

TO ALL POTENTIAL CREDITORS OF THE DIRECT SCHEME

4 September 2024

Email: [CXRe@uk.ey.com](mailto:CXRe@uk.ey.com)

Dear Sirs or Madams

**Proposed Scheme of Arrangement pursuant to Part 26 of the Companies Act 2006 between CX Reinsurance Company Limited (in Administration) (the “Company”) and its creditors in respect of policies of direct insurance (the “Direct Scheme”)**

**This letter is important. It concerns matters which may affect your legal rights and entitlements.**

**1 Introduction to the Direct Scheme**

- 1.1 The Company proposes to enter into a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 (“**Part 26**”) with its creditors with claims arising in respect of contracts of direct insurance (collectively the “**Direct Scheme Creditors**”). A contract of direct insurance means, for these purposes, the cover provided by an insurer to a non-insurer policyholder, as opposed to reinsurance cover provided by an insurer to cover insurance risks written by another insurer.
- 1.2 The Company entered into administration proceedings on 17 August 2020 (the “**Administration**”), and now proposes the Direct Scheme for the purposes of endeavouring to bring closure to the run-off of its direct insurance business.
- 1.3 We are sending you this letter because we believe that you are:
  - 1.3.1 a Direct Scheme Creditor with a claim arising under or pursuant to a contract of direct insurance, and therefore may be affected by the Direct Scheme; or
  - 1.3.2 a broker who placed relevant insurance business with the Company as intermediary for a Direct Scheme Creditor. Brokers are requested to forward a copy of this letter to any clients which may be affected by the Direct Scheme; or
  - 1.3.3 another party which may potentially be involved in the Direct Scheme Creditor claim process.
- 1.4 This letter is sent in accordance with the Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006) issued by the Chancellor of

the High Court dated 26 June 2020 (the "**Practice Direction**"). We ask that you read this letter, consider its contents carefully and take legal advice if you consider it appropriate to do so.

**IMPORTANT NOTE:** if the English High Court approves the proposed scheme of arrangement, then post-approval, the Direct Scheme Creditors will be required to submit a claim form in respect of any claims they have in the Direct Scheme by a deadline. The deadline will be 11.59 p.m. (London time) on the first business day falling 180 calendar days after (and not including) the date on which the Direct Scheme becomes effective (the "Final Claims Deadline"). The Final Claims Deadline (in effect a bar date) will be notified to Direct Scheme Creditors if the Direct Scheme becomes effective.

If the Direct Scheme becomes effective, then, other than as set out in paragraph 4.1.3 below, no Direct Scheme Creditor will be entitled to receive any payment from (or have any further rights against) the Company in respect of a claim which is the subject of the Direct Scheme unless such claim has been notified to the Company by the Final Claims Deadline.

## 2 Background

- 2.1 The Company was incorporated on 13 December 1972 and wrote non-life insurance and reinsurance business including US and international originating property and casualty treaty business and professional liability insurance.
- 2.2 The Company ceased underwriting in August 2001 and went into solvent run-off.
- 2.3 In 2019, following an independent actuarial review, the Company concluded that it was likely to breach its Minimum Capital Requirement under the European Solvency II directive. The Company had at no point been able to meet its Solvency Capital Requirement under Solvency II. The Prudential Regulation Authority ("**PRA**") therefore requested that the Company produce an exit plan to bring closure to its run-off.
- 2.4 The Company explored various options, including a solvent scheme of arrangement, with the aim of bringing a solvent conclusion to the run-off of its business. However, none of these options were ultimately found to be feasible for various reasons, including material uncertainty relating to various litigation cases to which the Company was party.
- 2.5 In July 2020 the board of directors of the Company reached the conclusion that a solvent exit solution was not possible and that entry into administration would provide a platform to deliver the best outcome for the Company's creditors as a whole. The Company was placed into administration on 17 August 2020 (the "**Administration Date**") and Richard Barker and Simon Edel of Ernst & Young LLP were appointed as administrators of the Company (the "**Administrators**"). On 8 October 2020, the administration was recognised as a 'foreign main proceeding' in the United States under Chapter 15 of the United States Bankruptcy Code.
- 2.6 The purpose of the Administration is to achieve a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in administration). Details of the progress of the administration have been set out in the Joint Administrators' six monthly progress reports to creditors which are available at [http://www.ey.com/en\\_uk/ey-cx-reinsurance-company-administration](http://www.ey.com/en_uk/ey-cx-reinsurance-company-administration)

### 3 Purpose of the Direct Scheme

- 3.1 The Direct Scheme is being proposed for the purposes of bringing closure to the Company's direct insurance business, in light of the Company's insolvency. Copies of all documents relating to the Direct Scheme, and updates regarding the progress of the Direct Scheme, will be made available at [https://www.ey.com/en\\_uk/administrations/cxreinsurancecompanydirectscheme](https://www.ey.com/en_uk/administrations/cxreinsurancecompanydirectscheme) (the "**Website**") in due course.
- 3.2 The Direct Scheme has been proposed to offer Direct Scheme Creditors the most effective and economical method for having their claims against the Company agreed or otherwise determined and paid in the shortest practicable time, while at the same time maximising the assets of the Company available to make payments to Direct Scheme Creditors.
- 3.3 The Direct Scheme is likely to be more beneficial overall for the distribution of the Company's assets to Direct Scheme Creditors, as well as being in overall terms more beneficial for the body of creditors of the Company as a whole, than a liquidation process. In brief, this is because:
- 3.3.1 the Direct Scheme imposes a bar date for claims (see paragraph 4.1.3 below) meaning all Direct Scheme Claims against the Company must be made by a certain date or are extinguished. It also provides for unquantified claims (including outstanding losses and IBNR claims) to be valued on a 'once-and-for-all' basis in accordance with actuarially-based estimation guidelines set out in the Scheme document. This allows for all Direct Scheme Claims to be dealt with together at the same time and on the same basis, within a predictable timeframe. In a liquidation, outside of a scheme, it is very difficult for a liquidator to impose an effective bar date for the submission of creditor claims, resulting in a long delay before a final distribution to creditors can safely be paid. In addition, whilst the statutory liquidation regime provides for the liquidator to 'estimate' the value of non-crystallised liabilities for proof of debt purposes, it provides no guidelines or other criteria to underpin any such estimate, meaning that any estimate by a liquidator of such claims is likely to be vulnerable to challenge and, therefore, to the delays and uncertainty of High Court litigation.
- 3.3.2 In the Direct Scheme, claims will be determined either by agreement or, in the absence of agreement, through a non-appealable adjudication by an independent expert. In contrast, in a liquidation, the process for determining creditors' claims and paying distributions is likely to take considerably longer and be more expensive than under the proposed scheme, because (amongst other factors), any determination of a proof of debt by a liquidator can be subject to appeal to the High Court, with all the attendant delays and costs involved in a litigation process.
- 3.3.3 In a liquidation, non-sterling denominated claims must be converted into sterling at the exchange rate applicable at the relevant date, in this case the Administration Date. This would be potentially unfair to Direct Scheme Creditors whose claims are denominated in a currency other than sterling, due to exchange rate volatility.
- 3.4 Potential returns to Direct Scheme Creditors will be maximised by avoiding the costs involved in administering claims against the Company over a protracted period. Due to the long-tail nature of

the Company's business, a run-off in the ordinary course is expected to take from 15 to 20 years, but the Company's limited assets mean that it would not be possible to maintain such a run-off (either in administration or in liquidation). The Administrators estimate that the Company's assets would be exhausted by the costs of administering a run-off within the next four to five years in the absence of a scheme such as the one proposed.

- 3.5 The Company has discussed the main proposals of the Direct Scheme with the creditors' committee established in the Company's Administration, (the "Committee") and has taken account of the Committee's views where possible.

#### 4 **Effect of the Direct Scheme**

- 4.1 In brief summary, the Direct Scheme provides that:

- 4.1.1 the Administrators will be appointed as the first **"Direct Scheme Administrators"** with power to administer the Direct Scheme;
- 4.1.2 from the date on which the Direct Scheme becomes effective, Direct Scheme Creditors will be prohibited from taking legal action against the Company to determine or otherwise secure payment in respect of the Direct Scheme Claims, unless such action is taken in accordance with the terms of the Direct Scheme;
- 4.1.3 Direct Scheme Creditors will be required to submit a claim form within 180 calendar days of the Direct Scheme becoming effective (the **"Final Claims Deadline"**), notifying the Company of any Direct Scheme Claims. A Direct Scheme Creditor which fails to submit a claim form in respect of any Direct Scheme Claim within this timeframe shall not be entitled to receive any payment in respect of it (except in relation to any agreed unpaid claim which according to the Company's records has been agreed as due to the relevant Direct Scheme Creditor as at the Scheme Reference Date, being 31 December 2023, but which has not been paid or otherwise discharged and which is set out by the Company on a claim form sent to the relevant Direct Scheme Creditor);
- 4.1.4 Direct Scheme Claims will be valued by the Company (as well as any amounts to be set-off against those Direct Scheme Claims) using the guidelines described in the Direct Scheme (the **"Estimation Guidelines"**). A copy of the Estimation Guidelines will be made available on the Website once finalised;
- 4.1.5 in the event that a Direct Scheme Creditor does not agree with the value placed on its Direct Scheme Claim by the Company it will have the right to challenge the valuation;
- 4.1.6 if the Company and the Direct Scheme Creditor are not able to reach agreement as to the value of the relevant Direct Scheme Claim, the dispute shall be referred to an independent adjudicator appointed under the Direct Scheme (the **"Direct Scheme Adjudicator"**) to determine the value. The determination of the Direct Scheme Adjudicator will be based on the Estimation Guidelines and will be final and binding (other than in respect of mathematical or manifest error) on both the Company and the Direct Scheme Creditor;
- 4.1.7 once the value of a Direct Scheme Claim has been agreed or determined in accordance with the Direct Scheme, the resulting value of the Direct Scheme Claim, if any, will be the

amount of that Direct Scheme Creditor's claim (its "**Gross Ascertained Claim**"), which will be final and binding up on the Company and the Direct Scheme Creditor;

- 4.1.8 the Company will take account of any set-off, security and will apply a discount for the time value of money (discounted to the Scheme Reference Date) in order to establish the Direct Scheme Creditor's net claim against the Company (its "**Net Ascertained Claim**"),
- 4.1.9 as soon as possible following the Final Claims Deadline, the Company will determine whether all Net Ascertained Claims can be paid in full. If the Company determines that such claims can be paid in full, it will make payment in full in respect of all Net Ascertained Claims as soon as reasonably practicable. In the event that the Company determines that all Net Ascertained Claims cannot be paid in full, it shall determine what percentage of Net Ascertained Claims (the "**Direct Payment Percentage**") can be paid. The initial Direct Payment Percentage will be paid to Direct Scheme Creditors in respect of their Net Ascertained Claims as soon as reasonably practicable. The Direct Payment Percentage set by the Company may subsequently be increased or reduced;
- 4.1.10 all payments under the Direct Scheme will be made in US Dollars, GBP or euros (each a "**Relevant Currency**");
- 4.1.11 Direct Scheme Creditors will retain such rights as they currently have in respect of any security, including but not limited to any deposit or reserve of funds or assets established by the Company; guarantee provided by a third party; letter of credit; or any other funds held or otherwise retained by or on behalf of a Direct Scheme Creditor.

## 5 **United States-domiciled Direct Scheme Creditors**

- 5.1 As a condition of being permitted to write insurance and reinsurance business in the United States the Company was required to establish a trust fund in the United States for the benefit of certain beneficiaries including US domiciled policyholders (the "**Surplus Lines Trust Fund**").
- 5.2 The Direct Scheme does not affect or compromise the rights of recourse of any Direct Scheme Creditor which is a beneficiary of the Surplus Lines Trust Fund against that Trust Fund. Such rights are governed by the terms of the Surplus Lines Trust Fund. In particular, the values to be attributed to Direct Scheme Creditors' claims under the Direct Scheme (including pursuant to a determination by the Direct Scheme Adjudicator) will not be binding for the purpose of determining those creditors' rights of recourse (if any) as beneficiaries of the Surplus Lines Trust Fund.

## 6 **Liabilities excluded from the Direct Scheme**

- 6.1 The Direct Scheme does not apply to claims against the Company arising other than under contracts of direct insurance. It does not apply to claims arising under contracts of reinsurance. Additionally, the following liabilities of the Company are excluded from the Direct Scheme (the "**Excluded Liabilities**"):
  - 6.1.1 Administration costs, being in summary, the costs incurred on behalf of the Company by the Administrators as administration expenses or determined as administration expenses by the Court, including the remuneration and expenses of the Administrators

- 6.1.2 preferential claims, being, in summary, those claims against the Company that have preferential status under section 386 of the Insolvency Act 1986;
- 6.1.3 pre-scheme expenses, being, in summary, the expenses reasonably incurred by the Company in connection with the promotion and preparation of the Direct Scheme; and
- 6.1.4 scheme costs, being, in summary, the costs incurred by the Company in the course of implementing the Direct Scheme, including the remuneration and expenses of the Direct Scheme Administrators.

## **7 The Direct Scheme process**

- 7.1 The Company will make an application to the Business and Property Courts of England and Wales (the "**Court**") for an order granting permission to it to convene a meeting of the Direct Scheme Creditors to vote upon the proposed Direct Scheme (the "**Direct Scheme Meeting**"). At the hearing to consider that application (the "**First Court Hearing**"), the Court will be invited to consider the constitution of classes of Direct Scheme Creditors and therefore the number of meetings of Direct Scheme Creditors that should be held to vote on the Scheme. The application is expected to be heard on 3 October 2024 and further details about how to attend the First Court Hearing will be made available on the Website closer to that date.
- 7.2 If the Court gives the Company permission to convene the Direct Scheme Meeting, the Company will send you information about how to access a copy of the Direct Scheme and the explanatory statement in respect of the Direct Scheme required by Part 26 (the "**Explanatory Statement**"). Direct Scheme Creditors will be requested to complete and submit a voting and proxy form in accordance with the procedures described in the Explanatory Statement.
- 7.3 If the required majorities of the Direct Scheme Creditors vote in favour of the Direct Scheme at the Direct Scheme Meeting, the Company will ask the Court to "sanction" (or approve) the Direct Scheme at a second Court hearing. In deciding whether to sanction the Direct Scheme, the Court will consider, amongst other things, whether it is fair to Direct Scheme Creditors as a whole. Details of the sanction hearing will be provided to Direct Scheme Creditors in due course.
- 7.4 If the Direct Scheme is sanctioned by the Court, the Company will file a copy of the order sanctioning the Direct Scheme with the English Registrar of Companies, at which time the Direct Scheme will become effective. The process for creditors to make claims will be explained in the greater detail in the Direct Scheme and Explanatory Statement.
- 7.5 Following the sanction of the Direct Scheme by the Court, the Company (acting through the Administrators) intends to file a motion for recognition of the Direct Scheme as a 'foreign main proceeding' under Chapter 15 of the United States Bankruptcy Court in order to facilitate implementation of the Direct Scheme. The Direct Scheme is not, however, contingent on obtaining Chapter 15 recognition and the Company may elect not to apply for Chapter 15 recognition depending on legal advice at the relevant time. The effectiveness of the Direct Scheme is not dependent on the success or otherwise of any application for Chapter 15 recognition the Company may choose to make.



**8 Proposed voting classes for Direct Scheme Creditors**

- 8.1 In order for the Direct Scheme to be implemented, it must be approved by a majority in number, representing not less than 75% in value, of those creditors who vote at the meetings.
- 8.2 Where scheme creditors have rights which are so different as to make it impossible for them to consult together with a view to their common interest, the law requires them to be split into separate classes and to vote at a separate meeting for each class.
- 8.3 The Company has considered the rights of the Direct Scheme Creditors in respect of their Direct Scheme Claims, and the way in which those rights will be affected under the proposed Direct Scheme and has concluded that there should be one class for the purpose of voting on the Direct Scheme, comprising all Direct Scheme Creditors.
- 8.4 The Company has reached this conclusion because, in the event that the Direct Scheme is not implemented, the Direct Scheme Creditors share the same ranking with respect to their Direct Scheme Claims against the Company (each being claims against the Company arising under contracts of direct insurance). Furthermore, the Company does not consider it necessary to divide the Direct Scheme Creditors into further classes based on whether they have agreed unpaid claims, notified outstanding claims and incurred but not reported claims because, in the most likely alternative to the Direct Scheme – i.e. a liquidation of the Company - all such claims would, in any event, be subject to the same mandatory valuation and distribution procedure.
- 8.5 The Company does not consider it necessary to separate Direct Scheme Creditors with claims against the Surplus Lines Trust Fund into a separate class. As noted above, the Direct Scheme does not compromise the rights of recourse which any Direct Scheme Creditor may have against the Surplus Lines Trust Fund. Their rights against the Company in respect of their Direct Scheme Claims are the same as those of any other Direct Scheme Creditor – i.e. in a liquidation of the Company their claims would be subject to the same mandatory valuation and distribution procedure. The manner in which the Direct Scheme affects those rights is also the same as for other Direct Scheme Creditors. Under the Direct Scheme, Direct Scheme Creditors' rights of recourse, if any, against the Surplus Lines Trust Fund will be treated as security for their claim and deducted from the value of their Direct Scheme Claim for the purposes of receiving payment. They will therefore be treated in the same manner as any other Direct Scheme Creditor which holds security (including any deposit or reserve of assets established by the Company to secure the payment of a Direct Scheme Claim, such as a letter of credit) in respect of its Direct Scheme Claim. For voting purposes, Direct Scheme Creditors' claims will be valued net of any security, including any potential claim on the Surplus Lines Trust Fund. Furthermore and in any event, the fact that some Direct Scheme Creditors may have claims against the Surplus Line Trust Fund is not relevant for the purposes of class formulation.

**9 Next steps**

- 9.1 If permission to convene the Direct Scheme Meeting is granted by the Court at the First Court Hearing, known Direct Scheme Creditors, known brokers and other interested parties identified by the Company and for which the Company has contact details will be sent a copy of the Direct Scheme document containing, amongst other things:

- 9.1.1 the Explanatory Statement;
- 9.1.2 the terms of the Direct Scheme; and
- 9.1.3 a notice confirming the date, time and place of the Direct Scheme Meeting.

The document will also include a voting and proxy form (including guidance notes).

- 9.2 Documents relating to the Direct Scheme will also be available for Direct Scheme Creditors to download from the Website.

- 9.3 **If you are content to receive future correspondence in relation to the Direct Scheme by email, please send details of your preferred contact email address(es) to the Administrators on the contact details below. Please also let us know if the contact details used for you are incorrect, or if correspondence regarding the Direct Scheme should be addressed to someone else in your organisation.**

## 10 Questions and contact

- 10.1 If you have any concerns regarding the proposed constitution of a single class of Direct Scheme Creditors for voting purposes, or otherwise in relation to the Direct Scheme, please contact the Administrators on the contact details below as soon as possible and, in any event, at least seven days prior to the date of the First Court Hearing. You also have the right to attend the First Court Hearing for the purpose of making representations and, if requested, we will be pleased to provide you with further information on arrangements for this. Please note that if the Direct Scheme is approved at the Direct Scheme Meeting, it will remain possible for Direct Scheme Creditors to raise objections regarding the constitution of classes at the Court hearing to sanction the Direct Scheme. However, in this event, the Court would likely require the objecting Direct Scheme Creditors to demonstrate why they had not raised their objections at an earlier stage.

- 10.2 If you have any questions in relation to this letter or the Direct Scheme, please contact the Administrators at:

Ernst & Young LLP

1 More London Place, London SE1 2AF

Contact: Prava Kuhendraruban

Telephone: +44 20 7951 2000

Email: [CXReClaims@uk.ey.com](mailto:CXReClaims@uk.ey.com)

- 10.3 This Practice Statement Letter is being emailed or posted to all known Direct Scheme Creditors for which the Company has contact details to inform them of the Administrators' proposal to seek the court's approval of a single class meeting for voting on the Direct Scheme. Notice of this Practice Statement Letter will also be advertised in appropriate publications, and a copy of the Practice Statement Letter is available to be downloaded from the Website.



10.4 Any further notifications required or considered desirable for the purposes of the Direct Scheme, its timetable or other matters arising will be posted on the Website.

Yours faithfully



**Richard Barker**

**Joint Administrator acting as agent for and on behalf of CX Reinsurance Company Limited (in administration) without personal liability.**

Richard Barker and Simon Edel are licensed in the United Kingdom to act as insolvency practitioners by The Insolvency Practitioners Association. As Insolvency Practitioners, they are bound by the Insolvency Code of Ethics in carrying out all professional work relating to the appointment.

The affairs, business and property of the Company are being managed by the Joint Administrators, Richard Barker and Simon Edel, who act as agents of the Company only and without personal liability.

The Joint Administrators may act as data controllers of personal data as defined by the UK General Data Protection Regulation (as incorporated in the Data Protection Act 2018), depending upon the specific processing activities undertaken. Ernst & Young LLP and/or the Company may act as a data processor on the instructions of the Joint Administrators. Personal data will be kept secure and processed only for matters relating to the Joint Administrator's appointment. The Office Holder Data Privacy Notice can be found at [www.ey.com/uk/officeholderprivacy](http://www.ey.com/uk/officeholderprivacy).