

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

MARKEL CATCO REINSURANCE FUND
LTD., *et al.*,

Debtors in Foreign Proceedings.¹

Chapter 15

Case No. 21-11733 (LGB)

(Jointly Administered)

**ORDER GIVING FULL FORCE AND EFFECT
TO BERMUDA SCHEMES OF ARRANGEMENT**

Upon consideration of the *Motion for Entry of an Order Giving Full Force and Effect to Bermuda Schemes of Arrangement* [Docket No. 30] (the “**Motion**”)² of Simon Appell of AlixPartners UK LLP and John C. McKenna of Finance & Risk Services Ltd., in their capacities as the joint provisional liquidators and authorized foreign representatives (in such capacities, the “**JPLs**” or the “**Foreign Representatives**”) of the above-captioned foreign debtors (the “**Debtors**”) subject to liquidation proceedings (the “**Provisional Liquidation Proceedings**”) under Part XIII of the Companies Act 1981 (the “**Bermuda Companies Act**”) and the schemes of arrangement under section 99 of the Bermuda Companies Act commenced in the Provisional Liquidation Proceedings (the “**Schemes**” and, together with the Provisional Liquidation Proceedings, the “**Bermuda Proceedings**”), which Bermuda Proceedings were commenced to implement the buy-out transaction contemplated by such Schemes and the

¹ The Debtors are Bermuda companies registered with the Registrar of Companies in Bermuda. The Debtors’ respective registration numbers are as follows: Markel CATCo Reinsurance Fund Ltd. (50599); CATCo Reinsurance Opportunities Fund Ltd. (44855); Markel CATCo Investment Management Ltd. (50576); and Markel CATCo Re Ltd. (50602). Each of the Debtors has its registered office located at Crawford House, 50 Cedar Avenue, Hamilton HM11, Bermuda.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Settlement Agreement³ (the “**Buy-Out Transaction**” and the implementation of such Buy-Out Transaction through the Scheme and these chapter 15 cases (the “**Chapter 15 Cases**”), the “**Restructuring**”), before the Supreme Court of Bermuda (the “**Bermuda Court**”), for entry of an order (this “**Order**”) giving full force and effect to the Schemes and approving the releases, the permanent injunctions, the financing, and the related relief described below in support of court-approved and creditor-endorsed Schemes and the Buy-Out Transaction; and this court (the “**Court**”) having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and after due deliberation therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference*

³ “**Settlement Agreement**” means the agreement, dated February 3, 2022, between Markel CATCo Investment Management Ltd. (the “**Manager**”) (on its own behalf and on behalf of the Private Fund), HWH Realty LLC (“**HWH**”) and certain investors in the Private Fund connected with Partners Capital LLP (the “**Partners Investors**”).

M-431, dated January 31, 2012 (Preska, C.J.). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(P). Venue is proper under 28 U.S.C. § 1410.

C. The relief sought in the Motion is necessary and beneficial to the Debtors and is necessary and appropriate to effectuate the purposes of chapter 15 and to protect the Debtors, their assets, and the interests of the Scheme Creditors, other parties-in-interest, the public and of international comity, and is consistent with the laws and public policies of the United States, international comity, and the policies of title 11 of the United States Code (the “**Bankruptcy Code**”).

D. The Debtors and the Foreign Representatives are entitled to all of the relief requested in the Motion.

E. Adequate, sufficient, appropriate, and timely notice of the filing of the Motion and the Hearing was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

F. No objections or other responses were filed that have not been overruled, withdrawn, or otherwise resolved.

G. Just treatment and due process were satisfied because Scheme Creditors and other parties-in-interest were provided with access to information and a full and fair opportunity to be heard in a meaningful manner in connection with the Schemes.

H. The Foreign Representative and the Debtors, as applicable, are entitled to the additional assistance and discretionary relief requested in the Motion (including enforcement of the Bermuda Proceedings, including the Schemes (and the Releases contained therein), the Sanction Orders, and the Buy-Out Transaction) under Bankruptcy Code sections 1507 and 1521.

I. The relief granted hereby is necessary and appropriate in the interests of the public and of international comity, consistent with the public policy of the United States, warranted pursuant to Bankruptcy Code sections 105(a), 1507, 1509(b), 1517(d), 1521, 1522, and 1525(a), and will not cause hardship to the Scheme Creditors or other parties-in-interest that is not outweighed by the benefits of granting that relief.

J. The Loans are an essential element of the Buy-Out Transaction, are necessary for the implementation of the Buy-Out Transaction, and are critical to the overall success and feasibility of the Restructuring. The creation and perfection of the liens in connection therewith and the priority thereof, are necessary and appropriate for implementation of the Buy-Out Transaction and the Restructuring.

K. Absent the relief requested in the Motion, the Debtors or the CATCo Released Parties may be subject to the prosecution of CATCo Claims or CATCo Liabilities or other proceedings in connection with claims against the Debtors, the CATCo Released Parties or their property in the United States, thereby interfering with and causing irreparable harm to the Debtors, the Scheme Creditors, the CATCo Released Parties and other parties-in-interest and, as a result, the Debtors, the Scheme Creditors, the CATCo Released Parties and such other parties-in-interest would suffer irreparable injury for which there is no adequate remedy at law.

L. Absent the relief requested in the Motion, the efforts of the Debtors, the Bermuda Court and the Foreign Representatives in conducting the Bermuda Proceedings and effecting the Restructuring and the Buy-Out Transaction under the Schemes and Bermuda law may be undermined by the actions of certain parties, contrary to the purposes of chapter 15 as reflected in Bankruptcy Code section 1501(a).

M. Each of the injunctions contained in this Order (i) is within this Court's jurisdiction; (ii) is essential to the success of the Schemes, the Buy-Out Transaction, and the Restructuring and their overall objectives; (iii) is an integral element of the Schemes, the Buy-Out Transaction, and the Restructuring and/or to their effectuation; and (iv) confers material benefits on, and is in the best interests of, the Debtors and their creditors, including without limitation the Scheme Creditors.

N. In accordance with Bankruptcy Code section 1507(b), the relief granted herein will reasonably assure: (i) the just treatment of all holders of claims against or interests in the Debtors' property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Bermuda Proceedings; (iii) the prevention of preferential or fraudulent dispositions of the Debtors' property; and (iv) the distribution of proceeds of the Debtors' property substantially in accordance with the order prescribed in the Bankruptcy Code.

O. All creditors and other parties-in-interest, including the Debtors, are sufficiently protected in the grant of the relief ordered hereby in compliance with Bankruptcy Code section 1522(a).

P. The Foreign Representatives and the Debtors are entitled to this Court's cooperation under Bankruptcy Code section 1525(a) in implementing the Bermuda Proceedings, including the Schemes and the Buy-Out Transaction, in the form of relief granted by this Order on the terms provided herein.

For all of the foregoing reasons, and for the reasons stated by the Court on the record of the Hearing, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, the relief requested in the Motion is approved, and any objections are overruled on the merits with prejudice.
2. Upon entry of this Order, the Bermuda Proceedings and all prior orders of the Bermuda Court shall be and hereby are granted comity and given full force and effect in the United States.
3. As of the date each is deemed approved, sanctioned, enforceable, and/or effective by their terms or under applicable law (as applicable to each, the “**Effective Date**”):
 - (a) the Bermuda Proceedings, the Schemes, the Sanction Orders, the Deed of Release,⁴ and any other documents to be entered into pursuant to authority or instructions provided for by the Schemes or otherwise in connection with the Schemes and the Buy-Out Transaction, including the Settlement Agreement (all such documents, the “**Transaction Documents**”), and all other agreements related thereto are recognized, granted comity, and given full force and effect and are binding upon and enforceable against all Entities⁵ in accordance with their terms, and such terms shall be binding upon and fully enforceable against the Scheme Creditors,⁶ whether or not they have actually agreed to be bound by the Schemes or have participated in the Bermuda Proceedings;
 - (b) the releases and agreements not to sue granted, provided for, or approved under the Sanction Orders, the Schemes, the Deed of Release, the Transaction Documents (including the Settlement Agreement), and all other related

⁴ “**Deed of Release**” means a deed of release to be dated on or about the date of completion of the implementation of the Buy-Out Transaction (the “**Closing Date**”) between the Scheme Creditors; the Scheme Companies; the Manager; Markel CATCo Re Ltd. (the “**Reinsurer**”); SOAFC I, Inc., SOAFC II, Inc. and SOAFC III, Ltd. (the “**Funding Cos**”); SPC, Ltd. as purchaser (the “**Purchaser**”); the Adverse Development Cover Provider; and Markel Corporation.

⁵ “**Entities**” has the meaning given to it in section 101(15) of the Bankruptcy Code).

⁶ “**Scheme Creditors**” means all persons (other than HWH and the Partners Investors) that are beneficially interested in the shares issued by the Private Fund in respect of the segregated accounts of the Private Fund (the “**Private Fund Shares**”) and the ordinary shares (the “**Ordinary Shares**”) and C shares (the “**C Shares**” and together with the Ordinary Shares, the “**Public Fund Shares**”) issued by the Public Fund (the Private Fund Shares and the Public Fund Shares, together, the “**Shares**”) as at March 1, 2022 at 2:00 p.m. (Bermuda Time) (the “**Scheme Record Time**”), in their capacity as potential creditors of the Private Fund (or any of its segregated accounts) or the Public Fund, as applicable, in relation to their potential CATCo Claims or CATCo Liabilities.

documents (collectively, the “**Releases**”), are enforceable by all Released Parties⁷ (including the Settling Insurers⁸ who shall be entitled to enforce the Releases in respect of any CATCo Claims⁹ or CATCo Liabilities¹⁰ asserted by any Scheme

⁷ “**Released Parties**” means (a) the “**CATCo Released Parties**,” comprised of (i) the Purchaser, (ii) the Public Fund, (iii) the Private Fund, (iv) the Reinsurer, (v) the Manager, (vi) the Funding Cos, (vii) the Adverse Development Cover Provider, (viii) Markel Corporation and (ix) all or any of their respective former and existing affiliates, directors, managers, shareholders, officers, controlling persons, beneficial owners or interest holders, advisory board members, employees, consultants, agents, subsidiaries, members, managers, predecessors and successors in interest, heirs, executors and assignors or assignees, nominees, participants, partners, limited partners, general partners, principals, fund advisors, attorneys, financial advisors, investment bankers, accountants, other professionals or representatives, sub-advisors (and their respective affiliates directors, managers, shareholders, partners, principals, members, officers, controlling persons, employees and agents), and agents (including any individual who serves at the Manager’s request as a director, officer, partner, trustee, or the like of another entity) and/or the legal representatives and controlling person of any of them, (b) all persons beneficially interested in Shares as at the Scheme Record Time (for purposes of this definition, an “**Investor**”); (c) in respect of any Investor, any financial or investment adviser or manager, introducer, or equivalent party (howsoever described) in respect of which such Investor may have a claim, potential claim, counterclaim, potential counterclaim, right of set-off, indemnity, cause of action, demand, suit, right to payment (whether or not such right is reduced to judgment), right or interest of any kind or nature whatsoever, whether in law or in equity, civil or criminal, contractual or in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), or under the laws that govern the offer and sale of securities in any jurisdiction and whether direct or derivative in nature, whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or unliquidated, matured or unmatured, direct or indirect, disputed or undisputed, secured or unsecured, fixed or undetermined, present or future, however and whenever arising and in whatever capacity and jurisdiction (“**Claims**”) in respect of the Investor’s investment in either of the Scheme Companies, to the extent that such party would be entitled to indemnity from any of CATCo Released Parties on account of such Claims; and (d) the JPLs.

⁸ “**Settling Insurers**” means Axis Insurance Company, QBE Insurance Corporation and Twin City Fire Insurance Company.

⁹ “**CATCo Claims**” means all Claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies or the Markel CATCo Business, and/or the Investors’ Shares, including, without limitation, any such Claims based on any oral or written statements or omissions by any person; based in tort (including, but not limited to, negligence or fraud), contract, or the laws that govern the offer and sale of securities under the law of any jurisdiction; based on breach of fiduciary or other duties or breach of any contracts or deviations from operations; based on any argument or theory of alter ego, vicarious liability, agency, or piercing the corporate veil; for breach of representation, warranty or undertaking; based on an event of default or under any indemnity given under or in connection with any such Claim; based on indemnification, whether statutory or otherwise in any jurisdiction; for damages, restitution, contribution, attorneys’ fees, costs, or other liability; or as a result of any recovery by any person of a payment on the grounds of preference or otherwise, and any Claims which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

“**Markel CATCo Business**” means the retro reinsurance and reinsurance business carried out by the Manager, the Scheme Companies and the Reinsurer and the management and solicitation of investments in respect thereof.

¹⁰ “**CATCo Liabilities**” means all Liabilities at any time due, owing or incurred by any Released Party to any Party or any of its Related Parties arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies or the Markel CATCo Business, and/or the Investors’ Shares, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

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Creditor against any CATCo Released Party or Settling Insurer only in respect of the Settled Policies¹¹) in the United States pursuant to their terms and in respect of all parties subject thereto;

- (c) all Entities are permanently enjoined from commencing, continuing in any manner, or taking any action, directly or indirectly, including by way of counterclaim, any action, suit, or other proceeding, employing any process, or performing any act to collect, recover, or offset (except as expressly provided in the Schemes, the Deed of Release, and the Transaction Documents), or seeking any related discovery, in each case with respect to any CATCo Claim or CATCo Liability or any claim, debt, or interest cancelled, released, discharged, assigned, or restructured under the Schemes, the Deed of Release, or the Transaction Documents (including the Settlement Agreement) against the Debtors, any CATCo Released Parties, the Settling Insurers (only in respect of the Settled Policies) or that would otherwise be inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, or consummation of the Schemes, the Sanction Orders, the Deed of Release, the Transaction Documents (including the Settlement Agreement), or the terms of this Order or the application of Bermuda law in connection with the Restructuring, including:
 - (i) against any property of the Debtors within the territorial jurisdiction of the United States (or of any direct or indirect transferee of or successor to any property of the Debtors), including (i) levying, attaching, collecting, or otherwise recovering such property, (ii) enforcing against such property any judgment, award, determination, decree, assessment, garnishment, or order against Debtors, or (iii) creating, perfecting, or otherwise enforcing any lien or encumbrance against such property; or
 - (ii) transferring, relinquishing, or disposing of any property of the Debtors located within the territorial jurisdiction of the United States, or taking or continuing any act to obtain possession of, commingle, or exercise control over, such property;

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“Liability” or **“Liabilities”** means any debt, liability or obligation of a person whether it is present, future, prospective, actual or contingent, whether it is fixed or undetermined, whether incurred solely or jointly or as principal or surety or in any other capacity, whether or not it involves the payment of money or performance of an act or obligation and whether it is civil or criminal and howsoever arising, whether at common law, in equity or by statute, in contract or in tort (including, but not limited to, negligence or fraud) in England and Wales, Bermuda or any other jurisdiction, or in any manner whatsoever.

¹¹ **“Settled Policies”** means Axis Insurance Corporation Policy No. MLN627387/01/2017; QBE Insurance Corporation Policy No. EOC-0228518-02 and Twin City Fire Insurance Co. Policy No. 34 DC 0293471-17 in each case to the extent the amount agreed in writing between the Manager and the relevant Settling Insurer have been paid to the Manager on or prior to the Closing Date.

- (d) any judgment that purports to determine the liability of any entity released pursuant to the Schemes, the Deed of Release, or the Transaction Documents (including the Settlement Agreement) with respect to any CATCo Claim or CATCo Liability or claim, debt, or interest cancelled, released, discharged, assigned, or restructured under the Schemes or the Settlement Agreement or as a result of the application of Bermuda law in connection with the Schemes or the Settlement Agreement is unenforceable in the United States, in each case to the extent inconsistent with the Schemes, the Sanction Orders, the Transaction Documents (including the Settlement Agreement), or the application of Bermuda law in connection with the Restructuring; and
- (e) the Loans to be made by the Funding Cos pursuant to the Purchase Price Loan Agreement and the security to be granted in favor of the Funding Cos to secure repayment of the Loans (the “**Security**”) are hereby deemed valid and enforceable, and this Order constitutes sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the security interests and liens granted to the Lenders, without the necessity of executing, filing, or recording this Order or any financing statement, mortgage, or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect (in accordance with applicable law) such liens; *provided* that the Foreign Representatives and/or the Debtors are authorized to execute, and the Funding Cos or any agent on their behalf may file or record any financing statements, mortgages, or any other instruments or documents to further evidence the Loans and the liens authorized, granted, and perfected in this Order.

4. No action taken by the Foreign Representatives in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the Schemes, the Transaction Documents (including the Settlement Agreement), or any order entered in or in respect of these Chapter 15 Cases will be deemed to constitute a waiver of any immunity afforded the Foreign Representatives, including pursuant to section 1510 of the Bankruptcy Code.

5. The Foreign Representatives are not required to mail paper copies of the *Declaration of Peter Newman in Support of the Motion for Entry of an Order Giving Full Force and Effect to Bermuda Schemes Of Arrangement* (the “**Newman Declaration**”) or its exhibits, but, rather, the Foreign Representatives are directed to give notice of the Debtors’ restructuring website at <https://catcobuyout.alixpartners.com>, where all Notice Parties (as defined in the *Motion for Entry of An Order (I) Scheduling Recognition Hearing and (II) Specifying Form and*

Manner of Service of Notice of the Notice Documents and Other Documents Filed in the Chapter 15 Cases [Docket No. 8] can access copies of the Newman Declaration (together with all exhibits thereto) and any other documents filed in the Chapter 15 Cases. Any Notice Party or other party-in-interest may request a paper copy of the documents from counsel to the Foreign Representatives at the Debtors' expense.

6. This Order is without prejudice to the Foreign Representatives requesting an additional relief in the Chapter 15 Cases.

7. The Foreign Representatives and the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

8. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, effect, enforcement, amendment, or modification of this Order.

9. This Order shall be immediately effective and enforceable upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

Dated: **March 16, 2022**

New York, New York

/s/ Lisa G. Beckerman
HON. LISA G. BECKERMAN
UNITED STATES BANKRUPTCY JUDGE