

Insurance Act 1973 (Part III Division 3A)

SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS OF THE AUSTRALIAN BRANCH OF HSB ENGINEERING INSURANCE LIMITED TO GORDIAN RUNOFF LTD

1 Introduction and overview

- 1.1 This Scheme has been prepared under Division 3A of Part III of the Insurance Act for the purpose of applying for confirmation from the Court for the transfer of the general insurance business of the Australian branch of HSB Engineering Insurance Limited (ABN 24 076 158 962) (**HSB**) as Transferor to Gordian RunOff Ltd (ABN 11 052 179 647) (**Gordian**) as Transferee.
- 1.2 HSB carries on business in Australia through a branch. HSB is authorised under section 12 of the Insurance Act to carry on insurance business in Australia.
- 1.3 Gordian is authorised under section 12 of the Insurance Act to carry on run-off insurance business in Australia.
- 1.4 HSB and Gordian have agreed to request the Court to transfer the Transferring Assets and the Transferring Liabilities from HSB to Gordian, in accordance with the terms and conditions of the Framework and Transfer Deed.
- 1.5 The transfer of the Transferring Assets from HSB 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.
- 1.6 The Scheme is supported by and based upon the Actuarial Report.

2 Definitions and interpretation

2.1 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 HSB 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 means the Australian branch of Great Lakes Insurance SE (ABN 18 964 580 576), trading as Great Lakes Australia.

HSB has the meaning given in paragraph 1.1.

HSB Business means all insurance business (as that term is defined in the Insurance Act) underwritten by or on behalf of HSB (including by an agent) comprising liabilities undertaken by HSB under insurance policies having been treated for the purpose of APRA prudential requirements as liabilities of its Australian branch or which are otherwise deemed to constitute liabilities of its Australian branch under the Insurance Act.

Gordian has the meaning given in paragraph 1.1.

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 HSB 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 HSB and Gordian, each acting reasonably.

Transferee means Gordian.

Transferor means HSB.

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

Transferor Intra-Group Reinsurance means any policy of reinsurance under which a 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.

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

Transferring Assets means:

- (1) the rights and benefits under the Transferring Policies;
- (2) the rights and benefits under the Transferring Contracts; and
- (3) the Transferring Records.

Transferring Contracts means:

- (1) all MGA Agreements;
- (2) the Claims Management Services Contract between HSB and Crawford & Company (Australia) Pty Ltd dated 6 June 2014 as amended by agreement between the parties on 17 August 2018; and

- (3) the proportional facultative reinsurance intra-group reinsurance contract written by Munich Re UK Services Limited dated 8 April 2015 in relation to 50% of HSB's 10% signed line exposure as detailed in the Aon Benfield Bulking Lineslip MRC Reference B087514Y135030, Endorsement 3 and stamped 10 February 2015.

Transferring Liabilities means:

- (1) all of the claims, losses, liabilities and Costs of the Transferors of any kind under the Transferring Policies; and
- (2) all of the claims, losses, liabilities and Costs of the Transferors of any kind under the Transferring Contracts.

Transferring Policies means all contracts of insurance issued, entered into or assumed by HSB in the conduct of the HSB 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 but excluding any reinsurance cover provided by any Transferor Intra-Group Reinsurance.

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

- (1) the archived hard copy files contained on disks in relation to the Transferring Policies or MGA Agreements;
- (2) the working paper files relating to open claims arising under the Transferring Policies or MGA Agreements; and
- (3) the electronic records of HSB relating to the Transferring Assets and Transferring Liabilities.

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced;
 - (g) dollars means Australian dollars unless otherwise stated;
 - (h) costs includes charges, expenses and legal costs;

- (i) any contract or other instrument includes any variation or replacement of it;
 - (j) a group of persons is a reference to any 2 or more of them taken together and to each of them individually;
 - (k) a body which has been reconstituted or merged must be taken to be the body as reconstituted or merged;
 - (l) 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
 - (m) a day or a month means a calendar day or calendar month.
- (2) "Including" and similar expressions are not words of limitation.
 - (3) 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.
 - (4) Headings and any table of contents or index are for convenience only and do not form part of this Scheme or affect its interpretation.
 - (5) Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

3 Transfer of HSB Business

- 3.1 HSB's and Gordian's obligations under the Framework and Transfer Deed are conditional on:
- (1) 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
 - (2) the Court providing the Court Confirmation.
- 3.2 In accordance with the terms of the Court Confirmation the Transferring Assets and the Transferring Liabilities will transfer from HSB to Gordian by way of statutory vesting insofar as they are comprised within the HSB Business with effect on and from the Transfer Time.

4 Consideration for the transfer of HSB Business

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

5 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 HSB 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 HSB in any such proceedings will have effect as between HSB and Gordian as if such judgment or determination had been made for or against Gordian.

6 Transfer Time

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

7 Implementation

- 7.1 HSB 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.

8 Costs of the Scheme

- 8.1 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 HSB in accordance with the Framework and Transfer Deed.

9 Consequences of the transfer of the HSB Business

- 9.1 With effect on and from the Transfer Time:
- (1) 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.
 - (2) 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 HSB.
 - (3) all proposals, applications, declarations and representations made to HSB 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 HSB.
 - (4) any policyholder under a Transferring Policy or other person having any claim on or obligation to HSB 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 HSB irrespective of when such claim or obligation arose.
 - (5) 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 HSB under or in respect of the Transferring Policies.
 - (6) all directions, authorities, mandates or instructions given to HSB:
 - (a) 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

- (b) 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 HSB.

- 9.2 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.
- 9.3 Upon confirmation of the Scheme by the Court, the Scheme becomes binding on all parties.