

CLAIM NO CR-2020-000072

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

**IN THE MATTER OF STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION
LIMITED**

**IN THE MATTER OF STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION
(EUROPE) LIMITED**

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

INSURANCE BUSINESS TRANSFER SCHEME

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1. DEFINITIONS AND INTERPRETATION

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

Act	the UK Financial Services and Markets Act 2000.
Best Estimate	an estimate of the claims liabilities with no margin for either prudence or optimism included, such estimate to be made on bases, and using policies and principles, consistent with those used by SMUAL in the estimation of such liabilities.
Blue Card	<p>a document (written or electronic) known as a ‘Blue Card’ and provided by SMUAL 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);(d) article 3 of the EU Regulation on the Liability of Carriers of Passengers by Sea in the Event of Accidents (No. 392/2009); and(e) article 12 of the Nairobi International Convention on the Removal of Wrecks 2007.

Business Day	means a day, other than a Saturday, Sunday or public holiday on which banks in the City of London are open for business generally.
Capital Resources Requirement	the minimum regulatory capital required to be held by SMUAE immediately after the Effective Time (such requirement to be determined on bases, and using policies and principles, consistent with those used by SMUAE in the determination of such requirement for the period prior to the Effective Date).
Competent Authority	any national, supra national, federal, state, municipal or local government (including any court, commission, agency, authority or other body or entity exercising powers on behalf of any of the same) or any quasi-governmental or private body or entity exercising any governmental or judicial or quasi-governmental authority or function or anybody or entity exercising regulatory authority under any law including the European Union and the European Commission.
Court	the High Court of Justice in England.
Data Protection Laws	all applicable laws, directives, statutes, regulations and codes of practice (to the extent that any codes of practice have legal effect) relating to the processing and protection of personal data.
EEA State	any state which is a contracting party to The Agreement on the European Economic Area 1992 at the Effective Time.

DISP	the Dispute Resolution: Complaints Sourcebook within the UK Financial Conduct Authority handbook.
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) all assets and liabilities of SMUAL to the extent they do not relate to the Transferred Business; (b) all assets and liabilities of SMUAL to the extent they relate to any business carried on by any of SMUAL's branches in Hong Kong, Japan and Singapore; (c) any interest of SMUAL in any freehold or leasehold property; (d) all shares held by SMUAL in the capital of Steamship (Germany) GmbH; (e) the management agreements between SMUAL and (i) Steamship P&I Management LLP and (ii) Steamship Mutual Management (Bermuda) Limited both dated 14 May 2019 and all assets and liabilities relating thereto (including any obligation thereunder in respect of the funding of any pension scheme); (f) any contract with PricewaterhouseCoopers LLP and any rights and obligations thereunder; (g) any Policies which are subject to the benefit of any licence, permission and/or assurance granted to SMUAL by HM Treasury or any other Competent

Authority in connection with sanctions where, as at the Effective Time, (i) such licence, permission and/or assurance cannot be transferred pursuant to the terms of this Scheme; and (ii) where SMUAE has not been granted the appropriate licence, permission and/or assurance by the relevant Competent Authority in connection with sanctions;

- (h) all licences, permissions or authorisations granted to SMUAL by any Competent Authority and any assets and liabilities relating thereto (other than those licences, permissions and assurances referred to in paragraph (c) of the definition of Transferred Assets);
- (i) all cash or non-cash assets held by or on behalf of SMUAL as, or in support of, the regulatory capital provisions imposed or required in respect of the Transferred Business;
- (j) all assets and liabilities of SMUAL in respect of Tax relating to the Transferred Business; and
- (k) all obligations of SMUAL to indemnify any party under the Pooling Agreements.

Excluded Policies

all Policies written by or on behalf of SMUAL in the course of carrying on the Transferred Business:

- (a) which are not capable of being transferred under section 111 of Part VII of the Act at the Effective Time;
or
- (b) which the Court determines for any reason not to transfer by virtue of the Order.

FMC Certificate	a guarantee or other undertaking given by SMUAL to the Federal Maritime Commission under the US 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 injury to, passengers) and/or section 3 (being a guarantee or an undertaking to establish financial responsibility to passengers in the event of non-performance of their transportation).
FOS	the UK Financial Ombudsman Service.
Hydra	Hydra Insurance Company Ltd, a company incorporated in Bermuda under number 34834.
Hydra Reinsurance	all contracts of reinsurance and/or indemnity entered into between Hydra, acting for and on behalf of the Hydra Steamship Cell, and SMUAL and/or SMUAB prior to the Effective Time, to the extent such contracts relate to any liabilities of SMUAL arising in respect of claims subject to the Pooling Agreements.
Independent Expert	Ruth Nelmes 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 UK 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 SMUAL (regardless of how that contract of reinsurance may be evidenced) and any contract and/or indemnity relating to the provision (including on a discretionary basis) of legal costs cover (so called ‘freight, demurrage and defence’ cover) by SMUAL (including any associated 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 any endorsement slip).
Policyholder	shall have the meaning given to the term ‘policyholder’ in the UK 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.

Policy Year	a year from noon Greenwich Mean Time on any 20 th February to noon Greenwich Mean Time on the next following 20 th February and ‘Policy Years’ shall be construed accordingly.
Pooling Agreements	the 2020 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 UK Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
Regulators	the UK Prudential Regulation Authority and the UK Financial Conduct Authority (or any successor authority or authorities with responsibility to supervise the prudential and/or conduct of business requirements which apply to the carrying on of general insurance and/or reinsurance business in the UK).
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.
SMUAB	The Steamship Mutual Underwriting Association (Bermuda) Limited, a company incorporated by act of the Bermudian legislature with registered number 3742.

SMUAE Steamship Mutual Underwriting Association (Europe) Limited, a company incorporated in Cyprus with number HE401650.

SMUAL Steamship Mutual Underwriting Association Limited, a company incorporated in England and Wales with number 00105461.

Tax means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the UK or elsewhere, payable to or imposed by any authority responsible for the collection or management of any tax; and
- (b) all charges, interest, penalties, and fines incidental or relating to any tax falling within (a) above or which arise as a result of the failure to pay any tax on the due date or to comply with any obligation relating to tax.

Transferred Assets means:

- (a) all rights of SMUAL under or by virtue of the Transferred Policies or any of the Transferred Reinsurances;
- (b) all rights of SMUAL against any third party in relation to the Transferred Business or arising as a result of SMUAL having carried on the Transferred Business;
- (c) the benefit of any licences, permissions and/or assurances granted to SMUAL by HM Treasury, or any other Competent Authority, in connection with

- sanctions and relating to the Transferred Business, to the extent the same can be transferred;
- (d) a cash amount equivalent to the amount, if any, by which the claims liabilities relating to the Transferred Business assessed on a Best Estimate basis as at the Effective Time exceed the reinsurance assets relating to the Transferred Business in the books of account of SMUAL as at the Effective Time plus the amount of the risk margin relating to the Transferred Business as at the Effective Time (such risk margin to be calculated in accordance with the requirements of Solvency II relating to the calculation of risk margin);
 - (e) a cash amount equivalent to the amount of the claims handling provision relating to the Transferred Business in the books of account of SMUAL as at the Effective Time;
 - (f) such cash amount, if any, as is required as at the Effective Time so as to ensure that SMUAE holds as at the Effective Time solvency capital representing at least 150% of the Capital Resources Requirement; and
 - (g) a cash amount equivalent to any unearned premium (less any associated deferred acquisition costs) relating to the Transferred Policies as at the Effective Time,
- but in each case excluding (i) all rights under the Excluded Policies (including the benefit of any reinsurance, retrocession or indemnity of SMUAL in relation to liabilities arising under the Excluded Policies) and (ii) all assets comprised in the Excluded Assets and Liabilities.

Transferred Business the insurance and reinsurance business carried on at any time by SMUAL up to and including the Effective Time to the extent it relates to the Transferred Policies (including all activities carried on by SMUAL in connection with or for the purposes of such business), but excluding such business to the extent it comprises (i) assets and/or liabilities relating to the Excluded Policies or (ii) the Excluded Assets and Liabilities.

Transferred Liabilities means:

- (a) all liabilities under the Transferred Policies and the Transferred Reinsurances; and
- (b) all other liabilities of SMUAL to the extent they relate to the Transferred Business (including any liabilities under Blue Cards or FMC Certificates),

but in each case excluding all liabilities under (i) the Excluded Policies and all other liabilities relating to the Excluded Policies (including liabilities relating to any reinsurance, retrocession or indemnity of SMUAL 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 SMUAL or which is otherwise a Policy of SMUAL (including any Policy written by another entity and subsequently transferred or novated to or otherwise assumed by SMUAL) prior to the Effective Time to the extent that such Policy relates to any purchasing Policyholder as named in the relevant certificate of entry the establishment of which is situated in an EEA State (other than the UK), Monaco or Switzerland, but excluding (i) the Excluded Policies and (ii) any Policy comprised in the

Excluded Assets and Liabilities.

Transferred Reinsurances all contracts of reinsurance (for the avoidance of doubt excluding any contract of reinsurance falling within the definition of ‘Policy’ above), retrocession and/or indemnity under which (and to the extent to which) SMUAL is covered in respect of any risks insured or reinsured by SMUAL under or pursuant to any Transferred Policies (including all rights to be indemnified under the Hydra Reinsurance, the Pooling Agreements or any excess of loss program for the benefit of members of the International Group) but excluding any rights of reinsurance, retrocession or indemnity (i) in respect of liabilities arising under the Excluded Policies and (ii) comprised in the Excluded Assets and Liabilities.

UK the United Kingdom of Great Britain and Northern Ireland.

US 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, in every case 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 SMUAL is a mutual insurance company incorporated under the laws of England and Wales 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 SMUAE is a mutual insurance company incorporated under the laws of Cyprus which has permission under article 26 of the Cyprus Law on Insurance and Reinsurance Services and Other Related Issues of 2016-2019 to effect and carry out contracts of general insurance under paragraphs 1, 2, 6, 7, 12, 13 and 17 of such Law. Permissions under such paragraphs are sufficient to enable SMUAE to carry on the Transferred Business.
- 2.3 It is proposed that the Transferred Business shall, in accordance with this Scheme, be transferred to SMUAE (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 SMUAE 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 SMUAL therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in SMUAE.
- 4.2 SMUAL and SMUAE 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 SMUAE 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 licence, permission and/or assurance granted to SMUAL by HM Treasury or any other Competent Authority 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 licence, permission and/or assurance has transferred or been granted to SMUAE by HM Treasury or such other Competent Authority 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 SMUAE and the assets and liabilities relating to such Policies shall immediately upon the transfer of such Policies be transferred to SMUAE and such Policies, assets and liabilities shall thereafter be dealt with by SMUAE under the provisions of this Scheme in all respects as if such Policy were a Transferred Policy and 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 SMUAE and shall cease to be liabilities of SMUAL.

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, SMUAE shall by the Order, and without any further act or instrument, be entitled to all rights of SMUAL under the Transferred Policies (including the right to levy additional premiums, supplementary calls, overspill calls and release calls) and be subject to all of SMUAL's obligations under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to SMUAL and/or to rights and/or liabilities of SMUAL, its board of directors or other officers, employees, agents or managers and/or to liabilities of holders of Transferred

Policies to SMUAL shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to SMUAE and/or to rights and/or liabilities of SMUAE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to SMUAE, in each case subject to and in accordance with the terms of this Scheme.

- 6.2 Subject to paragraph 6.3 and without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, SMUAE shall by the Order and without any further act or instrument, be entitled to all rights of SMUAL under the Transferred Reinsurances and be subject to all liabilities of SMUAL 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 SMUAL and/or to rights and/or liabilities of SMUAL, 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 SMUAL shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to SMUAE, 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 SMUAE 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 SMUAE as if SMUAE was the original party thereto in place of SMUAL.
- 6.3 Notwithstanding any other provision of this Scheme, where a Transferred Reinsurance relates to both the Transferred Business and any other business of SMUAL, and contains an annual aggregate deductible and/or an annual aggregate limit, to the extent that such a Transferred Reinsurance has, at the Effective Time, an unexhausted annual aggregate deductible or annual aggregate limit, SMUAL and SMUAE shall as soon as reasonably practicable allocate between themselves any amounts received by SMUAL and SMUAE from relevant reinsurers after the Effective Time in the following proportions:

- 6.3.1 SMUAL is allocated an amount equalling the total of (a) those claims which were paid to SMUAL and (b) those claims which would have been paid to SMUAL if such annual aggregate deductible or annual aggregate limit was not in place, expressed as a proportion of the total of (a) those claims which were paid to SMUAL and SMUAE and (b) those claims which would have been paid to SMUAL and SMUAE if such annual aggregate deductible or annual aggregate limit was not in place; and
- 6.3.2 SMUAE is allocated an amount equalling the total of (a) those claims which were paid to SMUAE and (b) those claims which would have been paid to SMUAE if such annual aggregate deductible or annual aggregate limit was not in place, expressed as a proportion of the total of (a) those claims which were paid to SMUAE and SMUAL and (b) those claims which would have been paid to SMUAE and SMUAL if such annual aggregate deductible or annual aggregate limit was not in place.
- 6.4 Without prejudice to the generality of paragraphs 3, 4 and 5 and without prejudice to paragraphs 6.1, 6.2 and 6.3, on and with effect from the Effective Time, any references to SMUAL in any contract between SMUAL 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, manipulated, construed and treated as references to SMUAE and such contract shall operate as if SMUAE was the original party to the contract in place of SMUAL.

7. PERSONAL DATA

On and with effect from the Effective Time, SMUAE shall:

- 7.1.1 succeed to all rights, liabilities and obligations of SMUAL in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, 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 Reinsurances, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Laws 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 Reinsurances, Transferred Assets or Transferred Liabilities be under the same duty as SMUAL 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 SMUAL and which required SMUAL 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 SMUAL shall be deemed to include a reference to SMUAE.

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 (including those not yet in contemplation)) by or against SMUAL from the Effective Time in connection with the Transferred Policies, the Transferred Reinsurances, the Transferred Assets, the Transferred Liabilities or otherwise in relation to the Transferred Business shall be continued by or against SMUAE and SMUAE shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to SMUAL in relation to such proceedings and SMUAL shall have no liability under those proceedings and, for the avoidance of doubt, SMUAE, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by SMUAL.

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 (whether current or future (including those not yet in contemplation)) in relation to SMUAL and concerning the Transferred Policies, Transferred Reinsurances, Transferred Assets, Transferred Liabilities or otherwise in relation to the Transferred Business shall be commenced against SMUAE. Any such proceedings after

the Effective Time commenced against SMUAL shall be deemed to have been commenced and shall be continued against SMUAE without the need for further order, whether for substitution of parties or otherwise. In any event, SMUAE shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to SMUAL in relation to such proceedings, complaint or claim.

8.3 Any judgment, order or award obtained by or against SMUAL (whether before or after the Effective Time) which relates to the Transferred Policies, the Transferred Reinsurances, the Transferred Assets, the Transferred Liabilities or otherwise to any part of the Transferred Business and which is not fully satisfied before the Effective Time shall, on and from that date, be enforceable by or against SMUAE and shall be dealt with by SMUAE without the need for further order.

8.4 Without prejudice to the foregoing provisions of this paragraph 8 and subject always to any laws, regulations or regulatory requirements applicable to SMUAE from time to time, if any proceedings with the FOS are continuing at the Effective Time or commence after the Effective Time and which relate to the acts or omissions of SMUAL prior to the Effective Time, SMUAE shall comply with:

8.4.1 each provision of DISP which relates to the complaint handling procedures of the FOS (including, but not limited to, DISP 3.7.12R) in the event that the relevant complaint is within the jurisdiction of the FOS under the provisions of DISP; and

8.4.2 any judgment, settlement, order or award (or relevant part thereof) handed down by the FOS in respect of a complaint within the jurisdiction of the FOS under the provisions of DISP.

9. EXCLUDED POLICIES

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

9.2 If:

- 9.2.1 SMUAL or SMUAE procures the novation of any Excluded Policy to SMUAE;
- 9.2.2 any impediment to the transfer of any Excluded Policy to SMUAE shall have been removed or overcome (including any waiver, consent, permission or licence having been obtained or notice having been given);
- 9.2.3 any conditions to the transfer of an Excluded Policy to SMUAE contained in the Order shall have been satisfied; or
- 9.2.4 the Court orders the transfer of such Excluded Policy to SMUAE,

then, notwithstanding any other provisions of this Scheme, the assets and liabilities relating to such Excluded Policy shall be transferred to SMUAE and such Excluded Policy, assets and liabilities shall thereafter be dealt with by SMUAE 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 SMUAE and shall be receivable and received by SMUAE.
- 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 SMUAL on their behalf shall thereafter take effect as if it had provided for and authorised such payment to SMUAE.

11. DECLARATION OF TRUST BY SMUAL

- 11.1 If:

11.1.1 any asset (other than an asset referred to in paragraph 9) of SMUAL 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 (other than an asset referred to in paragraph 9) of SMUAL 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,

SMUAL shall, on and from the Effective Time and until the relevant asset is transferred to SMUAE, hold any asset referred to in paragraphs 11.1.1 or 11.1.2 as trustee for SMUAE absolutely.

11.2 SMUAL shall in any event be subject to SMUAE's directions in respect of any asset referred to in paragraphs 11.1.1 or 11.1.2 until the relevant asset is transferred to or otherwise vested in SMUAE or is disposed of (whereupon SMUAL shall account to SMUAE for the proceeds of disposal thereof), and SMUAE shall have authority to act as the agent and/or attorney of SMUAL 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, SMUAL on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, SMUAL 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 deal with such payment or asset in accordance with the reasonable directions of, SMUAE.

11.4 Without prejudice to the foregoing provisions of this paragraph 11 or the provisions of paragraph 12, if:

11.4.1 any asset or liability included in the Order is governed by the law of any country or territory outside the UK, SMUAL shall take all necessary steps as SMUAE may require for securing that the transfer to SMUAE of that asset or liability is fully effective under the law of that country or territory; and

11.4.2 any asset or liability of SMUAL proposed to be transferred pursuant to this Scheme is not for whatever reason immediately transferred to SMUAE at the Effective Time, SMUAL shall take all necessary steps as SMUAE may require for securing the transfer to SMUAE of that asset or liability.

12. INDEMNITIES IN FAVOUR OF SMUAL

12.1 If:

12.1.1 any liability (other than a liability referred to in paragraph 9) of SMUAL 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 (other than a liability referred to in paragraph 9) of SMUAL 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 SMUAE, SMUAE shall discharge such liability on behalf of SMUAL or, failing that, indemnify SMUAL against such liability and any other loss or expense incurred by or demand made against SMUAL that is attributable to such liability.

12.2 SMUAL shall in any event be subject to SMUAE'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 SMUAE, and SMUAE shall have authority to act as the agent and/or attorney of SMUAL in respect of such liability for all such purposes.

13. EFFECTIVE TIME

Subject to the Court having made an Order under section 111 of the Act sanctioning this Scheme, this Scheme shall become operative at noon London time on 20 December 2020, or such other time and date as may be specified in the Order sanctioning this Scheme.

14. MODIFICATIONS OR ADDITIONS

14.1 Save as provided in paragraph 14.3, SMUAL and SMUAE may consent 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 before the Effective Time.

14.2 Save as provided in paragraph 14.3, SMUAE may consent for and on behalf of SMUAL to any modification of or addition to this Scheme or to any further condition or provision affecting the same provided that the Regulators have been notified of the same at least 28 days in advance of any hearing of the Court at which such application is considered, such period to commence on the earlier of:

14.2.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to SMUAL or SMUAE (as the case may be); and

14.2.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by SMUAL or SMUAE (as the case may be),

and each have indicated by the end of such 28 day notice period that they do not object thereto and which the Court may approve or impose after the Effective Time.

14.3 For the purposes of paragraphs 14.1 and 14.2, the consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors), provided that the Regulators have been notified of the same at least 28 days in advance of the amendment being made, such period commencing on the earlier of:

14.3.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to SMUAL or SMUAE (as the case may be); and

14.3.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by SMUAL or SMUAE (as the case may be),

and each have indicated by the end of such 28 day notice period that they do not object thereto.

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 UK Contracts (Rights of Third Parties) Act 1999.

16. SUCCESSORS AND ASSIGNS

This Scheme will bind and enure to the benefit of the successors and assigns of each of SMUAE and SMUAL.

17. COSTS AND EXPENSES

All costs and expenses of and incidental to the preparation and carrying into effect of this Scheme shall be borne by SMUAL.

18. GOVERNING LAW AND JURISDICTION

18.1 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.

18.2 Each of SMUAL and SMUAE 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 SMUAL and SMUAE 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.