Solvent Schemes of Arrangement
6 December 2006

Bringing an early end to run-off in the insurance industry

Dean Carrigan
Partner
Allens Arthur Robinson

Christopher Prestwich
Overseas Practitioner
(Admitted in England and Wales only)
Allens Arthur Robinson
Introduction

Solvent schemes of arrangement are used by insurance companies to accelerate the run-off of their business, or parts of their business, while they are still solvent. Run-off can last for many years and involve substantial administrative costs, so there are substantial benefits for insurance companies in being able to bring it to an early end. There are also advantages for creditors, for example receiving an early payment for a claim that has not yet crystallised, removing any uncertainty about the long-term solvency of the insurance companies and avoiding protracted litigation over claims.

There have only been three solvent schemes of arrangement in Australia to date. In 2002, the Federal Court approved a solvent scheme of arrangement for an insurance company, Mercantile Mutual Insurance (Aust) Ltd (MMIA). The scheme related to its discontinued reinsurance business. In 2006, the Federal Court approved solvent schemes of arrangement for two reinsurance companies, NRG London and NRG Victory.¹

Solvent schemes of arrangement have been very popular in England for the last ten years, not least due to the size of the insurance run-off market there. Given the advantages for insurance companies in avoiding the costs associated with run-off, it may be the case that solvent schemes of arrangement become an increasingly popular feature of the Australian insurance market.

This paper discusses:

(a) the implementation of schemes of arrangement generally;
(b) the scope for the use of solvent schemes in Australia
(c) common features of solvent schemes of arrangement;
(d) the reasons why an insurance company and its creditors might seek to implement a solvent scheme;
(e) particular issues arising from recent case law; and
(f) the role played by the regulators.

Schemes of Arrangement

Creditors' schemes

A scheme of arrangement is a court approved compromise or arrangement, entered into between a company and its creditors, or any class of them.

Generally a scheme of arrangement is seen as a way of maximising the value of a company's property by allowing the debtor company to continue trading. A scheme may simply maximise the return to creditors, or it may enable companies to be restored to financial health and generate profits which can in turn be passed on to creditors.

The relevant statutory provision is s411 Corporations Act. The power of a scheme of arrangement comes as a result of the wide definition of the term "arrangement"; that it can incorporate

¹ See http://www.aar.com.au/pubs/insol/foiaug06.htm for a full discussion on this case
compromises as well as offers; that it is effected merely by the stroke of the Court issuing its order (thereby reducing what would otherwise be an impossible amount of paperwork with separate agreements being entered into between the company and the relevant scheme participants); and that it is binding on dissentients and non-voters, provided that the requisite majorities approved the scheme and the Court exercises its discretion in favour of the scheme.

This paper does not deal with insolvent schemes. If an insurance or reinsurance company is insolvent or likely to become insolvent at some future time, voluntary administration resulting in a Deed of Company Arrangement may be an alternative to a scheme of arrangement in Australia. An example is the Deed of Company Arrangement entered into between AFG Insurance Pty Ltd (subject to Deed of Company Arrangement) and its creditors. Of course the most recent example of an insolvent scheme of arrangement for an insurance company in Australia is the HIH scheme of arrangement.2

Other types of schemes of arrangement

Schemes of arrangement are most regularly adopted for corporate re-organisations such as 'top hatting', mergers, spin offs, demergers and demutualisations by way of members' schemes. Creditors' schemes are less common than members' schemes.

Implementing a scheme of arrangement

Identifying creditors and the Explanatory Statement

A company wishing to enter into a scheme of arrangement must take all necessary steps to identify scheme creditors, and bring the proposed scheme to their attention. It must also prepare the proposed scheme document itself along with an Explanatory Statement. The Explanatory Statement has to provide an adequate description of the effect of the scheme, and comply with the various requirements set out in the Corporations Act.

Convening a meeting of creditors

The next step in implementing a creditors scheme of arrangement is to obtain a court order convening a meeting of creditors or classes of creditors (s 411(1)). At that stage the Court will consider whether the manner in which the proposed scheme will operate is so clearly unfair and unreasonable that it should not be allowed to go forward for consideration.

The Court will also consider whether there should be a single meeting of all scheme creditors, or meetings of separate classes of scheme creditors. The Court will take a broad view of whether different creditors with different interests are able to vote as a single class. In an English case, Sovereign Life Assurance Co v Dodd [1892] 2 QB 573 Bowen LJ held that the term ‘class’ should be given such a meaning:

as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interests.

The position is the same in Australia - in Re Hills Motorway Limited (2002) 43 ACSR 101 Barrett J commented:

2 An English scheme of arrangement was also entered into in HIH
The test is not one of identical treatment. It is one of community of interest. The Court must ask itself whether the rights and entitlements of different groups, viewed in the totality of the scheme’s context, are so dissimilar as to make it impossible for them to consult together with a view to their common interest.

Nevertheless, if the Court is not satisfied that the rights of certain groups are sufficiently similar, but they are nevertheless treated as a single class, that may lead to the proposed scheme not being approved. As discussed below, this is a particularly important issue in relation to solvent schemes of arrangement for insurance or reinsurance companies - it must be considered whether creditors with unsettled paid claims and creditors with claims relating to losses that had been incurred but not yet reported can be treated as a single class.

Assuming that the order convening the creditors’ meeting is made, the Court will also approve the explanatory statement that is sent to creditors with notices of the meeting. Once that order is made, a notice of the meeting must be sent to creditors or members explaining the effect of the compromise or arrangement and providing any material information.

Meeting of creditors

When the meeting of creditors is held, it must be accepted by (in relation to each class of creditor) (s 411(4)):

- a majority in number of the creditors present and voting
- whose debts or claims against the company amount to at least 75% of the total amount of the debts and claims of the creditors present and voting.

The Chairman of the creditors’ meeting will generally ascribe a value to creditors’ debts or claims. Unliquidated or contingent claims must be estimated so that they may be counted in the vote. That raises the question of precisely what value those claims should be given. It may be the case that this will impact on whether or not the creditors’ meeting will approve the scheme.

Whilst it is not unusual for contingent claims to simply be given a value of $1 for voting purposes, care should be taken before doing so. In Re Huon Valley Springs Pty Limited the Court refused to sanction a scheme as insufficient value had been attributed to a contingent claim.

If the company faces a class action, how that contingent claim is treated may impact on whether or not the required majority in number of creditors voting and present can be obtained. It might be argued that each member of that class is entitled to a vote. If this is a concern of the company, it may be possible to ascribe a contingent claim a value of $0. In a Hong Kong case, Re UDL Argos Engineering & Heavy Industries Co. Ltd [2000] HKCA 460 the Court approved the valuation of a contingent claim at $0 because “it would be impossible to give [the contingent claim] any value for sensible purposes”. It seems that whether or not this is possible, particularly given Re Huon Valley Springs Pty Limited, will depend in part on the merits (or otherwise) of the underlying claim.

Approval of the Court

The Court may then grant its approval to a compromise or arrangement, subject to such alterations or conditions as it thinks just (s411(6)).

---

3 (1986) 10 ACLR 883
Scope for use of solvent Schemes of Arrangement in Australia

In England, solvent schemes of arrangement have generally been used to accelerate the run-off of long-tail insurance or reinsurance businesses. In Australia, all of the three solvent schemes of arrangement that have been approved to date have related to that type of business.

There is however the potential (in England at least) for the broader application of solvent schemes of arrangement. In Re Cape plc & Ors [2006] EWHC 1316 (Ch), the Court considered an application by Cape plc and its subsidiaries to convene a meeting of creditors to consider a solvent scheme of arrangement. Cape plc and its subsidiaries’ business used to be asbestos mining and the manufacture, distribution and installation of asbestos products. It faced a substantial number of claims as a result of individuals having been exposed to asbestos, and due to the long latency periods for more serious asbestos-related conditions, there would be a significant volume of claims in the future.

Cape plc was nevertheless solvent and expected to remain so despite future asbestos-related claims. The solvent scheme of arrangement was designed to protect the group's business from the asbestos claims, while at the same time directing a proportion of its earnings to the payment of those claims.

The Court approved the proposed scheme. In Re T&N Limited the Court had held in relation to an insolvent scheme that future tort claimants without an accrued cause of action were nonetheless creditors of the company, and could be bound by a scheme of arrangement (although they would not be creditors in an insolvency). In a 2006 decision in the same matter, the English Court also held that a company with a claim for contribution arising out of an asbestos claim against it was also a contingent creditor.

If that were the position in Australia, solvent schemes of arrangement would potentially be of interest to companies that faced similar exposure to asbestos claims that might arise in the future. However, the current position in Australia, according to the New South Wales Court of Appeal in Edwards v Attorney General is that possible future personal injury claimants who were not presently ill were not contingent creditors in a winding up, as they did not have an accrued cause of action. Unless the Australian court held that the position is different in a scheme of arrangement than in a winding up (which is what the English Court held), it would not be possible to bind such future claimants by a scheme of arrangement.

The use of solvent schemes to deal with issues arising from long-tail liabilities in Australia is therefore likely to be restricted to insurance companies wishing to accelerate the run-off of their business, or parts of their business.

---

4 [2005] EWHC 2870 (Ch)
5 See AAR: Publication: Focus: Insolvency for a full discussion of this case
6 Re T&N Limited [2006] EWHC 1447 (Ch)
Principal features of solvent Schemes of Arrangement

Solvent schemes of arrangement have been used in relation to insurance companies in run-off. The scheme of arrangement will bind all scheme creditors whether known or unknown. It may be used in relation to a company's entire business, or just in relation to part of a business.

The principal features of solvent schemes generally include:

- a moratorium on claims against the company;
- a 'bar date' meaning that, to stand any chance of being paid, all claims must be submitted by a certain date;
- the payment of claims in full;
- a claims agreement process;
- a means of resolving claims if they cannot be agreed; and
- a provision allowing for the company to go into run-off if solvency becomes an issue.

Taking each of these features in turn:

(a) **Moratorium**: a scheme of arrangement will involve a moratorium on claims meaning that no claims can either be commenced or continued against the scheme company. Instead, a procedure will be put in place for resolving those claims. That process may ultimately involve the Court resolving the proceedings, although that is not generally the case in relation to solvent schemes.

(b) **Bar date**: this provision requires all claims to be submitted by a certain date. Claims submitted after that date will not be paid.

(c) **Payment of claims in full**: as the scheme company is solvent, claims are paid in full. For those claims that have not crystallised, that will involve estimating the amount of the claim (see below). The scheme may or may not provide for a discount to reflect the early payment of claims.

(d) **Claims agreement process**: claims will generally be valued by an actuary, and an actuarial approach will be adopted to valuing claims.

(e) **Means of resolving unagreed claims**: creditors are not obliged to accept the valuation given by the actuary, and a scheme would generally provide some other means of resolving the value of the claim. That might be through a scheme adjudicator.

(f) **Run-off in the event of insolvency**: in order to ensure equality of treatment, a scheme would generally contain a provision for reversion to run-off in the event that there is an unexpectedly high value of claims.

Advantages of solvent schemes of arrangement

The reason for an insurance company in run-off to seek to implement a Scheme of Arrangement is simply to avoid the administrative expenses involved in a prolonged run-off.
The list of advantages cited for Scheme Creditors in solvent schemes of arrangement are fairly standard. In the recent NRG London and NRG Victory solvent schemes of arrangement in Australia, potential advantages cited were as follows:

(a) Scheme Creditors receive an early payment, and sooner than if the run-off were to continue;
(b) there is no discount for early payment (except in some circumstances);
(c) the Scheme removes any concerns that creditors might have about the long term future solvency of the Scheme Companies, and enables creditors to achieve finality in relation to their claims;
(d) the Scheme is designed to enable claims to be dealt with quickly and efficiently and without protracted litigation.

However, in *Re British Aviation Insurance Company Limited* [2005] EWHC 1621 (Ch) (*BAIC*), the English Court adopted a sceptical attitude as to whether matters such as those listed above really confer any benefit on scheme creditors. This was the first time that a scheme of arrangement for a solvent insurer had been opposed.

Justice Lewison's comments in relation to a number of supposed advantages were:

- **Early end to run-off**: this benefit enures largely to the benefit of the scheme company rather than creditors. Creditors who wish to receive the indemnity gain no advantage from an early end to run-off, whereas those who wish to compound the company's liabilities could do so in the absence of a scheme;
- **Administrative costs savings**: these savings are solely to the benefit of the company – the company is solvent, so there is no suggestion that the assets are insufficient to meet liabilities and pay the administrative costs of run-off;
- **Early payment**: this is a benefit to creditors, but that has to be weighed against the fact that they receive only an estimate of liability rather than being indemnified;
- **Simple out of court dispute resolution mechanism**: the dispute resolution procedure is something necessitated by the scheme, and would be largely unnecessary in the absence of a scheme; and
- **Scheme creditors avoid the risk of future insolvency**: the prospect of the scheme companies ever going into insolvent liquidation was no more than a remote and theoretical possibility.

It was particularly significant in the decision by Justice Lewison to refuse to sanction the scheme that creditors would only receive an estimate of the value of their claims rather than an indemnity. He commented that:

"The most powerful consideration is that it seems to me to be unfair to require manufacturers who have bought insurance policies designed to cast the risk of asbestos claims on insurers to have that risk compulsorily re-transferred to them. [BAIC] is in the risk business; and [the policy holders] are not."

---

8 See paragraph 141 of the judgment
Despite these comments, a number of solvent schemes have been approved by the Court after the decision in *BAIC*.

**Class issues in a solvent scheme of arrangement**

In *BAIC*, the proposed solvent scheme of arrangement was not approved because the classes of creditor entitled to attend and vote at class meetings had been incorrectly identified. The following types of creditor had been grouped together to vote as a single class:

- creditors with reported claims that have not yet been paid; and
- policy holders with 'incurred but not yet reported' (IBNR) claims.

In this case, the IBNR claims were claims that would relate to matters that had already occurred (namely exposure to asbestos) but where the claims had not yet crystallised. Justice Lewison held that the interests of these two types of creditor were not sufficiently similar to constitute a single class:

“In my judgment in the particular circumstances of a solvent scheme, where a solvent liquidation is not a realistic alternative, those with accrued claims and those with IBNR claims have interests which are sufficiently different as not to make it possible for them sensibly to consult together “in their common interest”. In truth, they do not have a common interest at all.”

The creditors' meeting had therefore been incorrectly constituted, and the Court had no jurisdiction to sanction the scheme.

However, in subsequent cases, this decision has not been treated as meaning that policyholders with IBNR claims and creditors with accrued claims must always be treated as falling into separate classes:

(a) in a Scottish case immediately following *BAIC*, *Re Scottish Lion*, Lord Drummond Young commented that the assumption contained in the test, namely whether the interests are not so dissimilar as to make it impossible for them to consult together with a view to their common interest, was that creditors were in practice allowed to consult together. That required the provision of a creditor list.

(b) in *Re NRG Victory Reinsurance Ltd [2006] EWHC 679*, Lindsay J commented that whether separate classes were required would depend on a number of variables such as the types of business covered, whether it was direct insurance or reinsurance, in what parts of the world business was conducted, the solvency margins and when the insurance company had stopped writing each type of business.

The issue of whether policyholders with IBNR claims and creditors with accrued claims should be placed into separate classes was considered again in *Sovereign Marine & General Insurance Co Ltd [2006] EWHC 1335* (or the *WFUM Pools* case). The case involved similar facts to *BAIC*, and the application to convene meetings of creditors was opposed. Certain policyholders objected that they were in effect being forced to commute their claims on terms that they said were more
favourable to the solvent insurance companies than could be achieved by negotiated settlement if the policyholders were prepared to negotiate commutation.

At the stage of convening creditors’ meetings, the Court held that it was not concerned with issues of fairness, although some of those factors were relevant to the proper constitution of classes of creditors. Warren J rejected a claim that it would never be possible for policyholders with IBNR claims and creditors with accrued claims to consult together in their common interest, stating that each individual case would turn on the facts. He gave examples of when it might be appropriate to have a single class of creditors:

- when all policyholders have similar policies and an almost identical mix of unpaid agreed claims and IBNR claims. In those circumstances, estimation and valuation provisions in the scheme would have a similar impact on all creditors, enabling them to consult in their common interest; and

- where a scheme deals with reinsurance liabilities only. Unlike policyholders, reinsurers are well able to assess risk and take a view on the extent of their exposure across their own business.

This latter example was noted by Lindgren J in his decision in Re NRG London Reinsurance Co Ltd & NRG Victory Aust Ltd [2006] FCA 872. In that case, the business of both companies was exclusively reinsurance. Lindgren J held that scheme creditors with IBNR claims and the other scheme creditors were able to consult together with a view to their common interest, and accordingly there should be a single class of creditors for voting purposes.

However, on the facts of Sovereign Marine & General Insurance Co Ltd Warren J held that there should be two separate classes of creditors, one voting in relation to unpaid agreed claims, outstanding claims and other claims not requiring estimation and the other in relation to IBNR claims (some creditors had claims that fell into both categories). The reasons why he considered that the creditors in this case would not be able to consult together in their common interest were:

- there was a large degree of uncertainty in the estimation and valuation of claims;
- unpaid agreed claims were however almost completely certain and there was also a substantial degree of certainty in relation to outstanding claims;
- for IBNR claims on the other hand there was a large degree of uncertainty.

Warren J noted the real difference in rights between creditors whose claims simply required quantification and those with IBNR claims, which were not even certain to occur. That divergence of interest would mean that it would not be possible for them to consult together.

These cases illustrate that in some cases, it may be possible to have a single class of creditors. In others, policyholders with IBNR claims may need to be put into a separate class. That will turn on the facts of any given case.

---

10 See paragraph 113
Post-approval amendments to Schemes of Arrangement

Another issue that has arisen in recent English decisions concerning solvent schemes of arrangement is whether it is possible for scheme documents to contain the power to amend substantive provisions of the scheme after the scheme has been approved by the Court and come into effect.

In *Re Cape plc & Ors*[^11], the proposed scheme of arrangement provided for the execution and implementation of a number of agreements and other documents that were integral to the scheme. These documents contained provisions enabling them to be altered in accordance with the procedures contained in them. Those provisions were there because the scheme was intended to remain in place and provide for the settlement of asbestos claims over a very long period. Over that period, changes might occur that were material to the operation of the arrangements.

It is a well established principle that a scheme of arrangement, once sanctioned by the court, cannot subsequently be varied simply with the agreement or acquiescence of the creditors or shareholders involved. That was why these provisions providing for future amendments were contained in ancillary documents. The Court therefore considered whether it had jurisdiction to approve the scheme in that form.

Arguments against those provisions were that powers of amendment undermine the function of the court in approving a scheme as the court has no say on the amendments. In sanctioning a scheme of arrangement, the court binds creditors who have either dissented or abstained, so must be in a position to form a view that the terms are fair as regards the creditors affected.

Justice Richards considered a number of Australian authorities, noting the comment of Santow J in *Re NRMA Ltd* [2000] 33 ACSR 595 that:

"*Courts will generally not approve schemes which carry within themselves machinery for variation of their own terms*"

In *Re Australian Co-operative Foods Ltd* (2001) 38 ACSR 71 Santow J did approve a provision in a scheme that was not reliant upon statutory provisions:

"*the scheme approved itself contemplates … flexibility outside of further court discretion. It does so in a manner which could not be said to be inimical to the interests of members, given the safeguards that attend any post-approval variation and the fact that this is to be made clear in the scheme booklet.*"

Justice Richards concluded that the English court has jurisdiction to sanction a scheme of arrangement which contains provision for future amendment either of the scheme itself or ancillary documents. There are however strong reasons why in most cases the court is unlikely to exercise the jurisdiction to sanction a scheme with provisions for future amendments. In this case however, as the scheme would be in place for such a long time to deal with asbestos liabilities, there was a clear need for flexibility. The Court therefore approved the scheme, although it could be amended in the future without the Court's involvement.

[^11]: [2006] EWHC 1316 (Ch)
Cross-border recognition of solvent schemes of arrangement

The moratorium provision contained in a scheme of arrangement is typically expressed to preclude proceedings being brought against the scheme company in any jurisdiction. Whether such a provision is effective in another jurisdiction will be a matter for that jurisdiction. Assuming that the scheme company's assets are all in one jurisdiction, that may not be a concern as a judgment obtained elsewhere would not be enforceable against those assets. However, in some circumstances it may be desirable to seek to ensure that the scheme will be recognised in another jurisdiction. In some jurisdictions that can be done by seeking an order from a foreign court recognising a particular order.

In *Re Cavell Insurance Company Limited*, the Court of Appeal of Ontario considered whether it should recognise an order of the English court convening a meeting of Cavell Insurance Company Limited's (Cavell) creditors. Cavell wrote reinsurance policies in London and overseas, including in Canada. In the mid-1990s it stopped writing new re-insurance business, but continued to administer the run-off of its existing reinsurance business. In 2004 it proposed a solvent scheme of arrangement to bring an end to its contracts of reinsurance.

The English court made orders authorising Cavell to convene a meeting of its creditors. Cavell sought an order from the Canadian court recognising the English order as it wished to ensure that the Canadian court would recognise the scheme as binding on Cavell's Canadian creditors. At first instance, the Canadian court granted that order. This was subsequently appealed by various creditors, essentially on the question of whether the Canadian court had the jurisdiction to recognise what was not a final order.

The appeal failed, and the order recognising the order of the English court was upheld. That was based on the doctrine of comity. The judgment also comments on the need to modernise rules relating to reciprocal enforcement of judgments to reflect the increasingly international nature of commercial transactions.

This case illustrates that a solvent scheme of arrangement may be feasible even where the insurance or reinsurance was written in a number of different countries. The Canadian courts have shown that they are likely to adopt a positive approach to reciprocal enforcement of orders either convening scheme meetings or sanctioning schemes of arrangement. Chapter 15 of the US Bankruptcy Code enables a foreign representative to seek assistance from the US Court. In December 2005 in the *MMA* case, the US Bankruptcy Court, Southern District of New York recognised the scheme administrator of an English solvent scheme of arrangement as a foreign representative. The scheme administrator was granted relief over the US assets of MMA consistent with the purpose and powers of the English scheme of arrangement, including the power to operate MMA’s US business under the terms of the English scheme.

This type of approach may not necessarily be followed in other jurisdictions though. For example, whilst Australia presently has quite an international approach to assisting foreign insolvent companies by the letter of request procedure, there are limits to the effectiveness of that procedure. In *Independent Insurance Company Ltd* [2005] NSWSC 587 an English provisional liquidator asked the New South Wales Supreme Court to grant an injunction restraining the company's Australian creditors from bringing proceedings in Australia among other things. The New South Wales Supreme Court refused to do so, essentially because there was no identified present risk.
Australia has no present system of assistance in relation to solvent schemes of arrangement. This means that if there are assets in Australia, a separate Australian scheme of arrangement will be required.

**Solvent schemes of arrangement and the regulators**

S 411(2) Corporations Act requires that the Australian Securities and Investment Commission (ASIC) be given 14 days notice of a hearing for an order to convene a meeting of creditors to consider a proposed scheme of arrangement. ASIC must also be given a reasonable opportunity to examine the terms of the proposed compromise and the draft explanatory statement, and to make submissions to the Court in relation to the proposed scheme and draft explanatory statement.

There is no strict legislative requirement to consult with the Australian Prudential Regulation Authority (APRA). However, the Court does expect to see evidence that full details of the proposed scheme were given to APRA and that it was notified of hearing dates. In *NRG London Reinsurance, NRG Victory Australia* [2006] FCA 872 Justice Lindgren commented that in his view, the Scheme Companies had to establish that they:

"have provided or will provide full disclosure concerning the proposed schemes, not only to the Scheme Creditors, to ASIC and to the Court, but also to the Australian Prudential Regulation Authority ("APRA"), and that APRA has also had a reasonable opportunity to examine the documents and to make submissions to the Court concerning them."

**Conclusion**

The principal benefit for insurers in run-off in considering implementing a scheme of arrangement is the potential for the saving in administration costs associated with run-off. In *BAIC*, Justice Lewison did cast some doubt as to whether or not a solvent scheme of arrangement is really in the interests of creditors. However, despite those comments, solvent schemes of arrangement have remained popular in England – creditors have approved and the court has sanctioned a number of solvent schemes after *BAIC*.

An insurer in run-off in Australia assessing a possible solvent scheme of arrangement should:

(a) carefully consider whether the company is insolvent, or likely to become insolvent at some future time. If so, a voluntary administration followed by a Deed of Company Arrangement may be a suitable alternative;

(b) consult with creditors to elicit their views on a possible solvent scheme of arrangement. In *BAIC* opposition from policyholders led to the Court refusing to sanction the proposed scheme of arrangement. This indicates that consultation with policyholders and creditors at a very early stage will be key to the success of a proposed scheme; and

(c) consult with APRA and ASIC on the proposed scheme of arrangement from an early stage.

APRA's 'Half Yearly General Insurance Bulletin' dated 3 August 2006 indicates that there are currently 34 general insurers in run-off. As mentioned above, there have only been three solvent schemes of arrangement in Australia to date.
Foreign insurers with Australian operations are required by s28 Insurance Act to maintain assets in Australia in excess of their liabilities in Australia. To the extent that such foreign insurers wish to implement a solvent scheme of arrangement in relation to their businesses outside Australia, it may be necessary, as in NRG London Reinsurance, NRG Victory Australia to implement solvent schemes of arrangement in Australia as well. Equally an Australian insurer in run-off might consider a solvent scheme of arrangement as being a cost-effective alternative to run-off. There is substantial scope for solvent schemes of arrangement to become increasingly popular in Australia.
NOTE: This document is intended only to provide a general review on matters of concern or interest to readers. The text of this document should not be relied upon as legal advice. Matters differ according to their facts. The law changes. You should seek legal advice on specific fact situations as they arise.

Visit our website, www.aar.com.au, for:

- An electronic, fully-searchable version of this paper;
- Past papers presented at Allens Arthur Robinson Corporate Insolvency & Restructuring Forums and Insurance Forums;