

## **Private & confidential**

To all Scheme Creditors of English &  
American Insurance Company Limited

12 January 2022

Dear Creditor

## **English & American Insurance Company Limited ('EAIC') The Scheme Administrators' Annual Report to Creditors**

### **1 Introduction**

Further to our previous report to the Scheme Creditors of EAIC we are writing to update you on progress made towards the closure of the EAIC estate.

Please note that KPMG LLP sold its restructuring and insolvency practice in the UK to Interpath Ltd ('Interpath Advisory') on 4 May 2021. As a consequence of the sale, the Scheme Administrators are now employees of Interpath Advisory in the UK (having previously been employed by KPMG LLP in the UK).

### **2 Summary**

- EAIC's Closure Scheme was declared complete on 15 December 2016.
- The total value of agreed claims was \$730 million.
- The final Scheme Payment Percentage was set at 49.6% effective from 2 November 2015. Final payments were distributed during late 2015 and early 2016.
- EAIC continues to be run-off for the benefit of creditors with unagreed claims under Marsh Mac Protected Policies (see para 3.2), which were excluded from the Closure Scheme.
- The Scheme Administrators, their legal advisors and key creditors are considering finality options available to them to accelerate the closure of the EAIC estate.

### 3 Closure

#### 3.1 Closure Scheme

The Closure Scheme became effective on 12 October 2010 and Scheme Claims with a value of \$730 million became subject to binding Valuation Statements. The final Scheme Payment Percentage was set at 49.6% and approximately \$370 million has been paid to Scheme Creditors in respect of these Scheme Claims.

The Closure Scheme was declared complete on 15 December 2016 and so, under the terms of the Scheme, no further Scheme Payments are due to Scheme Creditors.

#### 3.2 Closure – ILU Policies

The Closure Scheme excluded amounts in respect of outstanding or incurred but not reported ("IBNR") claims under EAIC policies signed and issued by the Institute of London Underwriters ('ILU') between 3 July 1980 and 6 October 1983.

The Marsh & McLennan Companies Inc. ('Marsh Mac') secured an irrevocable letter of credit in favour of the ILU on these policies. However, Marsh Mac would not provide an undertaking to EAIC that the letter of credit would cover and attach to any outstanding or IBNR claims which were crystallised under the Closure Scheme. Given the risk that policyholders may lose the right of recourse under the letter of credit, all contingent claims under these policies at the Closure Scheme Bar Date of 11 April 2011 were excluded.

EAIC continues to be run-off for the benefit of creditors with contingent claims under the Marsh Mac Protected Policies and those claims will be agreed by EAIC in the normal course under the EAIC Run-Off Scheme. However, claims development has been restricted to a small number of open claims which are closely monitored by the Scheme Administrators. Although some Scheme Payments have been made on these claims, Marsh Mac has not yet made any settlements in respect of such claims. Furthermore, as far as the Scheme Administrators are aware, Marsh Mac has not agreed or paid any Marsh Mac Protected claims since the Closure Scheme was terminated.

The Scheme Administrators along with PRO Insurance Solutions Limited ("PRO"), their run-off agent, have recently completed a detailed review of the Marsh Mac Protected Policyholders which has led to a reduction in the number of potential claimants and provided more certainty on the level of potential outstanding claims.

Creditors should continue to present claims under their Marsh Mac Protected Policies, together with supporting documentation, to Stephanie Wilton, PRO Insurance Solutions Limited, Southgate House, Southgate Street, Gloucester GL1 1UB, UK. Creditors will then be entitled to receive payment at the final Scheme Payment Percentage from funds set aside for this purpose.

Those Scheme Creditors should then apply to the ILU for payment of the balance of their claim under the ILU guarantee arrangements for the Marsh Mac Protected Policies. Policyholders who consider they may be entitled to payments should contact the ILU at The Institute of London Underwriters, The International Underwriting Association, London Underwriting Centre, 1 Minster Court, Mincing Lane, London EC3R 7AA, UK.

### 3.3 Closure – Protected Policyholders

EAIC's Protected Policyholders (Scheme Creditors who have claims against EAIC which are protected by virtue of the Policyholders Protection Act 1975) will, subject to eligibility, still be entitled to receive payment from the Financial Services Compensation Scheme on their claims as they are agreed in the normal course in future.

Protected policyholders should continue to present claims together with supporting documentation to Stephanie Wilton, PRO Insurance Solutions Limited, Southgate House, Southgate Street, Gloucester, GL1 1UB, UK (Email: pro\_eauapools@proisinsurance.com).

### 3.4 Closure Options– Protected Policyholders

When the closure scheme was finalised, the Company continued to maintain, in addition to the estimated loss reserves associated with the Marsh Mac Protected policyholders, a run-off expense provision to cover the costs of administering the run-off.

At that time, it was estimated that the run-off would extend for approximately a further 10 years and adequate allowance was made to cover run-off administration costs so that claimants under Marsh Mac Protected Policies would receive the same dividend percentage as the EAIC creditors received under the Closure Scheme.

However, over time the run-off expense provision has naturally eroded as costs of the run-off have been met (the investment income that had been assumed to set-off some of the costs has been very low given the prolonged low interest rate environment). As a result, the Scheme Administrators believe there is now a risk that the run-off expense provision could be exhausted prior to the agreement of all claims in the normal course. This combined with the fact that there has been a reduction in the likely number and value of claims from Marsh Mac Protected Creditors has prompted the Scheme Administrators to undertake a further review of the options available to EAIC to finalise these potential claims and thereby accelerate the closure of the estate.

The Scheme Administrators have consulted with their legal advisors on a number of closure options and have ongoing discussions with key creditors. In addition, the Scheme Administrators have invited Marsh to discuss the extent to which Marsh may be prepared to participate in the closure process for the benefit of all stakeholders.

## 4 ILU Protected Policies

### 4.1 Policies issued through The Institute of London Underwriters ('ILU')

EAIC was a member of the ILU for a number of years - as a result, some Scheme Creditors of EAIC may also be entitled to receive payments from guarantee arrangements which the ILU had in place for the benefit of member policyholders. There are two relevant periods: 3 July 1980 to 6 October 1983; and 1 September 1983 to 19 March 1993.

#### 4.1.1 3 July 1980 to 6 October 1983 ('Marsh Mac LOC Period')

As set out in Section 3.2 above, now that the Closure Scheme has been completed, EAIC will continue to be run-off for the benefit of creditors with contingent claims under Marsh Mac Protected Policies, as these claims were excluded from the Closure Scheme.

#### 4.1.2 1 September 1983 to 19 March 1993

EAIC held funds in trust for ILU policyholder creditors who placed business after 1 September 1983 and who benefitted from a guarantee provided by two related companies, English & American Group Plc ('EAG') and English & American Insurance Holdings Plc ('EAIH') which became insolvent in 2003.

There is a short period of approximately five weeks when the Marsh Mac LOC Period overlaps the EAG and EAIH guarantees period. As the Trust Deed (under which the Scheme Administrators are appointed Trustees for the funds received from EAG and EAIH) requires all claim values to be finalised before payments under the Trust can be made, and because the Marsh Mac Protected Policies were excluded from the Closure Scheme, it would not be possible to place a final value on eligible claims which fell within this period.

Therefore, in order to facilitate Trust Fund payments to the vast majority of ILU policyholder beneficiaries who do not fall into the overlap period, the Scheme Administrators/Trustees made an application to Court to vary the Trust Deed to enable payments to be made. In October 2013, the Court agreed the variation to the Trust Deed, and a relatively small amount of the Trust Funds were set aside for the benefit of policyholders in the five-week overlap period.

During 2014, eligible ILU Policyholder creditors received a top-up payment of 24% in respect of their Trust Fund entitlement.

A further attempt to distribute the top-up payment was made to eligible Trust Fund creditors that did not cash their original cheques in parallel with the issuance of the final Scheme Payments in late 2015 and early 2016.

The status of the Trust Fund distribution is as follows:

	<b>Payments made 2014/15</b>	<b>Payments cashed 2014/15</b>	<b>Payments reissued 2016/17</b>	<b>Payments cashed 2016/17</b>	<b>Balance unpaid</b>	<b>Untraceable creditors and creditors under international sanctions</b>
Trust Fund creditors (No.)	794	608	186	83	103	12
Value (US\$m)	19.80	19.00	0.80	0.44	0.36	0.11

The provisions in the Closure Scheme, which allow liabilities to be extinguished when payments are not cashed by a prescribed date, do not apply to the Trust Fund. Therefore, the Scheme Administrators would probably need to seek the direction of the Court regarding the treatment of any uncashed Trust Fund payments.

Counsel, acting for the Scheme Administrators, have advised that the Court would most likely order the Trustees to pay all of the residual funds, less an amount to cover remaining costs, into Court. However, this merely moves the issue to the Court and the Scheme Administrators would still likely have to manage all initial dealings with the applicable Trust Fund creditors. As a result, the Scheme Administrators have decided to defer making any application to Court at this time and will continue to hold the remaining funds and make payments if any further qualifying creditors make claims.

It is likely that the Trustees will seek the Court order only when the balance of the EAIC estate is finally closed (by liquidation or otherwise) and the Scheme Administrators released.

In the meantime, should any Trust Fund creditors that failed to cash their payments contact the Scheme Administrators, payment will be reissued to further reduce the number and value of the residual Trust Fund balance being held.

## 5 Financial position

### 5.1 Summary balance sheet as at 31 December 2020

The latest audited financial position of EAIC is summarised below:

<b>English &amp; American Insurance Company Limited</b>		
<b>Summary Balance Sheet as at 31 December 2020</b>		
	<b>2020</b>	<b>2019</b>
	<b>US\$m</b>	<b>US\$m</b>
<b>Assets</b>		
Cash	6.9	7.9
	_____	_____
Total Assets	6.9	7.9
	=====	=====
<b>Liabilities</b>		
Due to policyholders		
- agreed claims	1.1	0.4
- less scheme payments	-	-
- Outstanding and IBNR reserves	11.4	13.3
Provision for run-off costs	1.2	1.2
Other creditors	0.6	0.6
	_____	_____
	14.3	15.5
<b>Shareholders' deficit</b>		
	(7.4)	(7.6)
	_____	_____
Total Liabilities	6.9	7.9
	=====	=====
<b>Notes to summary balance sheet</b>		
<i>The above amounts have been taken from the audited financial statements for the year ended 31 December 2020.</i>		
<i>The summary balance sheet cannot be used to estimate the ultimate Scheme Payment Percentage.</i>		
<i>The value of any outstanding and IBNR reserves will not become clear until all claims are agreed and crystallised.</i>		
<i>The asset and liability values reflect foreign exchange fluctuations.</i>		

Copies of the audited accounts can be obtained from Companies House records.

## 5.2 Receipts and payments to 30 June 2020

A summary of the Scheme Administrators' receipts and payments from the commencement of the Scheme to 30 June 2021 is set out below.

<b>English &amp; American Insurance Company Limited</b>	
<b>Receipts and payments for the period 9 February 1995 to 30 June 2021</b>	
	<b>US\$m</b>
<b>Balance brought forward at 9 February 1995</b>	11.3
<b>Receipts</b>	
Reinsurance recoveries	488.7
Recoveries from bank accounts and fund managers	16.0
Tax refunds	10.3
Investment income	75.4
Other receipts	0.7
	<hr/>
Total receipts	602.4
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<b>Payments</b>	
Scheme Administrators' fees	69.3
KPMG actuarial fees	4.1
Run-off managers' fees	78.7
Legal fees	6.5
Other professional and agents' fees	10.4
VAT	16.2
Other payments	7.4
Scheme Payments to creditors ( <i>including accelerated payments</i> )	370.2
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Total payments	562.8
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Exchange rate loss	32.9
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Funds held at 30 June 2021	6.7
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<b>Notes to receipts and payments</b>	
<i>The receipt and payment values reflect foreign exchange fluctuations.</i>	

## 6 Responsibilities and contact details

### 6.1 Scheme Administrators

The current Scheme Administrators of EAIC are Michael Tagg and Darryl Ashbourne of Interpath Ltd in London.

The Creditors' Committee appointed Michael Tagg as Scheme Administrator in place of Barry Gale with effect from 21 June 2021.

The Scheme Administrators control the affairs of the Company in accordance with the provisions of the Run-off Scheme. These include provisions for consultation with the Creditors' Committee.

### 6.2 Creditors' Committee

The interests of creditors are represented by the Creditors' Committee whose primary function is to sanction significant transactions, provide input into any proposed amendments to the Run-off Scheme and approve the Scheme Administrators' fees.

The Scheme Administrators report to the Creditors' Committee on a six-monthly basis and hold a meeting or conference call whenever it is deemed appropriate to do so.

In April 2021, Mr Rahul Mehta resigned from the Creditors' Committee as the body corporate he represented, Fireman's Fund Insurance Co, ceased to be a Scheme Creditor.

The current constitution of the Creditors' Committee is as follows:

<b>Member</b>	<b>Represented by</b>
Anderson Kill P.C., on behalf of various policyholders International Policyholders Association	Mr R Mark Keenan Bette M Orr Esq
Sheppard Mullin Richter and Hampton LLP, on behalf of various policyholders	Mr M Katz

### 6.3 Run-off agent

The day-to-day management of the Scheme and the run-off, including maintenance of the records and handling of Scheme Creditor enquiries in relation to Scheme Claims, is the responsibility of PRO.

### 6.4 Scheme Claims and Scheme Creditor enquiries

General queries about Scheme Claims should be directed to Stephanie Wilton, PRO Insurance Solutions Limited, Southgate House, Southgate Street, Gloucester, GL1 1UB, UK (Email: [pro\\_eauapools@proisinsurance.com](mailto:pro_eauapools@proisinsurance.com)).



All other enquiries should be directed to the Scheme Administrators at the following address: Interpath Ltd, King's Arms Yard, London EC2R 7AF UK (Email: john.riley@interpathadvisory.com)

## **7 Annual meeting of creditors**

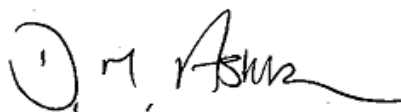
Under the terms of the scheme, the Creditors' Committee has agreed that no annual meeting of creditors would be held in 2021.

An electronic copy of this report is available at [www.englishandamericanpools.com](http://www.englishandamericanpools.com).

Yours faithfully  
*For English & American Insurance Company Limited*



Michael Tagg  
*Scheme Administrator*



Darryl Ashbourne  
*Scheme Administrator*