

**CLAIM NO 5279 OF 2012**  
**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 UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION  
(BERMUDA) LIMITED**
- (2) THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION  
(EUROPE) LIMITED**

**Applicants**

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**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:

<b>Act</b>	the Financial Services and Markets Act 2000.
<b>Bermuda Scheme</b>	the scheme of arrangement under section 99 of the Bermuda Companies Act 1981 proposed to be effected by UKB for the purpose of transferring insurance creditors of UKB to UKE
<b>Blue Cards</b>	a document (written or electronic) known as a 'Blue Card' and provided by UKB evidencing that there is in place insurance meeting the liability requirements of: (a) Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 and 1992 ; and (b) Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.
<b>Branch Assets and Liabilities</b>	the assets and liabilities (including employees and any regulatory capital) of UKB to the extent they relate exclusively to the carrying on of business by UKB's branches in Japan, Hong Kong and Singapore (including, in the case of liabilities, all liabilities arising under any Policies written by UKB's branches in Japan, Singapore and Hong Kong and, in the case of assets, all rights of reinsurance, retrocession or indemnity in respect of liabilities arising under such Policies).
<b>Capitalisation and Guarantee Deed</b>	the capitalisation and guarantee deed dated 17 January 2007 between UKB and UKE, pursuant to which UKB guarantees the liabilities of UKE.

<b>Court</b>	the High Court of Justice in England.
<b>Effective Date</b>	the time and date on which the Scheme shall become operative in accordance with paragraph 12.
<b>Excluded Assets and Liabilities</b>	<p>means the:</p> <ul style="list-style-type: none"> <li>(a) Capitalisation and Guarantee Deed;</li> <li>(b) UKE Membership Interest;</li> <li>(c) Hydra Governing Instrument;</li> <li>(d) Hydra Shares and Capital;</li> <li>(e) Branch Assets and Liabilities;</li> <li>(f) TMH Shares and Capital;</li> <li>(g) UK P&amp;I PT Shares and Capital;</li> <li>(h) IPIR Shares and Capital;</li> <li>(i) Swiss Re Contract; and</li> <li>(j) Perpetual Subordinated Capital Securities,</li> </ul> <p>including all assets and liabilities of UKB relating to any of the above at the Effective Date (and including in the case of the Perpetual Subordinated Capital Securities assets with a value equivalent as at the Effective Date to the principal outstanding amount of such securities as at the Effective Date).</p>
<b>Excluded Policies</b>	all Policies written by or on behalf of UKB 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 United Kingdom is the EEA State in which the risk is situated; and
- (b) the FSA 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 UKB to the Federal Maritime Commission under Section 2 of the U.S. Public Law 89-777 (being a guarantee or undertaking to secure payment of liabilities for loss of life of, or personal injury to, passengers).

**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 UK Cell, and UKB prior to the Effective Date in respect of liabilities

arising in respect of claims subject to the Pooling Agreements.

<b>Hydra Shares and Capital</b>	the shares in the general capital of, or any segregated account of, Hydra registered in the name of UKB (including the segregated account known as the ‘UKB Hydra Cell’), and any capital contributed to Hydra by UKB, in each case at the Effective Date.
<b>Independent Expert</b>	Michael Barkham of Ernst and 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 Insurance Regulator pursuant to section 109 of the Act, or any successor appointed to report on the same and approved by the Insurance Regulator.
<b>Insurance Regulator</b>	the Financial Services Authority or such other governmental, statutory or other authority as shall from time to time carry out such functions in relation to the supervision of non-life insurance business carried on in the United Kingdom as are on the date of this Scheme allocated to the FSA under the Act.
<b>International Group</b>	the International Group of P&I Associations as constituted from time to time.
<b>IPIR</b>	International P&I Reinsurance Company Limited, a company incorporated in the Isle of Man under registered number 053881C.
<b>IPIR Reinsurance</b>	all reinsurance contracts between IPIR and UKB entered into prior to the Effective Date pursuant to which IPIR has agreed

to reinsure liabilities of UKB.

**IPIR Shares and Capital** the shares in the capital of IPIR registered in the name of UKB and any capital contributed by UKB to IPIR, in each case at the Effective Date.

**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.

**Perpetual Subordinated Capital Securities** the US\$100,000,000 of perpetual subordinated capital securities issued by UKB and constituted by a trust deed dated 22 August 2008 (as amended from time to time) between UKB and BNY Corporate Trustee Services Limited, including all trustee, agency, security, depositary and other agreements and arrangements ancillary thereto at the Effective Date.

**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 UKB, regardless of how that contract of reinsurance may be

evidenced.

<b>Policy Year</b>	a year from noon G.M.T. on any 20th February to noon G.M.T. on the next following 20th February and 'Policy Years' shall be construed accordingly.
<b>Policyholder</b>	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.
<b>Pooling Agreements</b>	the 2012 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.
<b>RAO</b>	the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
<b>Scheme</b>	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 13.
<b>Subsidiary</b>	shall have the meaning given to that term in section 1159 of and schedule 6 to the UK Companies Act 2006.
<b>Thomas Miller</b>	TMH and its Subsidiaries, a professional services group being the managers of UKB and UKE and the agents of such managers.

**TMH** Thomas Miller Holdings Limited, a company incorporated in Bermuda under registered number EC26282.

**TMH Shares and Capital** any shares in the capital of TMH registered in the name of UKB, and any capital contributed by UKB to TMH in each case at the Effective Date.

**Transferred Assets** the following assets of UKB at the Effective Date:

- (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 UKB having carried on the Transferred Business; and
- (c) all other assets of UKB in relation to the Transferred Business,

but in each case excluding (i) all rights under the Excluded Policies (including the benefit of any reinsurance, retrocession or indemnity of UKB 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 UKB at the Effective Date including all activities carried on by UKB or Thomas Miller in connection with or for the purposes of such business save to the extent that such business consists of:



- (a) assets and/or liabilities relating to the Excluded Policies;
- (b) the Excluded Assets and Liabilities; or
- (c) Policies written by any branch of UKB in Hong Kong, Singapore or Japan.

**Transferred  
Liabilities**

the following liabilities of UKB at the Effective Date:

- (a) all liabilities under the Transferred Policies and the Transferred Reinsurances (including all obligations to indemnify under the Pooling Agreements);
- (b) all other liabilities of UKB 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 of UKB in relation to liabilities 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 UKB prior to the Effective Date and comprised in the Transferred Business but excluding the Excluded Policies and any Policy comprised in the Excluded Assets and Liabilities.

<b>Transferred Reinsurances</b>	all contracts of reinsurance, retrocession and/or indemnity under which (and to the extent to which) UKB is covered in respect of any risks insured or reinsured by UKB under or pursuant to any Policies issued by or on behalf of UKB before the Effective Date (excluding the Excluded Policies and any Policies written by UKB's branches in Japan, Singapore and Hong Kong), including 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 (a) rights of reinsurance, retrocession or indemnity in respect of liabilities arising under Excluded Policies and (b) rights of reinsurance, retrocession or indemnity in respect of liabilities arising under Policies written by UKB's branches in Japan, Singapore and Hong Kong.
<b>UKB</b>	The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, a company incorporated in Bermuda under registered number 1446.
<b>UKE</b>	The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited, a company incorporated in England under registered number 22215.
<b>UKE Membership Interest</b>	UKB's membership interest in UKE.
<b>UK P&amp;I PT</b>	UK Club Private Trust Company Ltd, a company incorporated

in Bermuda under registered number 28951.

**UK P&I PT Shares** any shares in the capital of UK P&I PT registered in the name of UKB and any capital contributed by UKB to UK P&I PT, in each case at the Effective Date.

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 rights under guarantees), benefits, 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 'assignment' 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 UKB is a mutual insurance company incorporated under the laws of Bermuda which has permission under Part IV 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 UKE is a mutual insurance company incorporated under the laws of England which has permission under Part IV 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 UKB is the sole member of UKE.

2.4 It is proposed that the Transferred Business shall, in accordance with this Scheme, be transferred to UKE (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 UKE 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 Date the Transferred Assets and all the estate and interest of UKB therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in UKE.

4.2 UKB and UKE 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 UKE 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.

#### **5. TRANSFER OF LIABILITIES**

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

#### **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 Date UKE shall by the Order, and without any further act or instrument, be entitled to all rights of UKB under the Transferred Policies (including the right to levy supplementary calls, overspill calls and release calls) and be subject to all UKB's obligations under the Transferred Policies whatsoever subsisting on the Effective Date, and in any document evidencing or constituting a Transferred Policy references to UKB and/or to rights and/or liabilities of UKB, its board of directors or other officers, employees, agents or managers and/or to liabilities of holders of Transferred Policies to UKB shall, to the extent necessary to give full effect to this Scheme, be read and construed as references to UKE and/or to rights and/or liabilities of UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to UKE, 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 Date UKE shall by the Order and without any further act or instrument, be entitled to

all rights of UKB under the Transferred Reinsurances and be subject to all liabilities of UKB under the Transferred Reinsurances (including any obligation to indemnify under the Pooling Agreements) whatsoever subsisting on the Effective Date, and in any document evidencing or constituting a Transferred Reinsurance references to UKB and/or to rights and/or liabilities of UKB, 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 UKB shall, to the extent necessary to give full effect to this Scheme, be read and construed as references to UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers under Transferred Reinsurances to UKE 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 the Scheme, be read, manipulated, construed and treated so that the Transferred Reinsurances shall operate for the benefit of UKE as if UKE was the original party thereto in place of UKB.

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 Date, any references to UKB in any contract between UKB and any third party relating to the Transferred Policies 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 UKE and such contract shall operate as if UKE was the original party to the contract in place of UKB.

## **7. CONTINUITY OF PROCEEDINGS**

7.1 At and with effect from the Effective Date, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim (whether current or future) by or against UKB from the Effective Date in connection with the Transferred Policies, the Transferred Reinsurances or otherwise in relation to the Transferred Business shall be continued by or against UKE and UKE shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to UKB in relation to such proceedings and UKB shall have no liability

under those proceedings and, for the avoidance of doubt, UKE, in its absolute discretion, may determine to discontinue after the Effective Date any such proceedings brought by UKB.

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

## **8. EXCLUDED POLICIES**

8.1 The Excluded Policies shall not be transferred to UKE by this Scheme and the liabilities and assets of UKB relating to the Excluded Policies shall remain liabilities and assets of UKB subject to clause 8.2.

8.2 If UKB or UKE procures the novation of any Excluded Policy to UKE, the assets and liabilities relating to such Excluded Policy shall be transferred to UKE and such Excluded Policy, assets and liabilities shall thereafter be dealt with by UKE 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.

## **9. PREMIUMS AND OTHER PAYMENTS**

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

9.2 Any mandate or other instruction in force on the Effective Date (including, without limitation, 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 UKB on their behalf shall thereafter take effect as if it had provided for and authorised such payment to UKE.

## **10. DECLARATION OF TRUST BY UKB**

10.1 If:

10.1.1 any property of UKB proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred on the Effective Date by the Order by reason of:

(a) such property being outside the jurisdiction of the Court; or

(b) for any other reason; or

10.1.2 the transfer of any property of UKB proposed to be transferred pursuant to this Scheme, outside the jurisdiction of the Court, is not recognised by the laws of the jurisdiction in which such property is situated,

UKB shall, on and from the Effective Date, hold any property referred to in 10.1.1. or 10.1.2. of this paragraph as trustee for UKE absolutely.

10.2 UKB shall in any event be subject to UKE's directions in respect of any property referred to in sub-paragraphs 10.1.1 and 10.1.2 of paragraph 10.1 until the relevant property is transferred to or otherwise vested in UKE or is disposed of (whereupon UKB shall account to UKE for the proceeds of disposal thereof), and UKE shall have authority to act as the attorney of UKB in respect of such property for all such purposes.

10.3 In the event of any payment being made to, property being received by or right being conferred upon UKB on or after the Effective Date in respect of the Transferred Business or any Transferred Asset, UKB 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 property or right to, or in accordance with the reasonable directions of, UKE.

#### **11. INDEMNITIES IN FAVOUR OF UKB**

On and with effect from the Effective Date, until the relevant liability is transferred to or becomes a liability of UKE, UKE shall discharge on behalf of UKB or, failing that, indemnify UKB against:

- (a) all Transferred Liabilities which are not, or are not capable of being, transferred by this Scheme or a vesting order pursuant to Section 112 of the Act (whether made before, on or after the Effective Date); and
- (b) any other loss or expense incurred by or demand made against UKB that is attributable to the Transferred Business.

#### **12. EFFECTIVE DATE**

This Scheme shall become operative at noon Greenwich Mean Time on 20 February 2013, or such other time and date as may be specified in the Order sanctioning this Scheme, subject to the Bermuda Scheme having been sanctioned by the Bermuda court (following the approval of the scheme of arrangement at a scheme meeting) and the order of the Bermuda court having been delivered to the registrar of companies under section 99(3) of the Bermuda Companies Act 1981 before such time. If the Bermuda Scheme shall not have been so sanctioned and the order not delivered before such time this Scheme shall automatically lapse.

#### **13. MODIFICATIONS OR ADDITIONS**

UKE may consent for and on behalf of UKB and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the Court may approve or impose.

#### **14. THIRD PARTY RIGHTS**

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.

**15. GOVERNING LAW**

This Scheme shall be governed by and construed in accordance with English law.