

**THE INSOLVENCY ACT 2011
THE INSOLVENCY RULES 2014**

ORDER FOR APPOINTMENT OF PROVISIONAL LIQUIDATOR

**Section 161(3)
Rule 97**

In the Supreme Court of Gibraltar

IN THE MATTER of the Gibraltar Financial Services Commission

-and-

IN THE MATTER of Enterprise Insurance Company plc (“the Company”)

-and-

IN THE MATTER of the Financial Services (Insurance Companies) Act

-and-

IN THE MATTER of the Insolvency Act 2011

Monday the 25th day of July 2016

Before the Honourable Mr Justice Dudley, Chief Justice

Case Number

Name of Company ENTERPRISE INSURANCE COMPANY PLC

Company Number 89698

UPON THE APPLICATION of the Financial Services Commission for an Order appointing a Liquidator of the Company in prescribed form L4 of the Notice of Specified Forms (LN.2014/202) having been made but not yet determined or withdrawn **AND UPON** the application by the Financial Services Commission for an Order appointing a provisional liquidator of the Company by Application Notice dated 25th July 2016

Names of persons heard

AND UPON HEARING Mr. Charles Simpson of Counsel for the Applicant and Mr. Guy Stagnetto of Counsel for the Respondent and Mr. Daniel Feetham and Mr. Nigel Feetham of Counsel for the Claimants in Claim No. 2016/Comp/20

Insert any affidavits and other documents presented in the Court

AND UPON READING the Affirmation of Peter Taylor dated 25th July 2016

AND UPON the Company having (i) been served with notice of the application by the Financial Services Commission for an Order appointing Mr Freddie White as provisional liquidator **AND** (ii) having consented to the appointment of the provisional liquidator under section 161(3)(a) of the Insolvency Act

AND UPON the Official Receiver having been notified of this hearing

Full name and address of applicant

The Gibraltar Financial Services Commission
P.O. Box 940, Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar

And upon reading the application for the appointment of a liquidator and

And the Court being satisfied on the evidence before it that:

Delete as appropriate

- (i) the EC Insolvency Regulation does not apply;
- ~~(ii) that these proceedings are *main/secondary proceedings as defined in Article 3 of the Regulations~~

Delete the words in brackets, as appropriate

It is ordered that *(upon the sum of £ _____ being deposited by the application with the Court *(the applicant securing the sum of £ _____ as set out below); ~~the following person is appointed as provisional liquidator of the above company~~

Name and address of provisional liquidator (which may be the Official Receiver)

Frederick David John White of Grant Thornton (Gibraltar) Limited, 6A Queensway, Gibraltar

If security is to be provided set out details

N/A

AND UPON Mr White confirming the Undertaking as set out in the Schedule to this Order **IT IS ORDERED** that:

Specify functions of provisional liquidator in relation to the company's affairs and assets

1. Permission, if required, be and is hereby granted pursuant to section 120 and paragraph 2(1) of Schedule 8 to the Financial Services (Insurance Companies) Act for the Financial Services Commission to bring an application for the appointment of a liquidator of the Company under the Insolvency Act.
2. Mr Frederick David John White of Grant Thornton (Gibraltar) Limited of 6A Queensway, Gibraltar be and is hereby appointed as Provisional Liquidator of the abovementioned Company with power to do any of the following until further order:
 - (a) to locate, protect, secure, preserve, take possession of, collect and get in all the undertaking, property or assets (of whatever nature) to which the Company is or appears to be entitled, such undertaking, assets and property not to be distributed or parted with by the Provisional Liquidator until further order except pursuant to the functions and powers hereby contained;
 - (b) to locate, protect, secure, take possession of, collect and get in the books, papers and records of the Company including the accounting and statutory records;
 - (c) to do all such things as may be necessary or expedient for the protection of the Company's undertaking, property or assets;
 - (d) to investigate the affairs of the Company and obtain such information as is necessary to locate, protect, secure, take possession of, collect and get in the assets, and conduct the business of the Company;
 - (e) to, as agent of the Company, retain, employ and pay any employee(s) of the Company as he thinks fit and, if necessary, make redundant and dismiss or otherwise terminate the

employment of any such employee(s);

- (f) to continue to operate the existing bank accounts of the Company and to open and operate new bank accounts (whether within or outside of Gibraltar) as appropriate and to pay monies into such accounts and authorise payments from such accounts;
- (g) to pay money held by the Company into the Government Savings Bank or into any other bank;
- (h) to carry on the business of the Company to the extent necessary to process and settle claims against the Company and effect reinsurance recoveries (including but not limited to paying reinsurance premiums);
- (i) to enter into communications with any creditors or debtors of the Company;
- (j) to discharge rent as agent of the Company and any other current and ongoing expenses of the Company;
- (k) to incur and pay normal administrative expenses of the Company and to pay any other payments which are necessary or incidental to the performance of the Provisional Liquidator's powers, duties and functions;
- (l) to enter into agreements with third parties for the provision of run-off and related services to the Company in relation to the Company's insurance business and, to this end, to subscribe for shares in a corporate vehicle established for this purpose, to appoint or to procure the appointment of one or more directors to the board of directors of the said corporate vehicle and to enter into agreements or arrangements with the other shareholders of the said corporate

vehicle with respect to the business and control of the said corporate vehicle;

- (m) to subscribe for shares in a new company as a wholly owned subsidiary of the Company for the purposes of employing within the said new company those persons whom the Provisional Liquidator identifies as being necessary for the purpose of running-off the Company's insurance business, as well as for such other ancillary or administrative purposes as the Provisional Liquidator may deem appropriate and, to this end, to appoint or, alternatively, procure the appointment of directors to the board of the said new company;
- (n) to employ (whether directly or through the agency of any other person, firm or company) and reimburse a third party for the cost of the employment of staff or other personnel to process claims made against the Company and to supervise the current run-off of the Company;
- (o) to grant or accept a surrender of a lease, licence or tenancy of any of the property of the Company and to take a lease, licence or tenancy of any property required or convenient for the business of the Company;
- (p) to terminate, complete or perfect as advised any contracts or transactions relating to the business of the Company including, without prejudice to the generality of this power, to cancel, disclaim or terminate any policy or policies of insurance;
- (q) to effect any insurance in connection with the management and maintenance of the business, undertaking, property and assets of the Company;
- (r) to bring or defend or intervene in any action or other legal proceedings whether in his own

name or in the name and on behalf of the Company including, for the avoidance of doubt, the giving of any indemnity or cross undertaking in damages as may be necessary or if required and including proceedings outside as well as within Gibraltar;

- (s) in the name and on behalf of the Company to do all acts and to enter into, approve, execute, sign and/or deliver all deeds instruments, assurances, agreements, certificates, receipts or other documents and for that purpose using, when necessary, the Company's seal;
- (t) to engage and retain and/or employ (whether within or outside Gibraltar) surveyors, solicitors, Counsel, lawyers, accountants, investment advisors, tax advisors, actuaries, auditors, run-off and claims consultants, loss adjustors and/or other qualified persons to assist him in the performance of his duties and functions and in particular to prepare such reports as the Provisional Liquidator may consider necessary in connection with any compromise or arrangement, and to pay their reasonable fees and disbursements from the assets of the Company;
- (u) to rank and claim in the bankruptcy, liquidation, administration, voluntary arrangement or insolvency of any person (including but not limited to any body corporate) indebted to the Company and to receive dividends, and to accede to trust deeds for the creditors of any such person;
- (v) to change the situation of the Company's registered office;
- (w) to pay premiums due or to become due under contracts of reinsurance entered into by the Company and to enter into new and/or replacement contracts of reinsurance for the protection of

the Company in relation to liabilities of the Company under current policies of insurance issued by the Company;

- (x) to sell or otherwise dispose of the undertaking, property or assets of the Company by public auction or private treaty;
- (y) to enter into any compromise or come to any arrangement with creditors or persons claiming to be creditors of the Company or with any person or persons having or alleging to have any claim whether present or future or certain or contingent, including the power to refer to arbitration any question affecting or otherwise touching or concerning any or all of such claims;
- (z) to exercise or utilise any of the powers and/or rights granted to the Provisional Liquidator under Part 8 of the Insolvency Act 2011; and
- (aa) to do all things incidental to the exercise of the foregoing powers.

3. Unless the Court upon application by the Provisional Liquidator deems otherwise the hearing of the Application for the Appointment of a Liquidator is to be fixed for a date not earlier than three months from the date of the appointment of the Provisional Liquidator.

4. The Provisional Liquidator shall report to the Court, on or before the date three months from his appointment, as to:

- (i) the assets and liabilities attributable to the Company's general insurance business;
- (ii) whether a liquidator should be appointed in respect of the Company; and
- (iii) any other course of action the Provisional Liquidator would recommend to the Court such as, but not restricted to, the run-off of the Company's general insurance business.

5. The Provisional Liquidator do provide a copy of the Report referred to at Paragraph 4 above to the Official Receiver and to the Applicant (the Gibraltar Financial Services Commission), as well as being at liberty to provide to the Applicant any and all other information that may be of relevance or interest to the Applicant in the administration of the Financial Services (Insurance Companies) Act or any other regulatory legislation applicable to the Company, and to generally discuss the Company's affairs and its operations with the Applicant.
6. The remuneration of the Provisional Liquidator shall be payable from time to time by reference to the time spent by him and by employees of Grant Thornton (Gibraltar) Limited under his control and on the basis of that firm's usual rates for the type of work involved, together with any expenses incurred in connection therewith.
7. The costs of the Applicant (the Financial Services Commission) in this application to be paid out of the assets of the Company.
8. The costs of the Company in this application be reserved.
9. The Provisional Liquidator be given liberty to apply to the Court for such further orders or directions as may be necessary or appropriate.

Dated: 25th July 2016



REGISTRAR

SCHEDULE

FORM OF UNDERTAKING

AND UPON Mr Frederick White undertaking to exercise the powers granted under paragraphs 2(c), 2(h), 2(l) , 2(p) and 2(w) and to pursue the activities of the insurance undertaking with the consent and under the supervision of the Commission in accordance with section 156(3) of the Financial Services (Insurance Companies) (Solvency II Directive) Act