits from all events and known latest market information.

Where matters of fact and law are referred for decision pursuant to the Estimation Methodology, the Scheme Adjudicator may apply a "win-factor" to the disputed issue. An example of a situation where this could apply would be a disputed interpretation of a policy wording where if the Scheme Creditor's interpretation is correct it would imply a Scheme Claim value of \$10m, and if the Scheme Manager's interpretation is correct it would imply a Scheme Claim value of \$5m. If the chance of the Scheme Creditor winning is considered by the Scheme Adjudicator to be 40%, then the application of this percentage as a win-factor would imply a Scheme Claim of \$7m, being the weighted average of the two outcomes given the win-factor applied.

The selected win-factor would be based on the judgment of the Scheme Adjudicator, and he is entitled to seek external legal or other professional advice in considering such cases.

### 2.2.1 LMX (Event based method)

For individual events the Scheme Adjudicator will proceed as follows:

- Where the Scheme Creditor's underlying gross loss development is available for each event, project that development to ultimate using paid and/or incurred claim link ratio or curve fitting methods, and then

apply that gross loss estimate to the relevant Scheme Creditor's policies.

- Alternatively, if the underlying gross loss development data is not available, but loss development data for the relevant Scheme Creditor's policies for that event are available, then these will be projected to ultimate in a similar way.
- If development data is not available, then an estimate will be made of the total market loss from the event and, insofar as this is possible and demonstrable from data provided, an estimate of the Scheme Creditor's market share of the loss. This will be used to estimate the gross ground-up losses to the Scheme Creditor from the event.

### **2.2.2 Bodily Injury Claims (Frequency - Severity Approach)**

It is envisaged that this kind of approach would be also used for claim types where data exists that facilitates an assessment of the frequency of claims and the severity of those that occur. It is considered that this kind of approach may be appropriate for motor reinsurance policies, or other claim types where a population has been exposed to the risk of injury or disease.

The method used will analyse the frequency and severity of losses on a ground up basis. Estimated ground up losses will then be applied to the appropriate reinsurance contract to estimate ultimate claim amounts to the cedant.

Frequency of future losses to the reinsurance layer will be modelled using projections of claim number development data, giving consideration to how

any claims will affect the layers in question. In terms of the severity of large IBNR Claims a simulation approach will be considered based upon the size of historical large claims notified to the layers of coverage in question and allowing for inflation of claims to equivalent monetary values in the current economic and claims environment as appropriate. Save as referred to below in respect of annuity payments, as the methodology allows for no discounting of claims, any anticipated claims inflation factors in severity calculations will be applied up to the date of the Valuation Statement calculation. Whilst discounting will not be applied to Scheme Claims in general, any part of a Scheme Claim settled in the form of an annuity payment for the life of a claimant will be valued as an annuity and will reflect the opportunity for investment return during the payment period. In such a case, no discounting would be applied up until the start of the relevant annuity payment

An expense-to indemnity ratio is then applied if applicable.

Where reinsurance policies allow for the indexation of limits and excesses, these will be applied up to the date of the Valuation Statement calculation, based on the most up-to-date index at that time.

Development of existing outstanding losses to the layer will be considered by reference to development data for similar large claims at a similar stage of development. This again may require some simulation of loss development, which should be detailed in the claims submission if applied.

Adjustments will also be made to allow for the expected number of claims that are currently notified to a reinsurance layer but will later settle below the

layer, to the extent that the available historical data suggests that this is likely and has happened in the past. Appropriate assumptions will be used to adjust for these claims that drop-down below the cover provided and applied alongside the methodology above.

### **2.2.3 Other Liability Claims (Exposure based method)**

In essence, exposure methods project claims against the original assured and then model those projected claims through successive tiers of insurance and reinsurance up to and including the Scheme Creditor's policies. It is envisaged that this kind of approach would be used for large corporate litigation based claims, where the nature of the losses is such that each underlying exposure should be considered on its own merits. Examples may include reinsurance of directors and officers and financial lines exposures.

Where the Scheme Creditor has not adequately specified to which of their policies the estimated exposure to each insured falls (for example where there is some uncertainty as to the policy year that will respond to the insured's claim), this exposure will be allocated to the Scheme Creditor's policies using assumptions deemed appropriate by the Scheme Adjudicator. For the specific case where the insured of a Scheme Creditor has presented claims on an "All-Sums" basis see section 2.3.

The allocation of claims to the Scheme Creditor's policies will also take into account the terms of the contracts including, amongst other things, the method of aggregation of claims and recoverability.

The Scheme Claim will be calculated as estimated ultimate indemnity and expense estimate under Scheme Creditor's policies less paid indemnity and expense amounts. Without specific information to the contrary, the Scheme Adjudicator will assume that, for primary layers, expenses are in addition to limits and, for excess layers, expenses are included within limits.

For the avoidance of doubt, the ultimate amount of claims on Scheme Creditor's policies will not exceed the aggregate limit under the policy.

#### **2.2.4 All Other**

##### **Development link ratio approach**

For this method, appropriate development factors by class of business will be derived by application of standard actuarial techniques, such as the link ratio (or chain ladder) method to paid and/or incurred claims development triangles. These factors will either be derived from relevant data supplied by the Scheme Creditor, or, if the Scheme Adjudicator considers it more appropriate, other data for the relevant class of business.

The method described will be modified if alternative, more accurate data and information is supplied by the Scheme Creditor as part of its claim submission under the Scheme.

#### **2.2.5 Secondary Methods**

##### **Benchmarking approach**

In circumstances where the previous methods and the Scheme Creditor's own methodology cannot be applied (for example, due to lack of data or the

method is not appropriate) then a simpler approach will be used. This will involve some or all of the following for a given Scheme Creditor:

- Review available information on the nature of the inwards business written by the Scheme Creditor, and on the Scheme Creditor's underlying inwards paid, reported incurred and estimated IBNR Claims.
- Review available information on the current and prior historical development of paid and incurred claims to each Scheme Creditor policy under review.
- Select appropriate benchmark paid or incurred survival ratios (a survival ratio is the ratio obtained by dividing reserve for a claim type by the average payments or incurred amounts for that claim type over a suitable period (eg three to five years)), IBNR to Outstanding Claims ratios or ultimate to paid or incurred ratios.
- Select final Scheme Claim estimate.
- Benchmarking information from market bodies, such as the Reinsurance Association of America (RAA), may also be considered, if appropriate.

### 2.3 All-Sums allocation

In some cases, the insured of a Scheme Creditor may present claims, or the Scheme Creditor may assert that the insureds will present claims, using an "All-Sums" basis in a State where the Choice of Law implies that this basis is appropriate. In such

situations, the Scheme Adjudicator will assume that the Scheme Creditor will assert their right to pursue the insurers of other relevant policy exposures that may also apply, and will estimate the Scheme Claim as though other coverage blocks have contributed to the Scheme Creditor's overall liability already (reflecting, to the extent that it is known, the impact of insolvencies or self-insurance in the other available coverage).

### **3. Evidence and data requested from Scheme Creditors**

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

Each Scheme Creditor seeking Outstanding Claims and/or IBNR as part of a Scheme Claim must provide evidence to support his claim. This evidence is needed to enable the Scheme Adjudicator to form a judgment on the reasonableness of the claim.

The form of the evidence required is explained in the following paragraphs, and in the instructions for completing the Claim Form. Failure to provide the supporting evidence requested may result in a Scheme Claim being assessed at a lower value than the Scheme Creditor placed on a Claim Form, possibly at zero. However, the Scheme Adjudicator will consider the size of the Scheme Claims being presented when deciding how much evidence is appropriate, with smaller claims requiring much less evidence than larger claims.

#### **3.2 Outstanding Claims and Additional Unpaid Claims**

Supporting documentation should be provided for each individual loss that is being asserted and should be in the same or substantially the same form as is customary for the reinsured to send to TMEI or the broker.

Normally this information might be expected to include some or all of the following;

- legal evidence of underlying exposure to claims;
- loss bordereaux certified by the leading underwriter;
- loss reports from the Scheme Creditor's policyholders or cedants or their legal representatives;
- closing statements for agreed claims which are not yet settled;
- cession statements; and/or
- most recently reported loss advice.

### 3.3 **IBNR Claims**

IBNR is the value, as at the Reference Date, of Scheme Claims in respect of losses which have been incurred by a Scheme Creditor but not notified to it, for which it asserts on a Claim Form that an amount will become due for payment by TMEI, excluding any amounts already included in Additional Unpaid Claims, and/or Outstanding Claims and/or Unpaid Agreed Claims.

Supporting evidence for IBNR Claims should include details of the method and calculation used to estimate the IBNR Claims, including a copy of any relevant actuarial or other expert reports where appropriate. It should also include details of the policies in respect of which IBNR is being asserted and the amount of IBNR claimed at a policy level, including details of each individual loss type.

Scheme Creditors should provide details of the basis for the calculation, supported by documentary evidence showing the reasonableness of each claim. The following are examples of possible evidence:

- cumulative data triangles of paid and incurred loss data, or incurred loss ratios;
- chain ladder statistics;
- loss bordereaux certified by the leading underwriter;
- loss reports from the leading underwriter, policyholders or cedants to the Scheme Creditor;
- any relevant internal and/or external actuarial reports;
- benchmark assumptions used;
- court awards for damages or judgements giving rise to claims;
- US attorney-generated APH reports for reinsureds and reinsurance brokers; and/or
- any other supporting information considered by the Scheme Creditor to be relevant.

Although an actuarial report may not be necessary for all IBNR Claims asserted, the provision of such a report will aid the agreement of such claims, particularly for Scheme Creditors claiming large IBNR amounts. Claims assessors' reports or lawyers' reports may also be useful in supporting a Scheme Creditor's IBNR Claim.

Generally, the Scheme Adjudicator would expect to receive full details of method and calculations used to derive IBNR to each policy and/or event, including choice of development factors, curve fitting, recoveries from layers etc, and split by loss type as appropriate. Further specific examples of evidence relating to the different types of methodology that might be used, are illustrated below.

### 3.3.1 **LMX (Event based approach)**

Quarterly or annual historical paid and incurred claims development by year for each event, gross to the Scheme Creditor and to each of the Scheme Creditor's policies on which reserves are being asserted.

### 3.3.2 **Bodily Injury Claims (Frequency-severity method)**

Quarterly or annual historical paid and incurred claims development by year for each class of business, gross to the Scheme Creditor and to each of the Scheme Creditor's policies on which reserves are being asserted. Large claims should be shown separately.

If the claim relates to a specific underlying cause, event or incident, then full details of that should be supplied, including any associated legal reports or opinions.

### 3.3.3 **Other Liability Claims (Exposure based method)**

Sufficient data to enable the Scheme Adjudicator to follow the Scheme Creditor's estimate of reserves from the progression of claim filings for each assured through to the allocation to the Scheme Creditor's policies.

Detailed list of underlying exposures that are expected to produce the claims being asserted, including limit profile, excess point, exclusions etc.

Trigger and policy allocation, including rationale for the basis.

Details of treatment of all specific issues affecting estimation of future claims including treatment of non-products exposures.

Copies of attorney reports, explanation as to how these reconcile by policy to claims submitted by the Scheme Creditor and basis for any differences in approach adopted by the Scheme Creditor compared to the attorney reports.

#### **3.3.4 Development link ratio approach**

Quarterly or annual historical paid and incurred claims development by year for each class of business, gross to the Scheme Creditor and to each of the Scheme Creditor's policies on which reserves are being asserted. Large claims should be shown separately.

If the claim relates to a specific underlying cause, event or incident, then full details of that should be supplied, including any associated legal reports or opinions.

### **3.4 Additional Information**

In considering and making decisions in respect of Scheme Claims, the Scheme Adjudicator is entitled to ask Scheme Creditors to provide further supporting evidence. If that additional information is not provided within the appropriate timescale, the Scheme Claim may be valued on the basis that this information is not available.

#### 4. **Use of Scheme Creditor's own methods**

Scheme Creditors are not obliged to use the actuarial methods set out in section 2 in estimating Scheme Claims: the Scheme Adjudicator will, in forming his determination, adopt the method used by the Scheme Creditor rather than the methods set out in section 2 if the Scheme Adjudicator believes that the Scheme Creditor's own methodology better reflects the circumstances affecting their Scheme Claim. The Scheme Adjudicator will in this case review the application of that method and the appropriateness of the assumptions used. The Scheme Adjudicator may also elect to apply the methodology submitted by any Scheme Creditor to any other Scheme Creditor's Scheme Claim if he believes that it is a better choice of method than any of those described in section 2 (including the Scheme Creditor's own methodology).

The Scheme Adjudicator may base his recommendation on a combination of results produced by the application of the Scheme Creditor's method and results produced by the application of one or more methods set out in section 2.

In reviewing the reasonableness of the Scheme Creditor's methods and assumptions in estimating the IBNR Claim, the Scheme Adjudicator will take the following considerations into account:

- The extent to which the methods use historical development patterns (with explicit adjustment where appropriate) to predict the future,
- The extent to which the methods are recognised and used by actuaries and other claim reserving practitioners,

- The degree to which the methods and assumptions used are based on documentary evidence rather than on subjective judgement.

**APPENDIX C  
SPECIMEN TMEI CLAIM FORM (INCLUDING POLICY LISTING)**

Please complete this Claim Form following the instructions in this Claim Form, the guidance in the letter accompanying the Claim Form and the Estimation Methodology at Appendix B to the Scheme. **You should read the instructions and notes carefully. Failure to follow them may result in a claim being rejected in whole or in part. Claim values must be submitted at policy level as at a date not earlier than 31 December 2008.**

**Part 1: Scheme Creditor Details and Signature**

**CLAIM FORMS TOGETHER WITH SUPPORTING INFORMATION MUST BE RETURNED TO: PRO INSURANCE SOLUTIONS LIMITED, BRUTON COURT, BRUTON WAY, GLOUCESTER GL1 1DA UNITED KINGDOM / Fax +44 (0)1452 523437 / Email: [PRO\\_TMEI@pro-ltd.co.uk](mailto:PRO_TMEI@pro-ltd.co.uk) BY NO LATER THAN THE BAR DATE, BEING 11:59PM LONDON TIME ON [REDACTED] 2011**

**Scheme Creditor Name:** .....

**Cedant Name (as shown on the policy):** .....

**Creditor Reference:** ..... *(to be quoted in all future correspondence)*

**E-mail:** .....

**Telephone:** ..... **Fax:** .....

**Scheme Creditor Address:** .....

.....

.....

**(Note:** Please amend any details in the pre-populated areas, if incorrect. Alternatively, where a broker or agent of the Scheme Creditor is completing this form, please enter the name and address of the Scheme Creditor, together with all former names, in BLOCK CAPITALS.)

**Signature:**

To be signed by a duly authorised individual on behalf of the Scheme Creditor. A signature on this form shall constitute the giving of a warranty that the signatory has been duly authorised by the relevant Scheme Creditor to sign the form on their behalf.

**To the best of my knowledge and belief, the information on this Claim Form as completed, and all supporting evidence and information which I have supplied, including any which I may in future supply in connection with it, is correct and fair.**

**Signed:**..... **Date:**.....

**Name:**..... **Position / Capacity:**.....

**SPECIMEN TMEI CLAIM FORM (INCLUDING POLICY LISTING)**

**Part 1 - Continued**

**SCHEME CREDITOR NAME:** .....

**TMEI REF:** .....

**Valuation Statement and Scheme Currency**

Please tick ✓ the appropriate box below to indicate the single Scheme Currency in which you elect for your Net Ascertained Claim or Net Debt to be denominated. Failing such election, the Net Ascertained Claim or Net Debt will be denominated and paid in Pounds Sterling. Please select one currency only.

AUSTRALIAN DOLLARS	<input type="checkbox"/>	EUROS	<input type="checkbox"/>	POUNDS STERLING	<input type="checkbox"/>
CANADIAN DOLLARS	<input type="checkbox"/>	JAPANESE YEN	<input type="checkbox"/>	US DOLLARS	<input type="checkbox"/>

**Form of Payment**

**Note:** Payments will be made by bank transfer, at the expense of TMEI, unless you request payment by cheque and the Scheme Manager in his sole discretion agrees to make such payment, or the Scheme Manager considers the cost of making payment by bank transfer to be unreasonably large. Please insert a tick in the relevant box below to indicate your preference for payment by bank transfer or by cheque, and provide the requested details to enable the Scheme Manager to make payment.

**Please make payment by bank transfer to the following account:**

**Please make payment by cheque sent by Post:**

**Name of Bank:** .....

**Cheque payable to:** .....

**Address of Bank:** .....  
.....  
.....  
.....

**Name of Addressee:** .....  
.....  
.....

**Account in the name of:** .....

**IBAN:** .....

**SWIFT BIC:** .....

**Bank Sort Code** .....

**SPECIMEN TMEI CLAIM FORM (INCLUDING POLICY LISTING)**

**Part 2A: Summary Claim Form**

**TMEI REF:**

**SCHEME CREDITOR NAME:**

**REFERENCE DATE (1):**

**CURRENCY IN WORDS (2):**

	<b>(3) Unpaid Agreed Claims</b>	<b>(4) Outstanding Claims</b>	<b>(5) IBNR Claims</b>	<b>(6) Security/Set-off</b>	<b>(7) Net Total</b>
Values per PRO's records (pre-populated)					
<b>Values Added by Scheme Creditor</b>					
<b>(8) Total Submitted Claims</b>					

For Information Only:

<b>(9) Provisional Outwards Debt</b>					
--------------------------------------	--	--	--	--	--

The summary totals shown above must represent the total of the values, as entered in Part 2B: Policy / Claim Information.

**Part 2B: Policy / Claim Information**

**TMEI REF:**

**SCHEME CREDITOR NAME:**

**(10) REFERENCE DATE:**

**(11) CURRENCY IN WORDS:**

(12) Ref.	(13) Our Contract Reference Number	(14) Your Contract Reference Number	(15) Type Of Business Policy Type	(16) Inception Date Expiry Date	(17) CCY	(18) Sum Insured Excess	(19) Order	(20) Ultimate Signed Line	(21) Broker Broker Slip Reference	(22) Original Signing Date & No.	(23) Unpaid Agreed Claims per PRO's records	(24) Additional Unpaid Claims	(25) Outstanding Claims (Undiscounted)	(26) IBNR Claims (Undiscounted)	(27) Security/Set-off	(28) Net Total (23 + 24 + 25 + 26 - 27)
1																
2																
3																
4																
5																
6																
7																
8																
9																
10																
11																
12																
13																
14																
15																
										<b>(29) Overall Total</b>		0	0	0	0	0

### **Part 3: Instructions for completion of the Specimen Claim Form**

#### **GENERAL**

*PLEASE REMEMBER THAT CLAIMS AND SUPPORTING EVIDENCE MUST BE SUBMITTED AT POLICY LEVEL AS AT A DATE NOT EARLIER THAN 31 DECEMBER 2008.*

Please complete a separate table for each different currency in which you wish to submit a Scheme Claim. The default currency is consolidated Pounds Sterling. Use photocopied pages as required.

*WHEN ENTERING INFORMATION IN RESPECT OF A SCHEME REINSURANCE CONTRACT NOT ALREADY LISTED, PLEASE DO SO IN THE SAME FORMAT AS THE PRE-POPULATED FORM, IN ACCORDANCE WITH THESE NOTES.*

**Please be aware that your Claim Form is also available electronically in Microsoft Excel format from PRO. You are strongly encouraged to request this electronic version of the Claim Form and to enter your policy and claims data on the Excel spreadsheet, where possible, because this should be easier for you than entering it on the paper spreadsheet. Alternatively, if you so wish, a blank schedule can be downloaded in Microsoft Excel from the Website at [www.TMEIScheme.com](http://www.TMEIScheme.com).**

Please note that the defined terms contained within these instructions and the Claim Form bear the same meanings as given to them by the Scheme.

You should insert your TMEI reference number, together with the name of the Scheme Creditor on each page of the Claim Form.

Amendments to the Claim Form must be initialled by the person completing it.

All values must be entered to the nearest whole number. Where a value is due to you, this should be entered as a positive figure. Values due to TMEI should be entered as negative figures.

Please read these instructions prior to completing and returning your Claim Form. If in any doubt as to how to complete your form, please contact the Scheme Manager, PRO Insurance Solutions Limited ("**PRO**") for clarification.

## **SUBMISSION OF CLAIM FORMS**

Scheme Creditors wishing to submit a Scheme Claim must submit their Claim Form to PRO by 11.59pm London Time on [●] 2011 (the "**Bar Date**").

The Claim Form must be signed and returned by post to TMEI c/o PRO Insurance Solutions Limited, Bruton Court, Bruton Way, Gloucester GL1 1DA, United Kingdom, by fax to +44 (0)1452 523 437 (marked for the attention of the TMEI Scheme Manager) or by e-mail to PRO\_TMEI@pro-ltd.co.uk.

If a Scheme Creditor does not return a Claim Form, together with appropriate supporting documentation in accordance with the instructions accompanying the Claim Form, by 11.59pm London Time on the Bar Date, the Scheme Creditor will lose its entitlement to assert or receive payment in respect of any Scheme Claims other than any Unpaid Agreed Claims included on the Claim Form sent to such Scheme Creditor by PRO.

Particulars as to estimates of the amount of any Outstanding Claims or IBNR Claims provided by a Scheme Creditor may not be protected by privilege under English law (or other relevant laws) and may be discoverable by a third party with a claim against the Scheme Creditor in any action or proceeding to which the Scheme Creditor may be a party. You

should consult your legal adviser as to the consequences for you of providing such particulars in relation to any litigation in which you are or may become involved.

## **Part 1: Scheme Creditor Details and Signature**

### **Name and Address**

For any forms which are not pre-populated, please insert in this section the name of the Scheme Creditor and, if different, the name of the cedant as given in the relevant Scheme Reinsurance Contract. Where the name of the cedant given on the Scheme Reinsurance Contract is different from the name of the Scheme Creditor, please explain the reason for this, e.g. change of name, assignment etc. Insert an address and contact details for the individual who will be dealing with the Scheme Creditor's claims against TMEI. Inclusion of up-to-date contact details will facilitate the reduction of any queries regarding the Claim Form.

### **Signature**

The individual completing the form should sign and date the form to confirm the accuracy of the information provided printing his/her name in BLOCK CAPITALS where indicated. If that individual is the duly authorised representative of a corporation or partnership or other unincorporated body or person, or the duly authorised agent and/or attorney of a Scheme Creditor, enter the capacity in which he/she has signed the Claim Form (for example agent and/or attorney).

### **Valuation Statement and Scheme Currency**

Please tick the appropriate box to indicate the Scheme Currency in which you wish your Valuation Statement to be denominated and any Net Ascertained Claim to be settled. If you do not indicate a currency, your Valuation Statement will be denominated in Pounds Sterling and settlement will be made in that currency.

## **Form of payment**

Please enter the relevant details to enable settlement of any Net Ascertained Claim to be made by bank transfer or by cheque in accordance with the provisions of the Scheme.

## **Supporting Documentation**

Where additional policies and values have been added to the Claim Forms, then these additions must be substantiated with appropriate supporting documentation. All supporting documentation must be supplied to PRO by the Bar Date.

Failure to provide appropriate supporting documentation could result in your claim being rejected or valued at a lower amount.

Examples of appropriate supporting documentation are as follows:

- Additional policies: a copy of the cover note / slip or other appropriate document, including details of TMEI's participation.
- Additional Unpaid Claims: a copy of the closing advices and any supporting documentation sent to your broker.
- Outstanding Claims: a copy of the loss advices and any supporting documentation sent to your broker.
- IBNR Claim estimates: details of the method and calculation used to estimate IBNR Claims, including a copy of any relevant actuarial or other expert reports where appropriate.

It is recommended that you refer to the Estimation Methodology provided at Appendix B of the Scheme for further guidance as to the type of supporting documentation which may be required in relation to your claims or contact PRO to discuss.

## Notes to Part 2A: Summary Claim Form

### (1) Reference Date

The "as at" date of the calculation of your Scheme Claim. Please note that there is no fixed ascertainment date specified by TMEI. Instead you are free to select the most appropriate date (provided it is after **31 December 2008**) up to which you have current claim records in order to calculate your Scheme Claim.

### (2) Currency in Words

Please enter the currency in which your claims are submitted. You must complete one Claim Form for each relevant original currency. Claims may be submitted in any of the following Scheme Currencies:

AUD – Australian Dollars	GBP – Pounds Sterling
CAD – Canadian Dollars	JPY – Japanese Yen
EUR – Euros	USD – US Dollars

or, if preferred, the currency of the original contract.

Claims Forms sent by PRO will be pre-populated in consolidated GBP with the value of your Unpaid Agreed Claims and any Security / set-off as per PRO's records.

### (3) Unpaid Agreed Claims

The total value which has been agreed as due to you, but not paid or discharged by operation of set-off or otherwise. This field will be pre-populated by PRO in accordance with its records. If you consider that the values shown at (3) do not reflect your records, please add any additional value and provide particulars of your additions in Part 2B: Policy / Claim Information.

### (4) Outstanding Claims

Enter the total value in respect of losses notified to you for which you assert that an amount will become due for payment to you by TMEI (excluding any amounts in (3) above and (5) below) and provide particulars of your additions in Part 2B: Policy / Claim Information.

**(5) IBNR Claims**

Enter the total estimated amount in respect of losses which have been incurred by you, but not notified to you, for which you assert that an amount will become due for payment to you by TMEI (excluding any amounts already included in columns (3) and (4) above) and provide particulars of your additions in Part 2B: Policy / Claim Information.

**(6) Security / Set-off**

The total amount of any Security (including any Letter of Credit, trust fund, Loss Reserve or Premium Reserve), set-off or counter-claim which is available in relation to your claim under Scheme Reinsurance Contracts. This field will be pre-populated by PRO in accordance with its records.

If you consider that the values shown do not reflect your records, please add any additional value for Security / set-off within the field "Values added by Scheme Creditor" and provide particulars of your additions in Part 2B: Policy / Claim Information.

**(7) Net Total**

The total value of Unpaid Agreed Claims less any Security / set-off as presented per PRO's records and the total value of added Unpaid Agreed Claims, Outstanding Claims and IBNR Claims less any Security / set-off as added by you.

**(8) Total Submitted Claims**

The total value of Unpaid Agreed Claims less any Security / set-off as presented per PRO's records plus the value added by you for additional Unpaid Agreed Claims, Outstanding Claims, IBNR Claims and Security / set-off for the purpose of claims submission.

**Notes to Part 2B: Policy / Claim Information**

**(9) Provisional Outwards Debt**

The provisional unpaid claims due to TMEI for business ceded by TMEI to you. This is provided for information purposes only and will already be populated.

For the avoidance of doubt all values relating to business ceded by TMEI to you will be valued and included on the Valuation Statement.

**(10) Reference Date**

See Note 1 above.

**(11) Currency in Words**

See Note 2 above.

**(12) Ref.**

The unique reference number for each row of data.

**(13) Our Contract reference number**

The TMEI reference number on the Scheme Reinsurance Contract under which any claim(s) arises.

**(14) Your Contract reference number**

If there is any Scheme Reinsurance Contract not referred to in the Claim Form, which you would like to add and where you do not have the TMEI reference number, please specify your reference number on the Scheme Reinsurance Contract under which the claim arises and provide a copy of the policy schedule or cover note and the schedule of insurers with particulars of each claim in supporting schedules (where applicable). If you do not have a record of these numbers, please obtain them from your broker.

**(15) Type of Business**

This is the type of business to which the Scheme Reinsurance Contract relates, for example, Property, Casualty, Aviation, Marine, Motor, General Liability etc.

**Policy Type**

This is the policy type to which the Scheme Reinsurance Contract relates, for example, Binder/Lineslip - Direct Business (BND), Binder/Lineslip - Reinsurance Business (BNR), Binder/Lineslip - Mixed Business (BNM), Direct Business (DIR), Excess of Loss (X/L), Facultative (FAC), Facultative Obligatory Treaty (FOB), Quota Share Treaty (Q/S), Stop Loss (S/L) and Surplus Treaty (SUR).

**(16) Inception date**

The date when each Scheme Reinsurance Contract commenced. In the case of continuous Scheme Reinsurance Contracts or Scheme Reinsurance Contracts of more than 12 months plus odd time, each annual renewal should be shown as a separate Scheme Reinsurance Contract.

**Expiry Date**

The date at which the policy expired.

**(17) CCY**

The currency code for the sum insured and excess point for the policy.

AUD – Australian Dollars

GBP – Pounds Sterling

CAD – Canadian Dollars

JPY – Japanese Yen

EUR – Euros

USD – US Dollars

**(18) Sum Insured**

The policy limit or maximum amount payable under the policy.

**Excess**

The amount retained under any policy.

**(19) Order**

The total order placed on the slip.

**(20) Ultimate Signed Line**

The percentage line (taking into account the order placed) underwritten or assumed by TMEI under the Scheme Reinsurance Contract. If you are adding or amending the form, please insert TMEI's ultimate signed line for each Scheme Reinsurance Contract.

**(21) Broker**

The name of the broking company who placed the Scheme Reinsurance Contract under which you are claiming.

If you are adding Scheme Reinsurance Contracts or amending the form, and if the placing broker is not known, please specify any other broking company or intermediary (if known) who acted on your behalf in relation to the Scheme Reinsurance Contract. Enter, in addition, either "placing broker" or "other" as applicable.

**Broker Slip Reference**

The broker reference for the contract.

**(22) Original Signing Date & No.**

The Signing Date and Number for business where premium and claims are advised via the bureau (LPC). If adding or amending the form, please enter the original signing date and number.

**(23) Unpaid Agreed Claims per PRO's records**

The value of a Scheme Claim which, according to PRO's records at the Effective Date, has been agreed as due to you, but not paid or discharged by operation of set-off or otherwise. This field will be pre-populated by PRO.

If you consider that the values shown do not reflect your records, please refer to column (24).

**(24) Additional Unpaid Claims**

The value, as at the Reference Date, of Scheme Claims that you assert have been settled by you and are due for payment by TMEI.

If you consider that any values shown above in respect of Unpaid Agreed Claims do not reflect your records, please enter the value of Scheme Claims that you assert have been settled by you and are due for payment by TMEI. Please specify the amount for

each claim or, where there is more than one claim, the aggregate amount of any claims you have, by type of business, arising under each Scheme Reinsurance Contract.

The value you enter must represent the difference between your records and that presented in column (23).

**(25) Outstanding Claims (Undiscounted)**

Enter the estimated amount of any Scheme Claim or (where there is more than one claim) the aggregate estimated amount of any Scheme Claims, as at the Reference Date, in respect of losses notified to you for which you assert that an amount will become due for payment to you by TMEI (excluding any amounts included in columns (23) and (24)) and provide particulars of your estimate(s) in supporting schedules.

**(26) IBNR Claims (Undiscounted)**

Enter the estimated amount of any Scheme Claims, as at the Reference Date, in respect of losses which have been incurred by you but not notified to you, for which you assert that an amount will become due for payment to you by TMEI (excluding any amounts already included in columns (23) to (25) above) and provide particulars of your estimate(s) in supporting schedules.

**(27) Security / Set-off**

This is the amount of any Security (including any Letter of Credit, trust fund, Loss Reserve or Premium Reserve), set-off or counter-claim, in accordance with PRO's records, in relation to each Scheme Reinsurance Contract under each claim(s) and which is available in respect of such claim(s).

If you consider that the values shown do not reflect your records, please provide an analysis of the amount and provide any supporting documentation, including bank references in respect of Letters of Credit.

**(28) Net Total**

Enter the total of columns (23), (24), (25) and (26) less the amount in column (27) to achieve the net total in respect of each Scheme Reinsurance Contract.

**(29) Overall Total**

The overall total of values presented by PRO and additions by yourself at policy level.

Please return this Claim Form by 11.59pm London Time on [insert bar date once known] 2011 to:

**TMEI c/o PRO Insurance Solutions Limited  
Bruton Court  
Bruton Way  
Gloucester GL1 IDA  
United Kingdom**

**Tel: +44 (0) 1452 782 699  
Fax: +44 (0) 1452 523 437  
E-mail: PRO\_TMEI@pro-ltd.co.uk  
Contact: Philip Toft**

## APPENDIX D

### SPECIMEN VALUATION STATEMENT

#### TMEI Scheme Valuation Statement

SCHEME CREDITOR:	pre-populated name
REF:	Pre-populated
Date Issued:	Dd/mm/yyyy

Capitalised terms not defined in this Valuation Statement have the meaning ascribed to them in the Scheme.

**Substantive Disputes:** You may dispute any of the amounts set out on this Valuation Statement, other than the amounts set out in Table 1 and in row 1 of Table 2, on substantive grounds by sending notice in writing to be received by the Scheme Manager **within 42 days of the date of this Valuation Statement**. This written notice must set out the matters which are not agreed and the reasons for failing to agree such matters and provide any relevant additional available evidence.

**Manifest Error:** You may also dispute any item on the Valuation Statement on the basis of Manifest Error, in which case the dispute must be notified **within 42 days of the date of this Valuation Statement**, setting out such details of the Manifest Error as are necessary for the Scheme Manager to investigate and correct it.

If no notice disputing the Valuation Statement is received by the Scheme Manager within 42 days of the date of the Valuation Statement or, (if applicable), within 42 days of the revised Valuation Statement, it will be deemed to be accepted by you and will become final and binding on both you and TMEI in accordance with the Scheme.

Please send any notice disputing a Valuation Statement to the Scheme Manager either:

- By Post: PRO Insurance Solutions Limited  
Bruton Court  
Bruton Way  
Gloucester GL1 1DA  
United Kingdom

or

- By E-mail: [PRO\\_TMEI@pro-ltd.co.uk](mailto:PRO_TMEI@pro-ltd.co.uk)

or

- By Fax: +44 (0)1452 523437

A scanned signature on the Valuation Statement is required if e mail or fax is used.

### **TMEI Scheme Valuation Statement**

SCHEME CREDITOR:	pre-populated name
REF:	pre-populated
Date Issued:	Dd/mm/yyyy
Relevant Currency:	Pre-populated

Note: positive values are in your favour; negative values (in brackets) are in favour of TMEI.

<b>Table 1: Agreed Claims</b>			
<b>Policy/Claim ref.</b>	<b>Description</b>	<b>Currency</b>	<b>Agreed Claim</b>
<b><u>Total Agreed Claims</u></b>			

Please note that the values set out in Table 1 can be disputed only on the basis of Manifest Error.

Please refer to the guidance notes attached for further information as to each item in Table 2 (the numbers in the left hand column of the table refer to the relevant number in the guidance notes).

<b>Table 2: Application of Set-off and other adjustments to Agreed Claims</b>			
<b>Note No.</b>	<b>Description</b>	<b>Currency</b>	<b>Amount</b>
1)	<b>Total Agreed Claims</b>		
2)	<b>Total Scheme Debts</b>		( )
3)	Set-off		( )
4)	Security		( )
5)	Scheme Adjudicator's fees and expenses		( )
6)	Advance payments		( )
7)	Tax adjustments		( )
8)	Other adjustments		( )
9)	<b>Sub total (of 3+4+5+6+7+8)</b>		
10)	<b><u>Net Ascertained Claim or Net Debt</u></b> (1+2+9, in the Relevant Currency)		

Signed by the Scheme Manager: .....

Date: .....

**PRO Insurance Solutions Limited**

## **TMEI Scheme Valuation Statement Guidance Notes**

<b>Note</b>	<b>Comment</b>
1)	<p><b>Total Agreed Claims</b></p> <p>The total of the Scheme Creditor's Agreed Claims in the Relevant Currency. Please note this amount can only be disputed on the basis of Manifest Error.</p> <p>(Clause 2.14.1.1 of the Scheme)</p>
2)	<p><b>Set-off</b></p> <p>The amount of adjustments reflecting payments by or to TMEI or transactions effecting netting off or set-off in respect of a Scheme Creditor's Agreed Claims and/or Scheme Debts.</p> <p>(Clause 2.14.1.2 of the Scheme)</p>
3)	<p><b>Total Scheme Debts</b></p> <p>The aggregate amount of the Scheme Creditor's Scheme Debts (if any), in the Relevant Currency.</p> <p>(Clause 2.14.1.3 of the Scheme)</p>
4)	<p><b>Security</b></p> <p>The amount of any Scheme Claims which have been satisfied by the application of Security since the Effective Date and the amount of any remaining Security to be deducted from the total of such Scheme Creditor's Agreed Claims with the intention that the Scheme Creditor will draw down or realise the Security in that amount.</p> <p>(Clause 2.14.1.4 of the Scheme)</p>
5)	<p><b>Scheme Adjudicator's fees and costs</b></p> <p>The amount of any sums in respect of the Scheme Adjudicator's remuneration, costs and expenses pursuant to clause 2.12.1 or clause 2.12.2 to be deducted from the total of such Scheme Creditor's Agreed Claims.</p> <p>(Clause 2.14.1.5 of the Scheme)</p>
6)	<p><b>Advance payments</b></p> <p>The amount of any advance payment treated as having been received by the Scheme Creditor for the purposes of clause 4.1.2 or 4.1.3 which is to be deducted from the total of such Scheme Creditor's Agreed Claims.</p> <p>(Clause 2.14.1.6 of the Scheme)</p>

<b>Note</b>	<b>Comment</b>
7)	<p><b>Tax adjustments</b></p> <p>Any amounts which are required to be deducted or withheld by TMEI for or on account of Tax in respect of Admissible Interest.</p> <p>(Clause 2.14.1.7 of the Scheme)</p>
8)	<p><b>Other adjustments</b></p> <p>Any other amounts in relation to Scheme Claims or Scheme Debts not expressly referred to above which the Scheme Manager considers ought to be taken into account for the purpose of calculating the Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be.</p> <p>(Clause 2.14.1.8 of the Scheme)</p>
9)	<p><b>Sub-Total</b></p> <p>The sum of 3+4+5+6+7+8 above.</p>
10)	<p><b>Scheme Creditor's Net Ascertained Claim or Net Debt</b></p> <p>The final balance following aggregation of the amounts referred to above, which shall be the Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be. Where, for the purpose of aggregating the amounts referred to above, the Scheme Manager is required to set off amounts denominated in different currencies, the amounts to be set off shall be converted into the Relevant Currency at the Scheme Rate.</p> <p>(Clause 2.14.1.9 of the Scheme)</p>

## APPENDIX E

### REMUNERATION OF SCHEME ADJUDICATOR

The Scheme Adjudicator's remuneration, costs and expenses shall be determined in accordance with the details of this Appendix and clause 2.12 of the Scheme. Ordinarily, TMEI and the relevant Scheme Creditor, will each be responsible for paying half the remuneration, costs and expenses of the Scheme Adjudicator.

However, the Scheme Adjudicator shall be entitled to direct that such other proportion of the remuneration, costs and expenses incurred by him (including, without limitation, the costs of any advisers or experts) be payable by TMEI or the relevant Scheme Creditor in the event that the Scheme Adjudicator considers that either the Scheme Manager, acting on TMEI's behalf, or the Scheme Creditor had acted in bad faith etc. (per clause 2.12.2 (a)) or unreasonably failed to provide appropriate supporting evidence (per clause 2.12.2 (b)) or supplied supporting evidence in a way that increased the time and costs of the Adjudication (per clause 2.12.2 (c)).

Settlement must be made within 42 days of the request for payment.

#### **First Scheme Adjudicator:**

~~George Maher of Towers Watson~~ [John Birkenhead of HJC Actuarial Consulting Limited](#) will be the first Scheme Adjudicator in accordance with clause 6.1.2 of the Scheme.

The method of charging will be based on ~~Towers Watson~~ [HJC Actuarial Consulting Limited's](#) applicable standard hourly rates from time to time (for the avoidance of doubt, these rates will be the same for any time costs allocated to TMEI and the Scheme Creditor).

Costs and expenses properly incurred will also be charged.

**APPENDIX F**

**FORM OF DEED OF RELEASE**

**TOKIO MARINE EUROPE INSURANCE LIMITED**

and

**[SCHEME CREDITOR] / [THE SCHEME CREDITORS]**  
(as defined herein)

and

[            ]

---

**DEED OF RELEASE**

---

**THIS DEED OF RELEASE** is made on the            day of            [●]

**BETWEEN:**

- (1) **TOKIO MARINE EUROPE INSURANCE LIMITED ("TMEI");**
- (2) **[EACH] / [NAME OF SCHEME CREDITOR, BEING A] SCHEME CREDITOR** of TMEI, acting by TMEI acting as agent pursuant to the authority conferred upon it by the Scheme Creditors under clause 8.3.3 of the Scheme; and
- (3) [            ] (the "**Released Party**")

**WHEREAS**

TMEI entered into a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 in relation to certain reinsurance business written or assumed by it (the "**Scheme**"). The Scheme became effective as between TMEI and its Scheme Creditors (as defined in the Scheme) on [*insert Effective Date*]. Pursuant to clause 8.3.3 of the Scheme and following the Completion Date of the Scheme, each Scheme Creditor of TMEI has authorised the company to enter into and execute and deliver this Deed of Release on its behalf in the event that the Scheme Creditor has failed to execute and return a Deed of Release within 21 days of TMEI having requested its execution and return pursuant to clause 8.3.3.1 of the Scheme.

The Released Party has agreed to enter into and execute and deliver this Deed on its own behalf.

**NOW THIS DEED WITNESSES** as follows:

**1. Definitions**

Unless otherwise stated, terms defined in the Scheme shall have the same meaning in this Deed.

**2. Background**

2.1 TMEI has been authorised by the Scheme to execute this Deed on behalf of the Scheme Creditor[s].

2.2 The Scheme has become final and binding on the Scheme Creditors following the making of the Court Order by the High Court of Justice in England and the delivery of such order to the Registrar of Companies.

2.3 The Scheme has been certified as complete pursuant to clause 8.3.1 of the Scheme.

**3. Release**

[Each/The] Scheme Creditor, acting by TMEI pursuant to clause 8.3.3 of the Scheme, hereby releases the Released Party absolutely and unconditionally from any and all Liability that the Released Party may have to [each/the] Scheme Creditor under or in respect of any guarantee of TMEI's obligations to pay Scheme Claims.

**4. Rights of third parties**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

5. **Counterparts**

This Deed may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which taken together constitute one and the same deed.

6. **Assignment**

This Deed shall not be assignable.

7. **Governing law and jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and Wales. The parties to this Deed irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed.

**IN WITNESS WHEREOF** this Deed has been executed by the parties hereto and it is intended to be and is hereby delivered on the date hereof.

Signed as deed by Tokio Marine Europe Insurance Limited

acting by [*name of director*], a director, in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director

*Name:*

*Occupation:*

*Address:*

Signed as deed by Tokio Marine Europe Insurance Limited

**For and on behalf of the SCHEME CREDITOR[S]**

acting by [*name of director*], a director, in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director

*Name:*

*Occupation:*

*Address:*

Signed as deed by [Released Party]

acting by [*name of director*], a director, in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director

*Name:*

*Occupation:*

*Address:*



<b>Input:</b>	
Document 1 ID	interwovenSite://EUDMS/UK1/4075254/11
Description	#4075254v11<UK1> - Scheme Document - 25 November 2010
Document 2 ID	interwovenSite://EUDMS/UK1/4075254/12
Description	#4075254v12<UK1> - Scheme Document - 25 November 2010
Rendering set	standard

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Format change	
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Inserted cell	
Deleted cell	
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Split/Merged cell	
Padding cell	

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Insertions	23
Deletions	21
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>44</b>