

Proposed scheme to transfer the business  
of the UK branch of Sompo Japan Insurance  
Inc. to Transfercom Ltd.

*Report of the Independent Expert*

*Prepared by:*  
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*(Actuaries & Consultants)*  
*10 October 2006*

# Proposed scheme to transfer the business of the UK branch of Sompo Japan Insurance Inc. to Transfercom Ltd.

## *Report of the Independent Expert*

The purpose of this Report is to set out the results of my review of the proposed scheme to transfer the business of the UK branch of Sompo Japan Insurance Inc. to Transfercom Ltd.

The Report contains the following Sections and Appendices.

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# 1 Appointment

- 1.1 This report considers the likely effects on relevant policyholders of the transfer of the business of Sompo Japan Insurance Inc.'s UK branch to Transfercom Ltd ("Transfercom"), a Berkshire Hathaway group company. It is intended to aid the Court's deliberations as to whether the proposed transfer of policyholders and liabilities to Transfercom should be permitted.
- 1.2 I understand my duty to the Court in the preparation of this report. I have complied and will continue to comply with this duty.
- 1.3 The terms of reference for this work are set out in the engagement letter dated 21<sup>st</sup> December 2005, an extract from which is included as Appendix A.
- 1.4 I, Catherine Cresswell, have been appointed by Sompo Japan Insurance Inc. ("Sompo") to consider the proposed scheme under section 109 of the Financial Services and Markets Act 2000 ("the Act"). My appointment has been approved by the Financial Services Authority ("FSA"). Sompo Japan Insurance Inc. will meet the costs of the preparation of this report.
- 1.5 I am a fellow of the Casualty Actuarial Society and an affiliate of the Institute of Actuaries. I have had extensive experience of considering policyholders' interests in transfers of business and in insurance restructuring. This experience has been gained in both my current employment with Watson Wyatt, Actuaries and Consultants, and in my previous employment as Chief Actuary responsible for general insurance at the Government Actuary's Department. Details of my experience are included in Appendix B.
- 1.6 I have no financial holding in either Sompo or Transfercom or in their ultimate holding companies.
- 1.7 As far as I am aware, Watson Wyatt Limited has not undertaken any insurance consultancy work for either Sompo or Berkshire Hathaway. Watson Wyatt Limited has sold a licence for our Simulum software to General Re, a Berkshire Hathaway subsidiary. I do not consider that this software sale affects my independence in relation to the proposed transfer. In addition Watson Wyatt's Asian affiliates have conducted reviews of the reserves of Sompo subsidiaries in Hong Kong and Singapore. I understand the fees for this work amount to approximately US\$50,000 per annum. I do not consider this compromises my independence.

1.8 This report has been prepared by Watson Wyatt Limited on an agreed basis to meet the specific purposes of Sompo under Section 109 of the Financial Services and Markets Act 2000 and must not be relied upon for any other purpose. I understand that copies of this report may be issued to policyholders and made available to members of the public upon request under the requirements of regulation 3(4) of The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001. I highlight that third parties reading this report may not have the background information necessary for a full understanding of the report. Watson Wyatt's and my responsibilities and liabilities are limited to Sompo and exist only in the context of the use of my report for the purposes set out above. No responsibility, liability or duty of care whatsoever (other than for fraudulent misrepresentation) is or will be accepted by me or Watson Wyatt or any officers, employees, affiliates, agents or advisers to any third party recipients of my reports other than as required by law, under any circumstances. Except with the written consent of Watson Wyatt Limited or as required by law, this report and any written or oral information or advice provided in connection with it, must not be reproduced, distributed or communicated in whole or in part to any other person, or be relied upon by any other person. This report must be considered in its entirety as individual sections, if considered in isolation, may be misleading. Draft versions of this report must not be relied upon by any person for any purpose. No reliance should be placed on any advice not given in writing. If reliance is placed contrary to the guidelines set out above, Watson Wyatt Limited disclaim any and all liability which may arise.

1.9 This report should not be construed as investment advice.

### **Reliances**

1.10 In preparing this report I have relied without detailed verification on information supplied by Sompo and Berkshire Hathaway group companies, and on information available from Sompo's public internet sites pertaining to the state, assets and liabilities of Sompo. In particular, I have relied on information provided by Sompo as to the quantum of outstanding case estimates and the nature of the liabilities to be transferred and the payments made from the date of the liability evaluation to December 2005.

1.11 In addition I have relied upon the US statutory return of National Indemnity Company (the proposed provider of substantial reinsurance cover), and on the details of the proposed capital and reinsurance of Transfercom Ltd, as supplied by Tenecom Ltd (a Berkshire Hathaway company).

1.12 No liability will be accepted as a result of this report being used for a purpose for which it was not intended or arising as a result of any misunderstanding by any recipient of any aspect of the report.

- 1.13 This review does not comprise an audit of the financial resources and liabilities of Sampo or Transfercom or their respective parent companies.

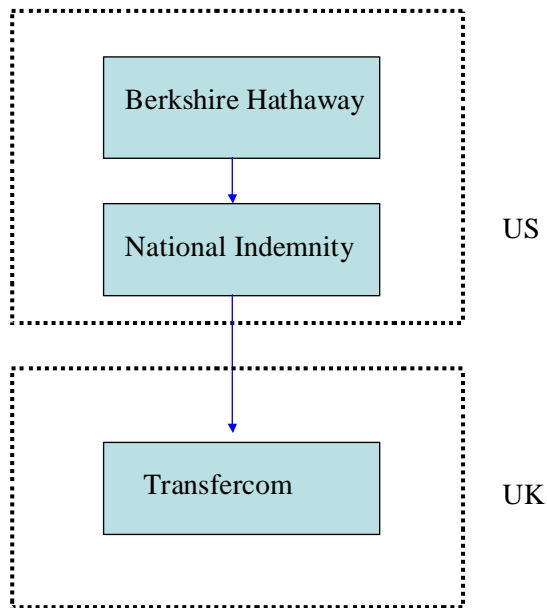
# 2 Background

## **Sompo**

- 2.1 Sompo Japan Insurance Inc. (“Sompo”) was formed in 2002, from the merger of the Yasuda Fire and Marine Insurance Company Limited (“Yasuda”) with the Nissan Fire and Marine Insurance Company Limited (“Nissan”). I understand its name is derived from the Japanese for “non life”. Sompo is a very substantial non life insurance company, the second largest in Japan, with written premiums some 30% greater than those of, say, the Royal & SunAlliance group, and with a significantly higher capital base. Sompo currently has a AA- security rating from Standard and Poor's and a A+ rating from AM Best.
- 2.2 Sompo has a market share of some 18% of the Japanese domestic market for non life business. It writes predominantly personal lines business, over half its premium income comes from motor insurance.
- 2.3 The scheme is designed to effect the transfer of several blocks of older reinsurance business to Transfercom (a Berkshire Hathaway company).
- 2.4 These blocks of business have given rise to substantial claims in respect of US asbestos and pollution claims.
- 2.5 The scheme will, for a substantial payment, rid Sompo of the bulk of its exposure to these contracts.

## Transfercom

- 2.6 Transfercom has been set up to receive the transferring liabilities. It is a subsidiary of Berkshire Hathaway, as illustrated in the following diagram:



- 2.7 Transfercom is a new company and does not currently have any other liabilities. Negotiations are currently in progress with the FSA to establish Transfercom as a UK authorised insurance company.
- 2.8 It is proposed that financial resources will be provided to Transfercom in the form of share capital and by means of an extensive reinsurance contract.
- 2.9 The scheme includes a provision to transfer certain third party reinsurance protections from Sompo to Transfercom. My understanding is that the parties intend that reinsurance protection with estimated recoveries of some US\$5.5m is to be transferred by Court order. In addition the parties intend that the benefit of further reinsurance protections with estimated recoveries of some US\$3.1m is to be transferred to Transfercom by individual agreements with reinsurers.
- 2.10 In the event that it is not possible to negotiate the complete benefit of reinsurance protections to accrue Transfercom, I understand Transfercom will be compensated for the shortfall up to an amount of US\$2.5m. I do not consider the possible non transfer of this reinsurance protection material to my consideration of the proposed scheme as a whole.

- 2.11 Sompo has been the subject of regulatory action in Japan in relation to the conduct of its general insurance business. I do not consider this material to my consideration of the proposed transfer.



# 3 Scope

- 3.1 This report considers the effects of the proposed transfer on the two groups of policyholders affected:
- The policyholders of Sompo who will remain with Sompo
  - The policyholders of Sompo who will be transferred.
- 3.2 There are no existing policyholders of Transfercom.
- 3.3 I have not considered any alternative schemes.
- 3.4 I have carried out:
- A high level review of the financial strength of Sompo Japan Insurance Inc., the nature of the major risks to which it is exposed and the riskiness of its liabilities
  - A high level reasonableness review of the assessment of the liabilities pertaining to the portfolios to be transferred and of the assessment of the likely scope for deterioration. I have not audited the data underlying this assessment.
- 3.5 I have reviewed:
- The balance sheet strength of Sompo Japan Insurance Inc. as shown in its financial accounts as at 31 March 2006
  - The various reports prepared by external actuaries pertaining to the liabilities for future claims payments as at 30 September 2004 in respect of the business to be transferred
  - Payments made in respect of the transferring liabilities in the period between 30 September 2004 and 31 December 2005
  - The balance sheet strength of National Indemnity Company as shown in its US statutory returns as at 31 December 2004, and as reported in proprietary databases of financial statistics extracted from annual US statutory returns as at 31 December 2005.
- 3.6 I have noted the ratings provided by the rating agencies for Sompo and National Indemnity.
- 3.7 In forming my opinion as to the likely effects of the scheme on the transferring policyholders, I have considered the likely scope for reserve deterioration (that is the amount for which outstanding claims are eventually settled being greater than the amount currently estimated), and reviewed the proposed financial resources of Transfercom, including the proposed National Indemnity reinsurance contract, against this background.

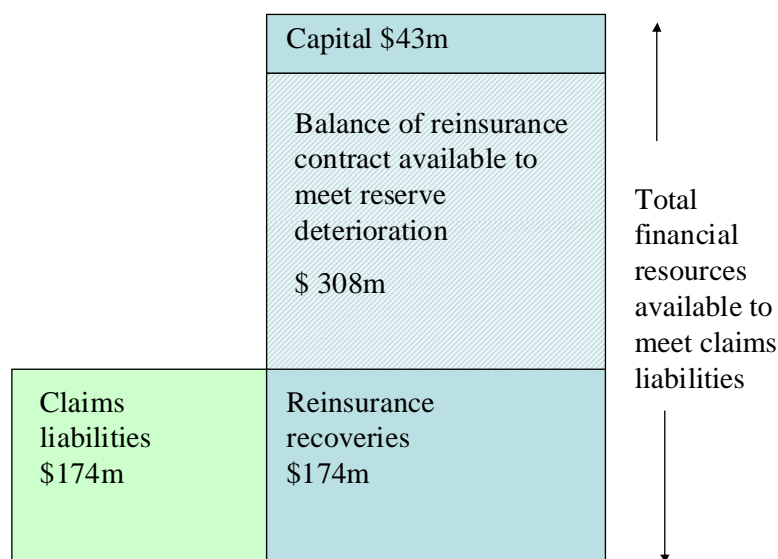
- 3.8 This review does not comprise an audit of the financial resources and liabilities of Sampo or Transfercom or their respective parents.
- 3.9 This report has been prepared in accordance with the Institute of Actuaries' Guidance Note 12 pertaining to reports on general insurance business.

# 4 Analysis and findings

## Analysis

- 4.1 The proposal is that Transfercom assumes five books of business from Sompco.
- 4.2 These are:
- A block of reinsurances of world wide cedants originally written by Yasuda from the late 1950s to 1999. This book contains substantial asbestos exposures.
  - A block of reinsurances originally written by Nissan in Tokyo between 1967 and 1993 mostly comprising excess of loss reinsurance treaties. This block of business has exposures to many of the major US commercial carriers, their principal reinsurers, and H.S. Weavers.
  - A block of business originally written by Nissan in the London Market termed the Non Marine Underwriting Agreement (“NMUA”) account. It was written between 1972 and 1983. This block contains exposures to many of the major US commercial carriers, their primary reinsurance and London pools and reinsurers.
  - A block of predominantly property reinsurance and retrocessional (ie reinsurance of reinsurance) exposures termed the Ex-Nissan Cat book. This book contains risks mainly written between 1990 and 2001 and has been in run-off since the end of 2001. This account contains significant exposure to the World Trade Center loss.
  - A block of Ex-Nissan reciprocal treaties. These also contain asbestos exposures.
- 4.3 I understand the bulk of the residual liabilities stems from reinsurance of international liability business, including substantial amounts of US liability exposure. The residual liabilities mainly relate to business written before 1990.
- 4.4 I understand the Nissan “NMUA” account contains a small amount of direct business, but that any direct contracts with risks situated in EEA states other than the UK are to be excluded from the transfer.
- 4.5 The estimated undiscounted value of the liabilities to be transferred is some US\$183m gross of third party reinsurances and US\$174m net of third party reinsurance, (this is net of both the reinsurance intended to be transferred by Court order, and that intended to be transferred by individual agreements with reinsurers).
- 4.6 I understand the estimated value of the liabilities is intended to be a valuation on a best estimate basis, that is a value with no deliberate bias upwards or downwards.
- 4.7 I understand Transfercom is to have a share capital of US\$43m fully paid.

- 4.8 The proposal is for the premium received by Transfercom in respect of the transfer to be used to purchase an extensive reinsurance arrangement from National Indemnity.
- 4.9 This contract has two components. First, there is cover for claims and external claims settlement and claims related payments. I understand the limit for this section of the contract will be US\$482m. Second, there is cover for internal expenses incurred by Transfercom. This cover is for US\$50m. There is no retention, that is, the reinsurance responds from the first dollar of claim payments made, or the first pound of expenses incurred.
- 4.10 As the premium received by Transfercom is to be used to purchase reinsurance, there will be relatively small amounts of investments held in Transfercom. I understand Transfercom's policy will be to invest these in bonds and cash deposits.
- 4.11 The proposed cover in respect of claims' costs is illustrated in the following diagram:



- 4.12 The business to be transferred contains substantial amounts of asbestos, pollution and other latent claims.<sup>1</sup> It is very difficult to assess the future payments that will arise in respect of these claim types. The exhaustion of the assets and products liability insurance programs of many of the primary asbestos manufacturers has led to claims being made against many companies who used asbestos or supplied asbestos-

<sup>1</sup> Latent claims (literally hidden claims) are those claims that emerge a considerable period after an insurance or reinsurance contract is written.

containing products. In addition companies have sought to recover from insurance coverages other than product liability.

- 4.13 The future claims payments that will arise on the policies to be transferred will depend on many currently unknown factors. These range from the future incidence of asbestos related disease to the extent to which new defendants will be called on to respond to asbestos claims to the size of future court awards and the response to novel legal coverage theories.
- 4.14 Thus, I consider there is a great deal of uncertainty attached to both Sompo's assessment of its best estimate of the run-off liability in respect of the transferring business, and to any assessment of the scope for adverse outcomes.
- 4.15 Historically, insurance companies' and actuaries' estimates of asbestos claims payments and remaining liabilities have often proved inadequate.
- 4.16 In Sompo's case, this uncertainty is increased by the lack of detailed records as to what policies were written that are exposed to asbestos and pollution claims. This lack of detailed records in respect of Sompo's asbestos and pollution exposures is not unusual.

**Non-transferring policyholders of Sompo Japan Insurance Inc.**

- 4.17 The transfer will result in a small decrease of the order of 2% in the net assets of Sompo Japan Insurance Inc.
- 4.18 Notwithstanding this, the separation of asbestos and other commercial liability claims from Sompo's remaining portfolio of personal lines (household, private vehicle etc) business is in my opinion in the interests of the non-transferring policyholders.
- 4.19 Overall, I do not consider the position of the non-transferring policyholders would be materially disadvantaged by the proposed transfer.

**Transferring policyholders**

- 4.20 The claims arising from the transferring policies will take many years to be paid out.
- 4.21 Currently, in the event of claims liabilities worsening, these policyholders would benefit from the protection afforded by Sompo's very substantial net asset position.
- 4.22 However, the future position of Sompo Japan Insurance Inc. (and hence of these policyholders were the transfer not to proceed) is subject to risk. In particular, it is possible that strategic decisions or future events or investment conditions could result in substantial future losses. It is, however, likely that such losses would be absorbed by Sompo's substantial free capital. I consider the prospects of such future losses as would impact on the payment prospects of transferring policyholders to be remote. In

addition, it is possible that future re-structuring of Sompo's trading subsidiaries could result in the isolation of these liabilities from ongoing personal lines business.

- 4.23 I do not consider it possible, with any degree of reliability, to quantify the probability of such unlikely outcomes as would impact policyholder security.
- 4.24 The proposal is for the transferring policyholders to transfer into a separate Berkshire Hathaway subsidiary, Transfercom.
- 4.25 There is substantial uncertainty as to the eventual amounts that will be paid in respect of claims on the transferring policies. In part this derives from the nature of the liabilities (asbestos and pollution claims) and in part from the absence of records of the details of coverage and limits provided.
- 4.26 The transferring policyholders will have the benefit of aggregate resources (net assets plus reinsurance cover) amounting to US\$525m. This is approximately three times the value of the liabilities transferred (US\$174m net of third party reinsurances). That is policyholders are protected against deterioration in the amounts eventually settled, until the total claims paid is three times the current assessment. Generally, it is considered that for this kind of portfolio with a substantial asbestos component, an amount of twice the reserves held might prove to be sufficient approximately 90% to 95% of the time. I consider the reinsurance provided should result in substantial protection for the transferring policyholders so that the likelihood of their liabilities not being met in full is reasonably remote. Because this event lies in the extreme portion of the distribution of possible outcomes and because of uncertainty surrounding the factors that will influence the claim payments, I do not consider it possible to quantify this probability with any degree of accuracy.
- 4.27 The reinsurance will also meet the costs of administering the portfolio, in addition to the claims' costs until either the claims run-off is complete, the limit of the reinsurance cover in respect of claims is reached, or an amount of US \$50m in respect the costs of administering the portfolio is incurred, whichever is the earliest.
- 4.28 The reinsurance is to be provided by the National Indemnity Company. This is a main insurance company within the Berkshire Hathaway group with net assets as at 31 December 2005 of some US\$29bn and an A++ AM Best's rating.
- 4.29 I consider it unlikely, absent future transfers to Transfercom adversely impacting their position, that the transferring policyholders' liabilities will fail to be met as they fall due.

### **Administration of contracts**

- 4.30 I understand these portfolios subject to transfer are currently administered by Axiom (a company that specialises in claims of this type) and Resolute Management Inc, a Berkshire Hathaway subsidiary. It is proposed that this arrangement will remain in place after the transfer.
- 4.31 I confirm that in so far as the facts stated in my report are within my own knowledge I have made it clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

*Catherine Cresswell*

**Catherine Cresswell**  
**Fellow of the Casualty Actuarial Society**  
**Senior Consultant**

**10 October 2006**

**Watson Wyatt Limited**  
**Watson House**  
**London Road**  
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**Surrey**  
**RH2 9PQ**

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# A Extract from terms of reference

Direct line: +44 1737 274443  
Email: [catherine.cresswell@watsonwyatt.com](mailto:catherine.cresswell@watsonwyatt.com)

Your reference:  
Our reference:

21 December 2005

Mr K Tsukui  
Senior Deputy General Manager  
Sompo Japan Insurance Inc  
Commercial Risk Solution Department  
Level 4  
155 Bishopsgate  
London  
EC2M 3AY

Dear Mr Tsukui

## **Engagement letter**

This engagement letter together with the enclosed general terms and conditions of business, sets out the basis upon which Watson Wyatt is willing to allow Catherine Cresswell to act as independent expert in connection with the Court approval of the transfer of insurance business from the UK branch of Sompo Japan Insurance Inc (“Sompo”) to Tenecom Ltd in accordance with Chapter 18 of the Financial Services Authority’s (“the FSA”) Handbook Supervision Manual (“the assignment”).

## **Scope**

Catherine’s role will be to act as independent expert and provide the scheme report on the transfer of insurance business from Sompo’s UK Branch to Tenecom Ltd (“the Report”) in accordance with Chapter 18 of the FSA’s Handbook. The assignment may include meetings with the FSA and appearing before the Court as required.

You will provide us with full details of the block of business to be transferred and any relevant financial information including [actuaries’] reports on the book of business to be transferred, and either internal or external reports on Sompo’s other liabilities pertinent to the financial position of both Sompo and Sompo’s UK Branch.

We will review the actuarial reports and will draw your attention to any significant areas of concern that we have with such reports. It is the responsibility of Sompo to inform itself of the work performed by and the advice given by its other advisers.

We will provide Sompo with a draft copy of the scheme report and will only disclose draft versions of the report to third parties with Sompo’s consent.



In the event of a summary of the Report being circulated to policyholders, Watson Wyatt will approve the form of that summary before circulation.

In the event of serious doubt arising as to whether the scheme would be approved by the FSA or by the Court, we will arrange a meeting with you to discuss our concerns and agree a subsequent course of action.

Any variations to the scope of the services to be provided must be set out in writing between us.

### **Timetable**

We understand you seek to have approval of the transfer from the UK FSA by 31 March 2006.

We will aim to complete our draft report by 21 February 2006. This is subject to:

- Our receiving by 31 December 2005 details of the financial position of both Sompo Japan Insurance Inc and Sompo's UK Branch, including [actuaries'] reports on the book of business to be transferred and either internal or external actuarial reports on Sompo's other liabilities;
- Details of the post transfer financial position of Sompo Japan Insurance Inc and Sompo's UK Branch;
- Details of the pre-transfer financial position and policyholder exposures of Tenecom Ltd, including details of the reinsurance protection in place;
- Details of the post transfer financial position of Tenecom Ltd; and

either

- Either a reinsurance contract between Berkshire Hathaway and Tenecom Ltd having been agreed, subject to court approval for the transfer, which, in the opinion of the independent expert, enables the transfer to be accomplished without materially disadvantaging any of:
  - Sompo's existing policyholders;
  - the transferring policyholders; and
  - Tenecom Ltd's existing policyholders.

or

- Tenecom otherwise being provided with adequate financial resources which, in the opinion of the independent expert, enables the transfer to be accomplished without materially disadvantaging any of:
  - Sompo's existing policyholders;

- the transferring policyholders; and
- Tenecom Ltd's existing policyholders.

Our ability to meet any timetable set by or agreed with you is dependent on you making available staff and providing all information pertinent to the transfer in a timely fashion.

### **Limitation of liability**

We would draw your attention to section 8 of the general terms which sets out provisions limiting Watson Wyatt's liability to Sompo in total in respect of the assignment. We would propose that the Amount (as that term is defined in the general terms) be set at £10 million.

Watson Wyatt's liability to Sompo is limited to the use of the report as a scheme report under Chapter 18 of the FSA's Handbook.

Watson Wyatt will not accept any liability or responsibility to any third party recipient of the report, other than for consideration of the scheme, under any circumstance.

You accept that in producing the Report we have placed reliance upon the accuracy and completeness of Tillinghast's actuarial reports pertaining to the liabilities to be transferred from Sompo Japan Insurance Inc.

### **Letter of representation**

You will furnish Watson Wyatt with representation letters setting out matters material to our consideration of policyholders' interests and confirming that the data and information provided by Sompo Japan Insurance Inc is accurate and complete, stating the technical reserves held and net assets held and confirming that there are no material inaccuracies or omissions in the description of Sompo branches, business and operations given in our reports.

### **Publicity**

Subject to complying with all obligations in respect of confidentiality under section 6 of the general terms, and subject to the transaction being completed, we have the right to refer to the fact that we have carried out the services described in this letter for you in proposals or other similar submissions made to prospective clients unless you prohibit disclosure in writing.

## Acceptance

If there is anything in this engagement letter or in the general terms that you do not agree with or wish to discuss please do not hesitate to contact us. Otherwise please could you sign and return to us a copy of this letter and of the general terms attached to it indicating your acceptance of its terms.

If you ask us to commence the provision of the services or allow us to continue to provide services after the delivery of this letter without your having objected to the terms of this letter then we shall be entitled to treat you as having accepted this engagement letter and the general terms.

Yours sincerely

Catherine Cresswell  
Senior Consultant

Enc: General Terms of Business

I confirm my agreement, on behalf of Sompo Japan Insurance Inc to this engagement letter and the enclosed general terms.

Signed:

Name:

Authorised for and on behalf of Sompo Japan Insurance Inc

Date:

# Watson Wyatt Limited

## Terms & Conditions of Business

### **1 Parties, engagement letters and application**

These general terms and conditions of business ("general terms") shall apply to all engagements for professional services and advice (other than pensions administration services) ("services") provided to you by Watson Wyatt Limited or any entity directly or indirectly owned or controlled by Watson Wyatt & Company (together "Watson Wyatt", "we", "our" or "us"). The terms "you" or "your" means the addressee(s) of an engagement letter and/or any parent, associated or subsidiary entities to whom we provide services unless other terms have been agreed with such parent, associated or subsidiary entity.

These general terms only create rights enforceable by parties falling within the definitions set out in this section and section 8 and do not create any rights enforceable by any other party ("third parties").

### **2 Fees**

Where they have not been otherwise set or agreed our fees will be calculated by reference to the time spent on, the importance, complexity and urgency of, and the value of the knowledge and skills applied in the context of the particular assignment. Any fees or rates quoted or estimated are exclusive of VAT and disbursements.

Our normal practice is to submit invoices for services rendered and disbursements incurred on a monthly basis. Invoices are payable within 28 days of receipt. In the event that invoices are not paid within that time period we shall be entitled to charge interest for late payment at a rate of 2% above the base rate from time to time of HSBC Bank plc on any balances outstanding.

### **3 Our responsibilities**

We shall provide the services with all reasonable skill and care and will use reasonable endeavours to meet any timetable or deadline that we may agree with you. A more detailed description of the services to be provided in connection with any assignment may be found under the section headed "Scope" in the engagement letter (if any) issued in relation to that assignment.

Unless specifically otherwise agreed in writing we shall not be providing you with legal, audit, accountancy or tax advice which are outside the normal scope of our services. Where, in the course of providing our services, we need to interpret a document, deed, accounts or relevant taxation provision in order to advise you we will do so with the reasonable skill and care to be expected of us in our professional capacity but you acknowledge that we are neither lawyers nor tax advisers nor accountants and accordingly should you want definitive advice for example, as to the proper interpretation of a document, deed, accounts or relevant taxation provision you should consult your lawyers, accountants or tax advisers for that advice.

#### **4 Your responsibilities**

You will provide us with all necessary documentation and information required in order to enable us to provide the services. You will also ensure that your staff and any third parties who are otherwise assisting, advising or representing you will co-operate with us in the provision of the services. Any delay or failure to provide documentation, information or co-operation may result in our being unable to meet any agreed timetable and in additional work being required.

You confirm that the information provided to us will be accurate and complete and that unless otherwise agreed in writing we may rely upon it without seeking to verify or check it in any way.

You also confirm that, in relation to any particular assignment, we shall only be treated as having notice of information provided to the staff who are members of the team performing the assignment in question.

#### **5 Intellectual property rights, skills and know-how**

The Intellectual Property Rights in all materials created or otherwise generated by us during the course of providing any services shall remain our property. No report, document or publication produced by us (in whatever form) may be reproduced or distributed, in whole or in part, without our prior written consent although consent is given for any reproduction or distribution that you undertake within your own organisation.

For the purposes of these general terms the term "Intellectual Property Rights" shall mean all patents, trademarks, design rights (whether registerable or otherwise), applications for any of these, copyrights, database rights, trade or business names and other similar rights or obligation whether registerable or not in any country.

You confirm that we are free (subject to complying with any duties in relation to confidentiality) to use any skill, know-how or methodologies used or acquired in providing the services for our own business purposes.

## **6 Confidentiality and Data Protection**

We will treat as confidential all information (whether provided orally, in writing or in any other form) which you provide to us for the purposes of any assignment.

All reports, advice, opinions, letters or other information provided by us to you are provided solely for your use and for the specific purposes indicated to us or envisaged in any engagement letter. Except where we agree in writing, they should not be disclosed or provided to any third party. In the absence of our express written agreement to the contrary we accept no responsibility whatsoever for any consequences arising from any third party relying on any such reports, advice, opinions, letters or other information.

The provisions in sections 5 and 6 restricting disclosure of confidential information shall not apply to any information which:

- a.** is or becomes public knowledge other than as a consequence of breach of these general terms;
- b.** is already in the possession of the other party without restriction before the date of receipt from the disclosing party;
- c.** is required to be disclosed by any applicable law, professional or regulatory authority or order of a court of competent jurisdiction.

Subject to our complying with our obligations in respect of confidentiality we shall be free to act for clients whose interests compete with or oppose yours without having to first obtain your consent to so doing.

Where we receive personal data and act as a data processor on your behalf (both as defined in the Data Protection Act 1998) we confirm that we will take appropriate technical and organisational measures to protect that personal data against accidental or unlawful destruction or accidental loss or unauthorised alteration, disclosure or access. We will only process in accordance with your instructions. We understand that your instructions are to process the personal data in question only for the purposes of providing services to you or for other reasonable purposes which are ancillary to the provision of such services.

## **7 Termination**

In relation to any assignment governed by these general terms, either party may terminate that assignment on notice to the other party in writing. We shall be entitled to be paid for services rendered up to the date of any such termination, and for disbursements incurred.

The termination of any one assignment shall not, unless expressly stated to do so, terminate any other assignment that we may be carrying out for you and shall not operate to affect any provisions that either expressly or by implication survive such termination.

## **8 Limitation of liability**

We acknowledge that we will be liable to you for losses, damages, cost or expenses ("losses") caused by our negligence, breach of contract, or wilful default, subject to the following provisions:

- we shall only be liable to you for any losses you suffer that correspond directly and are limited to our degree of responsibility for the losses in question;
- we will not be liable if and to the extent that such losses are due to the provision of false, inaccurate, misleading or incomplete information or documentation or due to the acts or omissions of any other person;
- our aggregate liability to you whether in contract, tort, breach of statutory duty or otherwise for any losses whatsoever and howsoever caused arising from or in any way connected with any one assignment shall not exceed the amount specified in the engagement letter ("the Amount") relating to that assignment. If no amount is specified or in respect of each assignment where no engagement letter has been issued the Amount shall mean £2 million (including any claims for interest and costs).

Unless otherwise specified or defined in an engagement letter, the term "assignment" shall mean either a discrete piece of standalone advice or, where there is a series of connected or linked pieces of advice forming a project or matter, that project or matter as a whole.

For the purposes of this section 8 the terms "we", "our" and "us" shall be construed so as to include the directors, officers, employees, agents and sub-contractors of Watson Wyatt and of any entity directly or indirectly controlled by it.

Nothing in this section shall exclude or restrict our liability for personal injury, death, fraud or dishonesty or otherwise to the extent that we cannot do so by law.

## **9 Staff retention**

You shall not offer employment to any member of our staff who provides services to you, neither shall you use the services of such individual as an independent consultant, for a period of 12 months following the end of the involvement by the individual concerned with the services being provided to you. In the event that you breach this provision you agree to pay to us, as a reasonable pre-estimate of the loss that we are likely to suffer, a sum equivalent to 50% of the annual salary of the individual concerned.

## **10 Delay**

We shall not be responsible for any failure or delay in the performance of the services, where such failure or delay is caused by matters beyond our control (including but not limited to your failure to comply with the obligations set out in section 4 above).

## **11 Severability**

Should any of these general terms be declared void, illegal or otherwise unenforceable, the remainder shall survive unaffected.

## **12 Complaints procedure**

We would prefer that you do not take action or commence any proceedings against us without first addressing your complaint to your usual contact, and, in the event that the matter remains unresolved following discussions with that individual, to the Managing Director.

## **13 Jurisdiction and governing law**

These general terms and any engagement letter incorporating these general terms (whether by deemed incorporation or otherwise) shall be governed by and interpreted in accordance with English law and the courts of England shall have jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise out of or in connection with these general terms or any assignments carried out pursuant to them.



# B Catherine Cresswell - Curriculum Vitae

Catherine joined Watson Wyatt in 2001. Prior to joining Watson Wyatt, Catherine was chief actuary responsible for general insurance advice at the Government Actuary's Department. She advises clients on a range of regulatory and capital adequacy issues.

At the Government Actuary's Department she advised the DTI, the Treasury and the FSA insurance division on insurance issues including the consideration of reserving, capital adequacy issues, and the consideration of policyholders' interests in corporate restructuring and transfers of business.

She has acted as the independent expert in a number of transfer of business applications, and has dealt with most classes of insurance business commonly written.

Catherine has over 20 years experience in the insurance industry. She initially trained as a chartered accountant and specialised in the audit of financial service sector firms, before becoming a casualty actuary (that is an actuary specialising in general insurance) qualifying as a fellow of the Casualty Actuarial Society in 1996. She is an affiliate member of the Institute of Actuaries.

She serves on the general insurance accounting issues committee of the Institute of Actuaries.

She has spoken in the UK, US, Europe and Asia on a range of actuarial and insurance regulation issues. She regularly contributes to actuarial working parties.

# C Glossary of terms

<b>Term</b>	<b>Definition</b>
best estimate basis	an estimate with no deliberate bias upwards or downwards
cedant	the insurer who transfers risk to a reinsurer in a reinsurance contract.
commercial carriers	insurance companies that write insurance policies which cover risks for commercial enterprises
excess of loss treaty	a form of reinsurance under which recoveries are available when a given loss exceeds the cedant's retention defined in the agreement.
free capital	in this report the excess of a company's assets over its liabilities. This term can also be used to the excess of a company's assets over the liabilities plus its statutory solvency margin.
latent claim	claims resulting from perils or causes which the insurer is unaware of at the time of writing a policy, and for which the potential for claims to be made many years later has not been appreciated. The first claims from these sources may often not be apparent until many years after the period of cover, eg asbestosis, pollution, industrial deafness etc.
net assets	the excess of a company's assets over its liabilities
non life business	the insurance of property and liability (as opposed to life) risks
reciprocal treaties	reinsurance where two or more parties agree to reinsure each other
reinsurance business	the insurance of insurers: the practice whereby one party called the Reinsurer in consideration of a premium paid to him agrees to indemnify another party, called the Reinsured, for part or all of the liability assumed by the latter party under a policy or policies of insurance which it has issued
reserve deterioration	this occurs if the amount for which outstanding claims are re-evaluated or eventually settled is greater than the amount currently estimated
retention	the net amount of risk which the ceding company keeps for its own account

# D Sampo Japan Insurance 31 March 2006 Balance Sheet

	US\$ <b>billion</b>
Cash, investments and property (net of provisions)	47.0
Insurance related recoverables	2.0
Other assets	1.5
<b>Total assets</b>	<b>50.5</b>
Underwriting provisions	20.2
Policyholder deposits	13.4
Insurance related payables	0.8
Other liabilities	4.2
Shareholders' funds	11.9
<b>Total liabilities and shareholders' funds</b>	<b>50.5</b>

Fuller financial details are available from [www.sompo-japan.co.jp](http://www.sompo-japan.co.jp).