

# **British American Insurance Company Limited (“BAICL”)**

## **In Provisional Liquidation**

### **Frequently Asked Questions**

**September 2013**

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*Note: Capitalized terms in the Frequently Asked Questions are as defined in the Report of the Official Receiver/Provisional Liquidator to Bermuda resident policyholders and creditors.*

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## **Why was the Scheme proposed for Bermuda resident creditors of BAICL?**

Following the failure of attempts to find a solution to keep the life insurance policies operating as outlined in the Report of the Official Receiver/PL to Bermuda resident policyholders and creditors (“the Report”), the PL and his Agents, believed that the Scheme was the fairest and most efficient process to estimate the value of the life insurance policies issued by BAICL Bermuda. The policies written in Bermuda were written through a branch of BAICL, which is a Bahamian incorporated company. The Scheme allowed the PL to distribute the assets pledged in favour of the Bermuda resident creditors, and Other Assets secured by the PL, to Bermuda resident creditors of BAICL.

## **What were the advantages of the Scheme?**

The PL considered that the Scheme offered Scheme Creditors the following advantages:

- i) Scheme Creditors would receive final payment of their Scheme Claims, irrespective of the future outcome of the liquidation of BAICL outside Bermuda. In this regard, it is important to remember that BAICL Bermuda was only a branch of a BAICL, which operated throughout the Caribbean, and without the Scheme Bermuda resident creditors’ claims would have fallen within the liquidation of BAICL.
- ii) The Scheme offered Scheme Creditors a practical and cost-effective process for agreeing claims and making distributions.
- iii) Without the Scheme, BAICL Bermuda creditors would have experienced further delay in a formal winding up of BAICL.

## **How was my claim valued in the Scheme?**

Life insurance claims were valued in accordance with the Estimation of Values (as defined in the Scheme) approved by the Scheme Actuary. In most cases the cash surrender value of the policy was used to provide the valuation of the policy, which was deemed by the Scheme Actuary to be the fairest valuation methodology. Where the cash surrender value was deemed to be unfair on policyholders, the accumulated value was applied to provide a ‘deemed cash surrender value’.

Non-insurance related claims were valued by reference to the books and records of BAICL, together with any additional information provided by the creditor in support of a different value.

All claim values provided in the Scheme were accepted by Scheme Creditors, resulting in no Scheme Claims being referred to the Scheme Adjudicator.

**Why will I only receive 37.5% in total in respect of my claim which was valued under the Scheme?**

BAICL is insolvent, which means that it does not have sufficient assets to meet creditor claims. Specifically in relation to BAICL Bermuda, the level of the Pledged Assets and Other Assets secured by the PL through the Settlement Agreement (see below), are less than the sum of all Scheme Creditor claims.

BAICL Bermuda operated as a branch of BAICL, a company incorporated in the Bahamas. BAICL assets located in Bermuda fell into two categories; those specifically pledged for Bermuda resident creditors and those available for distribution to all creditors of BAICL, whether located in Bermuda or elsewhere.

With respect to the first category, as a result of actions taken by regulatory authorities in Bermuda, including the Bermuda Monetary Authority, certain assets of BAICL were specifically pledged for Bermuda resident creditors. The Pledged Assets amounted to \$7.8 million at the time the PL was appointed. This amount came under the control of the PL shortly after his appointment, the majority of which was distributed to Scheme Creditors in December 2011.

The second category of assets located in Bermuda, which were not specifically ring-fenced for Bermuda resident creditors, included cash, investments, mortgage loans and a 40% interest in Bram-ber, the entity which owned the Building from which BAICL Bermuda ran its operations.

In order to ensure that the Other Assets, or as much of them as possible, were secured for the benefit of the Bermuda resident creditors, the PL negotiated the Settlement Agreement with the JM of BAICL. The Settlement Agreement, which was approved by the Bermuda Court and the Commonwealth Court of the Bahamas, provided that the JM waive any rights or claims to both the Pledged Assets and the Other Assets, in exchange for a payment of \$445k to the BAICL estate in the Bahamas. After payment of the

Settlement Amount, the remaining Other Assets were used by the PL to meet the ongoing operating costs and professional fees of BAICL Bermuda.

Securing all assets located in Bermuda for the benefit of Bermuda resident creditors allowed the PL to implement the Scheme and make the first distribution to Scheme Creditors in December 2011.

After payment of the first distribution, the only asset which had not been realized by the PL was BAICL Bermuda's 40% interest in Bram-ber. The remaining 60% interest in Bram-ber was owned by the Bermuda Employees of British American Pension Trust ("the Pension Trust"). In January 2013, the directors of Bram-ber concluded a sale of the building, resulting in Bram-ber receiving net proceed (after transfer costs and legal fees) of \$1.628m. BAICL Bermuda's share of the net proceeds was approximately \$650k, and this was distributed to BAICL Bermuda following the liquidation of Bram-ber.

The second distribution to Scheme Creditors consists primarily of BAICL Bermuda's interest in Bram-ber. It was expected that the second distribution to Scheme Creditors would be more than 2.5%, however the final sale price of the building was lower than originally forecast, and this has resulted in the second amount available for distribution to Scheme Creditors being lower than originally anticipated.

#### **Why has it taken the PL 4 years to complete these distributions?**

It is not unusual for an insolvent insurance company to be in liquidation for a number of years before being in a position to pay creditors. This is due to the nature of the business it undertakes and the contingent nature of its liabilities. In the case of BAICL, the liquidation was made more difficult as a result of three principal factors: (a) the records of BAICL and BAICL Bermuda were not in good order and required considerable work to ensure that the PL could identify the creditors and the amounts due to them; (b) the number and many types of policies written by BAICL Bermuda were considerable; and (c) BAICL Bermuda was a branch of BAICL, a Bahamian company, and much of the documentation was not located in Bermuda, and the financial reporting systems were controlled from outside of Bermuda.

Added to this, under Bermuda law, the liquidator of a life insurance company is required to seek a solution which will allow for the continuation of the life insurance policies written by the company.

The PL, in accordance with his duties as liquidator of BAICL Bermuda, and mindful of the hardships which policyholders would face if all the BAICL Bermuda life policies were terminated, spent a

considerable amount of time investigating potential solutions that would allow the life insurance policies to continue. Unfortunately no solution was available which would allow the life insurance policies to continue. In July 2010, the PL had no other option but to pursue a route that would allow Bermuda resident policyholders' claims to be valued and distributions paid to them.

The PL and his Agents concluded that a scheme of arrangement would be the most efficient process to value claims and make distributions to Bermuda resident creditors in the shortest practicable timeframe. As a result the PL sought the Supreme Court of Bermuda's approval to prepare and implement a scheme of arrangement.

The Scheme was approved by the requisite number and value of BAICL Bermuda creditors, and was sanctioned by the Bermuda Court on May 27, 2011. After the expiration of the Scheme bar date on August 3, 2011, the PL and his Agents paid a first distribution to Scheme Creditors in December 2011.

A second distribution was dependant on the realization of BAICL's 40% interest in Bram-ber (which owned the Building). Given the prevailing market conditions, completing a sale of the building took longer than anticipated, and resulted in an agreed sale price that was considerably lower than the original valuation of the Building of \$3.8m (performed in 2009). A number of offers, received in 2010 and 2011, ultimately failed because the potential buyer was unable to raise the financing to complete the purchase. Following an extensive sales process and negotiations with potential purchasers, an offer was received and accepted in January 2013, resulting in Bram-ber receiving net proceeds of \$1.628m in March 2013, following the conclusion of the sale. In August 2013, following the liquidation of Bram-ber, BAICL Bermuda received its 40% share of the net proceeds from the Building sale, which totaled approximately \$650k.

Scheme Creditors will shortly be receiving their second distribution of 2.5%, comprising primarily BAICL Bermuda's share of the net proceeds from the Building sale.

The PL and his Agents are aware that the length of time it has taken to complete the liquidation of BAICL Bermuda has been frustrating to policyholders; however winding up a life insurance company is a time consuming process. It should be noted that BAICL's policyholders and creditors in other jurisdictions have yet to receive a distribution from the BAICL insolvent estates in those jurisdictions.

### **Why are the professional fees on this engagement so high?**

The liquidation of BAICL Bermuda has been a complex, multi-jurisdictional engagement, which has been made more difficult by the poor state of the Company's policyholder and financial records and the fact that BAICL Bermuda is a branch of a company incorporated in the Bahamas. The job of managing the BAICL Bermuda operations and the administrative burden of managing, corresponding with, and paying distributions to more than 6,000 policies, over a period of approximately 4 years, has resulted in significant time and professional costs to the estate.

In order to minimize the professional fees charged to the estate, the OR negotiated a discount of approximately 40% to KPMG's standard Court approved rates. Conyers also discounted their fees and agreed not to charge for all their time spent over the course of the liquidation. In addition, to further reduce costs to the estate, BAICL Bermuda employees were used to manage the day-to-day operations of the Company while under the supervision of the Agents.

All fees paid to the Agents have been reviewed in detail by the OR, and paid out of the Other Assets (i.e. the assets which were not pledged specifically for the benefit of Bermuda resident creditors).

### **Why were certain of the BAICL Bermuda employees retained?**

The PL and his Agents decided to utilize the services of certain former employees to manage the day-to-day operations BAICL Bermuda, under the supervision of the Agents, rather than have this work performed by the Agents, which would have been significantly more expensive to the BAICL Bermuda estate.

After the implementation of the Scheme, and as the operations of BAICL Bermuda wound-down, the number of employees was reduced accordingly. After payment of the first distribution, the PL concluded that it was no longer a benefit to the estate to retain the employees and their employment contracts were terminated.

### **What if I am still due a premium refund cheque or a distribution cheque?**

Uncollected premium refund and first distribution cheques will not be included as part of the second distribution packages. Prior to termination of the Scheme (i.e. 6 months after payment of second

distributions), any Scheme Creditor who has not received their second distribution cheque, or is owed a premium refund or first distribution cheque can contact KPMG on 294 2651, or via email at [infoba@kpmg.bm](mailto:infoba@kpmg.bm), in order to organize payment of these outstanding amounts. If you have stale dated premium refund or first distribution cheque in your possession, you will be required to return these to KPMG, in order that these cheques can be cancelled and re-issued.

Six months after payment of the second distributions, any unclaimed distributions or premium refunds will be paid into the Bermuda Government Consolidated Fund (“the Consolidated Fund”). Funds paid into the Consolidated Fund can be retrieved by the payee upon presentation of appropriate evidence of entitlement and identity. Such persons will be required to contact the office of the Accountant General. Details of the relevant contact person at the Accountant General’s office will be provided prior to the termination of the Scheme.

**What if I do not receive a second distribution package?**

Please contact KPMG on 294 2651 or at [infoba@kpmg.bm](mailto:infoba@kpmg.bm), in order to confirm that we have your correct mailing address so that the second distribution packages can be re-sent to you.

**How do I elect to have my second distribution payment paid to me by online transfer?**

Please complete the pink form included in your second distribution package, and return this form, together with your second distribution cheque, to KPMG.

**Will Scheme Creditors receive any further payments from the PL of BAICL?**

No. The second distribution cheque represents a complete distribution of assets available to Scheme Creditors, and represents full and final settlement of Scheme Creditor’s claims against BAICL.

**What happens in the event that I am unable to cash the cheque sent, or have moved and do not receive the cheque until after it expires?**

Please contact KPMG on 294 2651 or at [infoba@kpmg.bm](mailto:infoba@kpmg.bm), in order to confirm that we have your correct mailing address, so that the final distribution packages can be re-sent to you.

**What if the Scheme Creditor has passed away during the period between the first distribution and the second distribution?**

The representative of the Scheme Creditor's estate will be entitled to apply for the distribution to be paid to the Scheme Creditor's estate. The estate representative will be required to submit both proof of the Scheme Creditor's death and proof that they are the officially appointed representative of the Scheme Creditor's estate. If you are the representative of a Scheme Creditor's estate, please contact KPMG at 294 2651 or via email at [info@kpmg.bm](mailto:info@kpmg.bm), in order to ascertain what evidence you will need to provide in order to prove that you are the appropriate person and to facilitate the payment of the second distribution into the Scheme Creditor's estate.

**What happens if I lose my cheque?**

Scheme Creditors who lose their second distribution cheque and want to have their cheque re-printed will be required to pay the cheque cancellation fee associated with cancelling their original second distribution cheque. Please contact KPMG on 294 2651 or via email at [info@kpmg.bm](mailto:info@kpmg.bm), if you lose your cheque and want a replacement cheque printed.