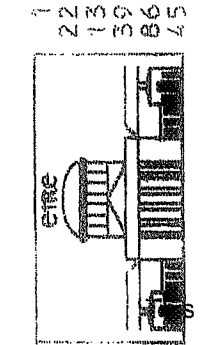
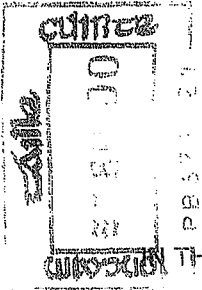


2011 Record No. 426 COS
(2011 Record No. 143 COM)



THE MATTER OF ACE BERMUDA INTERNATIONAL REINSURANCE (IRELAND) LIMITED

AND

SECTIONS 72, 74, 201 AND 203 OF THE COMPANIES ACT 1963

AND

THE COMPANIES ACTS 1963 TO 2009

PETITION

TO: THE HIGH COURT

This Petition of ACE Bermuda International Reinsurance (Ireland) Limited (the Company), having its registered office at 5 George's Dock, International Financial Services Centre, Dublin 1, SHOWETH as follows:

OBJECT OF PETITION

1 This Petition seeks, inter alia, that this Honourable Court sanction a scheme of arrangement between the Company and its sole shareholder, ACE Bermuda Insurance Limited (the Shareholder) pursuant to Sections 201 and 203 of the Companies Act 1963 (the Scheme). Under the terms of the Scheme, it is intended that the Company will be acquired and amalgamated with ACE Bermuda International Insurance (Ireland) Limited (ABII). To the extent that the Scheme constitutes a reduction of capital within the meaning of Section 72(1) of the Companies Act 1963, this Petition also seeks this Honourable Court's confirmation, pursuant to Sections 72 and 74 of the Companies Act 1963, of such reduction of capital

A. Information regarding the Company

2 The Company was incorporated in Ireland under its former name, ACE Insurance Company Europe Limited, as a single member private company limited by shares, on 13 January 1995, under company number 227274.

3 The registered office of the Company is situated at 5 George's Dock, International Financial Services Centre, Dublin 1

P. Keen
P. Keen

- 4 The Company is a wholly owned subsidiary of the Shareholder.
- 5 The objects for which the Company is established include, but are not limited to, *to carry on the business of reinsurance*. Further details may be found in clause 2 of the Company's Memorandum of Association.
- 6 The Company has the power under sub-clause 2.7 of its Memorandum of Association *to amalgamate with any other company or to enter into or agree to be bound by any arrangement or compromise as permitted under Section 201 of the Companies Act 1963 as amended and, to that purpose, to carry out any actions connected to, consequent upon, or ancillary to such an arrangement or compromise, including those permitted under Sections 201, 202 & 203 of the Companies Act 1963, as amended*".
- 7 The authorised share capital of the Company is US\$10,000,000 divided into 10,000,000 ordinary shares of US\$1.00 each. As at the date hereof, 961,528 ordinary shares of US\$1.00 each have been issued and are credited as fully paid.
- 8 The Company is a non-life reinsurance undertaking authorised and regulated by the Central Bank of Ireland (the **Central Bank**) under the European Communities (Reinsurance) Regulations 2006 (the **2006 Regulations**). It commenced activity as a reinsurance company in 1997.

B. Information regarding ABII

- 9 ABII was incorporated in Ireland under its former name, ACE European Markets Insurance Limited, as a single member private company limited by shares, on 20 August 1997 under company number 271023.
- 10 The registered office of ABII is situated at 5 George's Dock, International Financial Services Centre, Dublin 1.
- 11 ABII is a wholly owned subsidiary of the Shareholder.
- 12 The objects for which ABII is established include, but are not limited to, *to carry out the business of insurance*". Further details may be found in clause 2 of ABII's Memorandum of Association.
- 13 ABII has the power in the objects clause of its memorandum of association at sub-clause 2.18 to *to amalgamate with any other company or enter into or agree to be bound by any arrangement or compromise as permitted under section 201 of the Companies Act 1963, as amended and to that purpose to carry out any actions connected to, consequent*

upon or ancillary to such an arrangement or compromise, including those permitted under sections 201, 202 and 203 of the Companies Act 1963 as amended.

The authorised share capital of ABII is US\$30,000,000, divided into 30,000,000 ordinary shares of US\$1.00 each. As at the date hereof, 1,000,000 ordinary shares of US\$1.00 each have been issued and are held by the following persons:

ABII is a non-life insurance undertaking, authorised and regulated by the Central Bank under the European Communities (Non-Life Insurance) Framework Regulations 1994 and 1994 Regulations. It commenced activity as an insurance company in 1997 and opened a London branch in 2001, which permitted ABII to access the UK market.

Background to the Petition and the Scheme

16. The Company and ABII are part of the ACE group of companies (the Group). The Group started its insurance and reinsurance operations in 1997, providing, on a regularity basis, security excess capacity insurance and reinsurance to large multinational corporations. Although the Group writes business in a large number of jurisdictions, almost 60% of the Group's business originates from Continental Europe, with Germany, France, Switzerland and the Benelux Regions being the key territories. The Company writes excess liability and excess property reinsurance business. ABII writes excess liability, excess property and professional loans insurance business. The Group has carefully examined the operations of the Company and of ABII and, following consultation with the board of directors of the Company (the **Board of the Company**) and the board of directors of ABII (the **Board of ABII**), has determined that, for the reasons described below, the continued existence of both the Company and ABII is no longer merited from a capital efficiency perspective and, as such, is no longer in the best interests of the Group.
17. Having considered its options and the potential impact of those options on the policyholders of the Company and the policyholders of ABII, the Shareholder now wishes to amalgamate the operations of the Company and ABII within ABII (the **Amalgamation**). This will help to create a well capitalised and capital-efficient platform, will avoid the current duplication in aspects of the operation of both the Company and ABII and will result in regulatory capital savings for the Group.
18. Irish-regulated insurance companies can, under the terms of their authorisations, write both insurance and reinsurance business. While they are not required to comply with European insurance directives, the Central Bank has traditionally required all Irish insurance companies to limit the amount of premium received from reinsurance accepted to 20% of total gross premium income. This is commonly referred to as the "30/20 rule". ABII was subject to this particular restriction. Accordingly, it was necessary to carry on

the majority of reinsurance business through the Company.

19. In a letter dated 17 December 2010 the Central Bank confirmed that it was no longer applying the 80/20 rule and that it has removed the specific 20% limitation on inwards reinsurance.
20. The effect of the confirmation referred to at paragraph 19 above is that the majority of the existing reinsurance business of the Company that fell for renewal throughout 2011 was renewed into ABII.
21. The Board of the Company and the Board of ABII believe it to be in the best interests of the Group, and in no way prejudicial to the interests of the Shareholder, the policyholders and creditors of the Company and the policyholders, creditors and employees of ABII, for the Company to be amalgamated with ABII. Upon such amalgamation, the Company will be dissolved without winding up. This proposal is to be effected by way of the Scheme.
22. As an integral part of the Scheme, it is proposed that ABII shall, pursuant to section 203 of the Companies Act 1963, acquire and amalgamate with its own undertaking, the undertaking, all the property, assets and rights, real and personal, liabilities and obligations of every description of the Company, and by virtue of the Scheme, the undertaking, all the property, assets and rights of the Company as aforesaid shall be transferred to and vest in ABII and all the liabilities and obligations of the Company as aforesaid shall be transferred to and become liabilities and obligations of ABII.
23. Following the implementation of the Scheme, it is proposed that the Company shall be dissolved without winding up upon such date as the Court may by order prescribe.
24. To the extent that the Scheme constitutes or involves a reduction of capital within the meaning of Section 72(1) of the Companies Act 1963, the Shareholder has, by written resolution, approved such reduction of capital, subject to the confirmation of the Court. The Board of the Company believes that the proposed capital reduction (to the extent that the Scheme constitutes or involves a capital reduction) is in no way prejudicial to the rights or interests of the Shareholder or to those of any creditor or policyholder of the Company.

D The Court Meeting

25. By Order of this Honourable Court dated 29 July 2011 (the Order), the Company was ordered to convene a Court Meeting of the Shareholder for the purpose of considering and if thought appropriate, approving the proposed Scheme. The Court Meeting was duly convened in accordance with the terms and requirements of the Order for 10 a.m. on

8 August 2011 at 5 George's Dock, International Financial Services Centre, Dublin 1.

26 The Court Meeting was duly held at 10 a.m. on 8th August 2011 at 5 George's Dock International Financial Services Centre, Dublin 1. Anup Seth attended the Court Meeting and acted as Chairman thereof, in accordance with the directions given in the Order. Odran Hickey attended the Court Meeting as the appointed representative of the Shareholder.

27. By Notice dated 3 August 2011, sent by email to each of the directors of the Shareholder on 4 August 2011, the Court Meeting was duly convened and summoned in accordance with the terms of the Order. The notice sent to the Shareholder enclosed a copy of the Scheme and an Explanatory Statement, as required by Section 202 of the Companies Act 1963.

28 The following resolution (the **Resolution**) was proposed at the Court Meeting:

*"The scheme of arrangement between the Company and its sole shareholder in its original form or with or subject to any modification, addition or condition approved or imposed by the High Court of Ireland (the **Scheme**), a copy of which is attached, be and is hereby approved and the directors of the Company be and are hereby authorised to take all such actions as they may consider necessary and appropriate for carrying the **Scheme** into effect."*

29. The Scheme was duly approved by the Shareholder at the Court Meeting.

E. Written Resolutions of the Shareholder

30. Regulation 6 of Part II of Table A to the Companies Act 1963 (as applied to the Company by Article 1 of its Articles of Association) provides as follows:

"Subject to section 141 of the Act, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly authorised representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act."

31 At the Court Meeting, the following resolution was passed by the Shareholder in the form of a written resolution, pursuant to the aforementioned Regulation 6 of Part II of Table A.

"The scheme of arrangement between the Company and its sole shareholder in its original form or with or subject to any modification, addition or condition approved or imposed by the High Court of Ireland (the Scheme), a copy of which is attached hereto and is hereby approved and the directors of the Company be and are hereby authorised to take all such actions as they may consider necessary and appropriate for carrying the Scheme into effect"

32. Furthermore, as the Scheme provides for a reduction of the capital of the Company, to the extent that the Scheme constitutes a reduction of the capital of the Company, the Company seeks this Honourable Court's confirmation of such reduction of the Company's capital under Sections 72 and 74 of the Companies Act 1963.

33. A reduction of the share capital of the Company is permitted by Article 1 of the Company's Articles of Association (which, by incorporating regulation 1 of Part II of Table A in the First Schedule to the Companies Act 1963, incorporates regulation 46 of Part I of Table A in the First Schedule to the Companies Act 1963) in the following terms.

"The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with and subject to any incident authorised, and consent required, by law."

34. With respect to the reduction of capital, the following special resolution, dated 8 August 2011, was passed by the Shareholder in the form of a written resolution:

"Subject to, and conditional upon the confirmation of the High Court of Ireland, to the extent that the Scheme constitutes a reduction of the capital in the Company, the share capital of the Company will be thereby reduced upon the Scheme becoming effective."

Effect of the Proposed Scheme of Arrangement and Capital Reduction on Creditors and Policyholders

General Creditors

35. In addition to policyholder creditors referred to at paragraphs 40 to 45 below the Company and ABII have a number of non-policyholder creditors (the General Creditors), all of which will it is anticipated continue to be creditors of ABII following the Amalgamation.

36. Under the terms of the Scheme, ABII will acquire all the assets and all of the liabilities of the Company and the creditors of the Company will become the creditors of ABII. For the

reasons set out below, the Board of the Company is of the view that the proposed Amalgamation will have no adverse consequences for any of the General Creditors of the Company or of ABII.

37. The unaudited merged balance sheet of the Company and ABII which was prepared on the basis of the Amalgamation having taken effect as at 30 June 2011 demonstrates that the combined assets of the Company and ABII available to meet their liabilities as at that date, are US\$551,416,501 and that the combined liabilities as at that date are US\$389,522,892, resulting in a combined net asset value of approximately US\$161,893,609 (the Combined Balance Sheet).
38. The unaudited balance sheet of the Company as at 30 June 2011 demonstrates that the assets of the Company available to meet its liabilities as at that date are approximately US\$205,402,315 and its liabilities are approximately US\$77,248,468 resulting in a net asset value of approximately US\$128,153,847. The unaudited balance sheet of ABII as at 30 June 2011 demonstrates that the assets of ABII available to meet its liabilities as at that date are approximately US\$399,764,186 and its liabilities are approximately US\$312,274,425, resulting in a net asset value of approximately US\$87,489,761.
39. Neither the Board of the Company nor the Board of ABII are aware of any adverse circumstances, events or occurrences since 30 June 2011 in existence that would have a material adverse effect on the financial position of the Company or of ABII as provided for in the quarterly management accounts of each company made up to 30 June 2011. On the basis of the Combined Balance Sheet, it is believed and submitted that the General Creditors of the Company and of ABII will not be prejudiced by the Amalgamation.

Policyholder Creditors

40. Under the 1994 Regulations and the 2006 Regulations, respectively, ABII and the Company are required to maintain a solvency margin calculated in accordance with those regulations. Reference is made to Certificates of Solvency for each of the Company and of ABII, dated 21 September 2011, in which the Central Bank confirms that each of the Company and ABII complies with applicable solvency requirements.
41. Under the 1994 Regulations and the 2006 Regulations, respectively, ABII and the Company are also required to maintain technical reserves calculated in accordance with those regulations. On 26 April 2011, a statement of actuarial opinion on the non-life technical reserves of each of the Company and ABII as at 31 December 2010 was furnished by Mr. Brian M. Ancharski (Chief Actuary of each of the Company and ABII and a fellow of the Society of Actuaries of Ireland). In the statement of actuarial opinion in respect of the Company Mr. Ancharski states that, in his opinion, the total reserves gross and net of retrocession, comply with Irish legislation (including legislation

transposing relevant European Union insurance directives) and any relevant regulatory requirements. Mr. Ancharski concludes that the total reserves, gross and net of retrocession are greater than the sum of expected future liabilities plus the expected profit margin in the unearned premium reserves of the Company as at 31 December 2010. In the statement of actuarial opinion in respect of ABII, Mr. Ancharski states that, in his opinion, the total reserves, gross and net of retrocession, provide a reasonable provision, in the aggregate, for all unpaid claims and claim expense obligations of ABII under the terms of its policies and agreements and comply with applicable Irish legislation (including legislation transposing relevant European Union insurance directives) and are greater than the sum of expected future liabilities plus the expected profit margin in the unearned premium reserves of ABII as at 31 December 2010.

42. On 22 September 2011, a statement of actuarial opinion on the technical reserves of the Company as at 30 June 2011 was furnished by Mr. Ancharski (the **Company's June Report**). In the Company's June Report, Mr. Ancharski states that, in his opinion, the total reserves identified in the Company's June Report, gross and net of retrocession, comply with Irish legislation (including legislation transposing relevant European Union insurance directives) and any relevant regulatory requirements. The total reserves, gross and net of retrocession, are greater than the sum of expected future liabilities plus the expected profit margin in the unearned premium reserves of the Company as at 30 June 2011.
43. On 22 September 2011, a statement of actuarial opinion on the technical reserves of ABII as at 30 June 2011 was furnished by Mr. Ancharski (**ABII's June Report**). In ABII's June Report, Mr. Ancharski states that, in his opinion, the total reserves identified above, gross and net of reinsurance, provide a reasonable provision, in the aggregate, for all unpaid claims and claim expense obligations of ABII under the terms of its policies and agreements. They comply with applicable Irish legislation (including legislation transposing relevant European Union insurance directives) and are greater than the sum of expected future liabilities plus the expected profit margin in the unearned premium reserves of ABII as at 30 June 2011.
44. On the basis of the aforementioned statements of actuarial opinion, and the Certificates of Solvency provided by the Central Bank in respect of both the Company and of ABII, the Board of the Company believes and is satisfied that the rights and interests of the Company's and of ABII's policyholders will not be prejudiced by the Amalgamation.
45. In conclusion, it is the opinion of the Board of the Company and the Board of ABII that no creditor (whether a policyholder or other creditor) of the Company or of ABII will be prejudiced as a result of the Amalgamation and that it is just and equitable that the Scheme be approved and that the necessary ancillary and implementing orders pursuant

to section 203 of the Companies Act 1963 (to effect the transfer of the undertaking of the Company to ABII) be granted

H. Effect of the Proposed Scheme on the Shareholder and Employees

The Shareholder

46. Following the Scheme becoming effective, the Shareholder will hold the same number of Shares in ABII as it previously held in ABII but the net asset value of ABII will have increased by the net asset value of the Company, immediately prior to the Amalgamation. As such, the Scheme is in no way prejudicial to the rights or interests of the Shareholder.

Employees

47. The Company originally had two employees. The Company transferred these employees terms of employment from the Company to ABII. As a result, the Company no longer has any employees. In addition, the Amalgamation will not result in any job losses for ABII.

I. Minute to be registered

48. To the extent that the Scheme involves or constitutes a capital reduction, the form of Minute proposed to be registered is as follows:

"A special resolution was passed by the Company by way of written resolution dated 8 August 2011, to the following effect:-

Subject to, and conditional upon the confirmation of the High Court of Ireland, to the extent that the Scheme constitutes a reduction of the capital in the Company, the share capital of the Company will be thereby reduced upon the Scheme becoming effective.

By Order of the High Court of Ireland made on the [] day of [] 2011, the abovementioned reduction of the capital of the Company was duly confirmed.

The share capital of the Company is, immediately prior to the date of the registration of this Minute, US\$10,000,000 divided into 10,000,000 Ordinary Shares of US\$1 each of which, as a date hereof, [] have been issued (and are credited at full value) and the remainder are unissued.

Upon the registration of this minute the Company shall be dissolved without liquidation.

J. **Application for Orders Pursuant to Section 203 of the Companies Act 1963**

49. The Scheme, insofar as it seeks to effect an amalgamation of the undertaking of the Company with that of ABII, envisages and requires that orders pursuant to section 203 be sought.

50. In that regard, reference is made to paragraphs 1.1-1.2 of the Scheme which materially provide as follows:

1.1 Forthwith upon this Scheme taking effect, ABII shall, pursuant to section 203 of the Companies Act 1963, acquire and amalgamate with its own undertaking, the undertaking, all the property, assets and rights, real and personal, liabilities and obligations of every description of the Company, and by virtue of this Scheme, the undertaking, all the property, assets and rights of the Company as aforesaid shall be transferred to and vest in ABII and all the liabilities and obligations of the Company as aforesaid shall be transferred to and become liabilities and obligations of ABII .

1.2 Following the implementation of the Scheme, the Company shall be dissolved without winding up upon such date as the Court may by Order prescribe.

51. In this regard, and within the meaning of section 203(1) of the Companies Act 1963, the present Scheme has been proposed for the purpose of, or in connection with, a scheme for the amalgamation of the Company with ABII. Under the Scheme, the whole of the undertaking and property of the Company (being a "transferor company" within the meaning of section 203(1) of the said Act) is to be transferred to ABII (being a "transferee company" within the meaning of the said section 203(1)). In such circumstances, it is just and equitable (and for the reasons set out above, in no way prejudicial to the rights and/or interests of the creditors and/or policyholders of the Company or ABII) that this Honourable Court make the ancillary orders sought pursuant, inter alia, to Section 203(1)(a),(c) and (d) of the Companies Act 1963.

K. **Relief Sought.**

52. And Your Petitioner therefore prays as follows:

52.1 That this Honourable Court sanctions the Scheme between the Company and the Shareholder (as defined) pursuant to sections 201 and 203 of the Companies Act 1963.

52.2 That, to the extent that the Scheme constitutes a reduction of capital in the

Company pursuant to Section 72(1) of the Companies Act 1963. this Honourable Court confirm such reduction.

- 52.3 That to the extent necessary, that this Honourable Court directs the Registrar of Companies to register the orders made herein pursuant to section 75(1) of the Companies Act 1963
- 52.4. That this Honourable Court approve of the Minute set forth in paragraph 48 of this Petition.
- 52.5. That this Honourable Court make an order pursuant to section 203 of the Companies Act 1963 that, forthwith upon the Scheme taking effect.
- 52.5.1. the whole of the undertaking and property assets and rights of the Company, as exist at that time, (without further act or deed) be transferred to and vest in ABII for all the estate and interest of the Company, subject to all mortgages and charges (if any) affecting the same or any part or parts thereof;
- 52.5.2. all of the liabilities and obligations of the Company, as exist at that time, be transferred to and become the liabilities and obligations of ABII, without further act or deed; and
- 52.5.3. all proceedings (if any) pending by or against the Company be continued by or against ABII.
- 52.6. An order pursuant to section 203(1)(d) of the Companies Act 1963 that following the implementation of the Scheme, the Company be dissolved without winding up upon such date as this Honourable Court may prescribe.
- 52.7. That this Honourable Court direct that notice of the registration of the said Minute and the Order to be made herein be published once in the worldwide edition of the Financial Times and Iris Oifigiúil.
- 52.8. That all other necessary directions may be made and given.
- 52.9. That such other Order may be made as to this Honourable Court may deem fit.

Dated this

Signed: William J. Stock ~~PAULINE~~

FL

A & L Goodbody

Solicitors for the Petitioners

International Financial Services Centre

North Wall Quay

Dublin 1

NOTE. It is intended to serve a copy of this Petition together with the Schedules on such parties as this Honourable Court may direct.

Duly presented in the Central Office on the day of October 2011 by A&L Goodbody, Solicitors, International Financial Services Centre, North Wall Quay, Dublin 1, Solicitors for the Petitioners

THE HIGH COURT
COMMERCIAL

2011 Record No. 426 COS
(2011 Record No. 143 COM)

IN THE MATTER OF ACE BERMUDA INTERNATIONAL REINSURANCE (IRELAND) LIMITED

AND

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AND

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PETITION

A&L Goodbody
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