

Dated 25 June 2004

THE BERMUDA FIRE & MARINE INSURANCE COMPANY LIMITED (IN
LIQUIDATION)

AND

GARETH HOWARD HUGHES
JOHN CHRISTOPHER MCKENNA
LEON ANTHONY JOAQUIN

AND

THE MEMBERS OF THE COMMITTEE OF INSPECTION

SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING

Clifford Chance Limited Liability Partnership
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THIS SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING is dated 25 June 2004 and is made

BETWEEN:

- (1) **The Bermuda Fire & Marine Insurance Company Limited (in liquidation) (the "Company") acting by Gareth Howard Hughes, John Christopher McKenna and Leon Anthony Joaquin**, in their capacity as the Liquidators of the Company under the Original Scheme (as each of those terms is defined in the Original Scheme) (together, the "**Liquidators**");
- (2) **The Liquidators**; and
- (3) **Each member of the Creditors Committee** established pursuant to Clause 6.1 of the Original Scheme and the current members of which are signatories to this Supplemental Memorandum of Understanding (the "**Committee of Inspection**").

WHEREAS

- (A) The Company and its Scheme Creditors (as defined in the Original Scheme) entered into a Scheme of Arrangement pursuant to Section 99 of the Companies Act 1981 of Bermuda and Section 425 of the Companies Act 1985 of Great Britain dated 2 October 1996 and which became effective on 14 January 1997 (the "**Original Scheme**").
- (B) The Liquidators have acted as the Liquidators, as agents of the Company under the Original Scheme since it became effective.
- (C) A committee of inspection was established pursuant to Clause 6.1 of the Original Scheme, the current members of which are the Committee of Inspection.
- (D) In connection with the Original Scheme, the Liquidators and the initial members of the committee of inspection established under Clause 6.1 of the Original Scheme entered into a memorandum of understanding (the "**Original Memorandum of Understanding**") addressing how certain aspects of the Original Scheme involving the Liquidators and concerning the committee of inspection established under the Original Scheme would initially operate in practice.
- (E) The Company proposes to enter into a further Scheme of Arrangement (the "**Amending Scheme**") under the said Acts, the purpose of which is to amend and restate the Original Scheme in the form set out at Schedule 1 to the Amending Scheme or in the form sanctioned by the Courts (such Scheme of Arrangement as amended and restated being referred to herein as the "**Restated Scheme**"). From the date it becomes effective, the Restated Scheme will be binding on, amongst others, the Scheme Creditors (as defined in the Restated Scheme).
- (F) The Liquidators will continue to act as such in respect of the Amending Scheme and Restated Scheme in accordance with its terms. The Committee of Inspection have agreed to continue to act as the committee of inspection in respect of the Amending Scheme and Restated Scheme in accordance with its terms.

- (G) This Supplemental Memorandum of Understanding sets out the understanding the Liquidators and the Committee of Inspection have reached as to how certain new provisions of the Restated Scheme will operate in practice should the Restated Scheme become effective. The Liquidators and Committee of Inspection will continue to respect the agreements and understandings contained in the Original Memorandum of Understanding. Once the Restated Scheme has become effective, this Supplemental Memorandum of Understanding will be taken to have been written pursuant to Clause 6.4.6 of the Restated Scheme and will serve to incorporate those additional provisions set out in paragraphs 2 to 6 below into the Original Memorandum of Understanding.
- (H) Words and expressions defined in the Amending Scheme and Restated Scheme shall, unless the context otherwise requires, have the same meanings in this Supplemental Memorandum of Understanding. In the event of any conflict or inconsistency between the terms of this Supplemental Memorandum of Understanding and the Restated Scheme, the terms of the Restated Scheme shall prevail. Clause numbers in this Supplemental Memorandum of Understanding refer to Clauses of the Restated Scheme.
- (I) This Supplemental Memorandum of Understanding (together with the Original Memorandum of Understanding) will be available for inspection by creditors with the Restated Scheme.

NOW IT IS HEREBY AGREED:

1. THE ORIGINAL MEMORANDUM OF UNDERSTANDING

- 1.1 The provisions of this Supplemental Memorandum of Understanding will be incorporated into and will be without prejudice to the provisions of the Original Memorandum of Understanding.

2. THE SCHEME ADJUDICATOR

- 2.1 The Liquidators expect the majority of Notified Scheme Claims and Outwards Reserves and IBNR to be settled through the normal interaction between the Scheme Creditor concerned and the KMS claims' department.
- 2.2 The Scheme Adjudicator (and any alternate/s appointed under Clause 8.2.5) will have had no previous involvement acting for the Company. The Scheme Adjudicator (and any such alternate) will be expected by the Liquidators to operate in a fair and impartial manner without predisposition as to the outcome of the matter.
- 2.3 In the event the Scheme Adjudicator becomes aware he has a conflict of interest in relation to any matter referred to him under Part 8 of the Restated Scheme, he is required to notify the Liquidators of the relevant details. The Liquidators will, should they agree a conflict exists, appoint an alternate, unconflicted Scheme Adjudicator. Conflicts of interest could include, but not be restricted to, the following situation:
 - 2.3.1 where the Scheme Adjudicator has an existing professional relationship with the Scheme Creditor subject to the adjudication; and

- 2.3.2 where the Scheme Adjudicator has had a prior professional involvement acting either for the Scheme Creditor subject to the adjudication or against the Scheme Creditor subject to the adjudication.
- 2.4 It is open to the Scheme Adjudicator and the Scheme Creditor to agree to waive a conflict of interest, should it arise, with the agreement of the Liquidators.
- 2.5 The Liquidators will entertain challenges by Scheme Creditors subject to adjudication to the Scheme Adjudicator on the grounds of conflict of interest, for "cause". "Cause" shall require evidence that would lead a reasonable person to conclude that the Scheme Adjudicator may be incapable of acting in a fair and impartial manner in the resolution of the dispute, the subject of the adjudication. Proof that the Scheme Adjudicator has acted adversely to the Scheme Creditor in the past and taken an adverse position with the Scheme Creditor on the policy or issue to be adjudicated upon shall give rise to a presumption that "cause" has been shown (except if such position has been taken in the role of Scheme Adjudicator of the Company or another estate). Upon a finding of "cause" an alternate Scheme Adjudicator shall be appointed.
- 2.6 It is the Liquidators' intention that the adjudication process operates effectively and fairly. The Liquidators will be concerned to ensure that Scheme Creditors believe that any disputed Notified Scheme Claims and/or disputed Outwards Reserves and IBNR they may have are properly handled, regardless of outcome, and that actual conflicts and, if relevant, perceived conflicts are dealt with in a manner which facilitates the process.
- 2.7 The Liquidators will advise the Committee of Inspection, on a quarterly basis, of the number of claims in adjudication and their current status, for information purposes only.
3. **THE SCHEME ADJUDICATOR - ACCESS TO ADDITIONAL ADVISERS**
- 3.1 The Scheme Adjudicator (or any alternate) shall, when he deems necessary, consult with the Scheme Actuary and with such other advisers, including US coverage attorneys, other legal advisers and experts in relevant disciplines.
- 3.2 The Liquidators will build up a list of recognised, relevant law firms and advisers but it is accepted that such list cannot be prescriptive.
- 3.3 The Scheme Adjudicator (or any alternate) will advise the Liquidators who he wishes to consult. The Liquidators, in turn, will advise the Scheme Adjudicator (or any alternate) if they believe, for any reason, the proposed choice might not be appropriate. The Scheme Adjudicator will make reference to the list of law firms and advisers referred to in paragraph 3.2 above and will notify the Liquidators if he believes some other firm or adviser is, in his opinion, more appropriate in a particular circumstance.
- 3.4 The Liquidators will agree with the Scheme Adjudicator (or any alternate) appropriate levels of remuneration that may be paid for such advice.

4. **REMOVAL OF SCHEME ACTUARY AND SCHEME ADJUDICATOR**

- 4.1 The Liquidators will consult the Committee of Inspection in any situation where removal of the Scheme Actuary and/or Scheme Adjudicator under Clauses 8.3.2 or 8.2.3(e) (respectively) for good cause is under consideration.

5. **SUSPENDED SCHEME LIABILITIES**

- 5.1 The Liquidators will advise the Committee of Inspection, on a quarterly basis, of the number of Suspended Scheme Liabilities and their current status, for information purposes only.

6. **PROVIDING FOR INDEMNIFICATION OBLIGATIONS**

- 6.1 In conjunction with the Committee of Inspection, the Liquidators are currently exploring the appropriate arrangements to be put in place under Clause 9.4.2 to be effective and operative no later than the date upon which the Substantive Closure Distribution is paid to Scheme Creditors.
- 6.2 The Liquidators will, subject to fiscal and commercial considerations and the approval of the majority of the Committee of Inspection, create a trust for the purpose referred to in Clause 9.4.2 in due course, and/or purchase insurance cover.
- 6.3 For the avoidance of doubt, in the event that the trust mechanism is adopted under Clause 9.4.2, provision will be made, to the extent necessary for any tax which may arise on income generated by the trust funds.

7. **DECOUPLING**

- 7.1 In the event of Decoupling:
- (a) the Original Memorandum of Understanding, only, will continue to apply in respect of the Original Scheme and the Liquidators and Committee of Inspection relationship in respect thereto; and
 - (b) the Original Memorandum of Understanding, as supplemented by this Supplemental Memorandum of Understanding, will apply in respect of the Amending Scheme and Restated Scheme and the Liquidators and Committee of Inspection relationship in respect thereto.

8. **GOVERNING LAW**

- 8.1 This Supplemental Memorandum of Understanding shall be governed by and construed in accordance with Bermudian law.

9. **COUNTERPARTS**

- 9.1 This Supplemental Memorandum of Understanding may be executed in two or more counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

10. MISCELLANEOUS

10.1 This Supplemental Memorandum of Understanding sets out how the Liquidators and the Committee of Inspection currently envisage certain aspects of the Amending Scheme and Restated Scheme and their relationship relative thereto to operate in practice. As the Restated Scheme progresses and the Liquidators and Committee of Inspection relationship develops, the terms of the Original Memorandum of Understanding, as supplemented by this Supplemental Memorandum of Understanding, will be kept under review and, if necessary, amended by agreement between the Liquidators and the Committee of Inspection from time to time as appropriate.

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For and on behalf of
The Bermuda Fire & Marine Insurance Company Limited (in liquidation)

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Gareth Howard Hughes
Joint Liquidator

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John Christopher McKenna
Joint Liquidator

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For and on behalf of
Anderson, Kill & Olick P.C.

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For and on behalf of
Financial Services Compensation Scheme Limited

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For and on behalf of
FOJP Service Corporation

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For and on behalf of
The Hartford Insurance Group

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For and on behalf of
The International Policyholders Association

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For and on behalf of
TIG Insurance Company

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For and on behalf of
Transit Casualty Company (in Receivership)