

CLAIM NO CR-2018-003733
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INSOLVENCY AND COMPANIES LIST (ChD)

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

AND

IN THE MATTER OF:

- (1) THE SCOTTISH BOATOWNERS' MUTUAL INSURANCE ASSOCIATION**
(2) TT CLUB MUTUAL INSURANCE LIMITED

Applicants

INSURANCE BUSINESS TRANSFER SCHEME

ReedSmith

Reed Smith LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2RS
Phone: +44 (0) 20 3116 3000
Fax: +44 (0) 20 3116 3999
DX1066 City / DX18 London
reedsmith.com

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 Financial Services and Markets Act 2000.

Court the High Court of Justice in England.

Data Protection Laws all applicable laws and regulations relating to the processing and protection of personal data.

Effective Time the time and date on which the Scheme shall become operative in accordance with paragraph 12.

Excluded Assets and Liabilities means:
(i) the reinsurance agreement between SBO and TTI dated 30 June 2017 including the rights and obligations of SBO arising out of or in connection with it; and
(ii) to the extent any such assets or liabilities exist as at the Effective Time, or at any time thereafter, all assets and liabilities relating to the Pension Plan.

Excluded Policies all Policies written by or on behalf of SBO 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.

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.
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.
Pension Plan	SBO's defined pension plan known as the 'Scottish Boatowners' Mutual Association Pension and Life Assurance Scheme (1971)'.
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, policies, policy schedules and any clauses, endorsements, special conditions, warranties, variations, notices of termination and addenda to any of the foregoing, and shall in addition include any contract of reinsurance written by SBO, regardless of how that contract of reinsurance may be evidenced.
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.

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

Regulators means 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).

SBO The Scottish Boatowners’ Mutual Insurance Association.

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 13.

Transferred Assets all of the assets of SBO at the Effective Time including:

- (a) all rights under the Transferred Policies and the Transferred Reinsurances;
- (b) all rights against any third party in relation to the Transferred Business;
- (c) all cash at bank and in hand;
- (d) all amounts owed to SBO in relation to the Transferred Business; and
- (e) all other assets of SBO in relation to the Transferred Business (including any interest of SBO in any

freehold property or in any property lease), but in each case excluding (i) all rights under the Excluded Policies (including the benefit of any reinsurance, retrocession or indemnity SBO 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 business carried on at any time by SBO up to and including the Effective Time, 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

all of the liabilities of SBO at the Effective Time including:

- (a) all liabilities under the Transferred Policies and the Transferred Reinsurances;
- (b) all other liabilities of SBO in relation to the Transferred Business (including any liability in relation to any interest of SBO in any freehold property or in any property lease); and
- (c) all other amounts owing by SBO in relation to the Transferred Business,

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 SBO 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 SBO prior to the

Effective Time and comprised in the Transferred Business, but excluding (i) the Excluded Policies and (ii) 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) SBO is covered in respect of any risks insured by SBO under or pursuant to any Transferred Policies but excluding (i) rights of reinsurance, retrocession or indemnity in respect of liabilities arising under the Excluded Policies and (ii) the Excluded Assets and Liabilities.

TTI TT Club Mutual Insurance Limited.

UK the United Kingdom of Great Britain and Northern Ireland.

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 ‘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 SBO is a mutual insurance company incorporated under the laws of Scotland which has permission under Part 4A of the Act to effect and carry out contracts of general insurance under paragraphs 1, 4, 5, 6, 7, 11, 12 and 15 of part 1 of schedule 1 to the RAO. However, in

practice, SBO has not written contracts of general insurance in classes 4, 5 and 11 of part 1 of schedule 1 to the RAO.

2.2 TTI 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, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of part 1 of schedule 1 to the RAO.

2.3 The risks insured by SBO are 100 per cent. reinsured by TTI. Such insurance is limited to the ultimate net basis sustained by SBO, that is to say, after deduction of:

2.3.1 any salvage or recovery from any third party;

2.3.2 any deductible or other deduction applied under the terms of the original insurance or reinsurance underwritten by SBO;

2.3.3 any recovery made under any reinsurance, indemnity or loss-sharing arrangement of SBO other than with respect to TTI, such as stop-loss, excess of loss and facultative reinsurance as provided to SBO before commencement of the reinsurance arrangements with TTI.

2.4 It is proposed that the Transferred Business shall, in accordance with this Scheme, be transferred to TTI (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 TTI 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 SBO therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in TTI.

4.2 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 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 Time, the Transferred Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of TTI and shall cease to be liabilities of SBO.

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, TTI shall by the Order, and without any further act or 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 this 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 this Scheme.

6.2 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, TTI shall by the 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 this 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 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 TTI as if TTI was the original party thereto in place of SBO.

- 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 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 this 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.

7. PERSONAL DATA

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

- 7.1.1 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 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 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.

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 and 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.

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 and 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.

8.3 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, be enforceable by or against TTI and shall be dealt with by TTI without the need for further order.

9. EXCLUDED POLICIES

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

9.2 If:

9.2.1 SBO or TTI procures the novation of any Excluded Policy to TTI;

9.2.2 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);

9.2.3 any conditions to the transfer of an Excluded Policy to TTI contained in the Order shall have been satisfied; or

9.2.4 the Court orders the transfer of such Excluded Policy to TTI,

then, notwithstanding any other provisions of this 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 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. DECLARATION OF TRUST BY SBO

10.1 If:

10.1.1 any asset (other than an asset referred to in paragraph 9) of SBO 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

10.1.2 the transfer of any asset (other than an asset referred to in paragraph 9) of SBO 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,

SBO shall, on and from the Effective Time and until the relevant asset is transferred to TTI, hold any asset referred to in paragraphs 10.1.1 or 10.1.2 as trustee for TTI absolutely.

10.2 SBO shall in any event be subject to TTI's directions in respect of any asset referred to in paragraphs 10.1.1 or 10.1.2 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.

10.3 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.

10.4 Without prejudice to the foregoing provisions of this paragraph 10 or the provisions of paragraph 11, if:

10.4.1 any asset or liability included in the 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

10.4.2 any asset or liability of SBO proposed to be transferred pursuant to this 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.

11. INDEMNITIES IN FAVOUR OF SBO

11.1 If:

11.1.1 any liability (other than a liability referred to in paragraph 9) of SBO 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

11.1.2 the transfer of any liability (other than a liability referred to in paragraph 9) of SBO 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 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.

11.2 SBO shall in any event be subject to TTI's directions in respect of any liability referred to in paragraphs 11.1.1 and 11.1.2 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.

12. 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 28 June 2019, or such other time and date as may be specified in the Order sanctioning this Scheme.

13. MODIFICATIONS OR ADDITIONS

13.1 Save as provided in paragraph 13.3, SBO and TTI 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.

13.2 Save as provided in paragraph 13.3, TTI may consent for and on behalf of SBO 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 and have indicated that they do not object thereto and which the Court may approve or impose after the Effective Time.

13.3 For the purposes of paragraphs 13.1 and 13.2, 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 and have indicated that they do not object thereto.

14. 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.

15. SUCCESSORS AND ASSIGNS

This Scheme will bind and enure to the benefit of the successors and assigns of each of TTI and SBO.

16. COSTS AND EXPENSES

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

17. GOVERNING LAW AND JURISDICTION

17.1 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.

17.2 Each of SBO and TTI 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 SBO and TTI 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.