Insurance Act 1973

(Part III Division 3A)

SCHEME FOR THE TRANSFER OF PART OF THE INSURANCE BUSINESS OF

THE AUSTRALIAN BRANCH OF GREAT LAKES INSURANCE SE TRADING AS GREAT LAKES AUSTRALIA TO GORDIAN RUNOFF LTD

# Introduction and overview

## This Scheme has been prepared under Division 3A of Part III of Insurance Act for the purpose of applying for confirmation from the Court for the transfer of part of the general insurance business of the Australian branch of Great Lakes Insurance SE (ABN 18 964 580 576), trading as Great Lakes Australia, (**GLA**) as Transferor to Gordian RunOff Ltd (ABN 11 052 179 647) (**Gordian**) as Transferee.

## GLA carries on business in Australia through a branch. GLA is authorised under section 12 of the Insurance Act to carry on insurance business in Australia.

## Gordian is authorised under section 12 of the Insurance Act to carry on run-off insurance business in Australia.

## GLA and Gordian have agreed to request the Court to transfer the Transferring Assets and the Transferring Liabilities from GLA to Gordian, in accordance with the terms and conditions of the Framework and Transfer Deed.

## The transfer of the Transferring Assets from GLA to Gordian, and the assumption of Transferring Liabilities by Gordian, contemplated by the Framework and Transfer Deed will be effected under and in accordance with the terms of this Scheme.

## The Scheme is supported by and based upon the Actuarial Report.

# Definitions and interpretation

## **Definitions**

In this Scheme, unless the context requires otherwise:

**Actuarial Report** means the report dated 9 March 2020 prepared by Geoff Atkins of Finity Consulting Pty Limited ABN 89 111 470 270 on which the Scheme is based.

**Adjusted Price** has the meaning given in the Framework and Transfer Deed.

**APRA** means the Australian Prudential Regulation Authority.

**ASIC** means the Australian Securities and Investments Commission.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court** means the Federal Court of Australia.

**Court Confirmation** means the Court having made an order confirming the Scheme in accordance with section 17F(1) of the Insurance Act, either without modifications or with modifications acceptable to GLA and Gordian (each acting reasonably).

**Framework and Transfer Deed** means the Framework and Transfer deed dated 10 September 2019 between GLA, HSB and Gordian.

**GLA** has the meaning given in paragraph 1.1.

**GLA Business** means:

### all insurance business underwritten on behalf of GLA by Hollard Commercial Insurance Pty Ltd;

### all insurance business previously underwritten by Calliden Insurance Limited and vested in GLA with effect from 1 April 2017 by way of a transfer scheme under Division 3A of the *Insurance Act 1973* (Cth);

### all insurance business underwritten on behalf of GLA by Mecon Insurance Pty Ltd ACN 059 310 904 (formerly named Mecon Winsure Insurance Group Pty Ltd);

### all insurance business underwritten on behalf of GLA by PEN Underwriting Pty Ltd;

### all insurance business underwritten on behalf of GLA by Solution Underwriting Agency Pty Ltd;

### all insurance business underwritten on behalf of GLA by ATC Insurance Solutions Pty Ltd;

### all insurance business underwritten on behalf of GLA by Sports Underwriting Australia Pty Ltd;

### all insurance business underwritten on behalf of GLA by Residential Builders Underwriting Agency Pty Ltd;

### all insurance business underwritten on behalf of GLA by Celestial Underwriting Agency Pty Ltd; and

### all insurance business underwritten on behalf of GLA by SURA Construction Pty Ltd.

**Gordian** has the meaning given in paragraph 1.1.

**HSB** means the Australian branch of HSB Engineering Insurance Ltd (ABN 24 076 158 962) of New London House, 6 London Street, London EC3R 7LP.

**Innovation Group Contracts** has the meaning given in the Framework and Transfer Deed.

**Insurance Act** means the *Insurance Act 1973* (Cth).

**MGA Agreements** has the meaning given in the Framework and Transfer Deed.

**Scheme** means the scheme for the transfer of the Transferring Assets and the Transferring Liabilities from GLA to Gordian, by way of a statutory vesting in accordance with Division 3A of Part III of the Insurance Act, with any modifications as the Court thinks appropriate to confirm the Scheme and as agreed by GLA and Gordian, each acting reasonably.

**Transferee** means Gordian.

**Transferor** meansGLA.

**Transferor Group** has the meaning given in the Framework and Transfer Deed.

**Transferor Intra-Group Reinsurance** means any policy of reinsurance under which the Transferor is reinsured by a person who is a Transferor Group Member.

 **Third Party Claim** has the meaning given in the Framework and Transfer Deed.

 **Third Party Reinsurance** means any policy of reinsurance under which the Transferor is reinsured by a person who is not a Transferor Group Member.

**Transfer Time** means the time and date that the Court specifies as the commencement time and date of the Scheme.

**Transferring Assets** means:

### the rights and benefits under the Transferring Policies;

### the rights and benefits under the Transferring Contracts; and

### the Transferring Records.

**Transferring Contracts** means:

### all MGA Agreements; and

### the Innovation Group Contracts.

**Transferring Liabilities** means:

### all of the claims, losses, liabilities and Costs of the Transferor of any kind under the Transferring Policies; and

### all of the claims, losses, liabilities and Costs of the Transferor of any kind under the Transferring Contracts.

**Transferring Policies** means all contracts of insurance issued, entered into or assumed by GLA in the conduct of the GLA Business prior to the Transfer Time, including those contracts of insurance set out in the list of policies provided with the Framework and Transfer Deed, and any endorsements, extensions or amendments thereto, including all Third Party Reinsurance covering the GLA Business, but excluding any reinsurance cover provided by any Transferor Intra-Group Reinsurance.

**Transferring Records** means the following documents in the possession or control of GLA (including documents within the MGAs' possession that are within the control of GLA) at the Transfer Time:

### the archived hard copy files contained on disks in relation to the Transferring Policies or MGA Agreements;

### the working paper files relating to open claims arising under the Transferring Policies or MGA Agreements; and

### the electronic records relating to the Transferring Assets and Transferring Liabilities.

## **Interpretation**

### Reference to:

#### one gender includes the others;

#### the singular includes the plural and the plural includes the singular;

#### a person includes a body corporate;

#### a party includes the party’s executors, administrators, successors and permitted assigns;

#### a thing includes the whole and each part of it separately;

#### a statute, regulation, code or other law or a provision of any of them includes:

##### any amendment or replacement of it; and

##### another regulation or other statutory instrument made under it, or made under it as amended or replaced;

#### dollars means Australian dollars unless otherwise stated;

#### costs includes charges, expenses and legal costs;

#### any contract or other instrument includes any variation or replacement of it;

#### a group of persons is a reference to any 2 or more of them taken together and to each of them individually;

#### a body which has been reconstituted or merged must be taken to be the body as reconstituted or merged;

#### a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be that other body; and

#### a day or a month means a calendar day or calendar month.

### “Including” and similar expressions are not words of limitation.

### Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

### Headings and any table of contents or index are for convenience only and do not form part of this Scheme or affect its interpretation.

### Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

# Transfer of GLA Business

## GLA’s and Gordian’s obligations under the Framework and Transfer Deed are conditional on:

### the Treasurer (or APRA as the Treasurer’s delegate) providing all necessary approvals, consents or non-objections required under the *Insurance Acquisitions and Takeovers Act 1991* (Cth) on terms satisfactory to Gordian, acting reasonably; and

### the Court providing the Court Confirmation.

## In accordance with the terms of the Court Confirmation, the Transferring Assets and the Transferring Liabilities will transfer from GLA to Gordian by way of a statutory vesting insofar as they are comprised within the GLA Business with effect on and from the Transfer Time.

# Consideration for the transfer of GLA Business

### In consideration for the transfer of the Transferring Assets and the Transferring Liabilities from GLA to Gordian pursuant to the Scheme, GLA will pay to Gordian that proportion of the Adjusted Price as relates to the transfer of the GLA Business at the Transfer Time in accordance with the terms of the Framework and Transfer Deed.

# Proceedings

## For the avoidance of doubt, if any proceedings are pending or any proceedings are brought on or after the Transfer Time by or against GLA in any court or tribunal in respect of the Transferring Policies or the Transferring Liabilities, such proceeding will be continued by or against Gordian and any judgment or determination for or against GLA in any such proceedings will have effect as between GLA and Gordian as if such judgment or determination had been made for or against Gordian.

# Transfer Time

## The transfer of the GLA Business from GLA to Gordian pursuant to Scheme and the transfer of the Transferring Assets and Transferring Liabilities from GLA to Gordian pursuant to this Scheme take effect on and from the Transfer Time.

# Implementation

## GLA and Gordian will each do all such things and execute all such deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Framework and Transfer Deed, this Scheme, the Actuarial Report and the transactions contemplated by them.

# Costs of the Scheme

## Any stamp duty and other costs and expenses incurred in connection with the Scheme will not be paid by or charged to policyholders, but will be met by Gordian or GLA in accordance with the Framework and Transfer Deed.

# Consequences of the transfer of the GLA Business

## With effect on and from the Transfer Time:

### the Transferee will be substituted for the Transferor in all Transferring Contracts as if the Transferee was, and at times had been, a party in place of the Transferor under the Transferring Contracts.

### the rights, benefits and liabilities of policyholders under the Transferring Policies, and of all persons claiming through or under them will be the same in all respects as they would have been if the Transferring Policies had been issued or entered into by Gordian instead of GLA.

### all proposals, applications, declarations and representations made to GLA on which any Transferring Policy is based shall as and from the Transfer Time be taken to have been made to Gordian instead of to GLA.

### any policyholder under a Transferring Policy or other person having any claim on or obligation to GLA under or in respect of a Transferring Policy will have the same claim on or obligation to Gordian in substitution for that person's claim on or obligation to GLA irrespective of when such claim or obligation arose.

### Gordian will be entitled to enforce all rights and remedies against any policyholder or third party arising under or by virtue of any Transferring Policy (including but not limited to any claims by way of subrogation, contribution, outstanding premium and any other recoveries related directly or indirectly to any Transferring Policies) and receive and appropriate all premiums and other monies which, but for the Scheme, would have been enforceable or recoverable by GLA under or in respect of the Transferring Policies.

### all directions, authorities, mandates or instructions given to GLA:

#### to deduct premiums or fees payable in respect of the Transferring Policies (including by debiting a bank account/credit card, through automatic payroll deductions or through electronic bank transfer); or

#### to use, disclose or obtain information in the course of carrying on the Business (including personal information within the meaning of the *Privacy Act 1988* (Cth)),

#### are deemed to be given to Gordian instead of GLA.

## Policyholders are not required to take any action before or as a result of the Scheme and the terms of the Transferring Policies will not be varied as a consequence of the Scheme, save for the substitution of Gordian as the insurer.

## Upon confirmation of the Scheme by the Court, the Scheme becomes binding on all parties.