



IN THE HIGH COURT OF JUSTICE

- 2018 - 003733

Claim No. CR

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CR-2018-003733

INSOLVENCY AND COMPANIES LIST (ChD)

Before Mr Justice Nugee

17 June 2019

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

AND IN THE MATTER OF:

**(1) THE SCOTTISH BOAT OWNERS' MUTUAL INSURANCE
ASSOCIATION**

(2) TT CLUB MUTUAL INSURANCE LIMITED

ORDER

UPON THE APPLICATION by Claim Form dated 12 March 2019 of (1) the above-named The Scottish Boatowners' Mutual Insurance Association whose registered office is situated at 26-30 Marine Place, Buckie, Banffshire, Scotland AB56 1UT ('**SBO**') and (2) the above-named TT Club Mutual Insurance Limited ('**TTI**') whose registered office is situated at 90 Fenchurch Street, London EC3M 4ST, for (among other things) the sanctioning of the scheme set out at exhibit 1 to the first witness statement of Charles Edward Fenton (the '**Scheme**') pursuant to Part VII of the Financial Services and Markets Act 2000 (the '**Act**');

AND UPON HEARING Adam Chichester-Clark, Counsel 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. the Transferred Business shall be transferred to and be vested in TTI 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 SBO therein shall, by this Order and without any further act or instrument, be transferred to and be vested in TTI;
3. SBO and TTI 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 TTI 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;
4. on and with effect from the Effective Time, the Transferred

Liabilities shall, by this Order and without any further act or instrument, be transferred to and become liabilities of TTI and shall cease to be liabilities of SBO;

5. without prejudice to the generality of paragraphs 1, 2, 3 and 4 on and with effect from the Effective Time, TTI shall by this Order, and without any further actor instrument, be entitled to all rights of SBO under the Transferred Policies and be subject to all SBO's obligations under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to SBO and/or to rights and/or liabilities of SBO, its board of directors or other officers, employees or agents and/or to liabilities of holders of Transferred Policies to SBO shall, to the extent necessary to give full effect to the Scheme, be read, manipulated, construed and treated as references to TTI and/or to rights and/or liabilities of TTI its board of directors or other officers, employees or agents and/or to liabilities of the holders of Transferred Policies to TTI, in each case subject to and in accordance with the terms of the Scheme;
6. without prejudice to the generality of paragraphs 1, 2, 3 and 4, on and with effect from the Effective Time, TTI shall by this Order, and without any further act or instrument, be entitled to all rights of SBO under the Transferred Reinsurances and be subject to all liabilities of SBO under the Transferred Reinsurances whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Reinsurance references to SBO and/or to rights and/or liabilities of SBO, its board of directors or other officers, employees or agents and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to SBO shall, to the extent necessary to give full effect to the Scheme,

be read, manipulated, construed and treated as references to TTI, its board of directors or other officers, employees or agents and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to TTI 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 TTI as if TTI was the original party thereto in place of SBO;

7. without prejudice to the generality of paragraphs 1, 2, 3 and 4, and without prejudice to paragraphs 5 and 6, on and with effect from the Effective Time, any references to SBO in any contract between SBO 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 the Scheme, be read, manipulated, construed and treated as references to TTI and such contract shall operate as if TTI was the original party to the contract in place of SBO;
8. on and with effect from the Effective Time, TTI shall:
 - (i) succeed to all rights, liabilities and obligations of SBO 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 the Scheme;
 - (ii) 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
 - (iii) 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 SBO 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 SBO and which required SBO 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 SBO shall be deemed to include a reference to TTI;

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 or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) by or against SBO 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 TTI and TTI shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to SBO in relation to such proceedings and SBO shall have no liability under those proceedings and, for the avoidance of doubt, TTI, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by SBO;
10. 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 (whether current or future (including those not yet in contemplation)) in relation to SBO and concerning the Transferred Policies, Transferred Reinsurances, Transferred Assets, Transferred Liabilities or otherwise in relation to the Transferred Business shall be commenced against TTI. Any such proceedings after the Effective Time commenced against SBO shall be deemed to have been commenced and shall be continued against TTI without the need for further order, whether for substitution of parties or otherwise. In any event, TTI shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to SBO in relation to such proceedings, complaint or claim;
11. any judgment, order or award obtained by or against SBO (whether

before or after the Effective Time) which relates to any part of the Transferred Business and which is not fully satisfied before the Effective Date shall, on and from that date, become enforceable by or against TTI and shall be dealt with by TTI without the need for further order.

12. the Excluded Policies shall not be transferred to TTI by the Scheme and the liabilities and assets of SBO relating to the Excluded Policies shall remain liabilities and assets of SBO subject to paragraph 13;

13. if

(i) SBO or TTI procures the novation of any Excluded Policy to TTI;

(ii) any impediment to the transfer of any Excluded Policy to TTI shall have been removed or overcome (including any waiver, consent, permission or licence having been obtained or notice having been given);

(iii) any conditions to the transfer of an Excluded Policy to TTI contained in this Order shall have been satisfied; or

(iv) the Court orders the transfer of such Excluded Policy to TTI,

then, notwithstanding any other provisions of the Scheme, the assets and liabilities relating to such Excluded Policy shall be transferred to TTI and such Excluded Policy, assets and liabilities shall thereafter be dealt with by TTI 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;

14. if:

(i) any asset (other than an asset referred to in paragraph 12) of SBO proposed to be transferred pursuant to the 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
- (ii) the transfer of any asset (other than an asset referred to in paragraph 12) of SBO proposed to be transferred pursuant to the Scheme is not recognised by the law of the country or territory in which such asset is situated,

SBO shall, on and from the Effective Time and until the relevant asset is transferred to TTI, hold any asset referred to in this paragraph 14 as trustee for TTI absolutely.

15. SBO shall in any event be subject to TTI's directions in respect of any asset referred to in paragraph 14 until the relevant asset is transferred to or otherwise vested in TTI or is disposed of (whereupon SBO shall account to TTI for the proceeds of disposal thereof), and TTI shall have authority to act as the attorney of SBO in respect of such asset for all such purposes.
16. In the event of any payment being made to, or other asset being received by or being conferred upon, SBO on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, SBO 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, TTI.
17. without prejudice to the foregoing provisions of paragraphs 14 to 16 or the provisions of paragraph 18, if:
 - (i) any asset or liability included in this Order is governed by

the law of any country or territory outside the UK, SBO shall take all necessary steps as TTI may require for securing that the transfer to TTI of that asset or liability is fully effective under the law of that country or territory; and

- (ii) any asset or liability of SBO proposed to be transferred pursuant to the Scheme is not for whatever reason immediately transferred to TTI at the Effective Time, SBO shall take all necessary steps as TTI may require for securing the transfer to TTI of that asset or liability;

18. If:

- (i) any liability (other than a liability referred to in paragraph 12) of SBO 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 (other than a liability referred to in paragraph 12) of SBO proposed to be transferred pursuant to the 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 TTI, TTI shall discharge such liability on behalf of SBO or, failing that, indemnify SBO against such liability and any other loss or expense incurred by or demand made against SBO that is attributable to such liability.

19. SBO shall in any event be subject to TTI's directions in respect of any liability referred to in paragraph 18 until the relevant liability is transferred to or becomes a liability of TTI, and TTI shall have authority to act as the attorney of SBO in respect of such liability for all such purposes;
20. the Scheme shall become operative at noon (London time) on 28 June 2019, or such other time and date as the Court may order;

AND IT IS FURTHER ORDERED that:

21. the production of a copy of this Order and a copy of a certificate by a director of SBO for the time being that the Scheme has taken effect shall, for all purposes, be evidence of the transfer to, and vesting in, TTI 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;
22. 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:
 - (i) invalidate or discharge any agreement or other thing;
 - (ii) 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 SBO or TTI is a party or is bound;
 - (iii) allow any party to any agreement to terminate that agreement when it would not otherwise have been able to do so;
 - (iv) entitle any party to any agreement to which SBO or TTI 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

- (v) 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;

23. in accordance with Section 112(10) of the Act, TTI 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

24. there shall be liberty to SBO and/or TTI to apply:

- (i) for such Orders as may be expedient or necessary for the purposes set out in Section 112(1) of the Act; and

- (ii) generally.