



**FAI General Insurance Company Limited**  
**ACN 000 327 855**  
**(In Liquidation and subject to Schemes of**  
**Arrangement)**

**Scheme Administrators' Annual Report to Creditors**

30 June 2016



McGrathNicol



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# 1 Introduction & Background

## 1.1 Introduction

This is the tenth annual report to the Creditors of FAI General Insurance Company Limited - in liquidation and subject to Schemes of Arrangement ("FAIG").

The report has been prepared in accordance with clause 43.2 of the Scheme of Arrangement, which became operative in Australia on 30 May 2006. Under the terms of the clause: "Within three months after each anniversary of the date, being either 31 December or 30 June, at the discretion of the Scheme Administrators, after The Australian Scheme becomes effective, the Scheme Administrators shall report to the Scheme Creditors on the progress of The Australian Scheme, including details of remuneration paid to the Office Holders, since the date of the last such report". Accordingly this report has been prepared for the period to 30 June 2016. It also covers any significant events between that date and completion of the report.

An annual report has also been prepared by the Scheme Administrators of the UK Scheme of Arrangement for FAIG. This will be published on the HIH website as a supplement to the Australian annual report for this company.

## 1.2 Background

HIH Insurance Limited and certain of its major subsidiaries were placed into Provisional Liquidation on 15 March 2001, and subsequently into liquidation on 27 August 2001. In total, eighty-two HIH Group companies in Australia have been placed into liquidation.

Summary details of the history of the group; its failure; and background information are available on the HIH website at [www.hih.com.au](http://www.hih.com.au). The HIH Royal Commission established by the Australian Federal Government has also prepared an extensive report on the failure of the group.

Schemes of Arrangement for the eight licensed insurance companies in the HIH Group in Australia became effective on 30 May 2006, following approval by Creditors and the Court. Schemes of Arrangement for the UK branches of four of these companies became effective in the UK on 13 June 2006. Each of the Schemes has a Record Date (the date at which liabilities are measured) of 27 August 2001; and an estimation date of 31 May 2013 wherein all outstanding claims are valued.

The bar date for submission of Final Claims Forms by the Scheme Creditors against the eight licensed insurance companies in the HIH Group was set at midnight British Summer Time on 2 September 2013. Under the terms of the Schemes, no further claims will be accepted after this date.

The Schemes are currently in the "Estimation" phase where the claims received are being determined to be Acknowledged Creditor Claims, in preparation for the finalisation of the Schemes. Apart from the HIH Insurance Ltd shareholders claims, all other claims lodged against FAIG prior to the bar date have been determined.

## 2 Principal Developments To Report During The Period

The principal developments to report during the period were:

- Agreement of Scheme Payment Percentages by the Scheme Creditor Committee, which now total as follows:

<b>Creditors with insurance liabilities in Australia</b>	<b>Creditors with insurance liabilities outside of Australia</b>	<b>Creditors with non-insurance liabilities in Australia</b>	<b>All other creditors worldwide</b>
64.78%	n/a	62.5%	n/a

More detail on Scheme Payments and the estimated ultimate Scheme Payment Percentages for FAIG is included in section 3 of this report.

- On 20 April 2016, the NSW Supreme Court handed down its judgement on the legal proceedings taken by certain shareholders ("Plaintiffs") of HIH Insurance Ltd who have sought to prove as unsecured creditors of HIH Insurance Ltd ("HIH Insurance"), HIH Casualty & General Insurance Limited ("HIH C&G") and FAIG. The judgement found that the Plaintiffs' claims against HIH Insurance, HIH C&G and FAIG are to be admitted in the Liquidation and the two Schemes subject to certain parameters.

The Scheme Administrators are liaising with their solicitors and the Plaintiffs' solicitors to confirm the basis for calculating and admitting the Plaintiffs damages claims, which they hope to complete by the first half of 2017.

- Except for the Plaintiffs' claims, all other claims lodged against FAIG prior to the bar date have been determined.
- The liquidations of a further four HIH Group subsidiary companies have been finalised since the last annual report dated 30 June 2015. Of these, FAIG received \$3.06 million as a final dividend from FAI Financial Services Ltd.

To date, the liquidations of 64 HIH subsidiary companies have been completed leaving 18 Australian HIH entities remaining in liquidation of which six are subject to Schemes of Arrangement.

### 3 Current and Projected Scheme Payment Percentages

#### 3.1 The Current Scheme Payment Percentage

The current Scheme Payment Percentages for FAIG is 64.78% for creditors with insurance liabilities in Australia (in the case of FAIG this encompasses all insurance creditors) and 62.5% for all non-insurance creditors.

#### 3.2 Projected further Scheme Payments

The Scheme Administrators have paid Scheme Payments percentages close to the forecast minimum levels as set out in section 3.3 of this report. The Scheme Administrators continue to review the available funds and level of claims and final costs to the date of dissolution of the company and hope to be in a position to pay the final Scheme Payment to all classes of creditors with agreed claims by the second half of 2017. However, timing of payment will be dependent on the finalisation of the HIH Insurance shareholders claims.

#### 3.3 Estimated ultimate Scheme Payment Percentage

With the exception of the HIH Insurance shareholder claims, determination of the Scheme Creditors' claims is now complete.

The Scheme Administrators' latest estimate of the ultimate Scheme Payment Percentages for FAIG as at 30 June 2016 is shown below:

<b>Total Scheme Payment Percentage</b>			
<b>Scheme Company</b>	<b>Estimated at Scheme date</b>	<b>Updated at 30 June 2015</b>	<b>Updated at 30 June 2016</b>
FAIG	25% to 35%	63% to 70%	63% to 69.4%

The total estimated Scheme Payment range for creditors can be further analysed as:

	<b>Updated range as at 30 June 2015</b>	<b>Updated range as at 30 June 2016</b>
Creditors with insurance liabilities in Australia	65.5% - 70%	65.3% - 69.4%
Creditors eligible to be paid from US Trust Funds	65.5% - 70%	65.3% - 69.4%
Creditors with non-insurance liabilities in Australia	63% - 68%	63% - 67.5%

The difference in the high / low estimates reflects provision for the HIH Insurance shareholder claims.

## **4 Interaction Between Australian and English Schemes**

### **4.1 Claims under the Australian and English Schemes**

All creditors worldwide are entitled to claim in both the Australian and English Schemes for FAIG. The Australian and English Scheme Administrators co-operate fully. Claims lodged in one jurisdiction become effective under both Schemes.

The Australian and English Scheme Administrators maintain a unified principal to principal ledger system and a unified distribution payment system.

The entitlements of individual creditors under both Schemes are automatically calculated, and when a scheme payment is made, the creditor receives a statement showing how their liability has been classed, and from which classes of assets their distribution has been paid.

Both the Australian and English Schemes contain a “hotchpot” clause. The effect of the hotchpot clause is to prevent a creditor who has already been paid a distribution under one of the Schemes, from receiving further payments under the other scheme until such time as all other creditors with similarly ranked claims have received an equal proportionate distribution.

### **4.2 Distribution Priorities**

The English Scheme is designed to complement the Australian Scheme. Following receipt of the House of Lords judgement the English Scheme has adopted all of the provisions of the Australian Scheme, including the Australian distribution priorities, which now apply to the English Assets.

## **5 Financial Position**

### **5.1 Estimated balance sheet at 30 June 2016**

Included as Appendix 3 to the Australian Explanatory Statement section of the Scheme of Arrangement documentation, which was sent to creditors prior to the creditors' meeting on 29 March 2006, were balance sheets for each of the Scheme companies at 25 September 2005. An updated balance sheet for FAIG as at 30 June 2016 is included as Appendix 1 to this report.

### **5.2 Receipts and payments to 30 June 2016**

A summary of the Scheme Administrators' receipts and payments from the commencement of the Scheme on 30 May 2006 to 30 June 2016 is set out in Appendix 2 to this report.

Since the last annual report dated 30 June 2015, \$676,154.50 has been approved by the FAIG Scheme Creditors' Committee for payment to the Scheme Administrators in their role as Office Holders.

## **6 Closure**

### **6.1 Estimation Period**

The FAIG Schemes are currently in the "Estimation" phase where the claims received prior to the Schemes cut-off date are being determined to be Acknowledged Creditor Claims.

Apart from the HIH Insurance shareholder claims, determination of claims lodged by Scheme Creditors is completed.

### **6.2 Finalisation of the Schemes**

The major issues preventing the finalisation of the Schemes and liquidations of the remaining companies in the HIH Group are the ongoing HIH Insurance shareholders claims against HIH Insurance, HIH C&G and FAIG, and the adjudication of claims from shareholders of HIH Insurance who may now have a damages claim as a result of the judgement handed down in the HIH Insurance shareholders Court action.

The Liquidators and/or Scheme Administrators are currently working with their solicitors and the Plaintiffs' solicitors to confirm the basis for calculating and admitting the Plaintiffs damages claims, which they currently hope to complete by the first half of 2017.

Once the shareholders claims have been resolved, the Scheme Administrators will be in a position to make the final Scheme Payments; finalise the liquidations of the other HIH companies; and close the Schemes. Subject to the finalisation of the shareholders claims and based on current information, the Scheme Administrators consider this may be possible during 2017.



## 7 Responsibilities

### 7.1 Scheme Administrators

The Australian Scheme Administrators are Tony McGrath and Jason Preston, partners of McGrathNicol based in Sydney. Jason Preston replaced Chris Honey as the Australian Scheme Administrator of FAIG following Chris Honey's resignation on 1 December 2015.

The English Scheme Administrators of FAIG are Michael Walker and Barry Gale, partners of KPMG LLP based in London.

### 7.2 Run-off Managers

Any remaining day to day claims handling and reinsurance recovery activities of FAIG in Australia are managed in-house by the HIH run-off team.

The run-off managers for all business written by the UK branch of FAIG are Asta Insurance Services Limited.

### 7.3 Creditors' Committee

The interests of creditors in the Australian Scheme are represented by a Creditors' Committee. The Committee sanctions significant transactions (such as commutations), is involved in the setting of the Scheme Payment Percentage, and approves the Scheme Administrators' fees. It is currently reported to, and meets three times a year. The current constitution of the Committee is as follows:

Member	Represented By
ACT Workers Compensation Supplementation Fund	Mr John Fletcher
Law Cover Pty Limited	Mr Dharmesh Patel
Queensland Motor Accident Insurance Commission	Ms Lina Lee
HCSL – Australian Government Treasury	Ms Angela Baum
Avant Insurance Limited	Ms Suzanne Barron
WA Workers Compensation & Rehabilitation Commission	Mr Harry Neesham
Hong Kong Solicitors Indemnity Fund	Ms Orla McCoy
Motor Traders Association of New South Wales	Mr Greg Patten
Building Insurers Guarantee Corporation NSW	Mr Steve Hunt
Motor Accidents Authority of New South Wales	Mr Andrew Nicholls

## 8 Contact Details

Contact details for the Australian Scheme Administrators, the English Scheme Administrators, and the Australian and English Run-Off Managers are set out on the HIH website, [www.hih.com.au](http://www.hih.com.au).

### 8.1 Creditor Enquiries in Australia

Scheme Creditors with claims queries (excluding those in relation to branch business) should call the HIH Help Desk on +61 (0) 2 9650 5777. Written claims queries should be directed to HIH at the following address: HIH Group, GP Box 2707, Sydney NSW 2001, Fax +61 (0) 2 8117 9000.

Scheme Creditors with enquiries in relation to the Scheme or Scheme Payments should call the HIH Help Desk on +6 (0) 2 9650 5777. Written scheme queries should be directed to the Scheme Administrators at the following address: McGrathNicol, GPO Box 9986, Sydney, NSW 2001 or to the HIH Help Desk at [enquiries@hih.com.au](mailto:enquiries@hih.com.au).

Yours faithfully

For FAI General Insurance Company Limited – in liquidation and subject to Schemes of Arrangement



Tony McGrath  
Scheme Administrator



Jason Preston  
Scheme Administrator

## Appendix 1

Updated balance sheet for FAIG as at 30 June 2016

**FAI General Insurance Company Limited - (In Liquidation and subject to Schemes of Arrangement)**  
**All values in AUD**

	RATA as at 30 June 2016 \$'000	RATA as at 30 June 2015 \$'000
<b>Assets not specifically charged</b>		
<b>Cash</b>		
Cash at bank	32,806	35,638
	<u>32,806</u>	<u>35,638</u>
<b>Receivables</b>		
Amounts owing by related bodies corporate	1,395	4,403
	<u>1,395</u>	<u>4,403</u>
<b>Investments</b>		
Short term deposits	61,481	51,107
ADD back: Dividends Paid	1,145,467	1,167,333
Shares in controlled entities (FAI (NZ) General)	470	(3,517)
Other - Future Recovery from Allianz Sept 2015	0	12,614
	<u>1,207,418</u>	<u>1,227,538</u>
<b>Refund to Reinsurance Creditors</b>		
	(933)	(838)
<b>Other</b>		
Castor Settlement (Coopers & Lybrand)	0	(675)
Adverse Shareholder Costs	(1,333)	0
Current Shareholder Claims (\$5m split between FAIG, HIH C&G and HIH Ins)	(3,034)	0
	<u>(4,367)</u>	<u>(675)</u>
<b>TOTAL ASSETS</b>	<b><u>1,236,318</u></b>	<b><u>1,266,066</u></b>
<b>Unsecured creditors</b>		
<b>Accounts payable</b>		
Trade Creditors	(40,791)	(37,962)
Goods and services tax	(330)	(562)
Sundry creditors	(489)	(489)
	<u>(41,610)</u>	<u>(39,013)</u>
<b>Provisions</b>		
Other - MAA section 1321 application	0	(15,100)
	<u>0</u>	<u>(15,100)</u>
<b>ACCs - ESC at Estimation Date</b>	(1,329,198)	(1,316,485)
<b>Commutations - ESC Verified</b>	(6,111)	(7,893)
<b>Add back: Creditors with Statutory Cut Through &amp; s. 562A (4) claims</b>	91,369	0
<b>Outstanding claims</b>	<u>(1,243,940)</u>	<u>(1,324,377)</u>
<b>Other liabilities</b>		
Other creditors and accruals (Future Shareholder Claims - potential 1321 application)	(25,000)	(113,323)
Other creditors and accruals (Shareholder as per FCF Report)	0	(67)
Amounts owing to related bodies corporate	(356,717)	(413,798)
	<u>(381,717)</u>	<u>(527,188)</u>
<b>TOTAL LIABILITIES</b>	<b><u>(1,667,267)</u></b>	<b><u>(1,905,678)</u></b>
<b>NET DEFICIT</b>	<b><u>(430,948)</u></b>	<b><u>(639,613)</u></b>

## Appendix 2

Summary of the Scheme Administrators' receipts and payments from 30 May 2006 to 30 June 2016

	\$	\$
<b>Opening balance at 1 July 2015</b>		<b>75,823,292</b>
<b>Receipts</b>		
FAIG share of Allianz distribution	15,767,500	
Distribution from Solvent Subsidiaries/Dividends from Non Scheme Companies	4,873,746	
FAI NZ Capital Distribution	3,762,646	
Unrealised Foreign Exchange Gain on Overseas Accounts	1,522,262	
Interest on cash and deposits	1,175,946	
Scheme Payment received from FAI Insurance	590,383	
GST Refund from ATO	152,295	
Other receipts	128,501	
Dividend Payment Funding from UK	12,351	
Reinsurance Recoveries	12,196	
Scheme Payment from HIH C&G	110	
	<hr/>	
<b>Total receipts</b>		<b>27,997,935</b>
<b>Payments</b>		
Scheme Payments to Creditors	(15,929,790)	
Outsourced Claims Management Fees	(1,785,000)	
Central Expense reimbursement paid to HIH C&G	(1,471,248)	
Scheme Administrators Fees	(676,155)	
Professional Fees	(337,671)	
GST on payments	(105,734)	
Other Sundry Payments	(97,466)	
Computer Costs	(41,828)	
Insurance	(29,805)	
Scheme Administrators Disbursements	(4,003)	
Liquidators Fees	(437)	
	<hr/>	
<b>Total payments</b>		<b>(20,479,137)</b>
<b>Balance at 30 June 2016</b>		<b>83,342,091</b>