

**HIH CASUALTY & GENERAL INSURANCE  
LIMITED (IN PROVISIONAL LIQUIDATION)  
ACN 008 482 291**

**FAI GENERAL INSURANCE COMPANY LIMITED  
(IN PROVISIONAL LIQUIDATION)  
ACN 000 327 855;**

**WORLD MARINE & GENERAL INSURANCES PTY  
LIMITED (IN PROVISIONAL LIQUIDATION)  
ACN 000 093 112; and**

**FAI INSURANCES LIMITED (IN PROVISIONAL  
LIQUIDATION)  
ACN 004 304 545.**

Explanatory Statement to the English Schemes of  
Arrangement

(pursuant to section 426 of the Companies Act 1985)

10 February 2006

KPMG

## **IMPORTANT NOTICE**

This document has been prepared in connection with proposed schemes of arrangement (*English Schemes*) pursuant to section 426 of the Companies Act 1985 for HIH Casualty & General Insurance Limited, FAI General Insurance Company Limited, World Marine & General Insurances Pty Limited, and FAI Insurances Limited (*English Scheme Companies*) and their respective Scheme Creditors (as defined in this document).

The information contained in this document has been prepared by A J McMahon, T A Riddell, and J M Wardrop in their capacity as joint provisional liquidators (*English Provisional Liquidators*) based upon information available to them. Save where otherwise indicated, the financial information contained herein has not been subject to an independent audit or actuarial review.

The statements, opinions and information contained within this document are made, held or given, respectively, as at the date of this document unless another time is specified and such statements, opinions and information are made, held or given solely by or on behalf of the English Scheme Companies. Distribution of this document shall not give rise to any implication that there has been no change in the facts set out in it since such date.

Nothing contained in this document constitutes an admission of any fact or liability on the part of the English Scheme Companies, the English Provisional Liquidators or any other person in respect of any asset to which it may be entitled or any claim against them. No estimate of the amount of a claim against any of the English Scheme Companies specified in any Form of Proxy or Proof of Debt for Voting form returned to the Australian Liquidators or any other party, or otherwise provided for voting purposes, shall be admissible against any of the Scheme Companies or the Financial Services Compensation Scheme Limited (*FSCS*), or shall be taken into account in calculating payments under the Scheme or the Policyholders Protection Act. Any such estimate, if accepted, shall only be used for voting purposes at the meeting of Scheme Creditors convened for the purposes of considering the English Schemes.

The summary of the principal provisions of the English Scheme and related matters contained herein is qualified in its entirety by reference to the English Scheme itself. Scheme Creditors are advised to read in full and consider carefully the text of the English Scheme. In addition, the English Scheme and English Explanatory Statement include references to and adopt many of the provisions of the Australian Scheme and Australian Explanatory Statement – Scheme Creditors are advised to read the full text of the Australian Scheme and Australian Explanatory Statement.

No person has been authorised to make any representation, whether oral, written, express or implied, concerning the proposed English Scheme, that is supplemental or inconsistent with the statements contained within this document. Consequently, if such representations are made, they should not be relied upon.

Although great effort has been made to ensure its accuracy, the English Provisional Liquidators are unable to warrant or represent the accuracy of the information contained herein. Neither the Financial Services Authority, the FSCS, nor any members of the Informal Creditors' Committee is responsible for the information contained in this document.

Scheme Creditors should not construe the contents of this document as legal, tax, financial or other professional advice. Each Scheme Creditor should consult its own professional advisers as to the legal, tax, financial or other matters relevant to the action it should take in connection with the English Scheme.

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**Please note that if you have received payments from HIH Claims Support Limited (Australia) or the Financial Services Compensation Scheme (UK) in relation to all your actual and potential claims, and you have no possible further claims against any one of the English Scheme Companies, you can ignore this document.**

**The terms used in this document, accept as otherwise defined, are defined in the English Scheme, at pages 1 to 11, and the FSCS Schedule, at pages 68 to 70.**

## 1 Introduction

### 1.1 *Background*

1.1.1 HIH Insurance Limited (the holding company of the HIH group) was a publicly listed company in Australia. Prior to its failure the HIH group was the second largest general insurer in Australia, and had operations in many other countries.

1.1.2 On 15 March 2001 the HIH group failed. A G McGrath and A R M Macintosh (then of KPMG Sydney) were appointed as provisional liquidators of HIH Insurance Limited and many of its subsidiaries. A J McMahon, T A Riddell, and J M Wardrop of KPMG London were appointed as provisional liquidators of some of the same companies in England, and also of other group companies incorporated in England. Other insolvency practitioners were appointed to various group companies incorporated in other parts of the world.

1.1.3 On 27 August 2001 the major Australian companies in the HIH group to which provisional liquidators had been appointed, were placed into liquidation with the former provisional liquidators Messrs McGrath and Macintosh being appointed as Liquidators.

1.1.4 On 1 July 2005 A R M Macintosh retired as Liquidator of the Australian HIH Group companies and was replaced by C J Honey. A G McGrath & C J Honey (both now of McGrath Nicol+Partners) are the Liquidators.

### 1.2 *Why have you been sent this document?*

1.2.1 You have been sent this document because one of the HIH companies listed below may have provided you with insurance cover, or because you might otherwise have a claim against one of these companies. In that case you may be a creditor or potential creditor of one of these companies:

HIH C&G

FAI General

FAI Insurances

WMG

1.2.2 Each of these companies was a licensed or formerly licensed insurance company in Australia, and also provided insurance cover to some policyholders in England. Each is now insolvent

and unable to pay its creditors in full. The Australian Liquidators have concluded that implementation of a scheme of arrangement in Australia between each company and its creditors is the best way of maximising the return and achieving the earliest practical distribution to creditors.

- 1.2.3 Details of the scheme recommended by the Australian Liquidators (**Australian Scheme**) together with an explanatory statement (**Australian Explanatory Statement**) are being sent to Scheme Creditors at the same time as this document. The English Provisional Liquidators have concluded that the best way of distributing the assets held in England is to propose a scheme of arrangement in England, designed to work in conjunction with and be complimentary to the Australian Scheme.
- 1.2.4 Such schemes can only be implemented with the approval of creditors and the court. The approval of creditors is through a vote at a creditors' meeting, if the creditors vote by the required majorities in number and value of those of them voting at the meeting. Accordingly if you are a creditor or potential creditor of one of the HIH companies listed above, you may be entitled to vote on whether a scheme of arrangement should be implemented, as recommended by the English Provisional Liquidators.
- 1.2.5 The proposed English Schemes will only apply to each of the four companies listed above. For each company, the English Scheme covers the liabilities of the company worldwide, including liabilities arising in Australia and from any former US and English branches of the company. Enquiries in relation to any HIH company, including those shown above, should be directed to the relevant contact addresses provided in Appendix 1 to this document.
- 1.2.6 RECEIPT OF THIS DOCUMENT DOES NOT NECESSARILY MEAN THAT YOU ARE CURRENTLY OWED, OR WILL EVER BE OWED, MONEY BY ANY OF THE FOUR ENGLISH SCHEME COMPANIES.

### 1.3 *What is a scheme of arrangement?*

- 1.3.1 A scheme of arrangement of the kind recommended by the English Provisional Liquidators is a compromise, or arrangement, between a company and its creditors (or any class of them), governed by section 425 of the Companies Act 1985 (in England and Wales). Such a scheme essentially sets out the rules by which certain aspects of the administration of the company will be governed, although the provisional liquidations that are already underway in relation to the English Scheme Companies will continue subject to the terms of the English Scheme. The English Scheme becomes legally binding on the English Scheme Companies, the English Provisional Liquidators and on all creditors of the company, or any class of them if:
- a) a majority in number representing at least 75% in value of the creditors (or any class of them) present and voting in person or by proxy, vote in favour of the English Scheme at a meeting convened by Order of the English Court; and
  - b) the English Court subsequently approves the English Scheme; and
  - c) the scheme proposed by the Australian Liquidators is approved by creditors and the Australian Court, and becomes effective; and
  - d) a copy of the Court Order approving the English Scheme is lodged with the Registrar of Companies.

1.4 ***What is the effect of the proposed English Scheme?***

1.4.1 The effect of the English Scheme is to introduce a structure to operate in conjunction with and complimentary to the Australian Scheme and liquidation of the companies to which the English Scheme will apply, covering amongst other things the following:

- a) the filing and agreement of claims;
- b) priorities to apply to assets in England (to enable their release for distribution);
- c) payment of interim distributions to Scheme Creditors;
- d) management of the run-off; and
- e) final closure of the remaining insurance business by an estimation procedure.

1.4.2 Each of the four English Scheme Companies (HIH C&G, FAI General, WMG and FAI Insurances) will also be subject to a scheme in Australia pursuant to sections 411 and 412 of the Corporations Act. The schemes in Australia for each of the Scheme Companies will not be dependant upon the English Schemes.

1.4.3 The four English Scheme Companies (HIH C&G, FAI General, WMG and FAI Insurances) will also be subject to a parallel English Scheme pursuant to sections 425 and 426 of the Companies Act 1985. The English Schemes however will be dependant upon the Australian Schemes coming into operation. These companies all had a substantial presence or involvement in the English insurance market.

1.4.4 For each of HIH C&G, FAI General, WMG and FAI Insurances, continuation of the current temporary injunction under section 304 of the US Bankruptcy Code will also be sought. The practical effect will be that the English Schemes in relation to these companies will also have effect in the United States of America.

1.4.5 The English Provisional Liquidators consider that the English Scheme, in conjunction with the Australian Scheme, will allow more efficient agreement of Scheme Creditor claims, earlier distribution of funds to Scheme Creditors, and earlier final closure of each insolvency.

1.5 ***What should you do?***

1.5.1 If you are a Scheme Creditor of any English Scheme Company listed above, you will be entitled to attend and vote at the meeting of Scheme Creditors of that English Scheme Company to consider, and if thought fit, approve the English Scheme for that English Scheme Company.

1.5.2 Notice of the meeting, together with the necessary proxy and voting form are enclosed with the cover letter to this documentation, together with notes to assist in completion of the form.

1.5.3 Creditors who wish to vote at the meeting should comply with the instructions provided with the forms. The purpose of voting by creditors is purely to determine whether the English Scheme will be approved or not.

1.5.4 Failure to complete the necessary forms or to vote will have no impact on any creditor's right to participate later in English Scheme distributions (if the English Scheme is approved) or Australian Scheme distributions or Australian liquidators' dividends.

#### 1.6 *Who will be bound by the English Scheme?*

1.6.1 If approved by the necessary majorities of Scheme Creditors, and by the English Court, the English Scheme will bind the English Provisional Liquidators and the English Scheme Company, and all Scheme Creditors of the English Scheme Company, whether they have received notice or not, and whether they have voted or not. However, under the terms of the English Scheme, the rights of Scheme Creditors with priority or preferential claims (e.g. employees) and secured Scheme Creditors will not be affected.

#### 1.7 *Valuation of Claims for Voting Purposes*

1.7.1 Claims against an English Scheme Company (**Scheme Claims**) will be admitted for voting at the agreed amount (in the case of claims that have been agreed but not yet paid) or at an estimated amount (in the case of claims that have been reported but not yet agreed, or incurred but not reported (IBNR)).

1.7.2 It is the responsibility of the Scheme Creditor to provide sufficient information to enable the chairman of the Creditors' Meeting (who will be one of the proposed English Scheme Administrators) to judge whether an estimate can be accepted for voting purposes.

1.7.3 The valuation or estimate of claims used for voting purposes will not affect any Scheme Creditor's rights to rank later for any payments made under the English Scheme.

1.7.4 Scheme Creditors have a separate vote, but do not have to complete separate claim details for the Australian Scheme and the English Scheme. For the purposes of voting on the English Scheme, any claim submitted by Scheme Creditors and accepted for voting purposes by the Australian Liquidators, will also be accepted for voting on the English Scheme.

#### 1.8 *When will the English Scheme become effective?*

1.8.1 If the English Scheme for any Scheme Company is approved by the required majorities at the meeting of Scheme Creditors and then approved by order of the English Court, the English Scheme will be effective when the last of the following occurs:

1.8.1.1 a copy of the Court Order is lodged with the Registrar of Companies in England; and

1.8.1.2 a copy of the Australian Court Order sanctioning the Australian Scheme is lodged with the Australian Securities & Investments Commission.

1.8.2 The reason for the English Scheme working in this way is that the English Scheme is to be complimentary to the Australian Scheme.

1.8.3 Scheme Creditors will be invited to vote on the parallel schemes at the same meeting, to be held in Sydney, as detailed in the accompanying notice of meeting.

## 2 **History of HIH group companies**

- 2.1.1 Details of the history of the HIH group are set out in Section 2 and Appendix 2 of the Australian Explanatory Statement, including materials from the Australian HIH Royal Commission: corporate chart; chronology of key events; and historical introductions for each of the Australian Scheme Companies.

### **3 Background Financial Information**

- 3.1 In August 2001 the Australian Liquidators publicised an estimate for the total deficiency of the HIH group of companies, as being between AUD3.6 billion and AUD5.3 billion. The Australian Liquidators consider that deficiency estimate remains reasonable.
- 3.2 Background financial information in relation to the HIH group and the companies for which an Australian Scheme is proposed (four of which are the English Scheme Companies) is set out in Section 3 and Appendices 3 – 4 of the Australian Explanatory Statement.
- 3.3 A listing of the available background financial information and where it may be accessed is provided in Appendix 2 to this document.

### **4 Operation of the Australian and English Schemes**

#### ***4.1 Operation of the Australian Schemes***

- 4.1.1 Under the proposed Australian Schemes, all assets of the Scheme Companies which can be realised by the Australian Liquidators or Australian Scheme Administrators will be progressively distributed to Scheme Creditors by the Australian Scheme Administrators as claims are agreed as set out in section 6.1 below.
- 4.1.2 The proposed Australian Schemes are what are commonly referred to as reserving schemes, converting to estimation schemes at a later date to enable closure of the insolvencies. A reserving scheme is one under which the scheme administrators continue to realise assets and agree claims as those claims are made during a run-off, and periodically pay interim distributions to scheme creditors with agreed claims at the scheme payment percentage, set after allowing (reserving) for future costs and claims expected and future asset realisations expected.
- 4.1.3 An estimation scheme is one under which scheme creditors submit claims to the scheme administrators by a certain deadline, covering all claims they have against the company, including present and future claims. The value of future claims is then estimated. The Australian Scheme provides for an automatic conversion to an estimation scheme seven years after commencement, unless on the recommendation of the Australian Scheme Administrators and the Creditors' Committee, a special resolution of Scheme Creditors is passed approving an earlier or later Estimation Date. No Estimation Date in the proposed Australian Scheme may be less than five years, or more than nine years, after commencement. The Australian Liquidators consider that the period as a reserving scheme is necessary to allow Scheme Creditor claims to develop and reinsurance assets to be collected prior to conversion to an estimation scheme.
- 4.1.4 All of the Australian Schemes will be governed by Australian Law. However the English Court will have exclusive jurisdiction in relation to the Schedule and provisions of the Australian Schemes which relate to the FSCS or the Policyholders Protection Act.



4.1.5 All of the Australian Schemes will be implemented in addition to, not in replacement of, the liquidations in Australia. The Australian liquidations will continue.

## 4.2 *Operation of the English Schemes*

4.2.1 The English Schemes are designed to compliment the Australian Schemes, by adopting most of the provisions of the Australian Schemes with the particular exception of the distribution priorities that are to apply to the English Assets. It is also envisaged that the English Scheme Administrators will co-operate with the Australian Scheme Administrators on a number of aspects of both schemes.

4.2.2 The English Provisional Liquidators currently control the assets of the English Scheme Companies in England.

4.2.3 As a result of the different statutory distribution priorities that apply to liquidators' distributions in Australia and the United Kingdom, the English Provisional Liquidators sought directions from the English Court as to whether the assets they control should be released for distribution in accordance with the Australian statutory distribution priorities. As set out in further detail in section 6.2 below, the Court directed that the English Assets are not to be remitted to the Australian Liquidators for distribution in accordance with the Australian statutory distribution priorities. This decision is expected to be appealed.

4.2.4 The English Schemes therefore apply the distribution priorities of the English statutory regime to the English Assets. Should any appeal of the recent decision result in the application of the Australian statutory distribution regime or otherwise, then the English Scheme will reflect the result of any appeal.

4.2.5 All creditors worldwide will be entitled to claim in both the Australian Schemes and the English Schemes for the relevant company. The Australian Liquidators and the English Provisional Liquidators (and subsequently the relevant Scheme Administrators) will work in close co-operation, and creditors will not need to lodge separate claims in each jurisdiction. It is expected that claims agreed in one jurisdiction will also be accepted in the other jurisdiction, subject to the right of review by the Scheme Administrators appointed in that other jurisdiction.

4.2.6 The English Provisional Liquidators support the recommendation of the Australian Liquidators, that creditors vote in favour of the Australian Scheme, whilst noting that in practice the distribution priorities which will apply to the English Assets will depend on the English Scheme, and any future orders of the English Courts.

4.2.7 Further particulars of the position in relation to the distribution priorities provided for in the English Schemes are given in section 6 of this English Explanatory Statement and Section H of the English Scheme.

## 5 **People Involved in the English Schemes**

### 5.1 *The English Scheme Administrators*

5.1.1 It is proposed that the initial English Scheme Administrators will be Thomas Alexander Riddell and John Mitchell Wardrop of KPMG LLP (UK). The English Scheme contains provisions regarding resignation, removal and filling of vacancies in respect of the English

Scheme Administrators. Attached as Appendix 3 are CVs for the proposed English Scheme Administrators.

- 5.1.2 The English Scheme Administrators will implement the terms of the English Scheme. They will manage the run-off of each English Scheme Company's liabilities, realise the English Assets and apply the assets for the benefit of Scheme Creditors.
- 5.1.3 The English Scheme Administrators will have broad powers to enable effective conduct of the English Scheme. Details of the English Scheme Administrators' powers are set out in clauses 36 and 37 of the English Scheme. In carrying out their functions and exercising their powers under each English Scheme, the English Scheme Administrators must consult with, and take account of, the views expressed by the English Creditors' Committee.
- 5.1.4 The English Scheme Administrators will not have any powers in relation to recoveries under the antecedent transaction provisions of the Insolvency Act. These functions and powers would only be exercisable if the English Scheme Companies were to be placed into liquidation by the English Court.

## 5.2 *The English Creditors' Committee*

- 5.2.1 The English Scheme provides for the establishment of an English Creditors' Committee for each English Scheme Company, of between 3 and 10 Scheme Creditors. In addition a representative of the Australian Scheme Administrators will be entitled to participate as a non-voting member.
- 5.2.2 The main functions of the English Creditors' Committee are to monitor the carrying out of the English Scheme and to supervise the English Scheme Administrators in the exercise of their functions and powers. A number of the powers of the English Scheme Administrators (see clause 38 of the English Scheme) may only be carried out with the agreement of the English Creditors' Committee. In addition, the remuneration of the English Scheme Administrators will be subject to English Creditors' Committee approval.
- 5.2.3 The English Creditors' Committee of each English Scheme Company will have a duty to act in good faith for the benefit of that English Scheme Company's Scheme Creditors as a whole. English Creditors' Committee members will be indemnified out of the assets in each English Scheme Company.
- 5.2.4 In order to be eligible for membership of the English Creditors' Committee an individual or corporate entity must be a Scheme Creditor of the English Scheme Company or be nominated by two Scheme Creditors. Corporate Scheme Creditors, if appointed, must nominate an authorised representative. The English Scheme contains provisions covering resignation, removal, and filling of vacancies on the English Creditors' Committee.

## 5.3 *Procedure for appointment of the Initial English Creditors' Committee*

- 5.3.1 The English Provisional Liquidators are currently assisted by an informal creditors committee in relation to the English Scheme Companies' affairs.
- 5.3.2 The names of the members of the informal creditors committee, and who they represent, are shown in Appendix 4 to this document.

5.3.3 Each of the members of the informal creditors committee has indicated that they are prepared to act as a member of the relevant English Creditors' Committee in the English Scheme. In addition other Scheme Creditors may seek nomination. The meeting of Scheme Creditors held to consider implementation of the English Scheme will also vote on the membership of the English Creditors' Committee (assuming the English Scheme is approved by the necessary majorities of Scheme Creditors). In addition the Australian Scheme Administrators will be entitled to be represented (but not vote) at any meetings of the English Creditors' Committee.

5.3.4 The nomination form for membership of the English Creditors' Committee is given in Appendix 5 to this Explanatory Statement. Any nomination for membership should be completed and forwarded to the English Provisional Liquidators prior to the meeting of English Scheme Creditors to consider implementation of the English Scheme, or be handed to the chairman at the meeting.

#### 5.4 *Scheme Adjudicators*

5.4.1 The English Scheme adopts the terms of the Australian Scheme for the purposes of adjudication. Under the terms of the English Scheme, there will be no separate estimation process for creditors claims - the Scheme Adjudicators will be the same Scheme Adjudicators as are appointed at any time under the relevant Australian Scheme, and the results of the estimation process under the Australian Scheme will be binding under the English Scheme.

#### 5.5 *FSCS*

5.5.1 The FSCS provides protection to certain policyholders in relation to business that an insurer was authorised to carry on in the United Kingdom. The FSCS will be bound by both the Australian Scheme and the English Scheme and will make payments to Protected Policyholders under the terms of the schemes. The provisions applying to the FSCS as set out in the Australian Scheme are adopted for the English Scheme.

5.5.2 In Appendix 6 the FSCS have provided a summary of the English Scheme Provisions in relation to the FSCS and the English Authorised Scheme Companies. In Appendix 7 the FSCS have provided a summary of the Policyholders Protection Act and the FSCS.

### 6 **Distribution Priorities**

#### 6.1 *The Australian Distribution Priorities*

6.1.1 Details of the distribution priorities which will apply under the Australian Scheme are set out in Section 5 of the Australian Explanatory Statement and Section H of the Australian Scheme. These reflect the distribution priorities that would apply in an Australian liquidation. The Australian legislative priorities as at 27 August 2001 will be used, interpreted in accordance with any judicial determinations by the Court.

6.1.2 The effect of the Australian legislative priorities is that creditors whose claims are classified as Insurance Liabilities have a potential advantage over creditors whose claims are not classified as Insurance Liabilities, and creditors whose claims are classified as Liabilities in Australia have a potential advantage over creditors whose claims are not classified as Liabilities in Australia. By comparison, for any liquidation of an insurance company which commenced in England prior to April 2003, the claims of all unsecured creditors worldwide

rank pro rata in the distribution of assets (after provision for some particular priorities such as costs and employee claims). No distinction is made as to where the assets or liabilities are located. It is these differences in the English legislative distribution priorities when compared to the Australian legislative distribution priorities, which led the English Court to order that the English Assets of the English Scheme Companies should not be remitted to the Australian Liquidators by the English Provisional Liquidators.

## 6.2 *The English Distribution Priorities*

- 6.2.1 In England, until April 2003, the distribution priorities which applied to insurance company liquidations were no different to those applying to other companies – i.e. *pari passu* distributions to unsecured creditors. The HIH provisional liquidations commenced in England in March 2001, and accordingly if these were to become liquidations in England, pro-rata distributions would apply.
- 6.2.2 In December 2004 the Australian Liquidators of the HIH companies applied to the Australian Court for an order to convene meetings of creditors to consider proposed schemes of arrangement to deal with distribution of all of the assets of each of the main licensed insurance companies in the group. The intention in the proposed schemes was to apply the Australian legislative distribution priorities to most assets, but to apply the English legislative distribution priorities to the assets in England. The proposed schemes were developed in co-operation with the English Provisional Liquidators.
- 6.2.3 A number of Australian creditors objected, arguing that the Australian priorities should be applied to all assets, including the English assets.
- 6.2.4 To resolve this issue the English Provisional Liquidators applied to the English Court for directions as to whether the assets they control should be released to the Australian Liquidators or not. The Australian Liquidators opposed the English Provisional Liquidators in the proceedings to ensure that the issues were fully tested. Several Australian creditors also opposed the English Provisional Liquidators.
- 6.2.5 The case was heard in July 2005 and judgment given on 7 October 2005 - *In the matter of HIH Casualty and General Insurance Limited & Ors* [2005] EWCH 2125 (Ch).
- 6.2.6 The judgment given by Mr Justice David Richards contains a detailed comparison of the priorities in the two countries, and relevant case law in England. The leading English authority on the cross border issue of whether a liquidator in an ancillary liquidation in England should remit assets to the liquidator in a principal liquidation in another country is *Re BCCI (No 10)* [1997] Ch 213. This decision is authority for the proposition that English Courts may direct liquidators in an ancillary liquidation in England to transmit funds to the principal liquidators in another country, but in doing so the Court has no power to dis-apply mandatory sections of English insolvency law.
- 6.2.7 Mr Justice David Richards concluded that an essential element of the principle in *Re BCCI (No 10)* is that the scheme for distribution in the jurisdiction of the principal liquidation must provide for *pari passu* distribution substantially the same as under English law. In the absence of that, the English liquidator's role in the ancillary liquidation was not restricted to collection of assets and settlement of lists of creditors – the English liquidator would be obliged to distribute the funds held to creditors worldwide on the basis of the English statutory priorities.

6.2.8 Mr Justice David Richards ruled that the assets in England should not be transmitted to the Australian Liquidators for distribution in accordance with the Australian legislative priorities as it would involve a materially different basis for distribution than would apply in an English liquidation.

6.2.9 This decision therefore leaves the current position in relation to the English Scheme as follows:

- In an English liquidation of the English Scheme Companies, the English legislative priorities would apply, as ruled by Mr Justice David Richards;
- The decision of Mr Justice David Richards is expected to be appealed, by either the Australian Liquidators or the Australian creditors who took part in the proceedings;
- The English Schemes as proposed provide alternatives, to accommodate the outcome of any appeal:
  - first alternative: if there is no appeal, or any appeal is unsuccessful, the English Assets (after costs and the preferential debts set out in section 386 of the Insolvency Act) will be distributed pro rata to all unsecured creditors worldwide, after adjustment of creditor entitlements to allow for any recoveries made by creditors from other sources (such as distributions by the Australian Scheme Administrators);
  - second alternative: if any appeal is successful and the English Scheme Administrators or English Provisional Liquidators are ordered to release the assets for distribution in accordance with Australian legislative priorities, the English Assets will be released for distribution in accordance with the Australian Scheme. This would be subject to any conditions attached to the English Court Order, such as payment of English priorities such as costs and employee entitlements.

6.2.10 If neither of the above alternatives apply, the English Schemes provide that the English Scheme Administrators may at their discretion adjust any future distributions or payments in accordance with the order of the Appeal Court; or apply to the Court for leave to convene a creditors meeting in order to amend the English Scheme to comply with the order of the Appeal Court; or terminate the English Scheme with a view to the English Scheme Company continuing to run-off in provisional liquidation.

### 6.3 *Continuation of the provisional liquidations in England*

6.3.1 Subject to the continued permission of the English Court, the provisional liquidations in England will also continue. The reason for adopting this approach is to avoid any difficulties regarding priorities between Scheme Creditors which might theoretically arise, should a Scheme Company be put into liquidation in England in the future. The European Directive on the reorganisation and winding-up of insurance undertakings (2001/17/EC), which was implemented into English law on 20 April 2003, altered the priorities which apply to new liquidations and certain other insolvencies commenced after 20 April 2003. Continuation of the existing English provisional liquidation appointments will mean that even if any of the Scheme Companies are put into liquidation in England in the future, the priorities which applied at the time of the failure of the HIH group will continue to apply.

6.3.2 There is a risk that the English Court will not continue to order the extensions of the provisional liquidation, in which case it would be possible for a Scheme Company to be put

into liquidation following a new winding up application, leading to the new priorities being applicable to that Scheme Company. The English Provisional Liquidators consider the risk of these events occurring to be small.

- 6.3.3 Although provisional liquidators do not have power to pursue recoveries related to antecedent transactions as a matter of English law, neither the English Provisional Liquidators nor the Australian Liquidators consider this to be an issue in the case of HIH. This is particularly so bearing in mind the provisions of the English Insolvency Act 1986, which allow the Australian Court to request assistance from the English Court if the situation requires it.

## 7 **Agreement of Claims**

### 7.1 *Liabilities to which the English Scheme will apply*

- 7.1.1 The English Scheme will apply to all liabilities worldwide (insurance and non-insurance) which would have been provable debts against the Scheme Company in a liquidation, adopting 27 August 2001 as the Record Date. (This is the date the Scheme Companies were placed in to liquidation in Australia).

### 7.2 *Australian Claims Agreement provisions adopted under the English Scheme*

- 7.2.1 Creditors whose claims are agreed in Australia will not be required to lodge separate claims for the purposes of the English Scheme. Any claim agreed by the Australian Liquidators or the Australian Scheme Administrators, will be accepted as agreed under the English Scheme.
- 7.2.2 Scheme Creditors should continue to make their claims in accordance with the usual course of business to the Scheme Company at the contact addresses given in Appendix 1 to this Explanatory Statement.
- 7.2.3 The English Scheme is intended to work in conjunction with and be complimentary to the Australian Scheme. The provisions of the Australian Scheme which apply to the agreement of claims are described in Section 6 of the Australian Explanatory Statement. All of the Australian Scheme provisions which apply to claims agreement are adopted for the English Scheme, with the exception of those relating to distribution priorities.
- 7.2.4 The following topics are covered in the Australian Explanatory Statement, section 6. These all apply equally to the English Scheme by adoption:

*Claims during the Run-Off Period*

*Enforcement by Scheme Creditors during the Run-Off Period*

*Claims after the Estimation Date*

*Resolution of disputed Scheme Claims after Estimation Date*

*Rights in relation to Security Interests, Letters of Credit, escrows and trusts*

*Lloyd's Names and syndicate Set-off*

*Currency of Scheme payments*

*Non payment of small cheques*

*Final offers to Scheme Creditors with low value claims*

*Treatment of particular policyholders*

*Policyholders eligible for assistance under Financial Services Compensation Scheme(FSCS) in the United Kingdom*

*Trust Funds held in the United States*

*Claims by Brokers for client funding*

*Lineslips, binders and agencies*

### **7.3 *Setting the Payment Percentage for the Australian Schemes***

7.3.1 Details of the way in which the Payment Percentages for each category of assets of the Australian Scheme Companies will be set, scheme payments made, and the information which will be provided to Scheme Creditors by the Australian Scheme Administrators when making scheme payments are set out in section 6.10 and 6.11 of the Australian Explanatory Statement.

7.3.2 The substantial majority of the assets of the companies are located in Australia, and will be distributed under the Australian Scheme.

7.3.3 The Australian Scheme Administrators will not be required to consult the English Scheme Administrators prior to setting any of the Payment Percentages under the Australian Schemes, but will receive full co-operation from the English Scheme Administrators in provision of information concerning the run-off of the Scheme Company's business in England.

### **7.4 *Setting Payment Percentages for the English Schemes***

7.4.1 The Payment Percentages set under the English Scheme will be set by the English Scheme Administrators, after consultation with the Australian Scheme Administrators.

7.4.2 Unless the English Court judgment referred to in Section 6.2 of this English Explanatory Statement is overturned on appeal, all of the English Assets will be in one category for distribution purposes, because the distribution priorities are pro rata to all Scheme Creditors without distinction for the different types of asset. Accordingly the English Schemes will only have one English Payment Percentage per English Scheme Company.

7.4.3 In contrast, the Australian Schemes may have different Payment Percentages for the different categories of assets of any Australian Scheme Company, and it is expected that some creditors will be entitled to receive higher distributions than others in the Australian Schemes.

7.4.4 The Payment Percentages set for the English Schemes are therefore likely to reflect supplementary payments to Scheme Creditors, starting at the lowest dividend rate achieved by any Scheme Creditors under the Australian Scheme.

7.4.5 To the extent made possible by the assets available, this will give effect to the English legislative priorities, which require pro rata distribution. For example, if creditor A had received 10 cents in the dollar under the Australian Scheme, but creditor B had received 12 cents in the dollar under the Australian Scheme, then under the English Scheme, no distributions would be made to creditor B until creditor A had been paid a further 2 cents in

the dollar. At that point both Creditor A and Creditor B would participate in any further distributions under the English Scheme.

- 7.4.6 This principle (of adjustment for funds received from other sources) is referred to as the equitable principle of “Hotchpot”, which is applied in any English liquidation.
- 7.4.7 In view of the ancillary nature of the English Scheme, it is expected that the timing and quantum of payments under the English Scheme will be largely dependant on developments under the Australian Scheme.
- 7.4.8 The English Scheme Administrators will review the English Payment Percentages for each English Scheme Company at least annually. The English Scheme Administrators will consult with the English Creditors’ Committee before setting any English Payment Percentage.
- 7.4.9 The English Scheme Administrators and English Creditors’ Committee will be entitled to take into account the cash available at the time, cash expected to become available from further asset realisations, future cash expenditure expected, and actuarial projections of liabilities not yet agreed when setting the English Payment Percentage. The English Payment Percentages for each English Scheme Company will be set at a level such that the English Scheme Company can be expected (to a reasonable confidence level) to be able to pay that same English Payment Percentage on all its liabilities expected to be admitted ultimately, including future liabilities not yet fixed in amount.
- 7.4.10 Payments will be made at regular intervals (expected to be quarterly), at the then current English Payment Percentage, to all Scheme Creditors whose claims have been accepted as Established Scheme Claims and who are then due to be paid sums in relation to their Established Scheme Claims (i.e. if it is a newly accepted Established Scheme Claim or if there has been an increase in the relevant English Payment Percentage).
- 7.4.11 Scheme Creditors will receive a statement with each payment detailing the amount accepted as an Established Scheme Claim, and how the amount being paid by the English Scheme Administrators has been calculated.

## 8 **Communication with Scheme Creditors**

### 8.1 *Meetings of the English Creditors’ Committee*

- 8.1.1 For meetings of the English Creditors’ Committee, the English Scheme provides that the frequency, notice, method of attendance, location, provision of reporting information, method of communication and any administrative details are to be as agreed between the English Creditors’ Committee and the English Scheme Administrators.

### 8.2 *Meetings of Scheme Creditors*

- 8.2.1 The initial meeting of Scheme Creditors to vote on implementation of the English Scheme will be convened in compliance with the requirements of the Companies Act 1985 of England, and the English Court.
- 8.2.2 Under the terms of the English Scheme, subsequent meetings of English Scheme Creditors will be convened only if the English Scheme Administrators or the English Creditors’ Committee for the relevant English Scheme Company considers a meeting to be warranted, or in the case of HIH C&G, or FAI General, if more than 50 Scheme Creditors with a collective claims value in excess of AUD100 million request the English Scheme Administrators to



convene a meeting. Notice of any subsequent meetings of Scheme Creditors will be by such means as the English Scheme Administrators, in consultation with the English Creditors' Committee, consider to be reasonable, including by advertisement alone.

### 8.3 *Communication with Scheme Creditors*

8.3.1 Under the English Scheme, the English Scheme Administrators are required to produce an annual report to Scheme Creditors, detailing progress made in the conduct of the English Scheme. The report will be provided to the Australian Scheme Administrators for inclusion with the corresponding report of the Australian Scheme Administrators. Distribution of the report is to be by way of the HIH Website, with hard copies to be provided to any Scheme Creditor on request. The annual report will include a summary of the English Scheme Administrators' receipts and payments, including the amounts of remuneration approved by the English Creditors' Committee. Availability of the report is to be notified to Scheme Creditors by public advertisement in such newspapers as the English Scheme Administrators consider appropriate, after consultation with the English Creditors' Committee.

### 8.4 *Termination of the English Scheme*

8.4.1 The English Scheme provides for its termination 12 months after payment of the final scheme payment, or earlier if all of the liabilities of the English Scheme Company have been discharged in full, or at any time if the English Scheme Administrators, after consultation with the English Creditors Committee, considers termination of the English Scheme to be in the best interests of Scheme Creditors.

8.4.2 After termination of the English Scheme any remaining assets will be paid to the English Provisional Liquidators or otherwise dealt with in accordance with orders of the English Court.

## 9 **Factors to be considered when voting on the English Scheme**

9.1.1 Each of the companies for which an English Scheme is proposed was a licensed insurer in Australia at one time, is clearly insolvent, and is currently in liquidation in Australia.

9.1.2 The Australian Liquidators have proposed the Australian Schemes to Scheme Creditors, to operate in conjunction with the liquidations in Australia.

9.1.3 The English Provisional Liquidators agree with the reasons given by the Australian Liquidators and support their recommendation of the Australian Schemes, whilst noting that in practice the distribution priorities which will apply to the English Assets will depend on the English Scheme, and any future orders of the English Courts. The reasons given by the Australian Liquidators for recommending the Australian Schemes, and the risks, are set out in Section 9 of the Australian Explanatory Statement.

9.1.4 As a result of the directions given by the English Court, the English Provisional Liquidators are not permitted to release the English Assets for distribution in accordance with Australian legislative priorities.

9.1.5 The alternatives available in England are:

- adoption of the English Schemes as proposed, which adopt most of the terms of the Australian Schemes, with the particular exception that the English legislative priorities

are applied to the distribution of English Assets unless the directions of the English Court are overturned on appeal; or

- adoption of alternative schemes of arrangement, adopting all of the Australian Scheme provisions, including as to distribution priorities; or
- recommending to the English Court that the provisional liquidations in England be terminated, the companies be placed into liquidation in England, and the English Assets be distributed by the English liquidators on a standalone basis.

9.1.6 The second course above has been advocated by some Australian creditors, and would be possible if the English Provisional Liquidators chose to promote it and Scheme Creditors supported it. However the English Provisional Liquidators are not willing to propose that course. The reason is that those creditors who would be thereby disadvantaged (as compared to their rights in an English liquidation) would be entitled to vote as a separate class, and would almost certainly vote against such a scheme. As the necessary majorities are required in every class, promotion of such a scheme would be a waste of funds.

9.1.7 The English Provisional Liquidators do not recommend the third possibility above (a standalone liquidation in England). This would be inefficient, as the English and Australian insolvencies have the same creditor base, but different liquidation requirements as to commencement date, currency, proof of debt procedures, and closure estimation procedures. In addition, it has been recognised practice for insurance insolvencies in the London market for 15 years, that liquidation procedures alone do not offer as efficient a method of closing long tail insurance books and maximising creditor returns as do schemes of arrangement.

9.1.8 The reasons for recommending the Australian Scheme, set out in Section 9 of the Australian Explanatory Statement, apply equally to the proposed English Scheme.

9.1.9 Accordingly the English Provisional Liquidators recommend the proposed English Scheme, to work in conjunction with and complimentary to the Australian Scheme, as the best way to maximise the return to Scheme Creditors, whilst at the same time giving effect to the statutory priorities which would apply if the English Scheme Companies were to be liquidated in England.

## 10 Conclusion

10.1.1 The English Provisional Liquidators consider that each Australian Scheme will produce a better result for all groups of Scheme Creditors of the relevant Scheme Company than would be achieved by liquidation alone. The English Provisional Liquidators also consider that each English Scheme, operating in conjunction with and complimentary to the Australian Scheme, will produce a better result for all groups of Scheme Creditors of the relevant companies than would be achieved by a separate liquidation in England.

10.1.2 The English Provisional Liquidators recommend that Scheme Creditors vote in favour of the English Schemes.

<b>Appendix</b>	<b>Content</b>
1	Contact details for HIH parties
2	A listing of available background financial information
3	CVs of the proposed initial English Scheme Administrators
4	List of the Informal Creditors' Committee members
5	Nomination form for membership of English Creditors' Committee
6	Summary of Scheme Provisions in relation to the FSCS and the English Scheme Companies
7	Summary of Policyholders Protection Act and the FSCS

# APPENDIX 1

Contact details for HIH parties

## Who should you contact?

### **Business written with Australia branches of each Scheme Company:**

For policies written in Australia by the Scheme Companies, contact CMGL (Address 1) in the first instance.

### **All other claims against companies incorporated in Australia:**

For claims against Australian HIH companies which are not the Scheme Companies, contact McGrathNicol+Partners Australia (Address 7)

### **Business written with the United Kingdom branch of HIH C&G:**

For policies written by the UK Branch of HIH C&G, contact Omni (Address 2) in the first instance.

### **Business written in the United Kingdom by WMG, FAI and FAIG**

For policies written in the UK by these companies, contact KPMG UK (Address 8).

### **Business written with Lloyd's syndicates (FAI Underwriting or Cotesworth syndicates)**

For claims against Lloyd's syndicates (FAI underwriting or Cotesworth syndicates) contact Capita (Address 4).

### **Claims against other companies incorporated in the United Kingdom**

For claims against any other UK incorporated HIH companies contact KPMG UK (Address 8).

### **Claims against HIH Claims Support Limited**

For claims which are being handled by the HIH Claims Support Scheme contact WGB HIH Claims Management (Address 10)

### **Claims to the Financial Services Compensation Scheme**

For claims which are eligible for FSCS assistance contact the FSCS (Address 11)

### **Business written by HIH America Compensation & Liability Insurance Company or Great States Insurance Company**

For claims against these companies contact the Conservation and Liquidation Office (Address 3).

### **Business written by HIH American Insurance Company of Hawaii**

For claims against HIH American Insurance Company of Hawaii Inc (In liquidation) please contact the Department of Commerce & Consumer Affairs (Address 9)

### **Claims against companies incorporated in Hong Kong**

For claims against Hong Kong incorporated HIH companies please contact PricewaterhouseCoopers Hong Kong (Address 6).

**Business written in New Zealand**

For claims against companies incorporated in New Zealand, contact the New Zealand Liquidators (Address 5).

**Business written by HIH C&G (Labuan) – Kuala Lumpur**

For claims against HIH Casualty and General Insurance (Labuan) Limited - In Liquidation contact the Liquidators in Kuala Lumpur (Address 12)

**All other claims against companies not covered above**

For claims against any HIH companies not dealt with above contact McGrathNicol+Partners Australia (Address 7)

**Contact details for correspondence for HIH parties (for the most relevant contact please refer to the descriptions above)**

**1 Australian run-off agents for the HIH group**

CMGL  
Level 41  
50 Bridge Street  
Sydney NSW 2000  
Australia

Phone: +61 (0) 2 9650 5700  
Fax: +61 (0) 2 9650 5710  
E-mail: enquiries@hih.com.au

**2 UK run-off agents for the HIH group**

Omni Whittington Insurance Services Limited  
Omni House  
33 Creechurch Lane  
London  
EC3A 5EB  
United Kingdom

Phone: +44 (0)20 7743 0858  
Fax: +44 (0) 20 7743 0979  
E-mail: hihenquiries@omniwhittington.com

**3 HIH America Compensation & Liability Insurance Company and Great States Insurance Company**

Susanne Twomey, Estate Operations Officer  
HIH America Compensation & Liability Insurance Company (In Liquidation)  
Conservation and Liquidation Office  
PO Box 26894  
San Francisco, CA 94126-0894  
United States of America

Phone: +1 415 676 5012  
Fax: +1 415 676 3930

**4 Run-off agents for the FAI Underwriting and Cotesworth Lloyd's Syndicates**

Capita Syndicate Management Limited  
Eastgate House  
40 Dukes Place  
London  
EC3A 7NH  
United Kingdom

Phone: +44 (0)870 523 4567  
Fax: +44 (0)870 523 4660

**5 New Zealand Liquidators of the HIH group**

Mr K Downey  
McGrathNicol+Partners  
KPMG Centre  
18 Viaduct Harbour  
PO Box 1584  
Auckland  
New Zealand

Phone: +64 (0)9 367 5800  
Fax: +64 (0)9 367 5875

**6 For creditors of HIH Insurance (Asia) Limited**

Mr Jan Blaauw  
PricewaterhouseCoopers  
Prince's Building  
22nd Floor  
China  
Hong Kong, SAR

Phone: +(852) 2289 2555  
Fax: +(852) 2845 0262

**7 Australian Liquidators / Proposed Scheme Administrators for the HIH group**

Mr AG McGrath  
McGrathNicol+Partners  
10 Shelley Street  
King Street Wharf  
Sydney NSW 2000  
Australia

Phone: +61 (0)2 9338 2600  
Fax: +61 (0)2 9338 2699

**8 UK Provisional Liquidators / Proposed Scheme Administrators for the HIH group**

Mr TA Riddell  
KPMG  
8 Salisbury Square  
London EC4Y 8BB  
United Kingdom

Phone: +44 (0)20 7311 1000  
Fax: +44 (0) 20 7694 3126

**9 HIH America Insurance Company of Hawaii Inc**

Mr Mark Morita  
Department of Commerce & Consumer Affairs  
Insurance Division  
335 Merchant Street  
Honolulu HU 96813  
United States of America

Phone: +1 808 586 2790  
Fax: +1 808 586 2806

**10 HIH Claims Support Scheme**

WGB HIH Claims Management  
Locked Bag 4830  
Melbourne VIC 3000  
Australia

Phone: 1800 777 016 (within Australia)  
Phone: +61 3 9297 9354 (outside Australia)  
Fax: +61 3 9297 9376

**11 Financial Services Compensation Scheme**

Financial Services Compensation Scheme  
7<sup>th</sup> Floor Lloyds Chambers  
Portsoken Street  
London  
E1 8BN  
United Kingdom

Phone: +44 20 7 892 7300  
Fax: +44 20 7892 7301

**12 HIH Casualty and General Insurance (Labuan) Limited – In Liquidation**

Ooi Woon Chee (Liquidator)  
Level 14, Suite 1402, Menara IMC  
No 8 Jalan Sultan Ismail  
50250 Kuala Lumpur  
Malaysia

Phone: +60 (3) 2026 6162  
Fax: +60 (3) 2026 6110

Additional contacts – Ivan Chong and Jimmy Ng



## APPENDIX 2

A listing of available background financial information

## **A listing of available background financial information**

<b>Document</b>	<b>Location</b>
Report as to Affairs	Appendix 3 (Australian Explanatory Statement)
Statements of the Australian Liquidators' Receipts and Payments	Appendix 3 (Australian Explanatory Statement)
Statements of the UK Provisional Liquidators' Receipts and Payments	Attached in this Appendix
Australian Liquidators' estimate of ultimate dividend rate	Appendix 4 (Australian Explanatory Statement)
Website Details (Royal Commission) for financial position pre-insolvency	Appendix 3 (Australian Explanatory Statement)

## HHH Casualty &amp; General Insurance Company Limited (In Provisional Liquidation)

Receipts and Payments Accounts for the Period 16 March 2001 to 30 September 2005

16 March 2001 -  
30 September 2005  
£

## Receipts

Premium Income		454,965
Reinsurance Recoveries		31,363,831
Insurance refund		3,754
Film Finance Litigation Settlement		4,254,595
Security Deposits Recovered		120,591
Subrogation Receipts		186,783
Genesis Subrogation Receipts		1,592,298
Claims floats returned		73,929
Cash at bank		4,318,411
Excess LOC Collateral		2,851,954
Tax Refund		4,198,033
Bank interest, gross		1,709,722
Sundry refunds		61,495
Rent		96,918
Return of P&I Settlement		171,470
Receipt of inter company recharge		56,909
Sydney & London Settlement		10,931,028
Suspense		55,178
Reinsurance Recoveries on Australian Book		2,914,838
<b>TOTAL</b>		<b>65,416,701</b>

## Payments

KPMG Provisional Liquidators' fees	6,603,410	
Amounts recovered from Australian proceedings	(120,199)	
		6,483,211
Insurance refund		53,700
KPMG Provisional Liquidators' expenses		125,331
KPMG (taxation specialists)		336,142
KPMG (actuarial services)		406,417
KPMG (forensic services)		72,202
Legal fees (Freshfields)		3,791,856
Legal fees (Film Finance)		4,112,936
Cost Awards (Film Finance)		1,755,024
Legal fees other		984,460
Omni Whittington Fees		4,620,867
Other claims handling costs		493,265
Payment of inter company recharge		2,008,738
Telephone/Fax/IT Expenses (Branch)		981,379
Statutory Advertising		324
Office and Property Expenses		23,617
Storage Costs		11,016
Redirection of mail		126
Bank charges		63,386
Insurance		32,813
VAT expense		3,006,809
Insurance Premium Tax		33,526
Reinsurer Subrogation Refund		799,726
Agents/Valuers' fees		118,000
Loss Adjusters' fees		2,426
Vat receivable		13
Exchange losses (gains) on currency transfers		(1,056,127)
<b>TOTAL</b>		<b>29,261,183</b>

## Balance

**36,155,518**

## Cash and Investments as at 30 September 2005

Represented by:

		Balance	Exchange Rate	£
Barclays Bank Plc	£	1,871,603	1.0000	1,871,603
Barclays Bank Plc	US\$	4,532,284	1.7628	2,571,071
Barclays Bank Plc	€	183,298	1.4639	125,212
Conning Asset Management	£	23,000,000	1.0000	23,000,000
Conning Asset Management	US\$	10,000,000	1.7628	5,672,793
Barclays Bank Plc - Australian Recovery A/C	£	38,033	1.0000	38,033
Barclays Bank Plc - Australian Recovery A/C	US\$	874,245	1.7628	495,941
Barclays Bank Plc - Australian Recovery A/C	AUD	5,522,415	2.3195	2,380,864
				2,914,838
				<b>36,155,518</b>

## FAI General Insurance Company Limited (in Provisional Liquidation)

## Receipts and Payments Account for the period 23 March 2001 to 30 September 2005

	23 March 2001 - 30 September 2005 £
<b>Receipts</b>	
Cash at bank	18,233
Bank Interest (Gross)	222,097
Settlement of S&L shares	2,500,000
Excess LOC Collateral	111,575
<b>TOTAL</b>	<b><u><u>2,851,905</u></u></b>
<b>Payments</b>	
Liquidator's fees	170,756
Liquidator's expenses	1,456
Legal fees (Freshfields)	78,045
Legal fees (Nicholson Graham & Jones)	6,718
Legal fees (other)	233,059
Film Finance payments	153,384
VAT expense	1,778
Bank charges	185
<b>TOTAL</b>	<b><u><u>645,381</u></u></b>
<b>Balance</b>	<b><u><u>2,206,524</u></u></b>

## Cash and Investments as at 30 September 2005

<i>Represented by:</i>	<b>Currency</b>	<b>£</b>
Barclays Bank plc	£	2,206,524
		<b><u><u>2,206,524</u></u></b>

## World Marine and General Insurances Pty Limited (in Provisional Liquidation)

## Receipts and Payments Account for the period 10 April 2001 to 30 September 2005

	10 April 2001 - 30 September 2005
	£
<b>Receipts</b>	
Reinsurance Recoveries	2,157,289
Bank interest, gross	119,495
	<u>2,276,785</u>
<b>Payments</b>	
KPMG Provisional Liquidators' fees	181,539
KPMG Provisional Liquidators' expenses	2,041
KPMG (actuarial services)	17,280
Legal fees (Freshfields)	15,601
Legal fees (Nicholson Graham & Jones)	6,718
Legal fees (Other)	345
VAT expense	14,942
FSA Fees	535
Bank charges	3,323
Telephone/IT Expenses	42,155
Stationery & Postage	4,679
Exchange losses (gains) on currency transfers	(74,930)
<b>TOTAL</b>	<u>214,228</u>
<b>Balance</b>	<u>2,062,556</u>

## Cash and Investments as at 30 September 2005

<i>Represented by:</i>		Balance	Exchange rate	£
Barclays Bank plc	£	140,173	1.0000	140,173
Barclays Bank plc	US\$	3,388,777	1.7628	1,922,383
				<u>2,062,556</u>

## FAI Insurances Limited (In Provisional Liquidation)

## Receipts and Payments Accounts for the Period 10 April 2001 to 30 September 2005

10 April 2001 -  
30 September 2005  
£

**Receipts**

Loan recovery	327,118
Security Deposits Recovered	175,953
Tax refund	1,578
Bank Interest (Gross)	17,730

<b>TOTAL</b>	<b><u>522,379</u></b>
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**Payments**

KPMG Provisional Liquidators' fees	89,201
KPMG Provisional Liquidators' expenses	110
FSA Fees	375
Legal (Freshfields)	15,621
Legal (Other)	19,381
VAT Expense	13,924
Bank charges	374
Actuarial Fees	2,636

<b>TOTAL</b>	<b><u>141,623</u></b>
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<b>Balance</b>	<b><u>380,756</u></b>
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## Cash and Investments as at 30 September 2005

Represented by:	Currency	Balance	Exchange Rate	Conversion to £
Barclays Bank Plc	£	311,737	1.0000	311,737
Barclays Bank Plc	€	101,036	1.4639	69,018
				<b><u>380,756</u></b>

## APPENDIX 3

CVs of the proposed initial English Scheme Administrators

## **Tom Riddell**

Tom is a corporate recovery partner in the London office of KPMG LLP. He specialises in insolvency and advisory appointments in the insurance sector.

He is the Joint Scheme Administrator for English and American Insurance Company Limited, Joint Liquidator of National Employers' Mutual General Insurance Association Limited, and Provisional Liquidator in the UK of HIH Casualty & General Insurance Limited, FAI General Insurance Company Limited, and other HIH group companies.

Tom joined KPMG in January 1983. Prior to transferring to London in 1997, he was a Corporate Recovery Partner in KPMG's Sydney office.

**Date of birth** - 22/8/1952

**Nationality** - Australian

### **Qualifications**

Bachelor of Commerce

Bachelor of Laws

Affiliate, Institute of Chartered Accountants in England and Wales

Member, Institute of Chartered Accountants in Australia

Licensed Insolvency Practitioner (UK)

Registered Liquidator (Australia)



## **John Wardrop**

John is a corporate recovery partner in the London office of KPMG LLP. He specialises in insolvency and advisory appointments in the insurance sector.

He is the Joint Scheme Administrator for Anglo American Insurance Company Limited, Joint Scheme Administrator of Sovereign Marine & General Insurance Company Limited, Provisional Liquidator of Trenwick Group Limited and LaSalle Re Holdings Limited and Provisional Liquidator in the UK of HIH Casualty & General Insurance Limited, FAI General Insurance Company Limited, and other HIH group companies.

**Date of birth** - 20/8/1963

**Nationality** - English

### **Qualifications**

Affiliate, Institute of Chartered Accountants of Scotland

Licensed Insolvency Practitioner (UK)

Member of the International Association of Insurance Receivers

## APPENDIX 4

List of the Informal Creditors' Committee members

## **Informal creditors' committee in England**

### **HIH Casualty & General Insurance Limited (in provisional liquidation)**

#### **Creditor**

Faraday Limited  
Financial Services Compensation Scheme  
Markel International Insurance Company Limited  
Riverstone Management Limited  
Groupama Insurances

#### **Committee Member**

Mr J Bond  
Ms H McMahon  
Mr G Appleton  
Mr J Bator  
Mr E Walker (Grant Thornton - as  
representative)

## APPENDIX 5

Nomination form for membership of English Creditors' Committee

## Nomination Form for Membership of an English Creditors' Committee

Requirements: To be eligible for membership of an English Creditors' Committee, a person or a company must be a Scheme Creditor or be nominated by two Scheme Creditors. If a company is appointed, it must then nominate an individual to represent it on the Creditors' Committee.

Please complete the details below to be nominated for inclusion on an English Creditors' Committee, and return to the Provisional Liquidators.

<b>Scheme Company</b>	.....
<b>Name of Scheme Creditor(s)</b>	.....
<b>Name of nominated representative</b>	.....
<b>Position/Role of nominated representative</b>	.....
<b>Organisation of the nominated representative (if different from the Scheme Creditor)</b>	.....
<b>Organisation address</b>	..... ..... ..... .....
<b>Estimated value of debt owed by the relevant Scheme Company in the question above (AUD of AUD Equivalent)</b>	.....

.....  
Signature (and Position/Role of authorised representative of Scheme Creditor(s))

.....  
Signature of nominated representative

## APPENDIX 6

### Summary of Scheme Provisions in relation to the FSCS and the English Scheme Companies

## Appendix 6

### Summary of English Scheme provisions in relation to the FSCS and the English Authorised Scheme Companies

#### Important Note

**Under the terms of the English Scheme, the FSCS will have obligations in respect of certain Scheme Claims in respect of which policyholders of the English Authorised Scheme Companies may be entitled to protection from the FSCS. Compensation from the FSCS under the English Scheme is, subject to its terms, only payable to policyholders of the English Authorised Scheme Companies whose policies were United Kingdom policies (within the meaning of the Policyholders Protection Act) at the Record Date and who would otherwise qualify for protection under that Act if those companies had gone into liquidation at the Record Date.**

#### Introduction

1. Certain creditors of the English Authorised Scheme Companies may have other sources of payment available to them in respect of their claims, either in addition to or as an alternative to the English Authorised Scheme Companies' payment obligations under the English Scheme. Brief details of one such alternative, applying to policyholders of the English Authorised Scheme Companies in the United Kingdom, are set out below. It is stressed that the explanation set out below is made in attempt to assist creditors and that the Liquidators and the UK Provisional Liquidators do not warrant or represent either its accuracy or completeness.

2. **The Liquidators and the UK Provisional Liquidators are not advising creditors concerning the rights which they may have to other sources of payment or the way in which creditors may exercise those rights. Creditors who believe that they may have other sources of payment should consult their own professional advisers. Claims against other sources of payment should be submitted to the appropriate body, as well as to the English Scheme Administrators.**

#### The Run-off Period

3. During the Run-off Period (i.e. before the Estimation Date) once a Payment Percentage has been set under the English Scheme, an English Authorised Scheme Company will pay a Protected Policyholder a percentage of his or her claim when it is established, in the same way that an English Authorised Scheme Company would any other Scheme Creditor. Subject to certain qualifications, however, the FSCS will also pay to him or her an amount sufficient to ensure that he or she receives in total (after taking into account all amounts paid and payable by the relevant English Authorised Scheme Company) the percentage

of his or her claim that the FSCS would have been under a duty to secure that he or she was paid if the relevant English Authorised Scheme Company had gone into liquidation in the United Kingdom on the Record Date.

4. Payment will be made by the FSCS as soon as reasonably practicable following the later of the dates specified for this purpose in the English Scheme.

**5. Payment will generally be made by the FSCS in the currency of the claim, although subject to the Capped Sterling Equivalent as explained below.**

6. Any obligation of the FSCS under the English Scheme to a Protected Policyholder in respect of a Protected Liability is subject to the same conditions, limitations, qualifications and other provisions (subject to any necessary adjustments) contained or referred to in, or capable of being imposed under, sections 9, 13(1), to (3) and 14 of the Policyholders Protection Act (UK) (and, for the avoidance of doubt, for the purposes of section 13(3) in its application to the English Scheme, the FSCS shall be entitled to have regard both to its obligations under the English Scheme and to its responsibilities otherwise than under the English Scheme) as the duty which the FSCS would have had under sections 6 to 8 of the Policyholders Protection Act to secure the making of a payment to any policyholder or any other person in respect of that Protected Liability if the English Authorised Scheme Company concerned had been a company in liquidation in the United Kingdom.

7. Under the English Scheme, an amount payable in respect of any Protected Liability by the FSCS in a currency other than Sterling is not to exceed a Capped Sterling Equivalent, arrived at by converting that amount into Sterling at a rate 12.5 per cent less than the average daily exchange rate prevailing over the period of three months prior to the Effective Date and converting the resulting amount back to the original currency at the exchange rate prevailing on the Business Day immediately prior to payment. If the Euro replaces Sterling, the currency cap will continue to apply as if references to Sterling were references to the Euro.

8. There is an overall limitation on the obligations of the FSCS under the English Scheme in respect of any Scheme Creditor or liability of any English Authorised Scheme Company, by reference to the obligations which it would have had (and neither any Scheme Creditor nor any English Authorised Scheme Company shall have any different or greater relief or remedy against the FSCS than he or it would have had) if the relevant English Authorised Scheme Company had been in liquidation in the United Kingdom, save for the FSCS's obligation to make payments in the currency of the claim. If an English Authorised Scheme Company goes into liquidation in the United Kingdom after the Record Date, the FSCS will not have any obligation which it would not have had, or greater than it would have had, if the relevant English Authorised Scheme Company had gone into liquidation in the United Kingdom on the Record Date.



9. The FSCS will not have an obligation to make payment to an English Authorised Scheme Company or to any person who had any responsibility for or who may have profited from the circumstances giving rise to the financial difficulties of the relevant English Authorised Scheme Company. For such purposes, any benefit which might accrue to any such person who is a policyholder of the relevant English Authorised Scheme Company in his capacity as such will be disregarded.

10. All rights of Protected Policyholders in respect of a Protected Liability under or in respect of a policy in relation to which payment is made by the FSCS and under the English Scheme, any rights and claims the Protected Policyholder may have to a return of the premiums paid under such policy and any rights and claims the Protected Policyholder may have against other persons in respect of any event giving rise to that Protected Liability (other than another insurer which has insured the Protected Policyholder in respect of the same event) or by reference to or in connection with the policy relating to the Protected Liability are automatically assigned to the FSCS with effect from the date of the payment (or, if an English Authorised Scheme Company has gone into liquidation in the United Kingdom, with effect from the liability becoming an Established Scheme Claim).

11. The rights and claims assigned include all those which a Protected Policyholder may have in respect of a Protected Liability to any payment out of, interest in or recourse to any such letter of credit, trust fund, guarantee, guarantee fund or deposit or similar arrangement.

12. Following any automatic assignment, the FSCS will have a right to payment by the relevant English Authorised Scheme Company of all sums due or payable in respect of the Protected Liability in question (except that if the relevant English Authorised Scheme Company has gone into liquidation in the United Kingdom and the initial payment by the relevant English Authorised Scheme Company falls to be made after that assignment it will be made to the Protected Policyholder concerned). Alternatively or in addition, the FSCS may require a specific assignment to it of such rights and claims in advance and as a condition of or following any payment by it to a Protected Policyholder.

13. It is a condition of payment by the FSCS that, unless it otherwise consents in any case, the Protected Policyholder is entitled and able to assign to the FSCS the above-mentioned rights and claims free from any third party right.

14. The FSCS may make payment to any person other than the policyholder in circumstances including those where it would be required or entitled to do so under the Policyholders Protection Act if the relevant English Authorised Scheme Company were in liquidation in the United Kingdom.

15. No payment will be made by the FSCS in respect of any part of the Scheme Claim which represents interest other than interest arising under a policy for a period prior to and ending on the Record Date.

16. A payment by the FSCS under the English Scheme will not operate to reduce or discharge any liability of an English Authorised Scheme Company or any part of such liability.

17. A person receiving payment from the FSCS who has knowingly provided false, misleading or incomplete information to it will be bound to repay to the FSCS on demand all amounts received by him in respect of the relevant Established Scheme Claim, together with interest.

18. If an English Authorised Scheme Company goes into liquidation in the United Kingdom, the rights of the FSCS will continue to be governed by the provisions of the English Scheme and the FSCS's obligations under the English Scheme will continue.

19. The FSCS Schedule, which forms part of the English Scheme (pages 67 to 90), sets out the FSCS's obligations under the English Scheme and a summary of certain provisions of the Policyholders Protection Act appear in appendix 7 of this explanatory statement. The obligations of the FSCS are governed by English law.

**20. Policyholders who believe that they may be entitled to the benefit of protection under the Policyholders Protection Act should contact the FSCS at the address appearing in appendix 1 of this explanatory statement. If you are in any doubt whether you are a Protected Policyholder, you should consult your own legal adviser without delay.**

### **The Estimation Period**

21. The English Scheme provides that any Scheme Creditor who considers they have or may have any Protected Liabilities as at the Estimation Date, should submit a Final Claim Form for Estimation to the English Scheme Administrators on or before the day three months after the Estimation Date. The Scheme Creditor must state where indicated on the Final Claim Form for Estimation that the Protected Liabilities are or would be protected (upon maturing) under the Policyholders Protection Act.

22. Protected Liabilities, as used in this Appendix, will mean Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR, as defined in the English Scheme.

**23. Scheme Creditors in any doubt as to their protected status should submit a Final Claim Form for Estimation to the English Scheme Administrators so as to be received by them on or before the day three months after the Estimation Date. Failure to do so will prevent any Scheme Creditor from receiving any payments from the relevant English Authorised Scheme Company or the FSCS if the Notified Liability turns out not to be protected.**

24. Final Claim Forms for Estimation containing Protected Liabilities which are submitted so as to be received by the English Scheme Administrators on or before the day three months after the Estimation Date will be referred by the English Scheme Administrators to the FSCS. If the FSCS agrees that they appear to or would qualify (upon maturing) for protection under the Policyholders Protection Act, such Protected Liabilities shall be designated under the English Scheme as Accepted Protected Liabilities. In that case, the agreement, adjudication and payment provisions summarised in paragraphs 5.4, 7.2 and 7.4 of this English Explanatory Statement will not apply and, instead, they will be treated in the way summarised below. The designation of any Protected Liability as an Accepted Protected Liability does not bind the FSCS as to eligibility for protection (under the Policyholders Protection Act, the English Scheme or otherwise) or as to the amount of any claim for the purposes of such protection.

25. If the FSCS does not agree to designate a Notified Liability as an Accepted Protected Liability, the English Scheme Administrators, Scheme Creditor and the FSCS will seek to agree how such liabilities are to be dealt with under the English Scheme. This will include the manner in which sums may be paid, any appropriate reservation of rights and the way in which the Scheme Creditor will give credit to the FSCS for any amounts received by the Scheme Creditor from an English Authorised Scheme Company.

26. A Scheme Creditor may consider that they are unprotected in circumstances where they cannot show good cause for that status and the English Scheme Administrators and the FSCS believe they are protected. In such a case, then with the consent of the FSCS and subject to entering a legally binding waiver of their rights as a Protected Policyholder or as otherwise agreed by the FSCS, the Scheme Creditor shall receive a distribution from the relevant English Authorised Scheme Company.

27. For the purpose of establishing the FSCS Amount, the English Scheme Administrators will calculate the total aggregate value of all Protected Liabilities which are Accepted Protected Liabilities and all other Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR of which the English Scheme Administrators or the relevant English Authorised Scheme Company are aware.

28. The English Scheme Administrators will pay to the FSCS the amounts due by way of Payment Percentages calculated on the FSCS Amount on the same basis as those distributions are paid to other Scheme Creditors. The relevant English Authorised Scheme Company's liability to make payments to the FSCS under the English Scheme in respect of Protected Agreed Liabilities, Protected Outstanding Losses and Protected IBNR shall be fixed at the amounts payable in respect of the FSCS Amount.

29. The FSCS will undertake to pay (notwithstanding the termination of the English Scheme or any liquidation of the relevant English Authorised Scheme

Company) the full amount of the Protected Percentage of any Protected Liability owed to a Protected Policyholder who is not entitled to receive payments from the relevant English Authorised Scheme Company under the English Scheme. Accordingly, such Protected Policyholders will have no right to any payment from the relevant English Authorised Scheme Company in respect of such liability.

30. No Scheme Creditor is eligible for compensation from the FSCS in respect of a Protected Liability, unless and to the extent that such liability becomes an Established Scheme Claim by agreement or determination with the English Scheme Administrators (or after termination of the English Scheme, the FSCS) in the normal manner and the FSCS agrees or it is otherwise determined that such liability is protected. In particular, where the relevant English Authorised Scheme Company has solvent co-insurers, claims must be agreed or litigated with the lead solvent co-insurers prior to seeking agreement of such claims.

31. Neither the calculation of the FSCS Amount by the English Scheme Administrators nor any agreement or adjudication of an Established Scheme Claim by the English Scheme Administrators or Scheme Adjudicator will bind the FSCS (either as to liability or quantum) in determining the existence or amount of any claim made against it by a Protected Policyholder in respect of a Protected Liability.

32. The FSCS will only make payments to Protected Policyholders in respect of Protected Liabilities if and to the extent they would be eligible for protection under the Policyholders Protection Act were the relevant English Authorised Scheme Company in liquidation. Payment will be made only after the existence and amount of the Protected Liabilities are properly agreed by the relevant English Authorised Scheme Company or the FSCS during or after the English Scheme, such Protected Liability having matured into an actual present liability of a scheme company. In the event the FSCS has received a distribution in respect of a Notified Liability that turns out not to be protected if and when it matures, then the FSCS will pay to the Scheme Creditor the amount of the relevant distributions together with interest.

33. In making any claim for compensation, a Protected Policyholder will be subject to those obligations and limitations on the FSCS's liability set out in paragraph 1 of the FSCS Schedule, including the requirement to assign their Protected Liabilities to the FSCS as a condition of receiving compensation.

34. The English Scheme will not alter the treatment of Protected Liabilities which became Established Scheme Claims in the normal way before the Estimation Date or which are notified to the English Scheme Administrators on a Final Claim Form for Estimation so as to be received by them on or before the day three months after the Estimation Date and which become Established Scheme Claims before that date.

35. The provisions of the English Scheme dealing with the treatment of Protected Liabilities, in common with the remainder of the English Scheme, are expressed to survive any liquidation of an English Authorised Scheme Company. They will also continue to operate notwithstanding any termination of the English Scheme for any other reason.

36. Until the termination of the English Scheme, the English Scheme Administrators, with the assistance of Omni Whittington will continue to undertake the claims handling functions for the purpose of agreeing or determining Established Scheme Claims as a precursor to submitting them to the FSCS for the purpose of determining their protected status. After termination, such claims handling function will be undertaken by the FSCS, who Scheme Creditors with Protected Liabilities should contact directly. If and when the FSCS is satisfied as to the validity, amount and eligibility for protection under the Policyholders Protection Act of the claim, it will pay to the Scheme Creditor the Protected Percentage of that amount.

37. The FSCS will make payments in the original currency of claims, subject to the currency cap provided for in the English Scheme.

## APPENDIX 7

### Summary of Policyholders Protection Act and the FSCS

## **Appendix 7**

### *The English Authorised Scheme Companies*

#### *Summary of Policyholders Protection Act and the FSCS*

##### *Important Note*

**Under the terms of the English Scheme, the FSCS will have obligations in respect of certain Scheme Claims in respect of which policyholders of the English Authorised Scheme Companies may be entitled to protection from the FSCS. Compensation from the FSCS under the English Scheme is, subject to its terms, only payable to policyholders of the English Authorised Scheme Companies whose policies were United Kingdom policies (within the meaning of the Policyholders Protection Act) at the Record Date and who would otherwise qualify for protection under that Act if those companies had gone into liquidation at the Record Date.**

**Any creditor who is in any doubt as to his own position should take his own legal advice.**

##### **Preliminary**

This memorandum contains a summary of certain provisions of the Policyholders Protection Act 1975 (**PPA**) and the role of the FSCS. It is not an exhaustive guide to all the provisions of the PPA and the role of the FSCS which may be relevant to establishing whether, and if so, to what extent, a policyholder is eligible for protection or assistance from the FSCS under the English Scheme. Certain expressions used herein are defined in the English Scheme on pages 1 to 11.

##### **The Applicable Provisions**

At midnight on 30 November 2001 the PPA was repealed by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001. The functions of the Policyholders Protection Board (**PPB**) in relation to the English Authorised Scheme Companies and their policyholders under the PPA have been transferred to the FSCS. As the insolvency of the English Authorised Scheme Companies occurred before the PPA was repealed, the provisions of the PPA continue to apply to the English Authorised Scheme Companies.

##### **The FSCS**

The FSCS is a company limited by guarantee established by the Financial Services Authority in accordance with Section 212 of the Financial Services and Markets Act 2000. The FSCS exercises the functions previously carried on by the PPB. The assets and liabilities of the PPB have been transferred to the FSCS, which further finances its functions by means of levies on authorised insurers. The chairman and board of the FSCS are appointed by the Financial Services Authority (acting, in the case of the chairman, with the approval of the Treasury).

##### **Payment Obligations: the PPA**

The FSCS's obligations under the English Scheme are determined principally by reference to its duties under the PPA which, in the event of the liquidation of an English Authorised Scheme Company in the United Kingdom on the Record Date (on 15 March

2001), it would have owed certain of the relevant English Authorised Scheme Company's policyholders or security holders in respect of policies issued or securities given by the relevant English Authorised Scheme Company. There are two categories of liabilities of an English Authorised Scheme Company toward such policyholders or security holders which would qualify for protection under the PPA:

- (a) those where the liability may be protected as to 100% of its amount; and
- (b) those where the liability may be protected as to 90% of its amount.

**It should be noted that the duties of the FSCS in liquidation (and hence its obligations under the English Scheme) are subject to a number of important qualifications. Furthermore, the existence of any duty of the FSCS in any particular case depends upon the relevant conditions of the PPA being satisfied.**

Some of these qualifications and conditions are summarised below.

### **100% Protection**

Subject to the relevant provisions of the PPA, in a liquidation to which the PPA applies, (and, therefore, in the English Scheme, should it take effect) it is the duty of the FSCS to secure that a sum equal to the full amount of any "liability subject to compulsory insurance" of a company in liquidation towards any policyholder (who need not be for these purposes a "private policyholder") or security holder under the terms of any policy or security which satisfies the requirements of specified enactments is paid to the policyholder or security holder as soon as reasonably practicable after the beginning of the liquidation. For such purposes, as well as for the purposes of the 90% protection referred to below, a policy must have been a policy of insurance which was a "United Kingdom policy" at the time when the liquidation of the company began.

"A liability subject to compulsory insurance" is a liability required under specified enactments in the United Kingdom to be covered by insurance (or by some other provision for ensuring its discharge). The specified enactments are Section 1(4)(d) of the Riding Establishments Act 1964, Section 1 of the Employers' Liability (Compulsory Insurance) Act 1969, Part VI of the Road Traffic Act 1988, and the equivalent provisions applicable to Northern Ireland. Policies evidencing contracts of insurance effected for the purpose of Section 19 of the Nuclear Installations Act 1965 are also covered.

Where a claim relates to a liability under a policy of one of the types specified above which is not a liability subject to compulsory insurance it is only eligible for 90% protection. This 90% protection is discussed below.

The FSCS also has a duty, in a liquidation to which the PPA applies, (and accordingly, the English Scheme should it become effective) subject to the relevant provisions of the PPA, to secure that a sum equal to the full amount of any liability of a company in liquidation in respect of a sum payable to a person entitled to the benefit of a judgment under certain legislation (Section 149 of the Road Traffic Act 1972 or Section 151 of the Road Traffic Act 1988 or the equivalent provisions in force in Northern Ireland) is paid to that person as soon as reasonably practicable after the beginning of the liquidation.

### **90% Protection**

The 90% protection is available only in respect of the liabilities of a company in liquidation towards "private policyholders". Subject to the relevant provisions of the PPA, in a liquidation to which the PPA applies, it is the duty of the FSCS to secure that a



sum equal to 90% of the amount of the liability of an authorised insurance company in liquidation towards a “private policyholder” under the terms of the relevant policy is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation.

A liability will not qualify for the 90% protection unless the relevant policy is a “general policy”, or unless the policy is one of the types described in relation to the 100% protection above. A “general policy” means any policy evidencing a contract the effecting of which constituted the carrying on of general business within the meaning of the Insurance Companies Act 1982 of the United Kingdom, with the exception of reinsurance and certain specified classes of business. The categories of “general business” which are relevant for the 90% protection are accident, sickness, land vehicles, railway rolling stock, fire and natural forces, damage to property, motor vehicle liability, general liability, credit, suretyship, miscellaneous financial loss and legal expenses.

### **Interpretation**

The PPA contains, or incorporates by reference, definitions of some of the more significant words and expressions mentioned above. Three definitions particularly relevant to the English Scheme are set out below.

#### *United Kingdom Policy*

The policy in question must have been a “United Kingdom policy” within the meaning of Section 4(2) of the PPA at the relevant time. A policy of insurance is a United Kingdom policy if, had any of the obligations under the contract evidenced by the policy been performed at the relevant time, such performance would have formed part of an insurance business which the insurer was authorised to carry on in the United Kingdom, whether or not such obligations would have been performed in the United Kingdom.

#### *Policyholder*

A claimant must be a “policyholder”. A policyholder is the person who, for the time being, is the legal holder of the policy for securing the contract with the insurance company and includes a person to whom, under a policy, a sum is due or a periodic payment is payable.

#### *Private Policyholder*

The 90% protection described above is only available to policyholders who are “private policyholders”.

A “private policyholder” means a policyholder who is either an individual or a partnership or other unincorporated body of persons, all of whom are individuals.

Consequently, a body corporate cannot be a private policyholder. Furthermore, it has been established by the English Courts that:

- (a) a professional corporation is not an individual and cannot be a private policyholder;
- (b) no partnership, one or more of whose partners is a professional corporation, can be a private policyholder, nor can any individual in his capacity as a partner in such partnership; and

- (c) being in partnership with a professional corporation does not disqualify an individual from being a private policyholder if he contracts with the insurance company in a capacity other than as a partner.

### **Basis of Participation**

The FSCS will participate in the English Scheme pursuant to its discretionary powers under Section 16(4) of the PPA to take such measures as it considers appropriate, for the purposes of assisting policyholders of a company in financial difficulties, to enable the company to continue to carry on insurance business. The FSCS has the power to make payments pursuant to Section 16(4) of the PPA on such terms and on such conditions as it thinks fit.

### **Assignments**

Any duty of the FSCS to assist a policyholder of a company in liquidation by the measures described in the preceding paragraph is subject to compliance on the part of the policyholder with any conditions imposed by the FSCS with respect to the total or partial assignment to the FSCS of his rights under or in respect of the policy and certain other rights.

The English Scheme contains a provision by which all rights which a Protected Policyholder has in respect of or in connection with a Protected Liability or a Liability which subsequently matures into a Protected Liability in relation to which payment has been made by the FSCS (under the English Scheme) are automatically and absolutely assigned to the FSCS with effect from payment being made. Alternatively, or in addition, the FSCS may require a separate assignment to it of such rights in advance and as a condition of it making payment. The right to require a separate assignment will also apply as will as the other provisions of the English Scheme in the event that the English Scheme terminates.

### **Other Relevant Provisions**

#### **Section 16**

To receive protection from the FSCS under the English Scheme, and to qualify as a “Protected Policyholder” for the purposes of the English Scheme, a Scheme Creditor must, in addition to satisfying the other specified eligibility criteria, meet the requirements of Section 16(9) of the PPA.

Accordingly, a Scheme Creditor must be a policyholder in respect of a general policy of an English Authorised Scheme Company which was a United Kingdom policy on the Record Date.

### **General**

The obligations of the FSCS to Protected Policyholders under the English Scheme are expressly made subject to the same conditions, limitations, qualifications and other provisions contained or referred to in, or capable of being imposed under specified sections of the PPA. Some potentially significant aspects of the provisions are summarised below.

#### *Insufficiency of Funds*

The FSCS finances its functions in relation to general insurance business by means of levies imposed upon authorised insurers. The amount a company can be required to pay

in respect of general insurance business is limited, in any financial year, to 0.8% of its income liable to the levy in the year last ending before that financial year. Accordingly, the FSCS's duties under Sections 6 to 11 of the PPA, including the duties described in the paragraphs concerning its payment obligations above (and therefore its obligations under the FSCS Schedule), are qualified to the extent that they do not require the FSCS to make any payment at a time when it appears to the FSCS that the funds available to it fall short of what it needs to carry out its various responsibilities (including any responsibilities towards policyholders of companies other than an English Authorised Scheme Company).

However, in the event that funds do fall short, the obligations of the FSCS to make payment under the FSCS Schedule will be postponed and not avoided. It is not possible to forecast the amounts required for the FSCS to perform all its responsibilities which may arise during the operation of the English Scheme. It is possible that responsibilities giving rise to substantial payments by the FSCS will arise in future years.

#### *Duplication of liability*

Section 9(1) of the PPA provides that the FSCS shall not, by virtue of any provision of Sections 6 to 8 of the PPA, be required to secure any sum for a policyholder in respect of a policy of a company in liquidation which was a United Kingdom policy at the beginning of the liquidation by reference to any liability (or any part of any liability) which is duplicated by the liability of any other authorised insurance company which is not a company in liquidation.

By virtue of Section 9(2) of the PPA, a liability of a company towards a policyholder is duplicated by the liability of another company for such purposes insofar as that other company is also under a liability, under the terms of any general policy which was a United Kingdom policy at the beginning of the first mentioned company's liquidation, to make any payment to or on behalf of the policyholder in respect of the matter to which the liability of the first mentioned company relates.

#### *Payments to a person other than the policyholder*

Under Section 13(1) of the PPA, where it appears to the FSCS, in the case of any policy of a company in liquidation:

- (a) that payment in respect of any sums falling due under the policy could have been made in accordance with the policy to a person other than the policyholder; or
- (b) that any sums paid under the policy would have been subject to any trust, charge or other agreement binding on the policyholder,

the FSCS may secure the payment of any sum payable to the policyholder in accordance with any of the provisions of Sections 6 to 8 of the PPA (in whole or in part) to that other person or (as the case may be) to the person appearing to the FSCS to be entitled under the trust, charge or agreement in question, instead of to the policyholder.

Any payment made by virtue of the provisions of Section 13(1) of the PPA to a person other than the policyholder is treated as a payment to the policyholder and may be made on such conditions (with respect to the total or partial assignment to the FSCS of any rights of the recipient against the policyholder or any other person, or otherwise) as the FSCS thinks fit.

#### *Payments to the policyholder by third parties*

Section 14(1) of the PPA provides that any payment made by any person other than the FSCS (such as an insurance broker or other intermediary or a guarantee fund) to the policyholder, or to any other person, being a payment referable to any such liability of a company in liquidation as is mentioned in Sections 6, 7 or 8 of the PPA, is to be treated as reducing any sum payable by the FSCS to the policyholder in accordance with any provision of those sections, by reference to that liability.