



GOVERNMENT OF BERMUDA

Ministry of Economic Development

Official Receiver

**British American Insurance Company Limited
(Provisional liquidator appointed)**

**Report of the Official Receiver/Provisional Liquidator to Bermuda
resident policyholders and creditors**

September 12, 2013

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This Report is 8 pages excluding the Frequently Asked Questions

1. Introduction

British American Insurance Company Limited (“BAICL”), a wholly owned subsidiary of CL Financial Ltd. (“CL Financial”), was incorporated in the Commonwealth of the Bahamas, and provided life, health and property insurance policies, primarily in the Caribbean and Bermuda. BAICL operated in Bermuda as a branch (“BAICL Bermuda”), and was licensed to write long-term business in Bermuda under the provisions of the Non-Resident Insurance Undertaking Act 1967 and the Insurance Act 1978.

On July 29, 2009, as a result of increasing financial difficulties facing BAICL and its parent company, the Bermuda Monetary Authority (“BMA”) filed a petition with the Supreme Court of Bermuda to wind up BAICL. This action was necessary to safeguard available assets for the benefit of BAICL Bermuda creditors.

On August 3, 2009, the Official Receiver was appointed as provisional liquidator of BAICL (“PL”) by Order of the Supreme Court of Bermuda. Following his appointment the PL appointed KPMG Advisory Limited (“KPMG Advisory”) and Conyers Dill & Pearman Limited (“Conyers”) to act as his agents in this matter (together “the Agents”).

At the time BAICL was placed in provisional liquidation by the Supreme Court of Bermuda, BAICL Bermuda had approximately 7,200 policies in force, providing health and life insurance to approximately 5,500 Bermuda resident policyholders.

2. Health Insurance policies

Considering the hardship that would be faced by BAICL Bermuda health insurance policyholders if health claims went unpaid, the PL worked with the Ministry of Finance (“MoF”) to establish a liquidity facility to ensure that all Bermuda resident health policyholders continued to receive health insurance benefits until a permanent solution could be established.

Subsequently, the PL concluded an agreement with the Argus Group (“Argus”) on August 21, 2009, whereby Argus agreed to provide health insurance to BAICL Bermuda individual and group health policyholders on the same terms and conditions that were provided by BAICL. As a result of the MoF

funding agreement and the support of the Argus Group, health insurance policyholders received uninterrupted cover.

3. Life Insurance, Annuity Products and Property and Casualty Insurance

Bermuda law provides that the liquidator of a life insurance company must, where possible, seek to transfer the long term business of the company to another insurer. The PL and his Agents spent a considerable amount of time investigating options that would allow for the continuation of the life insurance policies. Based on the level of available assets and the actuarial projection of the liabilities of BAICL Bermuda, any solution to continue the life insurance policies would require the commitment of additional capital to bridge the gap between assets available to Bermuda resident creditors and the projected claims of BAICL Bermuda creditors.

Life insurance policyholders were encouraged to continue paying their monthly premiums while options were considered which would allow for their life insurance policies to continue 'in-force'. This would allow for the transfer or continuation of the life insurance policies, if a workable solution was identified. Life insurance policyholders were advised that if no solution could be found any premiums paid, after the commencement of the liquidation, would be repaid to them in full.

The PL and his Agents, in conjunction with the BMA, the MoF and members of the local insurance industry, spent a considerable amount of time attempting to find a practical solution which would provide for a capital commitment and allow for the continuation of the life insurance policies. The options considered by the PL and his Agents are discussed below:

1. Establish an entity to assume the liabilities of BAICL Bermuda, which would be backed by members of the local insurance industry ("NewCo Option"). A working group consisting of the PL and his Agents, and members of the local insurance industry, investigated various scenarios which would enable the implementation of the NewCo option, however it became evident that the NewCo Option would not be feasible without a commitment to address the funding gap, and parties in interest were unable to unanimously commit to providing financial backing.

2. Identify a foreign insurer that would be willing to assume BAICL Bermuda's liabilities and provide the necessary funding to allow for the continuation of the life insurance policies, in exchange for a license to operate an insurance entity and compete for business in Bermuda. After tentative enquiries it was determined that a foreign insurer would be unwilling to accept the liabilities of BAICL Bermuda, given the extent of the deficit.

Due to the unavailability of a solution which would allow for the continuation of the life insurance policies, in July 2010, the PL determined that BAICL Bermuda could not continue to collect premiums from policyholders. All policyholders were invited to collect a premium refund cheque for premiums paid since the commencement of the liquidation. Life insurance premiums totaling \$2,647,408 have been received since the appointment of the PL, of which \$2,640,040 has been refunded to policyholders. The remainder (\$7,368) remains uncollected and a reserve has been put in place in respect of this amount.

4. Financial position of BAICL Bermuda

The liabilities of BAICL Bermuda, as valued under the Scheme of Arrangement ("the Scheme") (see section 5), total approximately \$21.529m, including life insurance policy claims of \$20.796m and unsecured creditor claims of \$733k. In addition, the Scheme made provision for preferential and proprietary claims against BAICL Bermuda totaling \$74k and \$102k respectively. Preferential and proprietary claims comprised primarily of employee claims and crystallized death benefits which were being held in trust by BAICL Bermuda.

BAICL assets located in Bermuda fell into two categories: those specifically pledged for Bermuda resident policyholders 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 BMA, certain assets of BAICL were specifically pledged for Bermuda resident creditors. On the date of the appointment of the PL, the amount of \$7.8m was specifically pledged for Bermuda resident creditors ("the Pledged Assets"). This amount was realized by the PL shortly after his appointment.

The second category of assets located in Bermuda, which were not specifically pledged for the benefit of Bermuda resident creditors, included cash, investments, mortgage loans and a 40% interest in Bram-ber Holdings Limited ("Bram-ber"), the entity which owned the building from which BAICL Bermuda ran its operations ("the Building") (together "the Other Assets").

As a matter of law there was some question as to who was entitled to the Other Assets: Bermuda resident creditors or all creditors of BAICL, wherever located. In order to prevent costly and time consuming litigation to determine entitlement to the Other Assets, the PL negotiated a settlement (“the Settlement Agreement”) with the Judicial Manager of BAICL (appointed by the Commonwealth Court of the Bahamas) (“the JM”), on December 22, 2010. The Settlement Agreement, which was approved by the Supreme Court of Bermuda and the Commonwealth Court of the Bahamas, provided that in exchange for the payment of \$445k (the “Settlement Amount”), the JM agreed to waive any further rights or claims to both the Pledged Assets and the Other Assets. As part of the Settlement Agreement, the PL agreed that any scheme of arrangement promoted by the PL would include language prohibiting Bermuda resident creditors from making any claim against BAICL (i.e. the company outside Bermuda), once the Scheme became effective.

Securing all assets located in Bermuda in exchange for the payment of the Settlement Amount (paid out of Other Assets) was viewed as a favorable outcome for Bermuda resident creditors, and allowed for the distribution of assets secured by the PL to Bermuda resident creditors through the Scheme. As per the terms of the Settlement Agreement, Bermuda resident creditors agreed, through their support of the Scheme, that they do not have a claim against BAICL in any jurisdiction outside Bermuda.

The Other Assets were realized by the PL during the course of the provisional liquidation. Recoveries from Other Assets totaled approximately \$7.2m, and have been used by the PL to meet the ongoing operating costs and professional fees relating to BAICL Bermuda, and payment of the second distribution to Bermuda resident creditors.

Enclosed at Annexure A is a Receipts and Payments account for the BAICL estate controlled by the PL.

5. Scheme of Arrangement

Having reached the determination that no solution would be available which would allow for the continuation of the life insurance policies, the PL and his Agents concluded that the best solution to distribute the assets available to Bermuda resident creditors, would be to implement a scheme of arrangement, which would crystallize and value the claims of policyholders and creditors. On September 16, 2010, the PL received an Order from the Supreme Court of Bermuda, authorizing the preparation and implementation of a scheme of arrangement.

A policy valuation methodology was developed by the BAICL actuary and applied to all policies written by the BAICL Bermuda, resulting in total claims (including life insurance policyholders and general unsecured creditors) of \$21.529m.

On April 13, 2011, notice was provided to all policyholders and creditors as defined in the Scheme (“Scheme Creditors”) that a meeting would be held on May 19, 2011 (“the Scheme Meeting”), for the purpose of considering, and if appropriate approving the Scheme. Included with the notice of the Scheme Meeting, Scheme Creditors were provided with a copy of the Scheme and other relevant documentation, including a statement explaining the Scheme, a voting claim form and a proxy form. Scheme Creditors were advised that a series of meetings would be held in advance of the Scheme Meeting (on April 26, 2011 and May 3, 2011) to assist Scheme Creditors to understand the Scheme documents, complete forms and to respond to queries regarding their Scheme claim valuation.

The requisite number of Scheme Creditors (by number and value) voted in favor of the Scheme at the Scheme Meeting, and the Scheme was sanctioned by the Supreme Court of Bermuda on May 27, 2011. As a result of the extensive process to explain the Scheme and claim calculation methodology at the information meetings and via the BAICL Bermuda hotline, all claim values provided in the Scheme were accepted by Scheme Creditors, resulting in no Scheme Claims being referred to the Scheme Adjudicator.

In December 2011, after realizing substantially all of the assets available to Scheme Creditors, the PL declared and paid a first distribution to Scheme Creditors. The first distribution totaled \$7.535m, representing 35% of Scheme Creditors’ claims.

A second distribution was dependant on the realization of BAICL’s 40% interest in Bram-ber. The Building was valued in 2009 at approximately \$3.8m; however, given the prevailing conditions of the Bermudian property market, offers received for the Building were significantly lower than the 2009 valuation. Following an extensive sales process and negotiations with potential purchasers, an offer was received and accepted in January 2013. This offer resulted in Bram-ber, receiving net proceeds of \$1.628m for the Building.

BAICL Bermuda’s share of the net proceeds from the Building sale totaled approximately \$650k which was received from the liquidator of Bram-ber in August 2013. The second distribution to Scheme Creditors is principally made up of BAICL Bermuda’s share of the net proceeds realized from the sale of

the Building. Second distribution cheques, representing a further 2.5% of Scheme Creditors' claims will be mailed to Scheme Creditors' last known address on September 12, 2013. Together with the first distribution, Scheme Creditors will have received a total distribution of 37.5% of their Scheme Claims. There will be no further distributions to Scheme Creditors.

6. Professional fees and operating costs

The winding up of the BAICL Bermuda has been a complex, multi-jurisdictional exercise which has been made more difficult by the state of the accounting and policyholder records maintained by the BAICL and the fact that BAICL Bermuda is a branch of a company incorporated in the Bahamas. The time intensive job of managing the BAICL Bermuda operations and the administrative burden of managing more than 6,000 policies, over a period of approximately 4 years, has resulted in significant professional costs to the estate.

The PL has where possible sought to minimize the professional fees and operating costs charged to the BAICL Bermuda estate by negotiating discounts to the Agents usual hourly rates, utilizing the services of certain former BAICL Bermuda employees, and by continually seeking to reduce the general operating costs of BAICL Bermuda.

KPMG Advisory agreed to discount their fees by approximately 40%, and similarly, Conyers agreed to discount their fees and not to charge all their time spent on the engagement. All fees paid to the Agents have been agreed by the PL following a detailed review, and paid out of the Other Assets (i.e. the assets which were not pledged specifically for the benefit of Bermuda resident policyholders). To date discounted fees paid to the Agents out of the BAICL Bermuda estate total \$3.49m.

It was determined by the PL and his Agents that utilizing certain former employees to manage the day-to-day operations of BAICL Bermuda, under the supervision of the Agents, would be more cost effective than if the Agents assumed these responsibilities themselves. By utilizing the services of former BAICL Bermuda employees, the time spent by the Agents, and associated costs, was significantly reduced. 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 in December 2011, the PL concluded that it was no longer a benefit to the estate to retain the employees and their employment contracts were terminated.

Annexure A - Receipts and payments account

Asset realizations		Total
Funds on appointment	\$	867,045.15
Investments realized	\$	3,512,962.77
Letter of credit drawn	\$	7,800,000.00
Reinsurance recoveries	\$	129,520.97
Non life insurance premium receipts (incl. health, fire, mortgages)	\$	1,229,884.17
Sale of mortgages	\$	545,057.07
Bram-ber Holdings Limited dividend (including proceeds from the Building sale)	\$	779,958.07
Sundry income (incl. interest)	\$	148,997.72
Total	\$	15,013,425.92
Expenses		
Professional fees	\$	(3,490,172.18)
First interim distribution	\$	(7,152,143.18)
Settlement and other payments to Judicial Manager	\$	(461,174.00)
Redundancy and preferential claim payments	\$	(245,699.01)
Operating expenses	\$	(2,168,209.26)
Total	\$	(13,517,397.63)
Funds remaining on August 13, 2013	\$	1,496,028.29
Reserves and final distribution amount		
Unpaid professional fees to August 2013	\$	438,291.42
Professional fees reserve to close engagement	\$	116,199.23
Reserve to fund uncollected first distribution payments	\$	383,348.47
Reserve to fund uncollected premium refunds	\$	7,367.67
Reserve for uncollected priority distribution	\$	2,272.10
Operating cost reserve	\$	10,300.00
Total	\$	957,778.89
Funds available for final distribution to policyholders	\$	538,249.40

Notes to the Receipts and Payments account

Life insurance premium receipts after the commencement of the provisional liquidation and the refund of life insurance premium receipts have been excluded. After the commencement of the provisional liquidation, life insurance premium receipts do not form part of the BAICL Bermuda estate.

Health insurance claims paid by the BAICL Bermuda estate and refunded by the Ministry of Finance have been excluded.