

## Scheme Summary

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**This document provides a summary of a scheme under Division 3A of Part III of the *Insurance Act 1973 (Cth)* for the transfer of the insurance business of the Australian branch of HSB Engineering Insurance Limited to Gordian RunOff Limited**

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This information is provided to you on the basis that you are a policyholder of the Australian branch of HSB Engineering Insurance Limited ABN 24 076 158 962 (referred to in this document as **HSB**). HSB is applying to the Federal Court of Australia in respect to the proposed transfer of its Australian branch insurance business, including your policy, to Gordian RunOff Limited ABN 11 052 179 647 (referred to in this document as **Gordian**).

This document provides information about the scheme, how your policy with HSB will be affected and provides details about your right to appear before the Federal Court in respect to the scheme.

This summary has been approved by the Australian Prudential Regulatory Authority (**APRA**).

### Summary and background

- 1 This is a summary of a scheme under Division 3A of Part III of the *Insurance Act 1973 (Cth)* (the **Insurance Act**) providing for the transfer of (amongst other things) the HSB Business, including the insurance contracts (including your policy) (the **Transferring Policies**), of HSB to Gordian (the **Scheme**).
- 2 HSB is a foreign company. HSB carries on its insurance business in Australia through its Australian branch. HSB is authorised under section 12 of the Insurance Act to carry on insurance business in Australia.
- 3 Gordian is authorised under section 12 of the Insurance Act to carry on run-off insurance business in Australia.
- 4 Upon confirmation of the Scheme by the Federal Court of Australia (**Court**), and subject to any modifications ordered by the Court, the Scheme is proposed to effect the transfer of the HSB Business, including the Transferring Policies, to Gordian on the terms of the Scheme. A summary of the material terms of the Scheme is included in this document.
- 5 Policyholders have a right to object to the Scheme. Once the Court confirms the Scheme, the Scheme will become binding on all persons, including Gordian, HSB and affected policyholders.
- 6 An actuarial report dated 9 March 2020 has been prepared by Geoff Atkins of Finity Consulting Pty Limited ABN 83 111 470 270 in support of the Scheme (the **Actuarial Report**). The key findings of the Actuarial Report are summarised in this document.
- 7 Gordian and HSB have entered into a Framework and Transfer Deed to give effect to the transfer of the HSB Business, including the Transferring Policies, from HSB to Gordian (the **Framework and Transfer Deed**), subject to confirmation of the Scheme by the Court. Material terms of the Framework and Transfer Deed are summarised in this document.

## The parties involved in the Scheme

- 8 Gordian is a company incorporated in Australia. It is a subsidiary of Enstar Group Ltd (a company registered in Bermuda). Gordian is authorised to carry on run-off insurance business in Australia under the Insurance Act and is regulated by APRA. It can be contacted at:

Mailing address: GPO Box 3931, Sydney NSW 2001 (Attention: Sandra O'Sullivan)  
Tel: +61 2 8062 4200  
Fax: +61 2 8062 4299  
Email: [complianceaustralia@enstargroup.com](mailto:complianceaustralia@enstargroup.com)

- 9 HSB is a company incorporated in England with company number 02396114. It is a subsidiary of Münchener Rückversicherungs-Gesellschaft (commonly referred to as **Munich Re**). HSB is authorised to carry on insurance business in Australia under the Insurance Act through its Australian branch. HSB is regulated by APRA. It can be contacted at:

Mailing address: HSB Engineering Insurance Limited (Australian Branch)  
c/- Great Lakes Australia, PO Box H35, Australia Square,  
Sydney NSW 1215 Australia (Attention: Shalaj Aggarwal)  
Tel: 1300 307066 (toll-free Australia)  
Email: [ausportfoliotransfer@hsbeil.com](mailto:ausportfoliotransfer@hsbeil.com)

- 10 If you would like to know more about the Scheme or any information contained in this summary, or if you would like to obtain a copy of the Scheme Documents free of charge, please contact HSB. HSB's contact details are listed above.

## Details of the Scheme

- 11 The Scheme will result in a transfer of certain assets and liabilities of HSB to Gordian, including the HSB Business comprising the Transferring Policies and all liabilities arising under them. Certain other business assets and liabilities of HSB will also be transferred to Gordian pursuant to the Scheme, including certain contracts with third parties engaged by HSB in underwriting and claims management, an internal reinsurance contract covering the HSB Business and business and claims records relevant to the Transferring Policies.
- 12 Subject to the Scheme being confirmed by the Court, the HSB Business will be transferred to Gordian in accordance with the terms of the Scheme on or around 1 July 2020 or such other date that the Court orders.
- 13 Any stamp duty and other costs and expenses incurred in connection with the Scheme will not be charged to policyholders.
- 14 From the time of transfer:
- (1) Gordian will be substituted for HSB in all Transferring Policies (and Transferring Contracts as defined in the Framework and Transfer Deed) as if the Gordian was, and at times had been, a party in place of HSB under the Transferring Policies (and Transferring Contracts as defined in the Framework and Transfer Deed).
  - (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 completion of the transfer 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.

- 15 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.
- 16 Upon confirmation of the Scheme by the Court, the Scheme becomes binding on all parties.

### **Actuarial report**

- 17 In support of the Scheme, Gordian and HSB have engaged Geoff Atkins of Finity Consulting Pty Limited (**Finity**) to prepare the Actuarial Report.
- 18 Mr Atkins of Finity has concluded that the interests of policyholders of HSB will not be adversely affected in a material way as a consequence of the Scheme, for the following reasons:

#### **Insurance policies**

- (1) There will be no changes to the terms and conditions of the insurance policies issued by HSB as a result of the Scheme, apart from Gordian being substituted as the insurer.

#### **Claims and claims management**

- (2) Gordian's intention is to retain claims management practices after the Schemes. Gordian intends to, amongst other things:

- (a) retain the managing agents whose business is transferring and who have claims management authority;
  - (b) retain arrangements with the third party claims service provider for claims relating to certain transferring run-off portfolios; and
  - (c) increase in-house head count for claims staff to the extent required (head count required is dependent on the maturity of Gordian's other run off portfolios).
- (3) Gordian has arranged access to a claims management system from the transfer date which will have all details of open claims.
- (4) Gordian has been managing claims for diverse run-off businesses in Australia for more than twenty years. Gordian is authorised under section 12 of the Insurance Act to carry on run-off insurance business in Australia.

### Financial Security

- (5) Gordian and Cavello Bay Reinsurance Limited (a related party of Gordian) (**Cavello Bay**) will enter into a quota share reinsurance agreement which will reinsure 100% of the claims risk in relation to the business transferring from HSB under the Scheme (net of any external reinsurance that continues to apply) from the effective date of the Scheme.
- (6) Cavello Bay had total assets of US\$4.1 billion, total liabilities of US\$2.4 billion, giving net assets of US\$1.6 billion as at 31 December 2018.
- (7) In connection with the reinsurance agreements, assets will be held in an Australian Trust Fund (**ATF**) held by a local trustee (being a major Australian bank) and available only to meet claims of transferring policyholders. This arrangement with the ATF is in accordance with APRA's requirements. There is no likelihood of this financial security being diminished by other claims against the receiving insurer (being Gordian).
- (8) Finity has assessed the first line of financial security as sound.
- (9) However, should the first line fail, Finity has assessed the other available sources of financial security as follows:

Source	Analysis
Trust Fund for Transferring Policies	Initially 105% of estimated liabilities. If liabilities increase, top-up from Cavello Bay to 105%. Funds available only to meet claims of transferring policyholders.
Cavello Bay	Should Cavello Bay be unwilling or unable to top-up the Trust Fund, Gordian has a legally enforceable right against Cavello Bay.
Gordian	Should the reinsurance fail entirely, the assets of Gordian are available to meet claims (noting these assets are ring-fenced in Australia).

	These assets, including available capital of about \$75m, are available to support the business currently insured by Gordian, including the CTP business (if the CTP Trust Fund for that business also becomes exhausted).
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- (10) In addition to the above legal avenues of financial security, it is possible that Enstar Group may support Cavello Bay and/ or Gordian, although there is no contractual agreements in place. The reputation of a global listed insurer will be substantially damaged if it allows a significant subsidiary to become insolvent.
- (11) Finity's assessment is that the chance of all four sources of financial security (as set out above) failing is very remote and that there is no material detriment to the financial security of transferring policyholders.

**Effect of the Scheme on policyholders**

- 19 The Scheme will not result in any change to the terms of your policy, or affect any claim that you have or may have under the Transferring Policies.
- 20 By way of summary, on confirmation of the Scheme by the Court:
  - (1) the rights, benefits and liabilities of policyholders under the Transferring Policies will be assumed by Gordian in the place of HSB, and will remain 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. In effect, the Scheme will result in the replacement of the insurer, but not the terms of any Transferring Policy.
  - (2) HSB will be released and discharged from all liabilities and obligations under the Transferring Policies and all premiums and other amounts payable to or recoverable by HSB under the Transferring Policies will be payable to and recoverable by Gordian.
  - (3) apart from Gordian becoming the insurer in place of HSB under the Transferring Policies, the Transferring Policies will be transferred to Gordian with the same terms and conditions as applied prior to the Scheme taking effect. Any policyholder under the Transferring Policies who has a claim on or obligation to HSB pursuant to the Transferring Policies will have the same claim on or obligation to Gordian in substitution for his or her claim on or obligation to HSB.
- 21 Policyholders are not required to take any action before or as a result of the Scheme however, policyholders have a right to object to the Scheme and may attend Court and be heard on the application for confirmation of the Scheme. 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.
- 22 Upon confirmation of the Scheme by the Federal Court of Australia, the Scheme becomes binding on all parties.
- 23 Following completion of the transfer, Gordian will be required under the Insurance Act to continue to comply with APRA prudential standards and all other laws applicable to it.

## Policyholders' right to appear

24 An application for confirmation of the Scheme will be made to the Court in Sydney on 26 June 2020 at 10:15am, or such later date as the Court appoints. Any policyholder affected by the Scheme has the right to attend the Court hearing and be heard by the Court on the application for confirmation of the Scheme.

25 If you wish to appear at the hearing we ask that you advise the lawyer for HSB, Rehana Box of Ashurst (Level 11, 5 Martin Place, Sydney, NSW, 2000) by phone on (02) 9258 6407 or by email to [rehana.box@ashurst.com](mailto:rehana.box@ashurst.com) before close of business on 23 June 2020. Your options for attending are:

(1) If it is lawful for you to do so given current Covid-19 restrictions in NSW, you may attend in person at the Federal Court, Court 1, Queens' Square, 184 Phillip Street, Sydney 2000.

(2) Alternatively, you may contact the Associate to the Chief Justice of the Federal Court on [Associate.AllsopCJ@fedcourt.gov.au](mailto:Associate.AllsopCJ@fedcourt.gov.au).

The Court will provide you with the details of how to appear via Microsoft Teams. If you would like to appear by Microsoft Teams but do not have access to Microsoft Teams, Ashurst can arrange access for you at its Sydney office by prior arrangement.

(3) Alternatively, to dial in and hear these proceedings, please contact the Associate to the Chief Justice of the Federal Court on [Associate.AllsopCJ@fedcourt.gov.au](mailto:Associate.AllsopCJ@fedcourt.gov.au) prior to the hearing, and you will be provided with dial-in details.

As you will not be able to be seen using this method of attendance, you will not be able to appear before the Court and make submissions. Should you wish to appear, you will need to either attend using Microsoft Teams or attend the Court in person.

26 Notification to the solicitor is preferred but not mandatory if you wish to attend court personally or you make arrangements with the court to attend via video or audio conferencing. However, if you wish to appear by videolink and do not have access to Microsoft teams, you will need to contact Ashurst to make arrangements.

27 Any policyholder affected by the Scheme is not required to take any action if they have no objection to the Scheme.

28 Other than the right to appear, any person who holds a policy affected by the Scheme also has the right to obtain a copy of the Scheme free of charge on request.

## Further information and public inspection

29 Copies of this summary of the Scheme, the Scheme, the notice of intention and the Actuarial Report (**Scheme Documents**) are available free of charge at [www.munichre.com/hsbeil](http://www.munichre.com/hsbeil).

30 Affected Policyholders may obtain and review the Scheme Documents in any or all of the following ways, free of charge:

(1) View and/or download the documents from HSB's website:

[www.munichre.com/hsbeil](http://www.munichre.com/hsbeil)

The documents will be available on HSB's website from the date of this notice until a decision on the Scheme is made by the Court, or the application is withdrawn.

- (2) You can also request a physical copy of the Scheme Documents by calling HSB on 1300 307 066 during the hours of 9:00am to 7:00pm AEST each day (other than weekends and public holidays in the relevant state or territory) from 28 May until 18 June 2020;
- (3) You can also request a physical copy of the Scheme Documents by emailing us at:

[ausportfoliotransfer@hsbeil.com](mailto:ausportfoliotransfer@hsbeil.com)

- 31 If an Affected Policyholder has any questions in relation to the Scheme, including the Court process, your right to appear, the Scheme Documents, or any of the information contained in this notice, please contact HSB at any time:

**By email at:** [ausportfoliotransfer@hsbeil.com](mailto:ausportfoliotransfer@hsbeil.com)

**By post at:** HSB Engineering Insurance Limited (Australian branch) Attention: Shalaj Aggarwal c/ Great Lakes Australia, PO Box H35, Australia Square, New South Wales 1215

**By telephoning:** : the HSB Run off portfolio transfer division at Munich Re Australia on 1300 307 066 (toll-free Australia)

HSB will endeavour to respond to your query the following business day after it is received by us.

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THIS SUMMARY HAS BEEN APPROVED, AS A SUMMARY OF THE SCHEME, BY THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY.