

IN THE HIGH COURT OF JUSTICE

No 4520 of 2015

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF:

MARINE SHIPPING MUTUAL INSURANCE COMPANY LIMITED

-and-

IN THE MATTER OF:

NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED

-and-

IN THE MATTER OF:

PART VII

THE FINANCIAL SERVICES AND MARKETS ACT 2000

INSURANCE BUSINESS TRANSFER SCHEME

1. Background

- 1.1. MSMI is a mutual insurance company registered in the United Kingdom and authorised to carry on business in the United Kingdom with permission under Part IV of the Act to carry out contracts of general insurance falling within any of paragraphs 1, 4, 5, 6, 7, 11, 12, and 15 of Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. On 30 June 2011, MSMI ceased effecting new contracts of insurance and is now in the process of managing the run off of its existing insurance contracts.
- 1.2. NOE is a mutual insurance company registered in the United Kingdom and authorised to carry on business in the United Kingdom with permission under Part IV of the Act to effect and carry out contracts of general insurance falling within any of paragraphs 1, 4, 5, 6, 7, 11, 12, 15 and 17 of Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- 1.3. NOE and MSMI were authorised and regulated by the Financial Services Authority ("FSA") until 1 April 2013 when changes to the structure of the FSA were introduced resulting in NOE and MSMI being authorised by the Prudential Regulation Authority ("PRA") and regulated by the PRA and the Financial Conduct Authority ("FCA").
- 1.4. NOE has provided management services to MSMI since MSMI's incorporation in 1972 either directly or, as has been the case since December 2000, through its wholly owned management company North Insurance Management Limited.
- 1.5. MSMI ceased to underwrite new insurance business with effect from 30 June 2011 and is now in the process of managing the run off of its outstanding liabilities.
- 1.6. Pursuant to the terms of a Framework Agreement between NOE and MSMI dated 23 August 2011 ("Framework Agreement") a transaction was completed upon 2 November 2011 whereby, inter alia, the corporate membership rights of all MSMI members were terminated and NOE was appointed as the sole member of MSMI (in run off). This has resulted in MSMI's former membership becoming fixed premium policyholders of MSMI with no corporate membership rights.
- 1.7. By this Scheme MSMI transfers the Transferring Business to NOE pursuant to Part VII of the Act.

2. Interpretation

- 2.1. In this insurance business transfer scheme, unless the context otherwise requires, the following words or phrases have the following meanings:

Act	the Financial Services and Markets Act 2000 and its subordinate legislation and any amending provisions in the Financial Services Act 2012;
------------	---

Business Day	any day other than Saturday, Sunday or any day on which banks are not open for business in London;
---------------------	--

Effective Date	means the time and date when the Scheme shall become operative in accordance with Clause 6;
High Court	the High Court of Justice of England and Wales;
Minimum Capital Requirements	the minimum capital requirement or MCR as may be prescribed from time to time by the PRA in accordance with the PRA Rulebook;
MSMI	Marine Shipping Mutual Insurance Company Limited a company incorporated in England and Wales under number 01065393;
NOE	North of England Protecting and Indemnity Association Limited a company incorporated in England and Wales under number 00505456;
Order	an order of the High Court pursuant to section 111 of the Act sanctioning the Scheme and/or making provisions under section 112 of the Act;
Proceedings	proceedings of any description including, without limitation, court proceedings, arbitrations, mediations, any other form of dispute resolution procedure, any judicial, quasi-judicial, regulatory, administrative review or process and any complaint or claim to any ombudsman or similar entity in respect of or in connection with the Transferring Business;
Residual Asset	means each asset which would form part of the Transferring Business but which cannot be transferred or vested in NOE for any reason pursuant to the terms of this Scheme on the Effective Date, and includes any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Date in respect of such asset;
Residual Policies Reinsurance Contract	means the contract to be entered into between MSMI and NOE in relation to certain liabilities (to the extent such liabilities would have formed part of the Transferring Business) pursuant to Clause 4 in the agreed form;
Residual Policy	means any insurance policy or reinsurance policy which would be a Transferring Insurance Policy or a Transferring Reinsurance Policy but which cannot be transferred or vested in NOE for any reason pursuant to the terms of this Scheme on the Effective Date;
Scheme	the insurance business transfer scheme set out in this document with or subject to any modification, addition or

condition approved or imposed by the High Court;

Subsequent Transfer Date	means in relation to any Residual Policy or Residual Asset, the date (and each date) after the Effective Date upon which any impediment to its transfer to NOE on the Effective Date has been removed or overcome;
Transferring Assets	all assets, property, rights, claims, benefits, interests and powers of MSMI of every kind and description attributable to the Transferring Business including without limitation all rights, claims, benefits, interests and powers under any contract (including without limitation the Transferring Insurance Policies and the Transferring Reinsurance Policies) and all rights, claims and powers against any third party but excluding for the time being any asset which is a Residual Asset until such time as it is subsequently transferred to NOE pursuant to Clause 5;
Transferring Business	the entire insurance and reinsurance business of MSMI including, without limitation, the Transferring Assets, the Transferring Insurance Policies, the Transferring Reinsurance Policies and the Transferring Liabilities;
Transferring Insurance Policies	all insurance policies issued by or to MSMI in relation to the Transferring Business but excluding for the time being any insurance policy which is a Residual Policy until such time as it is subsequently transferred to NOE pursuant to Clause 4;
Transferring Liabilities	all liabilities and obligations whatsoever (whether present, future, certain or contingent) attributable to the Transferring Business including, without limitation, all liabilities and obligations under the Transferring Insurance Policies and the Transferring Reinsurance Policies;
Transferring Reinsurance Policies	all reinsurance or retrocession policies under which MSMI is reinsured in respect of any liability arising under any Transferring Insurance Policy but excluding for the time being any reinsurance or retrocession policy in respect of any Residual Policy until such time as that Residual Policy is subsequently transferred to NOE pursuant to Clause 4;

2.2. In this Scheme unless the context otherwise requires or expressly provides:

- 2.2.1. references to Clauses are to Clauses of this Scheme;
- 2.2.2. the singular includes the plural and vice versa and any reference to one gender includes the other; and
- 2.2.3. headings are for convenience only and shall not affect the interpretation of this Scheme.

3. Transfer of Transferring Business

3.1. Subject to Clause 3.3, on and with effect from the Effective Date:

- 3.1.1. the Transferring Business shall be transferred to and vest in NOE in accordance with and subject to the terms of the Scheme;
- 3.1.2. the Transferring Insurance Policies shall be deemed to be contracts of marine and transit insurance effected and carried out by NOE pursuant to Article 106.4 (ii) of NOE's Articles of Association with the effect that the policyholders of the Transferring Insurance Policies shall not become members of NOE as a consequence of the Transferring Insurance Policies transferring to NOE.
- 3.1.3. subject to the provisions of paragraph 3.1.2, NOE shall be entitled to all the rights, benefits and powers of MSMI under the Transferring Insurance Policies and be subject to and shall observe and perform all obligations and liabilities of MSMI under the Transferring Insurance Policies;
- 3.1.4. NOE shall indemnify and keep MSMI indemnified against any loss or expense incurred by or demand made against MSMI that is attributable to the Transferring Business, whether arising before, on or after the Effective Date;
- 3.1.5. NOE shall be entitled to all the rights, benefits and powers of MSMI under the Transferring Reinsurance Policies and be subject to and shall observe and perform all obligations and liabilities of MSMI under the Transferring Reinsurance Policies;
- 3.1.6. any references to MSMI and/or its board of directors or other officers, employees, agents or managers in the Transferring Insurance Policies (including, without limitation, any Rules applicable to them), the Transferring Reinsurance Policies or any other contract or agreement to which MSMI is a party (or any document constituting or evidencing any of the foregoing) shall to the extent necessary to give full effect to the Scheme, be read, construed and treated as references to NOE and/or its board of directors or other officers, employees, agents or managers so that such Transferring Insurance Policy, Transferring Reinsurance Policy or contract shall operate as if NOE was the original party to the Transferring Insurance Policy, Transferring Reinsurance Policy or contract in place of MSMI;
- 3.1.7. any Proceedings which are pending by or against MSMI at the Effective Date or arise after the Effective Date in relation to the Transferring Business shall be continued by or against NOE and NOE shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to MSMI in relation to such Proceedings;
- 3.1.8. MSMI shall pay to NOE all sums, and account to NOE for all benefits, which may be received by MSMI in respect of the Transferring Business;

- 3.1.9. if and to the extent that there are any Residual Policies, each Residual Policy shall pending its transfer to NOE (whether pursuant to this Scheme or otherwise) remain vested in MSMI and shall be subject to the provisions of Clause 4;
- 3.1.10. if and to the extent that there are any Residual Assets, each Residual Asset shall pending its transfer to NOE (whether pursuant to this Scheme or otherwise) remain vested in MSMI and shall be subject to the provisions of Clause 5;
- 3.1.11. in the event of any payment (including any reinsurance receipts) being made to, property being received by, or a right being conferred upon MSMI in relation to the Transferring Business, MSMI shall as soon as is reasonably practicable notify NOE and 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 NOE or otherwise in accordance with the reasonable directions of NOE;
- 3.1.12. the Transferring Business shall continue to be managed by the Managers of NOE.
- 3.2. The transfer of property and liabilities pursuant to Clause 3.1 and the transfer of MCR Assets (as such term is defined in Clause 3.3) pursuant to Clause 3.3 shall, where the context requires and to the extent necessary to give full effect to the Scheme:
 - 3.2.1. take effect whether or not MSMI otherwise has the capacity to transfer or assign the property or liability in question;
 - 3.2.2. include any property or liabilities which would not otherwise be capable of being transferred or assigned;
 - 3.2.3. take effect as if there were no requirement to obtain any person's consent or concurrence; and
 - 3.2.4. take effect as if there were no contravention, liability or interference of any provision falling within Section 112 (2B) of the Act.
- 3.3. Notwithstanding any other provision of this Scheme, such amount of the Transferring Assets as is necessary to ensure that MSMI continues to comply with its Minimum Capital Requirements after the Effective Date shall be retained and shall not transfer to NOE on the Effective Date (the **MCR Assets**). On and with effect from the date on which the PRA confirms in writing to MSMI that all MSMI's authorisations under Part 4A of the Act have been cancelled the MCR Assets shall without further act or instrument be transferred to and vest in NOE in accordance with and subject to the terms of this Scheme.

4. Residual Policies

- 4.1. Liabilities arising out of the Residual Policies shall pending their transfer to NOE (whether pursuant to this Scheme or otherwise), remain liabilities of MSMI but all such liabilities of MSMI and all other amounts paid or payable by MSMI in respect of such Residual Policies shall at all times after the Effective Date be reinsured in their entirety by NOE under the Residual Policies Reinsurance Contract.

- 4.2. The premiums payable by MSMI in respect of such Residual Policies Reinsurance Contract shall be an amount relating to such Residual Policies as at the Effective Date, which shall be deemed to have been satisfied by the transfer to NOE of the Transferring Assets, plus all subsequent premium or other payments received by MSMI in respect of such Residual Policies.
- 4.3. MSMI and NOE shall enter into the Residual Policies Reinsurance Contract on or before the Effective Date pursuant to which MSMI shall appoint NOE to administer, adjudicate and settle all claims relating to any Residual Policy subject to claims handling guidelines to be agreed between the parties.
- 4.4. MSMI and NOE shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, NOE of any Residual Policy in accordance with the terms of this Scheme, including, for the purposes of clarity, obtaining any required consent or waiver.
- 4.5. On and from each Subsequent Transfer Date, each Residual Policy to which such Subsequent Transfer Date applies and all assets and liabilities relating to such Residual Policy, shall to the extent not previously transferred by the Order and without further act or instrument be transferred to, and be vested in, NOE upon and subject to the terms set out in Clauses 3.1.1 to 3.1.7 of this Scheme mutatis mutandis; and
- 4.6. If any Residual Policy is novated by written agreement to NOE, the property and liabilities relating to such Residual Policy shall, to the extent not previously transferred, be transferred to NOE and such Residual Policy shall thereafter be dealt with by NOE under the provisions of this Scheme in all respects as if such Residual Policy were a Transferring Insurance Policy or a Transferring Reinsurance Policy (as the case may be).

5. Residual Assets

- 5.1. MSMI shall from the Effective Date, until the relevant Subsequent Transfer Date or for so long as is legally permissible (but save to the extent that giving effect to such a trust would have the effect of transferring any interest falling within the definition of Residual Assets), hold the Residual Assets as trustee and in trust for the NOE absolutely.
- 5.2. MSMI and NOE shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, NOE of any Residual Asset in accordance with the terms of this Scheme, including, for the purposes of clarity, obtaining any required consent or waiver.
- 5.3. MSMI shall be subject to NOE's direction in respect of any such Residual Asset until it is transferred to or otherwise vested in NOE or is disposed of (whereupon MSMI shall account to NOE for the proceeds of sale thereof). NOE shall have authority (with authority to sub-delegate) to act as the attorney of MSMI in respect of any such Residual Asset for all such purposes.

- 5.4. On and from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all liabilities relating to such Residual Asset shall to the extent not previously transferred by the Order and without further act or instrument be transferred to, and be vested in, NOE upon and subject to the terms set out in Clauses 3.1.1 to 3.1.7 of this Scheme mutatis mutandis.

6. Effective Date

The Scheme shall become operative at 00.01 on 1 November 2015 (London time) or such other time and date as may be specified in the Order or such other date thereafter as the boards of NOE and MSMI shall agree, provided such date is no later than [31 March 2016].

7. Further Assurance

MSMI and NOE shall each take such steps and execute such documents as may reasonably be required to effect or perfect the transfer to NOE of the Transferring Business.

8. Modification

- 8.1. NOE may consent, on its own behalf and on behalf of all other persons concerned (other than the PRA and the FCA), to:

- (a) any modification of or addition to this Scheme or
- (b) any further condition or provision affecting the same,

in each case that the High Court may approve or impose whether before or after the Effective Date, provided that any modification to the substance of the Scheme may only be made with the consent of the PRA and the FCA.

- 8.2. NOE may amend this Scheme without further sanction of the High Court to correct a manifest error provided that:

- (a) the PRA and the FCA have been notified of the proposed amendment; and
- (b) each of the PRA and the FCA has indicated that it does not object to the proposed amendment.

9. Costs and Expenses

All costs and expenses, including, without limitation, fees and disbursements of legal and financial advisers and accountants, incurred in connection with the Scheme shall be paid by NOE and MSMI.

10. Third Party Rights

A person who is not a party to this Scheme has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

11. Governing Law

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