

# English & American Insurance Company Limited

Southgate House, Southgate Street, Gloucester, GL1 1UB

Company Registered Number: 240656

To: all Scheme Creditors of English & American Insurance Company Limited

13 September 2023

Dear Creditor

## **PROPOSED FINAL CLOSURE SCHEME OF ARRANGEMENT FOR ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

### **1 WHY HAVE WE WRITTEN TO YOU?**

We write to advise you that English & American Insurance Company Limited ("**EAIC**") is proposing to promote a scheme of arrangement under Part 26 of the English Companies Act 2006 (the "**Scheme**").

**We are writing to you as we believe that you are, or may be, a creditor, or a representative of a creditor, of EAIC and that you may be affected by the proposed Scheme.**

In accordance with requirements set out in a practice direction issued by the High Court of Justice of England and Wales (the "**Court**"), we are writing to inform you of:

- (a) the purpose which the Scheme is designed to achieve and its effect; and
- (b) the meetings of creditors which EAIC considers are required to consider and vote on the Scheme and its composition (the "**Creditors' Meetings**").

The Scheme applies only to creditors who have or may have a claim under a policy signed and issued through the Institute of London Underwriters ("**ILU**") between 3 July 1980 and 6 October 1983 (referred to in this letter as "**Marsh Mac Protected Policies**"). We are sending this letter to anyone who, according to EAIC's records, holds a Marsh Mac Protected Policy, whether or not a claim has been notified. Receipt of this letter does not necessarily mean you have an actual or potential future claim. If you do not have such a claim the Scheme will not apply to you and you will not be required to take any action.

Policyholders with Marsh Mac Protected Policies also have the benefit of an irrevocable letter of credit in favour of the ILU ("**Marsh Mac LOC**") procured by The Marsh & McLennan Companies, Inc ("**Marsh Mac**") in 1995 as security for the payment of policyholders' valid claims against EAIC. **As discussed in more detail in section 6 below, you may wish to obtain legal advice on the potential impact of the proposed Scheme on your entitlement to payment under the Marsh Mac LOC.**

A short history of EAIC and the circumstances giving rise to the current proposed Scheme is given in sections 2 and 3 of this letter. An explanation of the objective of the Scheme and an outline summary of the Scheme and its effect are given in sections 4 and 5. Details of the Creditors' Meetings EAIC intends to convene, and their compositions, are given in section 8. Information about the court hearings related to the Scheme, which you are entitled to attend,

and the anticipated dates of those hearings are given in section 7. A summary of the action you should take if you have any concerns or require any further information is in section 9.

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## **HISTORY OF EAIC**

EAIC commenced underwriting in 1929 and was involved in a number of underwriting activities, participating from 1954 in a number of underwriting pools (the "**Pools**") as well as underwriting on a standalone basis, including as a member of the ILU. Pooling is a method of spreading risk whereby a combination of insurers, writing a specific class of insurance, agree to share the premiums and losses in agreed proportions.

As a result of increased adverse claims experience, the Pools ceased taking on new business with effect from 23 November 1992 and EAIC ceased underwriting completely with effect from that date. EAIC had the largest individual share (approximately 70%) of the Pools' estimated remaining liabilities, and on 19 March 1993, a winding-up petition was presented by EAIC acting by its directors. Anthony James McMahon and Roger Smith, partners in KPMG Peat Marwick, were appointed as provisional liquidators by order of the High Court of England and Wales.

The administration of the Pools was kept together and continues on a unified basis and in 1993, we were appointed as run-off manager for the Pools. We continue to manage EAIC's remaining business.

The provisional liquidators developed a run-off plan for EAIC which included the implementation of a "reserving" or "run-off" scheme of arrangement under section 425 of the Companies Act 1985 (the predecessor to Part 26 of the Companies Act 2006), (the "**Original Scheme**") which became effective on 8 February 1995. Under the Original Scheme, EAIC has continued in run-off and made payments to creditors *pro rata* on their agreed claims (known as "**Established Scheme Liabilities**"). The Original Scheme was amended by an amending scheme of arrangement which became effective on 31 August 2000 (the "**Existing Scheme**"). The Scheme Administrators at the effective date of the Scheme will be Darryl Ashbourne and Joshua Dwyer (the "**Scheme Administrators**") of Interpath Advisory, which acquired the restructuring and insolvency practice of KPMG LLP in Great Britain on 4 May 2021.

In 2010 the Existing Scheme was amended by a further scheme of arrangement (the "**Closure Scheme**") which became effective on 12 October 2010. The Closure Scheme provided for a mandatory valuation of claims (including estimating the value of contingent and prospective claims), and payment of dividends based on that valuation. Claims not submitted by the deadline imposed by the Closure Scheme no longer qualify for payment by EAIC.

The Closure Scheme applied to all liabilities of EAIC, other than liabilities under the Marsh Mac Protected Policies i.e. liabilities policies issued through the ILU between 3 July 1980 and 6 October 1983 which had not matured in the ordinary course by time the Closure Scheme became effective. The Closure Scheme was declared complete on 15 December 2016. As a result, the only remaining insurance liabilities for which EAIC has any obligation to make a payment arise under Marsh Mac Protected Policies, where the policyholders concerned did not opt in to the Closure Scheme.

Some claimants covered by Marsh Mac Protected Policies ("**Marsh Mac Protected Creditors**") may also have the benefit of a trust fund held by EAIC (the "**Trust Fund**"). The Trust Fund covers claims under policies signed and issued through the ILU from 1 September 1983, and therefore covers Marsh Mac Protected Policies issued from 1 September 1983 to 6 October 1983 (both dates inclusive).

### POSITION OF MARSH MAC PROTECTED CREDITORS

Liabilities under the Marsh Mac Protected Policies had been covered by guarantees in favour of the ILU for the benefit of policyholders whose policies were issued and signed through the ILU between 3 July 1980 and 6 October 1983 (both dates inclusive). One of these guarantees was provided by Marsh Mac and another by Bowring Services Limited ("**Bowring**") which was EAIC's immediate parent company between those dates. In September 1993, the two guarantees were released and replaced by the Marsh Mac LOC, under which Marsh Mac Protected Creditors may be entitled to additional payments in respect of their claims under policies issued during the period that had been covered by the guarantees, as they are agreed in the ordinary course.

At the time the Closure Scheme was being implemented, Marsh Mac was approached with offers for options to participate in the Closure Scheme. They declined to do so and refused to provide an undertaking that the Marsh Mac LOC would also cover claims under Marsh Mac Protected Policies which were valued under the Closure Scheme, rather than maturing in the ordinary course. In order to preserve the potential for recovery under the Marsh Mac LOC, liabilities under Marsh Mac Protected Policies that had not matured by the time the Closure Scheme became effective were excluded from the scope of the Closure Scheme. Claims under Marsh Mac Protected Policies continue to be adjusted and administered under the Existing Scheme. The Scheme Administrators have approached Marsh Mac again with offers to participate in the Scheme now being proposed, and they have again declined to do so.

As mentioned above, Marsh Mac Protected Policies may also have the benefit of the Trust Fund, which covers claims under policies issued by EAIC through the ILU from 1 September 1983. The period covered by the Trust Fund overlaps by approximately 5 weeks with the period covered by the Marsh Mac LOC, which ends on 6 October 1983. Claims under policies issued through the ILU after 6 October 1983 were included in the scope of the Closure Scheme, and a top up payment of 24% of claims as valued under the Closure Scheme has been made to the policyholders concerned. A portion of the Trust Fund was set aside for the benefit of Marsh Mac Protected Creditors with policies issued in the overlap period, whose unmatured claims under those policies were not included in the Closure Scheme. Those creditors are entitled to receive a top up from the Trust Fund as and when their claims mature.

When the Closure Scheme was implemented in 2009, EAIC continued to maintain, in addition to the estimated loss reserves associated with the Marsh Mac Protected Creditors, 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 Marsh Mac Protected Creditors would receive the same dividend percentage as other 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 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 in consultation with the Scheme Manager have carried out a detailed review of the Marsh Mac Protected Policies which has provided more certainty on the level of potential outstanding claims. Recent claims development has been restricted to a small number of open claims, which are closely monitored by the Scheme Administrators.

Since the Closure Scheme was terminated in 2016, despite a number of claims being agreed by the Scheme Administrators, as far as they are aware, no Marsh Mac Protected Creditor

has been successful in obtaining payment of a claim under the Marsh Mac LOC. Continuing the run-off of EAIC's business simply in order to preserve a potential entitlement under the Marsh Mac LOC, in circumstances where EAIC's assets may be further eroded or even exhausted before claims can be agreed in the ordinary course, is not in the interests of EAIC's creditors.

#### 4 **THE OBJECTIVE OF THE SCHEME**

The Scheme Administrators, having consulted their legal advisers, are therefore proposing a further closure scheme to accelerate the closure of EAIC's estate. The objective of the Scheme is to terminate EAIC's run-off earlier than would otherwise be the case, thus saving administration costs and ensuring that the run-off expense provision is not exhausted before all claims are agreed and, as far as possible, creditors receive a dividend percentage at least equal to that paid under the Closure Scheme.

#### 5 **OUTLINE OF THE SCHEME**

Similar to the Closure Scheme, the Scheme will amend the Existing Scheme to include a process to facilitate an accelerated valuation of claims (including an estimate of contingent and prospective claims), which will be administered by PRO Insurance Solutions Limited as the scheme manager (the "**Scheme Manager**"). You will need to file details of all your claims against EAIC ("**Scheme Claims**") including your estimate of contingent and prospective claims, but excluding claims that have already become Established Scheme Liabilities under the Existing Scheme ("**Existing Scheme ESLs**"), within a period of 105 days from the date on which the Scheme becomes effective. If you do not do so, you will lose the right to receive payment of your claims, apart from claims for Existing Scheme ESLs, which remain binding and for which you may be entitled to receive a further payment if the current dividend percentage is increased. The Scheme contains a set of guidelines which the Scheme Company will apply in considering a Scheme Creditor's valuation of its claims ("**Estimation Guidelines**"). Scheme Creditors can also use the Estimation Guidelines as a guide for calculating their claim valuations and the supporting evidence they should consider providing.

If claims are not accepted as submitted, the Scheme Manager will enter into discussion with you to attempt to agree a fair value for your Scheme Claims. However, if agreement cannot be reached there will be a procedure for the adjudication of these disputed claims by an independent adjudicator, which will be final and binding on the parties to the extent permitted by law.

Once a creditor's Scheme Claims are agreed or determined, the Scheme Manager will issue a valuation statement. EAIC will pay the payment percentage of the total value of a creditor's Scheme Claims, as shown on the valuation statement. The payment percentage is determined by reference to the amount of EAIC's assets available for distribution to Scheme Creditors, having made provision for the costs of administering the Scheme and the run-off of EAIC's business and any other liabilities the Scheme Administrators consider should be provided for. The current payment percentage under the Existing Scheme is 49.6%.

Following agreement or determination of the value of all Scheme Claims and payment of the payment percentage of the valued claims, the Existing Scheme and the Scheme will terminate. EAIC will then be wound up.

#### 6 **INTERACTION OF THE SCHEME AND THE MARSH MAC LOC**

EAIC was not a party to any of the guarantees issued in favour of the ILU, and neither EAIC nor the Scheme Administrators were involved in, or a party to, the arrangements under which the guarantees issued by Marsh Mac and Bowring were replaced with the Marsh Mac LOC. However, they understand Marsh Mac's position to be that claims which are valued whether

under the Scheme or any other form of compromise, rather than being left to mature in the ordinary course, do not qualify for payment under the Marsh Mac LOC. If that is the correct position, Marsh Mac Protected Creditors may only receive a percentage (expected to be 49.6%) of their claim as valued under the Scheme.

In light of this uncertainty, you should not assume that you will be able to recover the difference between the dividend paid to you under the Scheme and the full amount of your claim under the Marsh Mac LOC. It is worth noting however that the Scheme does not contain any provisions extinguishing Marsh Mac's obligations in respect of Marsh Mac Protected Claims (although as mentioned in the previous paragraph, Marsh Mac's view is that claims valued under the Scheme do not qualify for payment under the Marsh Mac LOC)

There is a possibility that you may receive a more substantial recovery through a drawdown under the Marsh Mac LOC if the Scheme is not implemented. As they are not involved in the process of effecting recoveries under the Marsh Mac LOC, the Scheme Administrators are not aware of the approach the ILU takes in assessing compliance with the conditions applying to drawdowns, some of which are restrictive. However, of the 12 claims that have become Established Scheme Liabilities under the Existing Scheme since completion of the Closure Scheme in 2016, none has, to the Scheme Administrators' knowledge, been the subject of a successful drawdown under the Marsh Mac LOC for the difference between the dividend paid and the full amount of the Established Scheme Liability. You may wish to contact the ILU and request a copy of the Marsh Mac LOC and the procedures the ILU applies in assessing compliance with the conditions applying to drawdowns in order to make your own assessment.

As a result, even in the absence of the proposed Scheme, recoveries under the Marsh Mac LOC cannot be assumed. The Scheme Administrators do not consider it to be in the interests of the Scheme Creditors to continue the run-off of EAIC's business simply in order to preserve a potential entitlement under the Marsh Mac LOC, which past experience indicates is by no means certain.

This is an important issue you should take into account in considering the Scheme proposals and the alternatives open to you.

You are of course free to contact Marsh Mac and/or the ILU separately to discuss their approach to claims valued under the proposed Scheme; and whether they agree that you are entitled to a payment under the Marsh Mac LOC in respect of any unpaid balance of such claims, after a final distribution under the Scheme, and, if applicable, the Trust Fund. You may wish to obtain your own legal advice in respect of any payments you could be entitled to under the Marsh Mac LOC and/or the Trust Fund.

Marsh Mac Protected Creditors whose claims arise under a policy issued between 1 September and 6 October 1983 will be entitled to a top-up payment under the Trust Fund regardless of whether the Scheme compromises their ability to claim under the Marsh Mac LOC. The current payment percentage under the Trust Fund is 24%.

A comparison of the position of Marsh Mac Protected Creditors in the absence of the Scheme and if the Scheme is implemented is set out in section 8 below.

## 7 THE COURT HEARINGS

EAIC will apply to the Court for leave to convene the Creditors' Meetings, comprising two class meetings of Creditors, to consider and if thought fit approve the Scheme.

The hearing of that application ("**Convening Hearing**") is expected to take place on 3 November 2023 at 10.00 am at the Business and Property Courts of England and Wales at The Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL, United Kingdom. Formal

notice of the Creditors' Meeting will be sent to you in due course and published on the website <https://www.eaic.co.uk>.

If the Scheme is approved by the requisite majority of Scheme Creditors voting at the Creditors' Meeting, EAIC will apply to the Court for sanction of the Scheme. Scheme Creditors will be notified of the date and time fixed for the hearing of the application for sanction ("**Sanction Hearing**") via the website: <https://www.eaic.co.uk>.

Scheme Creditors are entitled to attend and be heard at both the Convening Hearing and the Sanction Hearing.

## 8 THE CREDITORS' MEETING AND ITS COMPOSITION

For a scheme of arrangement to be implemented, it must be approved by a majority in number, and not less than 75 per cent. in value, of those creditors who, being entitled to do so, vote (in person or by proxy) at the meeting of creditors convened to consider and vote on the proposal, or at each meeting if there is more than one class of creditors. Creditors must be divided into classes for voting purposes if their rights are so different, or would be affected so differently by the proposed scheme of arrangement, that it is impossible for them to consult together in their common interest.

Having considered the rights creditors have under the Existing Scheme, and how they will be treated under the Scheme, the Company is proposing to convene two class meetings of creditors.

Under the Existing Scheme, which will continue in force in its current form if the proposed Scheme is not implemented:

- (a) the claims of Scheme Creditors are left to run off in the ordinary course of business;
- (b) each Scheme Creditor concerned qualifies for the payment of the percentage (currently 49.6%) of each claim as and when it matures and may potentially effect a recovery under the Marsh Mac LOC;
- (c) Scheme Creditors whose claims are yet to mature are exposed to the risk of the run-off expense provision being eroded and potentially exhausted before their claims mature, such that they receive less than the payment percentage that has been paid to creditors with Existing Scheme ESLs;
- (d) Scheme Creditors with Existing Scheme ESLs have already received the payment percentage of their claim, and if they have no other claims are not exposed to the risk of reduction in the payment percentage, as there is no provision under the Existing Scheme for clawback of sums that have already been paid.
- (e) Scheme Creditors who have the benefit of the Trust Fund are entitled to a payment from the Trust Fund in respect of each matured claim.

The impact of the proposed Scheme on creditors in respect of Existing Scheme ESLs and in respect of all other claims ("**Unmatured Claims**") is therefore different. The position of Existing Scheme ESLs is as follows:

- (a) Existing Scheme ESLs will remain binding on EAIC and the Scheme Creditor concerned, and will not be subject to any valuation process;
- (b) if the quantum of Scheme Claims valued under the Scheme is such that the payment percentage cannot be maintained at its current level, the Scheme preserves the position under the Existing Scheme where distributions already made to Scheme

Creditors at the higher level under the Existing Scheme will not be disturbed and the Scheme Creditors concerned will retain sums already paid to them. As a result, they may receive a higher percentage of their Established Scheme Liabilities than is received by Scheme Creditors whose claims are valued under the Scheme;

- (c) if the payment percentage is increased due to the savings in costs resulting from the accelerated closure of the estate, Scheme Creditors will receive a top up payment in respect of their Existing Scheme ESLs, to ensure that (having taken into account the payment already received) they receive the increased payment percentage of their overall Established Scheme Liability. While theoretically the Payment Percentage could also be increased under the Existing Scheme, the increased risk of the run-off expense provision being eroded or exhausted if claims are left to run off to expiry makes this unlikely.

By contrast with the position for Existing Scheme ESLs:

- (a) Unmatured Claims will be subject to a mandatory valuation process, which places a present value on such claims, either by agreement or, if that is not possible, by valuation through binding independent adjudication;
- (b) Scheme Creditors will qualify for payment of the payment percentage (as determined under the Scheme) of their Unmatured Claims as valued under the Scheme;
- (c) Scheme Creditors will be exposed to the risk that the valuation of their Unmatured Claims under the Scheme may prejudice their ability to make any recovery from the Marsh Mac LOC;
- (d) Scheme Creditors with Unmatured Claims who also have the benefit of the Trust Fund will be entitled to receive a top up payment from the Trust Fund, as is the case under the Existing Scheme, but calculated by reference to the value placed on their Unmatured Claims under the Scheme.

Recognising the different treatment under the Scheme of Existing Scheme ESLs and Unmatured Claims compared with their treatment under the Existing Scheme, the Company proposes to convene two class meetings, one for creditors in respect of Existing Scheme ESLs and the other for creditors in respect of Unmatured Claims.

Some Scheme Creditors with Existing Scheme ESLs ("**Fully Matured Creditors**") have no other potential claims against EAIC. However, the Scheme Administrators are aware that there are two Scheme Creditors ("**Partially Matured Creditors**") who have Existing Scheme ESLs as well as Unmatured Claims. The Company is therefore proposing that these creditors vote in the class meeting for Fully Matured Creditors in respect of their Existing Scheme ESLs, and in the same class as all other Scheme Creditors in respect of their Unmatured Claims.

## 9 **THE ACTION YOU SHOULD NOW TAKE**

If you have any concerns, having considered appropriate professional advice, on the proposed composition of the Creditors' Meetings, you should write to or e-mail us, using the contact details below, as soon as possible and in any event seven days prior to the date of the Convening Hearing.

Any concerns which you communicate in writing to us on this issue will be drawn to the Court's attention at the Convening Hearing. You also have the right to attend the Convening Hearing for the purpose of making representations and we will be pleased to provide you with further information regarding the Convening Hearing, if requested.

Please note that it will be possible for Scheme Creditors to raise objections on the question of classes at the Sanction Hearing which it is anticipated will be held in January 2024, if the Scheme is approved at the Creditors' Meeting. However, were this to be the case, the Court is likely to expect creditors to show good reason why they did not object at an earlier stage.

If you are receiving this letter by post and wish to receive future communications by email, please provide us with your email address using the contact details set out below in section 10.

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#### **CONTACT DETAILS AND FURTHER INFORMATION**

**By Post:** Interpath Ltd 10 Fleet Place London EC2M 7RB

**By e-mail:** [fabrizio.maffi@interpathadvisory.com](mailto:fabrizio.maffi@interpathadvisory.com)

**By Phone:** +44 (0) 20 3989 2721

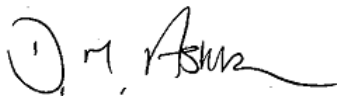
**Attention:** Fabrizio Maffi

Further information regarding the Scheme and the Convening Hearing and the Sanction Hearing dates will be available on the Website at [www.eaic.co.uk](http://www.eaic.co.uk). The Website will be updated should the hearing dates be postponed.

If you are unable to access the website and would like details sent to you by alternative means, or if you have any other queries, please contact the Scheme Administrators on the number given above.

Yours faithfully

**FOR ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**



**Darryl Ashbourne**  
**Scheme Administrator**