

Frequently Asked Questions

Q1: What is the proposal?

We made a decision in late 2011 to implement a managed withdrawal from New Zealand following the devastating Canterbury earthquakes. As part of that process we cancelled the customer policies we were able to cancel and transferred a handful of other policies to another insurer. ACS does not have any current policies and its business in New Zealand is now focused on the management of outstanding claims.

As part of the managed withdrawal, we are now proposing to put in place a Scheme of Arrangement (“Scheme”) under Part 15 of the New Zealand Companies Act 1993.

The proposed Scheme is designed to ensure that claims continue to be managed in as orderly a manner as possible and to maximise the prospect of claims being met in full.

Q2: What is a scheme of arrangement?

A Scheme is a High Court approved procedure under Part 15 of the New Zealand Companies Act 1993. A Scheme of the kind proposed by ACS is a compromise to take effect between a company and its creditors, which becomes legally binding on ACS and on all the creditors to whom it applies (referred to as “Scheme Creditors”) after:

- it is voted on at the meeting of Scheme Creditors, such vote to be passed by a majority in number, representing not less than 75% in value, of those Scheme Creditors voting at the meeting (whether in person, by proxy or by post); and
- the Court subsequently approves the Scheme.

Once the Scheme becomes effective, it will bind the Scheme Creditors to the terms of the Scheme, irrespective of whether or not they voted in favour of the Scheme, or at all.

Q3: Who will be affected?

Anyone who has, or may in the future have, a claim against ACS under an Insurance Contract. It should be noted that under certain types of policies issued by the Company claims may arise some time after the period of the policy, hence details of the Scheme proposal will be circulated widely to seek to ensure that all potential, as well as actual, claimants are aware of the Scheme. If you have any doubts about whether you are affected by the Scheme, you should contact the Company via its helpline on 0800 123 344 Option 2 (NZ free call).

Any obligations of ACS (apart from those owed by ACS to Ansvar Australia and EIO) not arising under an Insurance Contract will not be covered by the Scheme and will be unaffected by the Scheme.

Q4: Why has a Scheme been proposed?

The Scheme is designed to ensure that regardless of the financial position of ACS, its current and future claimants are treated fairly and that claims are settled as quickly and fully as possible.

Based on current estimates of claims, ACS currently has sufficient assets to meet its liabilities as they fall due. On that basis, the overall cost of claims against ACS following the Canterbury earthquakes is currently expected to remain within the limits of its reinsurance programme, which would enable all claims to be met by ACS in full.

However, the claims situation is still developing and is subject to a high degree of complexity and uncertainty. This is especially the case given the significant reliance on the Company’s reinsurers’ continued support.

It is likely that it will take considerable time for the loss position to stabilise. It will take several years for all claims to be brought to a conclusion, and for the final level of claims to be established and paid.

ACS is therefore proposing a Scheme as a precaution to protect creditors' interests regardless of its future financial position.

Q5: Does the Scheme affect how claims are managed?

The Scheme has been designed to ensure that claims continue to be handled in as orderly a manner as possible.

During an "Initial Scheme Period", claims will continue to be paid in full as and when they fall due, with the Company continuing normal day to day operations and the company Directors continuing to closely monitor the Company's financial position.

If, at any point, the Directors conclude that the Company's liabilities exceed assets, that all Scheme Creditors' claims will no longer be able to be met in full or that some other event or circumstance either has occurred or is likely to occur, and that without the Scheme there would be no reasonable prospect that the Company would avoid liquidation, then this will constitute a "Trigger Event". Following a Trigger Event occurring, payments to Scheme Creditors would be dealt with in a fair and equitable manner in accordance with the terms of the Scheme. Although the powers of the Directors will lapse, it is anticipated that in practice the Scheme Administrators will work in close consultation with the Directors and a Creditors' Committee to ensure that the Scheme operates in the best interests of all Scheme Creditors.

This process avoids the cost, uncertainty and disruption of the likely alternative in such circumstances, which would be an insolvent liquidation. The Scheme therefore seeks to ensure the continuation of an efficient claims handling operation which deals with all claims fairly even if a Trigger Event should occur.

Q6: Will my claim be paid in full?

Based on current knowledge we believe all claims will be paid in full and our intention is to settle all claims as quickly and efficiently as possible. However, as noted, this will take some time and the claims position is evolving. If a situation occurred where our liabilities exceeded our assets, it is possible that pro-rata payments will be made. We see having a Scheme in place in that situation as the most prudent way of protecting Scheme Creditors' interests, and ensuring claims are paid as fully and as quickly as possible, regardless of the Company's financial position.

Q7: Is the Scheme likely to delay payment of my claim?

During the "Initial Scheme Period", it is not anticipated that there will be any delays in the handling and settlement of claims, which will continue to be managed in the normal course. If a "Trigger Event" occurs, which is not currently anticipated, there may be a short period of delay to allow the Company to establish appropriate payment percentages, but under the Scheme payments to Scheme Creditors would be made earlier than if the Company entered into formal insolvency proceedings.

Q8: Has EIO provided any financial support to ACS?

ACS is the company which is liable to pay insurance claimants under the insurance policies, and not EIO. Accordingly, EIO has no legal obligation to provide further support, whether or not the Scheme proceeds. Nevertheless, EIO has provided considerable additional support to ACS, as set out below.

EIO has already taken steps to strengthen the financial position of the Company and thereby protect policyholders' interests. EIO has incurred costs in excess of NZ\$24 million through:

- funding the cost of additional reinsurance coverage;
- providing specialist and experienced claims personnel to bolster the customer service and claims support offered to affected customers; and
- funding professional advice from lawyers, accountants and actuaries.

In addition, A\$20 million and NZ\$20 million short term cash flow loan facilities to assist with the funding of claims payments were provided.

Q9: Does EIO plan to provide any further support to ACS?

In view of the material uncertainties facing the Company, EIO has, after careful consideration, agreed to provide additional support to ACS up to the following levels, to operate in conjunction with the Scheme:

- An additional capital injection of approximately NZ\$24 million, to be provided by 30 June 2012. NZ\$10m of the NZ\$24m has already been provided by EIO as share capital through a contribution to the Canterbury Earthquake Church and Heritage Trust (the "Charitable Trust"), with the Charitable Trust subscribing for 10m shares in the Company. The remaining NZ\$14m will be provided before 30 June 2012 by way of limited recourse loan to the Charitable Trust for application to the Company as share capital. Such limited recourse loan is repayable only after NZ\$5m has been distributed to the Charitable Trust's charitable beneficiaries;
- Adverse Development Reinsurance Cover ("ADC") for the February 2011 earthquake that effectively extends the reinsurance cover for the Company from about NZ\$548 million at 31 December 2011 to NZ\$570 million; and
- Additional share capital of NZ\$4.5 million to fund the payment of the ADC.

Q10: When will this further support be made available?

EIO has already provided NZ\$10m of the NZ\$24m. The balance (NZ\$14m) will be provided by 30 June 2012 (whether or not the Scheme is approved). The ADC is already in place, but it could be cancelled if the Scheme is not approved by 1 July 2012. \$100,000 of the additional share capital has already been provided. The balance of \$4.5 million would be payable when and if needed to fund the ADC.

Q11: What are the other main features of the Scheme?

The main aim of the proposed Scheme is to provide a stable and efficient claims handling environment, until all current and future claims have been dealt with.

Even with the additional support referred to above, given the uncertainties, the cost of claims could increase to a point where the Company's liabilities exceed its assets. This would normally lead to the Company's liquidation and be disruptive to the claims agreement process. Under the Scheme this would constitute a Trigger Event.

If a Trigger Event occurs, the Scheme will seek to maintain full payments wherever possible, but will have provisions allowing the Company to make pro-rata payments of claims to Scheme Creditors.

The level of claims payments made to Scheme Creditors will depend on the level of assets of the Company relative to its liabilities after recognising any specific rights that Scheme Creditors may have over assets, for example reinsurance recoveries. The amount paid to Scheme Creditors will therefore be dependent on the level of reinsurance recovered in relation to each earthquake.

The Scheme will also include provisions for the Company to revert to full payment to Scheme Creditors should the claims position improve.

Q12: What are the main benefits of the Scheme?

Orderly, seamless and efficient run-off – the Scheme is designed and intended to ensure the continuation of an efficient claims handling operation.

Minimal disruption – if ACS becomes insolvent, payments will be made more quickly than may otherwise be the case in a liquidation.

Additional support from EIO – the ADC cover has been provided by EIO in advance of the approval of the Scheme but it is cancellable if the Scheme does not become effective by 1 July 2012.

Cost savings – the Scheme would avoid a costly and disruptive insolvency process if claims liabilities deteriorate to an unsustainable level.

Creditors' Committee – a Creditors' Committee will be appointed immediately and should provide Scheme Creditors with additional comfort.

Q13: Has my broker been made aware of the Scheme?

All known brokers or intermediaries whom the Company believes may have acted for Scheme Creditors in arranging insurance with it have been informed of the Scheme.

Q14: Who will be the Scheme Administrators?

Dan Schwarzmann of PwC UK and Colin McCloy of PwC NZ are the proposed Scheme Administrators. Their CVs can be obtained on pages 31-32 of the **Explanatory Statement**.

Q15: Who will pay for the Scheme Administrators?

The costs of the Scheme Administrators, like all other costs in relation to the operation of the Scheme, will be met out of the assets of the Company, subject to the terms of the Scheme.

Q16: Why is there a Creditors' Committee established under the Scheme and who will be its members?

Although it is not usual for a committee of creditors to be formed when a company is solvent, such a committee, required to act in the best interests of Scheme Creditors as a whole, will be established upon the Scheme becoming effective. This committee will play an important role in monitoring the implementation of the Scheme and, in particular, provide the Directors or, after the Trigger Event, the Scheme Administrators, with views on important issues. This is intended to provide additional comfort to Scheme Creditors.

Full details of the process for appointing members of the initial Creditors' Committee are set out in the **Scheme document** (pages 40-42).

Q17: When does the Scheme become effective?

The Scheme will become effective once it has been approved by the Court. The outline Court approval process is as follows:

- At the Initial Hearing, which took place on 1 May 2012, the Court made procedural orders in relation to holding a meeting for Scheme Creditors to vote on the proposed Scheme and other procedural matters, which included:

- notification and provision of information to interested parties;
 - specification of who will be entitled to appear at the final approval hearing; and
 - setting a further hearing date to follow the meeting (“Approval Hearing”), and setting dates by which any formal opposition to the Court’s approval of the Scheme is to be filed in the Court and served on the Company.
- At the Initial Hearing, the Court also made an order that the Scheme is to be approved by the Scheme Meeting if more than 50% in number, representing not less than 75% in value, of the Scheme Creditors voting at the meeting (whether in person, by proxy or by post) vote in favour of the proposed Scheme.

The Scheme is then voted on at the Scheme Creditors’ meeting, which will take place at 11:00am on 12 June 2012 at the Dome, Christchurch Events Village.

Once the results of the vote at the Scheme Creditors’ meeting are known, the Company will then present those results to the Court at the Approval Hearing, scheduled to be held at 10:00am on 19 June 2012 in Auckland.

At the Approval Hearing, the Company will apply for final approval of the Scheme. The Court will consider the outcome of the meeting, and will hear from any party who has filed papers and wishes to be heard. Regardless of the outcome of the vote at the meeting, any Scheme Creditor will be entitled to be heard on the question of whether the Court should approve the Scheme, provided that they have filed papers in accordance with the Court’s earlier procedural orders (that is, by 1 June 2012).

Assuming that the Scheme is duly approved and becomes “effective”, claims will be managed in the manner outlined under the question above “Does the Scheme affect how claims are managed?”.

Q18: How do I participate in and vote at the meeting of Scheme Creditors?

Scheme Creditors are encouraged to take an active interest in the Scheme proposals and any queries should be directed to the Company’s helpline on 0800 123 344. Scheme Creditors are also eligible to become members of the Creditors’ Committee to be established under the Scheme and further details can be found in the **Scheme document** (pages 40-42).

All Scheme Creditors with unpaid, outstanding or potential future claims are entitled to vote on the Scheme proposal. Voting forms, together with guidance notes and instructions, will be circulated widely and be available from the Company and at its website www.acsclaimsservices.co.nz.

In summary, the value of each Scheme Creditors’ vote at the meeting of Scheme Creditors should represent a reasonable estimate of its actual or potential claim on the Company; it should be noted that the value of the claim is for voting purposes only and will not be relevant for the purposes of establishing and settling claims under the Scheme.

Q19: How can I be sure that my vote will be valued fairly?

The value to be attributed for voting purposes to a Scheme Creditor’s claim will be the amount of the claim subject to any adjustment by the chairman of the meeting. The chairman (who will be Andrew Moon, a director of ACS, or failing him another director of ACS) will consider completed Voting Forms in order to determine the value of each Scheme Creditor’s vote at the meeting.

The chairman’s determination shall be based on (i) the information provided by the Scheme Creditor; and (ii) the information available to ACS from its existing records. Account will also be taken of any known set-off, or cross-claim or deduction in respect of balances due to ACS.

The chairman has the power to reject a claim, in whole or in part, for voting purposes only if he considers that it does not represent a reasonable assessment of the value of the liabilities to which it relates. The decision of the chairman as to the value to be placed on a claim for voting purposes is final and, where the chairman has reduced or rejected a Scheme Creditor's assessment of the value of its claims for voting purposes, he will, if possible, notify the relevant Scheme Creditor of such decision, and the reasons therefor, before the meeting and, in any event, before the Approval Hearing.

Q20: Is the Reserve Bank of New Zealand ("RBNZ") aware of the proposed Scheme?

The RBNZ has been advised of these Scheme proposals and it is anticipated that the Company will continue to be a licensed insurer in accordance with the Insurance (Prudential Supervision) Act 2010.

Q21: What will happen if the Scheme is not approved?

If the proposed Scheme is not approved, the Company will continue to manage claims but will remain vulnerable to increasing claims and other factors which may endanger its solvency in the future. If at some point in the future the Directors conclude that the Company is insolvent, they will consider the most appropriate action for the benefit of the Company's creditors as a whole. This would most likely result in a formal insolvency procedure, resulting in significant disruption to the management of claims, delays in payments to Scheme Creditors and additional costs.

In the event the Scheme is not approved by 1 July 2012, EIO may cancel the Adverse Development Reinsurance Cover. This would effectively reduce the February 2011 earthquake cover for the Company back to about NZ\$548 million from NZ\$570 million, significantly increasing the uncertainty that all the Company's claims will be met in full. It would also increase the prospect of the Company's liquidation. The further \$4.5 million capital from EIO would not, in that case, be provided.

Q22: When will the Scheme end?

It is anticipated that the claims management under the Scheme could continue for in excess of 5 years, since claims on some Insurance Contracts may be made at any time, provided the loss giving rise to the claim occurred or is deemed to have occurred during the contract period. As a result, it is not possible to set a precise end date for the Scheme.

Q23: What should I do if I have any concerns?

If you have any concerns, please inform us using the contact details at the foot of this document as soon as possible or you should consult with your professional advisor.

Q24: What will happen after the Scheme becomes effective?

Once the Scheme becomes effective, the Company will, shortly after the Scheme becoming effective, send notice, that the Scheme is effective, by post to all known Scheme Creditors for which it has current address details and Brokers to their last known addresses. The Company will also post a notice on this website and in appropriate newspapers and other publications.

Q25: The Scheme documents refer to ownership of the Company being transferred to a Trust. What does that mean?

ACS's shares are to be transferred to the Canterbury Church and Heritage Trust ("the Charitable Trust"). The trust arrangements:

- will ensure that ACS is not placed in liquidation during the Scheme by the shareholders; and
- will convey ownership of ACS for the benefit of those affected by the Christchurch earthquakes.

As a result, ACS will cease to be part of the EIO group.

The Charitable Trust is for the benefit of those Christian charities and other entities that are supporting those affected by the Christchurch earthquakes. The Charitable Trust is to be set up in such a way that the first part of any surplus left after all ACS's claims have been met would be distributed to organisations supporting those affected by the Christchurch earthquakes. A contribution of \$5 million to those organisations will rank ahead of any repayment of loans made by EIO to the Charitable Trust in order to support ACS.

The transfer of ACS's shares to the Charitable Trust is not part of the Scheme. The Scheme does not establish the Charitable Trust or transfer assets to the Charitable Trust. Scheme Creditors are not being asked to vote on the Charitable Trust arrangements.

Q26: Who is the trustee?

A company named Canterbury Earthquake Church and Heritage Trustee Limited has been established to act as trustee of the Charitable Trust. The initial directors of the Trustee are David Harrison and Brent Pattison (who are both directors of ACS).

Q27: When did development of the Scheme commence?

Towards the end of 2011, when ACS was considering and then implementing a managed withdrawal from the New Zealand market, it was also considered prudent, given the significant continuing uncertainties, to ensure that appropriate measures were taken to address the possibility of further deterioration in ACS' ability to pay all claims in full. Development of the Scheme was commenced late 2011 / early 2012 with this important objective in mind and initial discussions with certain of the major creditors took place in February 2012 before formal communication of the Scheme proposal to all potential Scheme Creditors in mid April 2012.

Q28: Following a Trigger Event (i.e. in the event of ACS' insolvency) who sets the Payment Percentage?

The Payment Percentage would be set by the Scheme Administrators in close consultation with the Creditors' Committee to be established under the Scheme and on the basis of up to date detailed actuarial advice and other relevant information.

Q29: What is the role of the Scheme Administrators?

During the Initial Scheme Period, when ACS is able to pay all claims in full, the Scheme Administrators' role is limited to providing guidance to both the directors of ACS and to the Creditors' Committee.

In the event of a Trigger Event and the consequent commencement of a "Reserving Period", the Scheme Administrators become responsible for the management and control of the business and affairs of the Company in relation to the Scheme, but with broad powers to delegate duties to the directors of the Company, so that the run-off continues to be managed as cost-effectively as possible. A key role of the Scheme Administrators in a Reserving Period would be to set the Payment Percentage(s) in close consultation with the Creditors' Committee.

Q30: How does the Scheme deal with any rights Scheme Creditors may have in relation to reinsurance recoveries?

The Scheme has been designed so that it gives practical effect to any charges over reinsurance recoveries that Scheme Creditors might have as a result of Section 9 of the Law Reform Act 1936 and the recent case of *Western Pacific*. Indeed, the Scheme contains provisions that ensure that, in a Reserving Period, the Scheme Administrators may set multiple and varying Payment Percentages that reflect rights to reinsurances arising from specific events.

The Scheme has also been designed so that it responds to any change in the law in this area and above all to ensure that payments to creditors are at least as favourable as they would be in an insolvent liquidation.

Q31: How will any debts to former Group companies be dealt with in the Scheme?

The costs of developing and proposing the Scheme have been met from the additional financial contributions made by former Group companies - such costs would only be recovered (if at all) after all Scheme Creditors are paid in full.

During the Scheme, former Group companies will provide essential claims handling and other services to ACS and these will be provided on an arm's length commercial basis, the costs of which, like those of other service providers required to keep ACS operating, will be paid in full. This would be no different in an insolvent liquidation where such costs would rank ahead of other unsecured debt.

In addition, former Group companies have provided short-term loan facilities to ACS to assist with the funding of claims payments in advance of related reinsurance recoveries. At present there is no debt owed under those facilities, but in the event of such debts arising under the Scheme, the relevant lenders' rights to payment would be limited to those of the claimant whose claim had been funded in that way (i.e. they would be paid at the same level).

Q32: Have any arrangements been made in relation to policyholders with relatively small claims and who might not fully understand the nature and terms of the Scheme?

ACS have actively supported the representation of smaller policyholder interests by Grant Cameron, a solicitor currently representing a significant number of such policyholders and who can be contacted at grant@gcalawyers.com.

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