

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No. 5465 of 2014

Before Mr Justice Arnold
Wednesday, ²¹15 January 2015



IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT
2000

AND IN THE MATTER OF:

(1) THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA)
LIMITED

(2) STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED

ORDER

UPON THE APPLICATION by Claim Form dated 31 July 2014 of: (1) the above-named The Steamship Mutual Underwriting Association (Bermuda) Limited whose registered office is situated at Clarendon House, 2 Church Street, Hamilton, Bermuda ('SSMB') and (2) the above-named Steamship Mutual Underwriting Association Limited ('SSML') whose registered office is situated at Aquatical House, 39 Bell Lane, London E1 7LU, England, for (among other things) the sanctioning of the scheme set out at Schedule 1 hereto (the 'Scheme') pursuant to Part VII of the Financial Services and Markets Act 2000 (the 'Act');

AND UPON HEARING Adam Chichester-Clark for the Applicants;

AND UPON READING the Claim Form and the evidence;

THIS COURT HEREBY sanctions pursuant to Section 111(1) of the Act the Scheme set out in Schedule 1 hereto;

AND IT IS ORDERED pursuant to Section 112(1) of the Act that, using the definitions as set out in the Scheme:

1. on and with effect from the Effective Time, the Transferred Business shall be transferred to and be vested in SSML in accordance with the Scheme notwithstanding any terms in any agreement prohibiting all or any of such transfer and/or vesting and/or imposing any limitations on the circumstances in which any assets or liabilities comprised in the Transferred Business may be transferred and/or vested or purporting to terminate, limit or otherwise affect such assets or liabilities in the event of a transfer;
2. on and with effect from the Effective Time, the Transferred Assets and all the estate and interest of SSMB therein shall, without any further act or instrument, be transferred to and be vested in SSML. SSMB and SSML shall as and when appropriate execute all such documents and perform such other acts and things as may be required to effect or perfect the transfer to and vesting in SSML of any Transferred Asset in accordance with the terms of the Scheme or otherwise for effecting or perfecting the transfer of the Transferred Business in accordance with the terms of the Scheme. In the case of any Policies which are subject to the benefit of any licences, permissions and/or assurances granted to SSMB by HM Treasury or any other relevant entity in connection with sanctions which, as at the Effective Time were treated as Excluded Assets and Liabilities but where, following the Effective Time, the appropriate licences, permissions and/or assurances have transferred or been granted to SSML by HM Treasury or such other relevant entity then, immediately upon such transfer or grant taking place, such Policies shall, by this Order and without any further act or instrument, be transferred to and vested in SSML and the assets and liabilities relating

to such Policies shall immediately upon the transfer of such Policies be transferred to SSML and such Policies, assets and liabilities shall thereafter be dealt with by SSML under the provisions of the Scheme in all respects as if such Policy were a Transferred Policy and as if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant;

3. on and with effect from the Effective Time, the Transferred Liabilities shall, without any further act or instrument, be transferred to and become liabilities of SSML and shall cease to be liabilities of SSMB;
4. without prejudice to the generality of paragraphs 1, 2 and 3, on and with effect from the Effective Time, SSML shall without any further act or instrument, be entitled to all rights of SSMB under the Transferred Policies (including the right to levy additional premiums, supplementary calls, overspill calls and release calls) and be subject to all SSMB's obligations under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to SSMB and/or to rights and/or liabilities of SSMB, its board of directors or other officers, employees, agents or managers and/or to liabilities of holders of Transferred Policies to SSMB shall, to the extent necessary to give full effect to the Scheme, be read and construed as references to SSML and/or to rights and/or liabilities of SSML, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to SSML, in each case subject to and in accordance with the terms of the Scheme;
5. without prejudice to the generality of paragraphs 1, 2 and 3, on and with effect from the Effective Time SSML shall without any further act or instrument, be entitled to all rights of SSMB under the Transferred Reinsurances and be subject to all liabilities of SSMB under the Transferred Reinsurances (including any obligation to indemnify under the Pooling Agreements) whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Reinsurance references to SSMB and/or to rights and/or liabilities of SSMB, its board of directors or other officers,

employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to SSMB shall, to the extent necessary to give full effect to the Scheme, be read and construed as references to SSML, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to SSML subject to and in accordance with the terms of the Scheme and the Transferred Reinsurances shall (notwithstanding any provision to the contrary therein) continue in force and shall, to the extent necessary to give full effect to the Scheme, be read, manipulated, construed and treated so that the Transferred Reinsurances shall operate for the benefit of SSML as if SSML was the original party thereto in place of SSMB;

6. without prejudice to the generality of paragraphs 1, 2 and 3 and without prejudice to paragraphs 4 and 5, on and with effect from the Effective Time, any references to SSMB in any contract between SSMB and any third party relating to the Transferred Policies, Transferred Reinsurances or otherwise comprised in the Transferred Business, shall, to the extent necessary to give full effect to this Scheme, be read and construed as references to SSML and such contract shall operate as if SSML was the original party to the contract in place of SSMB;
7. On and with effect from the Effective Date, SSML shall:
 - (i) succeed to all rights, liabilities and obligations of SSMB in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities to the extent transferred by the Scheme;
 - (ii) become the data controller of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Act 1998 and shall be deemed to have been the controller of all such data at all material times when personal data is processed; and

- (iii) in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities be under the same duty as SSMB was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on SSMB and which required SSMB not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this paragraph, any reference to SSMB shall be deemed to include a reference to SSML.

8. on and with effect from the Effective Time, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future) by or against SSMB from the Effective Time in connection with the Transferred Policies, the Transferred Reinsurances, the Transferred Assets or otherwise in relation to the Transferred Business shall be continued by or against SSML and SSML shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to SSMB in relation to such proceedings and SSMB shall have no liability under those proceedings and, for the avoidance of doubt, SSML, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by SSMB.
9. on and with effect from the Effective Time, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or similar person or entity or other proceedings for the resolution of a dispute or claim in relation to SSMB and concerning the Transferred Policies, Transferred Reinsurances, Transferred Assets or otherwise in relation to the Transferred Business shall be commenced against SSML. Any such proceedings after the Effective Time commenced in error against SSMB shall be deemed to have been commenced and shall be continued against SSML without the need for further order, whether for substitution of parties or otherwise. In any

event, SSML shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to SSMB in relation to such proceedings, complaint or claim;

10. the Excluded Policies shall not be transferred to SSML by the Scheme and the liabilities and assets of SSMB relating to the Excluded Policies shall remain liabilities and assets of SSMB subject to paragraph 11;
11. if SSMB or SSML procures the novation of any Excluded Policy to SSML, the assets and liabilities relating to such Excluded Policy shall be transferred to SSML and such Excluded Policy, assets and liabilities shall thereafter be dealt with by SSML under the provisions of the Scheme in all respects as if such Excluded Policy were a Transferred Policy and as if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant;
12. all premiums and calls attributable or referable to the Transferred Policies (including additional premiums, supplementary calls, overspill calls and release calls in respect of Policy Years ending on or prior to the Effective Time) shall on and after the Effective Time be payable to SSML and shall be receivable and received by SSML;
13. any mandate or other instruction in force at the Effective Time (including any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other intermediary of premiums and calls payable under or in respect of any of the Transferred Policies to SSMB on their behalf shall thereafter take effect as if it had provided for and authorised such payment to SSML;
14. if:
 - (i) any asset of SSMB proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by reason of:

- (a) such asset being governed by the law of any country or territory outside the UK; or
 - (b) for any other reason; or
- (ii) the transfer of any asset of SSMB proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such asset is situated,

SSMB shall, on and from the Effective Time, hold any such asset as trustee for SSML absolutely. SSMB shall in any event be subject to SSML's directions in respect of any such asset until the relevant asset is transferred to or otherwise vested in SSML or is disposed of (whereupon SSMB shall account to SSML for the proceeds of disposal thereof), and SSML shall have authority to act as the attorney of SSMB in respect of such asset for all such purposes. In the event of any payment being made to, or other asset being received by or being conferred upon, SSMB on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, SSMB shall as soon as is reasonably practicable after its receipt pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such asset to, or in accordance with the reasonable directions of, SSML. Without prejudice to the foregoing provisions of this paragraph 14 or the provisions of paragraph 15, if any asset or liability included in the this Order is governed by the law of any country or territory outside the UK, SSMB shall take all necessary steps as SSML may require for securing that the transfer to SSML of that asset or liability is fully effective under the law of that country or territory;

15. If:

- (i) any liability of SSMB proposed to be transferred pursuant to the Scheme is not, or is not capable of being, immediately transferred at the Effective Time by reason of:

- (a) such liability being governed by the law of any country or territory outside the UK; or
 - (b) for any other reason; or
- (ii) the transfer of any liability of SSMB proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such liability is situated,

on and with effect from the Effective Time, until the relevant liability is transferred to or becomes a liability of SSML, SSML shall discharge such liability on behalf of SSMB or, failing that, indemnify SSMB against such liability any other loss or expense incurred by or demand made against SSMB that is attributable to such liability. SSMB shall in any event be subject to SSML's directions in respect of any liability referred to in this paragraph 15 until the relevant liability is transferred to or becomes a liability of SSML, and SSML shall have authority to act as the attorney of SSMB in respect of such liability for all such purposes;

16. the Scheme shall become operative at noon Greenwich Mean Time on 20 February 2015, subject to the Bermudan Scheme having been sanctioned by the Bermudan court (following the approval of the scheme of arrangement at a scheme meeting) and the order of the Bermudan court having been delivered to the Bermudan registrar of companies under section 99(3) of the Bermudan Companies Act 1981 before such time. If the Bermudan Scheme shall not have been so sanctioned and the order not delivered before such time the Scheme shall automatically lapse;
17. the production of a copy of this Order and a copy of a certificate by a director of SSMB for the time being that the Scheme has taken effect shall, for all purposes, be evidence of the transfer to, and vesting in, SSML of the Transferred Business, the Transferred Policies, the Transferred Reinsurances, the Transferred Assets and the Transferred Liabilities in accordance with this Order and the Scheme;

18. neither the transfer of the Transferred Business, the Transferred Policies, the Transferred Reinsurances, the Transferred Assets or the Transferred Liabilities nor any other matter provided for by this Order or the Scheme shall:
- a) invalidate or discharge any agreement or other thing;
 - b) constitute a breach of default under or termination event or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or instrument to which SSMB or SSML is a party or is bound;
 - c) allow any party to any agreement to terminate that agreement when it would not otherwise have been able to do so;
 - d) entitle any party to any agreement to which SSMB or SSML is a party or is bound to vary the terms of that agreement when it would not otherwise have been able to do so; or
 - e) cause the imposition of any greater or lesser obligation on any party to any such agreement when that greater or lesser obligation would not otherwise have been imposed;
19. in accordance with Section 114(2) of the Act:
- a) notice of the making of this Order shall be published in the Financial Times (International Edition); and
 - b) such notice shall specify that the period during which the holder of any policy included within the transfer for which the Scheme provides, which evidences a contract of direct insurance as regards which the relevant EEA state is the EEA state in which the risk is situated, may exercise the right (if any) under the law of the relevant EEA state to cancel the policy, shall be the period of 21 days starting from the date of such publication or such other period (if any) as provided for by the laws of the relevant EEA state;
20. in accordance with Section 112(10) of the Act, SSML shall within 10 days from the date of this Order or such longer period as the PRA may allow, deposit two office copies of this Order with the PRA; and

21. there shall be liberty to SSMB and/or SSML to apply:
- a) for such Orders as may be expedient or necessary for the purposes set out in Section 112(1) of the Act;
 - b) pursuant to paragraph 14 of the Scheme; and
 - c) generally.

SCHEDULE 1

Scheme

CLAIM NO 5465/2014
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF PART VII OF THE FINANCIAL
SERVICES AND MARKETS ACT 2000

AND

IN THE MATTER OF:

- (1) THE STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION (BERMUDA) LIMITED
(2) STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION LIMITED

Applicants

INSURANCE BUSINESS TRANSFER SCHEME

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1. DEFINITIONS

1.1 In this Scheme, unless the context otherwise requires, the following expressions bear the meanings respectively set opposite them:

Act	the Financial Services and Markets Act 2000.
Bermuda Regulatory Capital	the regulatory capital which SSMB is required to maintain from time to time by its regulator, the Bermuda Monetary Authority.
Bermudan Scheme	the scheme of arrangement under section 99 of the Bermudan Companies Act 1981 proposed to be effected by SSMB for the purpose of transferring insurance creditors of SSMB to SSML.
Blue Cards	<p>a document (written or electronic) known as a 'Blue Card' and provided by SSMB evidencing that there is in place insurance meeting the liability requirements of all or any of:</p> <ul style="list-style-type: none">(a) article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 and 1992;(b) article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;(c) article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea Act 1974 (as amended by the Protocol of 2002); and(d) article 3 of the EU Regulation on the Liability of Carriers of Passengers by Sea in the Event of Accidents (No. 392/2009).
Capital Resources Requirement	has the meaning given to it in the Handbook of rules and guidance issued by the Prudential Regulatory Authority and the Financial Conduct Authority.

Court	the High Court of Justice in England.
Effective Time	the time and date on which the Scheme shall become operative in accordance with paragraph 13.
Excluded Assets and Liabilities	<p>means:</p> <ul style="list-style-type: none"> (a) the rights and obligations of SSMB arising out of or in connection with the Hydra Governing Instrument; (b) the Hydra Shares and Capital; (c) the SSM Reinsurance Shares and Capital (including the shares held by SSM Reinsurance in the capital of SSM Property); (d) the rights and obligations of SSMB arising out of or in connection with any reinsurance provided by SSMB to SSML in respect of Policies written by SSML on or after the Effective Time; (e) the rights and obligations of SSMB arising out of or in connection with any reinsurance provided by SSM Trust to SSMB in respect of the reinsurance liabilities of SSMB referred to in paragraph (d) above; (f) the Management Agreement between SSMB and SSM Management dated 29 January 2013; (g) the SSM Management Loans; (h) the SIAT Shares and Capital; (i) the Reliance Matters; (j) any Policies which are subject to the benefit of any licences, permissions and/or assurances granted to SSMB by HM Treasury or any other relevant entity

in connection with sanctions where, as at the Effective Time, (i) such licences, permissions and/or assurances cannot be transferred pursuant to the terms of this Scheme; and (ii) where SSML has not been granted the appropriate licences, permissions and/or assurances by HM Treasury or such other relevant entity (as appropriate) in connection with sanctions; and

(k) the US Licences.

Excluded Policies

all Policies written by or on behalf of SSMB in the course of carrying on the Transferred Business in respect of which:

- (a) for the purpose of paragraph 6(3) of schedule 12 to the Act an EEA State other than the UK is the EEA State in which the risk is situated; and
- (b) the Prudential Regulatory Authority has not prior to the issue of the Order provided the certificate referred to in paragraph 5 of schedule 12 to the Act with respect to the relevant EEA State which is the EEA State where the risk is situated, and for these purposes 'EEA State' bears the meaning given in the Act.

FMC Certificates

means a guarantee or other undertaking given by SSMB to the Federal Maritime Commission under the U.S. Public Law 89-777 pursuant to either section 2 (being a guarantee or undertaking to secure payment of liabilities for loss of life of, or personal injury to, passengers) or section 3 (being a guarantee or an undertaking to establish financial responsibility to passengers in the event of non-performance of their transportation).

Hydra	Hydra Insurance Company Ltd., a company incorporated in Bermuda under number 34834.
Hydra Governing Instrument	the governing instrument dated 9 February 2005 relating to the governance of owned cells in the capital of Hydra (excluding for the avoidance of doubt the Hydra Reinsurance).
Hydra Reinsurance	all contracts of reinsurance and/or indemnity entered into between Hydra, acting for and on behalf of the Hydra Steamship Cell, and SSMB prior to the Effective Time in respect of liabilities arising in respect of claims subject to the Pooling Agreements.
Hydra Shares and Capital	the shares in the general capital of, or any segregated account of, Hydra registered in the name of SSMB (including the segregated account known as the ‘Hydra Steamship Cell’), and any capital contributed to Hydra by SSMB, in each case at the Effective Time.
Independent Expert	Alex Lee of Ernst & Young LLP of 1 More London Place, London SE1 2AF, the expert appointed to report on the terms of this Scheme and approved by the Prudential Regulatory Authority pursuant to section 109 of the Act, or any successor appointed to report on the same and approved pursuant to section 109 of the Act.
International Group	the International Group of P&I Associations as constituted from time to time.

Order	an order made by the Court pursuant to section 111 of the Act sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of the Act.
Policy	shall have the meaning given to the term ‘policy’ in the Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001, regardless of how that contract of insurance may be evidenced, and includes rules, certificates of entry, endorsement slips, notices of variation, notices of termination, and addendum clauses incorporated by reference in a certificate of entry or in an endorsement slip, and shall in addition include any contract of reinsurance written by SSMB, regardless of how that contract of reinsurance may be evidenced.
Policy Year	a year from noon Greenwich Mean Time on any 20th February to noon Greenwich Mean Time on the next following 20th February and ‘Policy Years’ shall be construed accordingly.
Policyholder	shall have the meaning given to the term ‘policyholder’ in the Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001 and in addition shall be construed in a manner consistent with the definition of ‘Policy’ in this Scheme.
Pooling Agreements	the 2014 pooling agreement between the P&I clubs in the International Group for the pooling of certain risks and all prior pooling agreements in respect of previous Policy Years

between members of the International Group.

RAO

the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Reliance Matters

the Personal Accident ('Sideways') policy number NAG 0149321-00 (JLT cover note number LE 9706408), the Excess Loss Bodily Injury Policy number NXC 0153694-00 and the Excess Loss Non-Bodily Injury Policy NXC 0153695-00 issued by the Reliance Insurance Company of Illinois to SSMB together with the related claims under such policies and in the liquidation of the Reliance Insurance Company of Illinois.

Scheme

this Scheme in its original form or with or subject to any modification, addition, provision or condition which may be approved or imposed in accordance with paragraph 14.

SIAT Shares

the shares in the capital of Società Italiana Assicurazioni e Riassicurazioni registered in the name of SSMB and any capital contributed by SSMB to Società Italiana Assicurazioni e Riassicurazioni, in each case at the Effective Time.

SSMB

The Steamship Mutual Underwriting Association (Bermuda) Limited, a company incorporated by act of the Bermudan legislature with registered number 3742.

SSM Management

Steamship Mutual Management (Bermuda) Limited, a company incorporated in Bermuda under registered number 6966.

SSM Management Loans	the loans made by SSMB to SSM Management prior to the Effective Time.
SSML	Steamship Mutual Underwriting Association Limited, a company incorporated in England under registered number 00105461.
SSM Property	Steamship Mutual Property Holdings Limited, a company incorporated in Bermuda under registered number 12513.
SSM Reinsurance	The Steamship Mutual Underwriting Association (Reinsurance) Limited, a company incorporated in Bermuda under registered number 6953.
SSM Reinsurance Shares and Capital	the shares in the capital of SSM Reinsurance registered in the name of SSMB and any capital contributed by SSMB to SSM Reinsurance, in each case at the Effective Time.
SSM Trust	The Steamship Mutual Underwriting Association Trustees (Bermuda) Limited, a company incorporated in Bermuda under registered number 9904, acting in its capacity as trustee of The Steamship Mutual Trust.
Subsidiary	shall have the meaning given to that term in section 1159 of, and schedule 6 to, the UK Companies Act 2006.

Transferred Assets

the following assets of SSMB at the Effective Time:

- (a) all rights under or by virtue of the Transferred Policies or any Transferred Reinsurances;
- (b) all rights against any third party in relation to the Transferred Business or arising as a result of SSMB having carried on the Transferred Business;
- (c) the benefit of any licences, permissions and/or assurances granted to SSMB by HM Treasury or any other relevant entity in connection with sanctions, to the extent the same can be transferred;
- (d) a cash amount equivalent to the amount of the claims handling provision in the books of account of SSMB as at the Effective Time;
- (e) such cash amount as is required as at the Effective Time so as to ensure that SSML holds as at the Effective Time solvency capital representing at least 120% of the Capital Resources Requirement;
- (f) a cash amount equivalent to any unearned premium (and associated deferred acquisition costs) relating to the Transferred Policies as at the Effective Time; and
- (g) all rights to receive amounts deposited by or on behalf of SSMB with, or held by, third parties in connection with the US Licences,

but in each case excluding (i) all rights under the Excluded Policies (including the benefit of any reinsurance, retrocession or indemnity of SSMB in relation to liabilities arising under the Excluded Policies) and (ii) all assets comprised in the Excluded Assets and Liabilities.

Transferred Business

the whole of the insurance and reinsurance business carried on

by SSMB at the Effective Time (including all activities carried on by SSMB or on behalf of SSMB in connection with or for the purposes of such business), but excluding such business to the extent it comprises:

- (a) assets and/or liabilities relating to the Excluded Policies; or
- (b) the Excluded Assets and Liabilities.

Transferred Liabilities

the following liabilities of SSMB at the Effective Time:

- (a) all liabilities under the Transferred Policies and the Transferred Reinsurances (including all obligations to indemnify under the Pooling Agreements); and
- (b) all other liabilities of SSMB in respect of or attributable to the Transferred Business (including any liabilities under Blue Cards and FMC Certificates),

but in each case excluding (i) all liabilities under the Excluded Policies and all other liabilities relating to the Excluded Policies (including liabilities relating to any reinsurance, retrocession or indemnity of SSMB in relation to liabilities arising under the Excluded Policies) and (ii) all liabilities comprised in the Excluded Assets and Liabilities.

Transferred Policies

every Policy written by or on behalf of SSMB prior to the Effective Time and comprised in the Transferred Business, but excluding the Excluded Policies and any Policy comprised in the Excluded Assets and Liabilities.

Transferred Reinsurances

all contracts of reinsurance, retrocession and/or indemnity under which (and to the extent to which) SSMB is covered in

respect of any risks insured or reinsured by SSMB under or pursuant to any Transferred Policies issued by or on behalf of SSMB before the Effective Time (including all rights to be indemnified under the Hydra Reinsurance, the International Group Pooling Agreements or any excess of loss program for the benefit of members of the International Group) but excluding rights of reinsurance, retrocession or indemnity in respect of liabilities arising under Excluded Policies.

UK the United Kingdom of Great Britain and Northern Ireland.

US Licences the licences held by SSMB in connection with surplus lines business in the states of Texas and Florida, respectively, in the United States of America.

1.2 In this Scheme, unless the context otherwise requires:

1.2.1 **'asset'** includes property, assets, data, records, shares, securities, security interests and rights, in each case of every description, wherever located, whether tangible or intangible and whether present or future, actual or contingent and includes any of the foregoing held on trust, and any interest whatsoever or howsoever held in any of the foregoing;

1.2.2 **'liabilities'** includes duties and obligations of every description (whether present or future, actual or contingent) including liabilities and obligations under guarantees and letters of undertaking;

1.2.3 **'rights'** includes rights (including contractual rights and benefits, rights of subrogation, rights to be indemnified, rights under guarantees and any right to receive any security, counter-security or the benefit of any lien, assignment or trust), benefits (including the benefit of any security, counter-security, lien, assignment, trust, set-off or escrow), rights and benefits under any licence and/or permission, advantages, powers and claims of every description whether present or future, actual or contingent;

- 1.2.4 **'transfer'** includes (as the context may require) 'assign' or 'assignation' or 'assignment', 'dispose' or 'disposal', 'convey' or 'conveyance';
- 1.2.5 the singular includes the plural and vice versa;
- 1.2.6 any reference to any gender includes a reference to every other gender;
- 1.2.7 any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- 1.2.8 any reference to a contract, agreement or other arrangement is to that contract, agreement or arrangement as in force and amended or varied at the relevant time;
- 1.2.9 references to paragraphs are to paragraphs of this Scheme;
- 1.2.10 any references to **'including'** or to **'in particular'** shall be deemed to be followed by the words 'without limitation'; and
- 1.2.11 the headings in this Scheme are for convenience only and shall not affect its interpretation.

2. INTRODUCTION

- 2.1 SSMB is a mutual insurance company incorporated by act of the Bermudan legislature which has permission under Part 4A of the Act to effect and carry out contracts of general insurance under paragraphs 1, 2, 4, 5, 6, 7, 11, 12, 13, 15, 16 and 17 of part 1 of schedule 1 to the RAO.
- 2.2 SSML is a mutual insurance company incorporated under the laws of England which has permission under Part 4A of the Act to effect and carry out contracts of general insurance under paragraphs 1, 2, 4, 5, 6, 7, 11, 12, 13, 15, 16 and 17 of part 1 of schedule 1 to the RAO.

2.3 All members of SSML are members of SSMB, but not all members of SSMB are members of SSML. Save for a minor proportion of risk retained by SSML, the risks insured and reinsured by both SSMB and SSML are ultimately reinsured, net of other reinsurances, by SSM Trust.

2.4 It is proposed that the Transferred Business shall, in accordance with this Scheme, be transferred to SSML (and that an Order be made accordingly for the sanction of this Scheme under section 111 of the Act).

3. TRANSFER OF BUSINESS

The Transferred Business shall be transferred to and be vested in SSML in accordance with this Scheme notwithstanding any terms in any agreement prohibiting all or any of such transfer and/or vesting and/or imposing any limitations on the circumstances in which any assets or liabilities comprised in the Transferred Business may be transferred and/or vested or purporting to terminate, limit or otherwise affect such assets or liabilities in the event of a transfer.

4. TRANSFER OF ASSETS

4.1 On and with effect from the Effective Time, the Transferred Assets and all the estate and interest of SSMB therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in SSML.

4.2 SSMB and SSML shall as and when appropriate execute all such documents and perform such other acts and things as may be required to effect or perfect the transfer to and vesting in SSML of any Transferred Asset in accordance with the terms of this Scheme or otherwise for effecting or perfecting the transfer of the Transferred Business in accordance with the terms of this Scheme.

4.3 In the case of any Policies which are subject to the benefit of any licences, permissions and/or assurances granted to SSMB by HM Treasury or any other relevant entity in connection with sanctions which, as at the Effective Time were treated as Excluded Assets and Liabilities but where, following the Effective Time, the appropriate licences, permissions and/or assurances have transferred or been granted to SSML by HM Treasury or such other relevant entity then,

immediately upon such transfer or grant taking place, such Policies shall, by the Order and without any further act or instrument, be transferred to and vested in SSML and the assets and liabilities relating to such Policies shall immediately upon the transfer of such Policies be transferred to SSML and such Policies, assets and liabilities shall thereafter be dealt with by SSML under the provisions of this Scheme in all respects as if such Policy were a Transferred Policy and as if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant.

5. TRANSFER OF LIABILITIES

On and with effect from the Effective Time, the Transferred Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of SSML and shall cease to be liabilities of SSMB.

6. TRANSFERRED POLICIES AND TRANSFERRED REINSURANCES

- 6.1 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, SSML shall by the Order, and without any further act or instrument, be entitled to all rights of SSMB under the Transferred Policies (including the right to levy additional premiums, supplementary calls, overspill calls and release calls) and be subject to all SSMB's obligations under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to SSMB and/or to rights and/or liabilities of SSMB, its board of directors or other officers, employees, agents or managers and/or to liabilities of holders of Transferred Policies to SSMB shall, to the extent necessary to give full effect to this Scheme, be read and construed as references to SSML and/or to rights and/or liabilities of SSML, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to SSML, in each case subject to and in accordance with the terms of this Scheme.
- 6.2 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, SSML shall by the Order and without any further act or instrument, be entitled to all rights of SSMB under the Transferred Reinsurances and be subject to all liabilities of SSMB under the Transferred Reinsurances (including any obligation to indemnify under the Pooling Agreements) whatsoever subsisting at the Effective Time, and in

any document evidencing or constituting a Transferred Reinsurance references to SSMB and/or to rights and/or liabilities of SSMB, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to SSMB shall, to the extent necessary to give full effect to this Scheme, be read and construed as references to SSML, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to SSML subject to and in accordance with the terms of this Scheme and the Transferred Reinsurances shall (notwithstanding any provision to the contrary therein) continue in force and shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated so that the Transferred Reinsurances shall operate for the benefit of SSML as if SSML was the original party thereto in place of SSMB.

- 6.3 Without prejudice to the generality of paragraphs 3, 4 and 5 and without prejudice to paragraphs 6.1 and 6.2, on and with effect from the Effective Time, any references to SSMB in any contract between SSMB and any third party relating to the Transferred Policies, Transferred Reinsurances or otherwise comprised in the Transferred Business, shall, to the extent necessary to give full effect to this Scheme, be read and construed as references to SSML and such contract shall operate as if SSML was the original party to the contract in place of SSMB.

7. PERSONAL DATA

- 7.1 On and with effect from the Effective Time, SSML shall:

7.1.1 succeed to all rights, liabilities and obligations of SSMB in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities to the extent transferred by this Scheme;

7.1.2 become the data controller of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Act 1998 and shall be deemed to have been the controller of all such data at all material times when personal data is processed; and

7.1.3 in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities be under the same duty as SSMB was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on SSMB and which required SSMB not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this paragraph, any reference to SSMB shall be deemed to include a reference to SSML.

8. CONTINUITY OF PROCEEDINGS

8.1 At and with effect from the Effective Time, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future) by or against SSMB from the Effective Time in connection with the Transferred Policies, the Transferred Reinsurances, the Transferred Assets or otherwise in relation to the Transferred Business shall be continued by or against SSML and SSML shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to SSMB in relation to such proceedings and SSMB shall have no liability under those proceedings and, for the avoidance of doubt, SSML, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by SSMB.

8.2 At and with effect from the Effective Time, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or similar person or entity or other proceedings for the resolution of a dispute or claim in relation to SSMB and concerning the Transferred Policies, Transferred Reinsurances, Transferred Assets or otherwise in relation to the Transferred Business shall be commenced against SSML. Any such proceedings after the Effective Time commenced in error against SSMB shall be deemed to have been commenced and shall be continued against SSML without the need for further order, whether for substitution of parties or otherwise. In any event, SSML shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to SSMB in relation to such proceedings, complaint or claim.

9. EXCLUDED POLICIES

9.1 The Excluded Policies shall not be transferred to SSML by this Scheme and the liabilities and assets of SSMB relating to the Excluded Policies shall remain liabilities and assets of SSMB subject to paragraph 9.2.

9.2 If SSMB or SSML procures the novation of any Excluded Policy to SSML, the assets and liabilities relating to such Excluded Policy shall be transferred to SSML and such Excluded Policy, assets and liabilities shall thereafter be dealt with by SSML under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferred Policy and as if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant.

10. PREMIUMS AND OTHER PAYMENTS

10.1 All premiums and calls attributable or referable to the Transferred Policies (including additional premiums, supplementary calls, overspill calls and release calls in respect of Policy Years ending on or prior to the Effective Time) shall on and after the Effective Time be payable to SSML and shall be receivable and received by SSML.

10.2 Any mandate or other instruction in force at the Effective Time (including any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other intermediary of premiums and calls payable under or in respect of any of the Transferred Policies to SSMB on their behalf shall thereafter take effect as if it had provided for and authorised such payment to SSML.

11. DECLARATION OF TRUST BY SSMB

11.1 If:

11.1.1 any asset of SSMB proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

- (a) such asset being governed by the law of any country or territory outside the UK; or

(b) for any other reason; or

11.1.2 the transfer of any asset of SSMB proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such asset is situated, SSMB shall, on and from the Effective Time, hold any asset referred to in paragraphs 11.1.1 or 11.1.2 as trustee for SSML absolutely.

11.2 SSMB shall in any event be subject to SSML's directions in respect of any asset referred to in paragraphs 11.1.1 and 11.1.2 until the relevant asset is transferred to or otherwise vested in SSML or is disposed of (whereupon SSMB shall account to SSML for the proceeds of disposal thereof), and SSML shall have authority to act as the attorney of SSMB in respect of such asset for all such purposes.

11.3 In the event of any payment being made to, or other asset being received by or being conferred upon, SSMB on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, SSMB shall as soon as is reasonably practicable after its receipt pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such asset to, or in accordance with the reasonable directions of, SSML.

11.4 Without prejudice to the foregoing provisions of this paragraph 11 or the provisions of paragraph 12, if any asset or liability included in the Order is governed by the law of any country or territory outside the UK, SSMB shall take all necessary steps as SSML may require for securing that the transfer to SSML of that asset or liability is fully effective under the law of that country or territory.

12. INDEMNITIES IN FAVOUR OF SSMB

12.1 If:

12.1.1 any liability of SSMB proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

- (a) such liability being governed by the law of any country or territory outside the UK; or
- (b) for any other reason; or

12.1.2 the transfer of any liability of SSMB proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such liability is situated,

on and with effect from the Effective Time, until the relevant liability is transferred to or becomes a liability of SSML, SSML shall discharge such liability on behalf of SSMB or, failing that, indemnify SSMB against such liability and any other loss or expense incurred by or demand made against SSMB that is attributable to such liability.

12.2 SSMB shall in any event be subject to SSML's directions in respect of any liability referred to in paragraphs 12.1.1 and 12.1.2 until the relevant liability is transferred to or becomes a liability of SSML, and SSML shall have authority to act as the attorney of SSMB in respect of such liability for all such purposes.

13. EFFECTIVE TIME

This Scheme shall become operative at noon Greenwich Mean Time on 20 February 2015, or such other time and date as may be specified in the Order sanctioning this Scheme, subject to the Bermudan Scheme having been sanctioned by the Bermudan court (following the approval of the scheme of arrangement at a scheme meeting) and the order of the Bermudan court having been delivered to the Bermudan registrar of companies under section 99(3) of the Bermudan Companies Act 1981 before such time. If the Bermudan Scheme shall not have been so sanctioned and the order not delivered before such time this Scheme shall automatically lapse.

14. MODIFICATIONS OR ADDITIONS

SSML may consent for and on behalf of SSMB to any modification of or addition to this Scheme or to any further condition or provision affecting the same which the Court may approve or impose, whether before or after the Effective Time.

15. THIRD PARTY RIGHTS AND JURISDICTION

A person who is not a party to this Scheme may not enforce any term of this Scheme pursuant to the Contracts (Rights of Third Parties) Act 1999.

16. GOVERNING LAW AND JURISDICTION

- 16.1 The validity, construction and performance of this Scheme (and any claim, dispute or matter arising under or in connection with it or its enforceability), and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.
- 16.2 Each of SSMB and SSML irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising out of or in connection with this Scheme or its enforceability or the legal relationships established by this Scheme (including non-contractual disputes or claims) and waives any objection to proceedings being brought in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inconvenient forum. Each of SSMB and SSML further irrevocably agrees that a judgment in any proceedings brought in the courts of England and Wales shall be conclusive and binding upon each of them and may be enforced in the courts of any other jurisdiction.

Claim No. 5465 of 2014

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

Before Mr Justice Arnold

Wednesday, ²¹15 January 2015

**IN THE MATTER OF PART VII OF THE
FINANCIAL SERVICES AND MARKETS ACT 2000**

AND IN THE MATTER OF:

**(1) THE STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION (BERMUDA) LIMITED**

**(2) STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION LIMITED**

ORDER

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