

**HIH Underwriting and Insurance (Australia) Pty Ltd**  
**ACN 004 906 110**  
**(In liquidation and subject to a Scheme of Arrangement)**

Scheme Administrators' annual report to  
creditors

30 June 2009

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# 1 Introduction & background

## 1.1 Introduction

This is the third annual report to the Creditors of HIH Underwriting & Insurance (Australia) Ltd - in liquidation and subject to a Scheme of Arrangement (“HIH U&I”).

The report has been prepared in accordance with clause 43.2 of the Scheme of Arrangement, which became operative in Australia on 30 May 2006. Under the terms of the clause: “Within three months after each anniversary of the date, being either 31 December or 30 June, at the discretion of the Scheme Administrators, after The Australian Scheme becomes effective, the Scheme Administrators shall report to the Scheme Creditors on the progress of The Australian Scheme, including details of remuneration paid to the Office Holders, since the date of the last such report”. Accordingly this report has been prepared for the period to 30 June 2009.

## 1.2 Background

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

Summary details of the history of the group; its failure; and background information are available on the HIH website at [www.hih.com.au](http://www.hih.com.au). Extensive information on the failure of the group, 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).

Schemes of Arrangement for the eight licensed insurance companies in the HIH Group in Australia became effective on 30 May 2006, following approval by Creditors and the Court. Schemes of Arrangement for the UK branches of the four of these companies, detailed in section 3 of this report, became effective in the UK on 13 June 2006. Each of the Schemes has a Record Date (the date at which liabilities are measured) of 27 August 2001. The earliest bar date permissible under the terms of the Schemes is 30 May 2011. At this stage the Scheme Administrators expect the actual bar dates to be 30 May 2013.

## 2 Principal developments to report during the period

The principal developments to report during the period were:

- + Agreement of Scheme Payment Percentages by the members of the requisite Scheme Creditor Committees, which now total as follows:

	Creditors with insurance liabilities in Australia	Creditors with insurance liabilities not in Australia	Creditors with non insurance liabilities in Australia	All other creditors worldwide
HIH C&G	16.28%	16.28%	9.00%	9.00%
FAIG	31.40%	n/a	30.00%	n/a
CIC	35.00%	n/a	35.00%	n/a
WMG	5.00%	nil	5.00%	nil

More detail on Scheme Payments and the estimated ultimate Scheme Payment Percentage for HIH U&I is included in section 3 of this report.

- + Following settlement with some of the defendants to the Liquidators' major litigation actions last year, discussions have continued with the defendants to the FAI Takeover claim. Further details of this, and other major litigation matters, are included in section 4 of this report.

## 3 Current and projected Scheme Payment Percentages

### 3.1 The current Scheme Payment Percentage

To date no interim Scheme Payment has been made to the creditors of HIH U&I. As detailed in section 3.4 of this report, the expected return for creditors with insurance liabilities has been increased to up to 25 cents in the dollar, following completion of the recent actuarial review of the forecast final insurance creditor claims and further reinsurance recoveries. Much of the reinsurance that is forecast to be available to pay insurance creditors has yet to be collected and therefore the Scheme Administrators do not expect that an interim Scheme Payment will be made to creditors with insurance liabilities within the next twelve months. Furthermore, in view of the small estimated final Scheme Payment to non insurance creditors, and the complexity of the guarantee group of which HIH U&I is a member, it is not expected that an interim Scheme Payment will be made to that group of creditors within the next twelve months.

### 3.2 Agreement of the current Scheme Payment Percentage

The Scheme Administrators review the Scheme Payment percentages on a regular basis, as major asset recoveries are made and claims estimates are updated. This review is undertaken in consultation with the Creditors' Committee, if one has been elected. Factors taken into account when estimating these percentages include current cash held, expected future agreed claims levels and the remaining potential volatility of the account.

### 3.3 Scheme Payments for reinsurance creditors

Agreed claims (described as "Acknowledged Creditor Claims" under the Scheme) of HIH U&I's reinsurance creditors have generally not yet been accepted as Established Scheme Claims by the Scheme Administrators, and so reinsurance creditors have generally not yet been paid any Scheme distributions.

The reason for this is the difficulty in identifying all potential future set-off. The HIH companies wrote both inwards reinsurance business and outwards reinsurance business, and significant set-off is expected. In common with many solvent insurers, prior to insolvency the HIH Group did not maintain their insurance records on a principal to principal basis, which meant that the Scheme Administrators were not able readily to identify all transactions with a particular principal. Considerable improvements to information management have now been made through the introduction of a P to P system.

In individual cases the Scheme Administrators remain willing to consider making Scheme Payments to reinsurance creditors with Acknowledged Creditor Claims before all potential set off has been finalised, provided the creditor is willing to give an undertaking to refund any amounts which subsequently prove to have been overpaid. Creditors interested in this should contact the Scheme Administrators.

### 3.4 Estimated ultimate Scheme Payment Percentage

The Scheme Administrators' current best estimates of the ultimate Payment Percentage for HIH U&I is shown below. This estimate is dependent on a wide range of factors including the volatility of claims; levels of set-off; levels of reinsurance recovery; the class of creditor claim; and litigation outcomes. It is possible that the ultimate Payment Percentage could vary significantly either above or below that predicted.

Scheme Company	Estimated Total Scheme Payment Percentage at Scheme date	Updated Total Scheme Payment Percentage at 30 June 09
HIH U&I	Less than 5%	5% - 25%

As stated above, following completion of the recent actuarial review of the forecast final insurance creditor claims and further reinsurance recoveries, the estimated return for creditors with insurance liabilities has been increased to 25 cents in the dollar.

HIH U&I is part of a guarantee comprising eleven of the HIH Group's subsidiaries. Membership of the guarantee group has had the effect of pooling the assets and liabilities of the eleven HIH companies making up the group. Whilst work has continued to realise assets within the other companies within the Group, the Scheme Administrators do not consider that this has had a material impact on HIH U&I estimated total Scheme Payment percentage for non insurance creditors, which is estimated to be between 5 and 10 cents in the dollar.

## 4 Major Litigation

### 4.1 Background

Following the collapse of the HIH Group in 2001, the Australian Government established the HIH Royal Commission to inquire into the reasons for the failure of the Group. The Hon Justice Neville Owen was appointed as Royal Commissioner and began his enquiry in September 2001. He presented his findings on the outcome of the enquiry in April 2003.

Considerable work was undertaken by the Commissioner and his team in investigating the circumstances behind the HIH collapse. This provided an extremely useful background against which the Liquidators could assess which of those HIH Directors, auditors and former advisors may be liable under any successful recovery action.

Having reviewed the potential courses of action open to them, the Liquidators decided to focus on two major recovery actions:

- + The Trading Loss & Dividend claim which was settled in 2007; and
- + The FAI Takeover claim

### 4.2 FAI Takeover claim

This claim arises from the takeover by the HIH Group of the FAI Group in 1998/99. The defendants to the claim include General Cologne Re, Guy Carpenter, Arthur Andersen and Goldman Sachs, who the Liquidators allege should compensate HIH for losses suffered through the takeover of the FAI Group.

The Liquidators are close to finalising a settlement with the defendants to this claim.

## 5 Financial position

### 5.1 Estimated balance sheet at 30 June 2009

Included as Appendix 3 to the Australian Explanatory Statement section of the Scheme of Arrangement documentation, which was sent to creditors prior to the creditors' meeting on 29 March 2006, were balance sheets for each of the Scheme companies at 25 September 2005. An updated balance sheet for HIH U&I as at 30 June 2009, is included as Appendix 1 to this report

Since the last annual report, the Scheme Administrators have commissioned a further full actuarial review of the insurance liabilities of the eight Scheme companies. This review has provided the Scheme Administrators with a more accurate estimate of the expected final insurance creditor claims, based on eight years of claims development since the start of the HIH Group liquidation. It has also provided an update on the forecast reinsurance asset that is remaining to be collected.

Factors that have led to adjustment to the HIH U&I balance sheet over the last year include:

- + A significant increase in the forecast recoverable reinsurance debtor; and
- + A large increase in outstanding insurance creditor claims, and IBNR. This increase in insurance creditors has been offset by a reduction in cross guarantee group creditors arising from further work undertaken in respect of these companies, and the forecast improved returns to creditors in certain of the individual companies making up the guarantee group.

Work has continued to realise assets and agree the claims of the other members of the cross guarantee group which comprises the following other HIH Group companies:

- HIH Underwriting and Agency Services Limited
- HIH Underwriting Holdings Pty Limited
- FAI (CTP) Pty Limited
- MW Payne (Assessors) Pty Ltd
- HIH Legal Services Pty Limited
- HIH Travel (Australia) Pty Ltd
- Ready Plan Group Limited
- Ready Plan Asia Pacific Pty Ltd
- Industrial Rehabilitation Services Pty Limited
- HIH Investment Holdings Limited

As previously explained, membership of the guarantee group has had the effect of pooling the assets and liabilities of the eleven HIH companies making up the group.

### 5.2 Receipts and payments to 30 June 2009

A summary of the Scheme Administrators' receipts and payments from the commencement of the Scheme on 30 May 2006 to 30 June 2009 is set out in Appendix 2 to this report.

During this period no Scheme Administrators fees have been paid to the Scheme Administrators in their role as Office Holders.



## 6 Closure

The Scheme for HIH U&I provides for an 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 insolvency on cost benefit grounds.

The Scheme provides 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. 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.

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

At the date of this report, the Scheme Administrators consider that June 2013 remains the most likely Estimation Date for the Scheme.

## **7 Responsibilities**

### **7.1 Scheme Administrators**

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 HIH U&I have been outsourced to specialist run-off organisation Capita CMGL, based in Sydney and London.

### **7.3 Creditors' Committee**

At the meeting of creditors to consider the Scheme on 29 March 2006, the creditors of HIH U&I chose not to elect a creditors' committee.

## 8 Contact Details

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

### 8.1 Creditor Enquiries in Australia

Scheme Creditors with claims adjustment queries (excluding those in relation to branch 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 HIH Help Desk on +61 (0) 2 9650 5777. Written scheme queries should be directed to the Scheme Administrators at the following address: McGrathNicol, GPO Box 9986, Sydney, NSW, 2001 or to the HIH Help Desk at [enquires@hih.com.au](mailto:enquires@hih.com.au).

Yours faithfully

*For HIH Underwriting and Insurance (Australia) Pty Limited – in liquidation and subject to a Scheme of Arrangement*



Tony McGrath  
*Scheme Administrator*



Chris Honey  
*Scheme Administrator*

## Appendix 1

Updated balance sheet for HIH U&I as at 30 June 2009

**HIH Underwriting and Insurance (Australia) Pty Limited - (In Liquidation and subject to Scheme of Arrangement)**  
**Balance Sheet as at 30 June 2009**  
**All values in AUD**

	RATA as at 30 June 2009	RATA as at 30 June 2008
	\$'000	\$'000
<b>Assets not specifically charged</b>		
<b>Cash</b>		
Cash at bank	6,051	130
	<u>6,051</u>	<u>130</u>
<b>Receivables</b>		
Amounts owing by related bodies corporate	167	119
GST Recoverable	1	7
	<u>168</u>	<u>125</u>
<b>Investments</b>		
Managed Investments	2,886	2,977
	<u>2,886</u>	<u>2,977</u>
<b>Reinsurance recoveries receivable</b>	20,804	6,432
<b>Total company assets not specifically charged</b>	<u>31,536</u>	<u>13,714</u>
Dividends receivable from other companies in the guarantee group	42,694	44,309
<b>Total assets not specifically charged</b>	<u><u>74,230</u></u>	<u><u>58,023</u></u>
<b>Assets subject to specific charges</b>		
Statutory Reinsurance Cut-Through	1,626	4,049
<b>Total assets subject to specific charges</b>	<u><u>1,626</u></u>	<u><u>4,049</u></u>
<b>TOTAL ASSETS</b>	<u><u>74,230</u></u>	<u><u>58,023</u></u>
<b>Liabilities secured by specific charge over assets</b>		
<b>Accounts payable</b>		
Statutory Reinsurance Cut-Through	(1,626)	(4,049)
<b>Total liabilities secured by specific charge over assets</b>	<u><u>(1,626)</u></u>	<u><u>(4,049)</u></u>
<b>Unsecured creditors</b>		
<b>Accounts payable</b>		
Trade Creditors	(1)	(1)
<b>ACCs</b>	(12,005)	(14,177)
<b>Outstanding claims (Reserves)</b>	(52,640)	(3,991)
<b>IBNR Claims</b>	(83,810)	(66,757)
<b>Outstanding claims</b>	<u>(148,455)</u>	<u>(84,925)</u>
<b>Other liabilities</b>		
Amounts owing to related bodies corporate (excluding amounts owing to companies in the cross guarantee group)	(1,035)	(1,035)
	<u>(1,035)</u>	<u>(1,035)</u>
Total company unsecured creditors	<u>(149,491)</u>	<u>(85,961)</u>
Liabilities from other companies in the cross guarantee group	(383,844)	(430,222)
<b>Total unsecured creditors</b>	<u><u>(533,335)</u></u>	<u><u>(516,183)</u></u>
<b>TOTAL LIABILITIES</b>	<u><u>(534,961)</u></u>	<u><u>(520,232)</u></u>
<b>NET DEFICIT</b>	<u><u>(460,731)</u></u>	<u><u>(462,209)</u></u>

## Appendix 2

Summary of the Scheme Administrators' receipts and payments from 30 May 2006 to 30 June 2009

**HIH Underwriting & Insurance (Australia) Pty Limited (In Liquidation and  
 subject to a Scheme of Arrangement)  
 Receipts and Payments Account 1 July  
 2008 to 30 June 2009**

<b>Balance at 1 July 2008</b>		<b>3,106,983.90</b>
<b>Receipts</b>		
Gen Re Commutation	6,032,613.00	
Reinsurance Recoveries	164,661.31	
Scheme Payments Received	48,251.55	
GST Refund from ATO	17,977.78	
Interest	15,902.82	
Other receipts	<u>1,949.81</u>	
<b>Total receipts</b>		<b>6,281,356.27</b>
<b>Payments</b>		
Professional Fees	(155,313.08)	
Unrealised Loss on Investments	(90,288.74)	
Central Expense paid to HIH C&G	(82,844.31)	
Outsourced Claims Management Fees	(69,104.33)	
Claims Run Off Expenses	(28,965.06)	
GST	(22,545.05)	
Other Sundry Payments	<u>(2,112.17)</u>	
<b>Total payments</b>		<b>(451,172.74)</b>
<b>Balance at 30 June 2009</b>		<b>8,937,167.43</b>