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To all known creditors, potential creditors and  
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Limited

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13 October 2009

Dear Sir/Madam

**FAI General Insurance Company Limited (In Provisional Liquidation and subject to  
Scheme of Arrangement)  
English Scheme Administrators' Annual Report to Creditors**

**1 Introduction**

This is the 3rd Annual Report to creditors of FAI General Insurance Company Limited ("FAIG") by the English Scheme Administrators. It will be published on the HIH website as a supplement to the Annual Report to creditors of the Australian Scheme Administrators, for the year ended 30 June 2009.

Background information in relation to the failure of FAIG is contained in Appendix 1. The purpose of this report is to provide creditors with information on the progress of the English Scheme to date.

**2 Key developments since the last report**

- The Scheme Administrators have been successful in their application to the New York State Conservation Court, seeking release of the small balance of Trust funds held to protect US domiciled holders of policies written by FAIG in the US. This has allowed the Scheme Administrators to make a Scheme Payment to these policy holders of 31.4%, which is in line with all other FAIG insurance creditors.
- Following negotiations by the Scheme Administrators, the House of Lords costs have been finalised and settled at £750,000, compared to an initial claim of £1,268,000. Further details of the effect on English Scheme Creditors are set out in section 3.2 of this report.

### **3 Scheme Payment Percentages**

#### *3.1 Current Scheme Payment Percentages*

There is no current Scheme Payment Percentage under the English Scheme. The Australian Scheme Percentage is currently 31.40% for creditors with insurance liabilities in Australia (in the case of FAIG this encompasses all insurance creditors), and 30% for all non-insurance creditors. The current ultimate expected outcome for creditors is between 45% to 55%.

During the year a successful application was made to the NY State Conservation Court, which ratified the Deed of Release for the small balance of US Trust Fund monies held in respect of FAIG. This has allowed payment of the interim 31.40 cents in the dollar to any US domiciled creditors who had yet to receive a distribution under the Scheme, thus bringing them in line with all other insurance creditors.

The Superintendent of Insurance in New York has released the Trust funds, which has allowed payment to those creditors eligible to participate in any distribution from the Trust. The Trust Agreement defines such policyholders as: "the holders of an American Policy resident or doing business in the United States, and any other persons or associations who are assignees, pledgees, or mortgagees named therein".

The terms of the Release of the Trust funds included an undertaking to distribute them strictly in accordance with the terms of the Trust Agreement.

The current Scheme Payment Percentages for the various classes of assets for all the HIH Scheme companies, of which FAIG is one, are set out on the HIH website [www.hih.com.au](http://www.hih.com.au).

#### *3.2 House of Lords costs*

As outlined in the 2<sup>nd</sup> Annual Report to creditors, the House of Lords ruled that the English assets will be distributed in accordance with Australian priorities. In addition, the Lords awarded the Australian Insurance Creditors (Amaca Pty Limited and Amaba Pty Limited, formerly known as the James Hardie Trust) their costs. The costs award covers all the proceedings including the initial High Court hearing, the appeal to the Court of Appeal, the action in the House of Lords and the final hearing in the High Court to implement their Lordships' Order.

The total of Clifford Chance's claim (acting on behalf of the Australian Insurance Creditors) against the English Scheme Administrators in relation to the House of Lords action was approximately £1,268,000. Following negotiations, the Scheme Administrators agreed on a figure of £750,000 in full and final settlement of these claims.

#### *3.3 How the Scheme Payment Percentages are set*

The Australian Schemes reflect the distribution priorities which apply to liquidations of insurance companies in Australia. This requires particular classes of assets to be distributed in priority to particular classes of creditor claims.

Under the terms of the Schemes, the Australian and English Scheme Administrators review the Scheme Payment Percentage for each relevant class of asset in consultation with the Creditors' Committees. Factors taken into account include current cash held, expected future asset realisations, expected future claims agreement levels and the remaining potential volatility of the account.

The objective in setting the Scheme Payment Percentages is to make interim distributions to creditors currently holding Established Scheme Claims, whilst ensuring that FAIG will be capable of meeting that same percentage on all eligible liabilities reasonably expected to be admitted in the future.

### 3.4 *Estimated ultimate Scheme Payment Percentages*

The summary estimates of the ultimate Payment Percentages per company given by the Australian Scheme Administrators are shown below and compared to the original estimates of the Scheme Administrators. These estimates are dependant on a wide range of factors including the volatility of claims; levels of set-off; litigation outcomes; levels of reinsurance recovery; and the class of creditor claim. It is possible that the ultimate Payment Percentages could vary significantly either above or below those predicted.

In addition the final result for individual creditors will vary according to whether their claims are classed as insurance or non-insurance, and whether their claims are classed as Liabilities in Australia or Liabilities not in Australia. As a generalisation, creditors with insurance Liabilities in Australia are expected to receive higher ultimate distributions than creditors with Liabilities not in Australia.

<b>Scheme Company</b>	<b>Initial Estimated Ultimate Scheme Payment Percentage</b>	<b>Revised Estimated Ultimate Scheme Payment Percentage</b>
HIH C&G	15% to 25%	12% to 35%
FAIG	40% to 50%	45% to 55%
FAII	Less than 5%	30% (insurance creditors) 8% (non insurance creditors)
WMG	10%	30% to 95%
CIC	40% to 50%	55% to 65%
FAIT	Less than 5%	Less than 5%
FAI Re	More than 50%	100%
HIH U&I	5% to 10%	5% to 25%

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

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

All creditors worldwide are entitled to claim in both the Australian and English Schemes for FAIG. The Australian and English Scheme Administrators co-operate fully. Creditors do not need to lodge separate claims in each jurisdiction. Creditors need to lodge claims in one location only, which is then effective under both Schemes.

## 6 Closure

The Scheme for FAIG provides for a planned Estimation Date of seven years after the Australian Scheme became effective, which means that the Estimation Date is expected to be in June 2013. By that time the Scheme Administrators expect that the majority of the reinsurance asset will have been collected or commuted, and the remaining tail of insurance liabilities will be sufficiently small to justify closure of the Scheme on cost benefit grounds. Under the terms of the Scheme all creditors will be given notice of the actual Estimation Date between six and three months prior to the time.

The Schemes provide that the Estimation Date may be moved two years either way from the expected seven years (to be as early as five years or as late as nine years after the Effective Date) by special resolution of creditors, on the recommendation of the Scheme Administrators and Creditors' Committees.

Following the Estimation Date all remaining outstanding and IBNR creditor claims will be crystallised by estimation, to allow for the closure of the Scheme.

## 7 Responsibilities

### 7.1 *Scheme Administrators*

The English Scheme Administrators of FAIG are John Wardrop and Tom Riddell, partner and senior advisor respectively of KPMG LLP, based in London. The Australian Scheme Administrators are Tony McGrath and Chris Honey, partners of McGrathNicol, based in Sydney.

### 7.2 *Run-off Managers*

The day to day claims handling and reinsurance recovery activities of FAIG have been outsourced to a specialist run-off organisation in Sydney. The run-off managers for all business written by FAIG are Capita CMGL.

### 7.3 *Creditors' Committee*

The interests of creditors in the English Scheme are represented by a Creditors' Committee. The Committee sanctions significant transactions (such as commutations), is involved in the setting of the Scheme Payment Percentage, and approves the Scheme Administrators' fees. The current constitution of the Committee is as follows:

<b>Member</b>	<b>Represented by</b>
CIC Insurance Ltd (In Liquidation)	Chris Honey
HIH Casualty and General Insurance Limited (In Liquidation)	Chris Honey

## **8 Contact details**

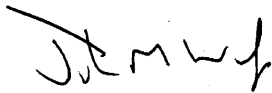
Contact details for the Australian Scheme Administrators, the English Scheme Administrators, and the Australian and English Run-Off Managers are set out on the HIH website, [www.hih.com.au](http://www.hih.com.au).

### *8.1 Creditor enquiries*

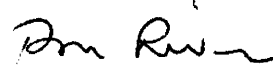
Scheme Creditors with claims adjustment queries in relation to UK business should call Capita CMGL on +61 (0) 2 9650 5777. Written claims adjustment queries should be directed in the first instance to Capita CMGL at the following address: Capita CMGL, Level 2, 117 Clarence Street, Sydney, NSW, 2000, Fax +61 (0) 2 9650 5710.

Scheme Creditors with enquiries in relation to the Scheme or Scheme Payments should call the Scheme Administrators on +44 (0) 20 7694 3703. Written Scheme queries should be directed to the Scheme Administrators at the following address: KPMG LLP, 8 Salisbury Square, London EC4Y 8BB.

Yours faithfully  
*For FAI General Insurance Company Limited*



John Wardrop  
*English Scheme Administrator*



Tom Riddell  
*English Scheme Administrator*

## Appendix 1

### Background information on the insolvency

- The HIH Group failed on 15 March 2001. FAIG was one of the licensed insurers in the group.
- Summary details of the history of the group; its failure; and other background information are available on the website maintained by the Australian Scheme Administrators at [www.hih.com.au](http://www.hih.com.au).
- Extensive information on the failure including the final report of the HIH Royal Commission established by the Australian Federal Government is available on the website [www.hihroyalcom.gov.au](http://www.hihroyalcom.gov.au)
- On 30 May 2006, Schemes of Arrangement became effective for the eight licensed insurance companies in the HIH Group in Australia. Complementary Schemes of Arrangement became effective for four of those companies in England on 13 June 2006, following approval by creditors and the courts. Copies of the Scheme documents are available on the HIH website [www.hih.com.au](http://www.hih.com.au).
- For at least the first five years, the Schemes will be “reserving” Schemes, under which claims are made in the normal course of business. During this reserving period, interim Scheme distributions will be paid to creditors with Established Scheme Claims at the current applicable Scheme Payment Percentage.
- The Australian and English Scheme Administrators co-operate fully. A unified principal to principal ledger system is operated, together with a unified dividend payment system. Creditors need to lodge claims in one location only, which is then effective under both Schemes.
- The Record Date (the date at which liabilities are measured) for each of the Schemes is 27 August 2001.

There is no bar date for the Schemes during the reserving period. The earliest bar date permissible under the terms of the Schemes is in June 2011.