

INSURANCE ACT 1973

(PART III DIVISION 3A)

SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS OF AUSTRALIAN ALLIANCE INSURANCE COMPANY LIMITED TO AAI LIMITED

Background

- A. Australian Alliance Insurance Company Limited (ACN 006 471 709) (**Aust Alliance**) and AAI Limited (ACN 005 297 807) (**AAI**) are authorised under the Insurance Act to carry on insurance business in Australia.
- B. This Scheme has been prepared under Part III Division 3A of the Insurance Act to give effect to the terms of an agreement by which Aust Alliance has agreed to sell and transfer, and AAI has agreed to purchase and accept the transfer of, all of the Business carried on by Aust Alliance. In particular, Aust Alliance has agreed to transfer and AAI has agreed to accept and assume all of the Insurance Contracts, the Insurance Liabilities, the Business Assets and the Business Liabilities.
- C. An Actuarial Report has been prepared in connection with the Scheme.

1. Definitions and Interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

Actuarial Report means the report dated 25 March 2013 prepared by Tim Andrews, fellow of the Institute of Actuaries of Australia, in connection with the Scheme.

APRA means the Australian Prudential Regulation Authority.

Business means the insurance business carried on by Aust Alliance in Australia within the meaning of the Insurance Act, including the Insurance Contracts, the Insurance Liabilities, the Business Assets and the Business Liabilities, but not including the Excluded Business Assets and the Excluded Business Liabilities.

Business Assets means the assets of Aust Alliance used for the purposes of conducting the Business including the Reinsurance Contracts, contracts relating to the Business (including with distributors, authorised representatives, intermediaries, information technology or software providers, suppliers or otherwise), certain business names and intellectual property, relevant licences, business records, goodwill, plant and equipment and receivables, as described in the Transfer Agreement but excluding the Insurance Contracts and the Excluded Business Assets.

Business Liabilities means Claims, losses, liabilities, costs or expenses of any kind of the Business, which have arisen and remain unsatisfied or which may arise in the future or which are prospective or contingent and whether or not the amount of the liability is ascertained or ascertainable other than the Insurance Liabilities and the Excluded Business Liabilities.

Claim means, in relation to any person, a claim, action, proceeding, judgment, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, future or contingent, whether ascertained or unascertained and whether arising before or after the Effective Date.

Effective Date means 12.01am on 1 July 2013 or such other date that the Federal Court of Australia may specify as the commencement date of the Scheme should the Scheme be confirmed by the Court.

Excluded Business Assets means:

- (a) assets required to be retained by Aust Alliance in order to meet its minimum capital requirements;
- (b) business records which Aust Alliance is required by law, or by a binding obligation to a third party, to retain;
- (c) certain investments in controlled entities and intercompany accounts, as described in the Transfer Agreement or otherwise identified by Aust Alliance; and
- (d) other assets that Aust Alliance identifies as being unrelated to its general insurance business, or that should not be transferred to AAI.

Excluded Business Liabilities means Claims, losses, liabilities, costs or expenses of any kind that are identified by Aust Alliance as relating to any Excluded Business Asset or being otherwise unrelated to Aust Alliance's general insurance business, including but not limited to certain intercompany loans, as described in the Transfer Agreement or otherwise identified by Aust Alliance.

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

Insurance Contracts means all right, title and benefit including any entitlement to receive or recover any money or property (insurance receivable) under or in relation to:

- (a) all contracts of insurance or reinsurance issued, entered into or assumed by Aust Alliance as insurer or reinsurer prior to the Effective Date;
- (b) any agreement to insure or reinsure issued, entered into or assumed by Aust Alliance prior to the Effective Date where the insurance or reinsurance is to commence or does commence on or after the Effective Date; and
- (c) any Post-Effective Date Insurance Contract,

in the conduct of its Business.

Insurance Liabilities means claims, losses, liabilities, costs or expenses of any kind under the Insurance Contracts, which have arisen and remain unsatisfied or which may arise in the future or which are prospective or contingent and whether or not the amount of the

liability is ascertained or ascertainable and includes any insurance liability described in APRA Prudential Standard *GPS 320 Actuarial and Related Matters*.

Post-Effective Date Insurance Contract means any contract of insurance or reinsurance inadvertently or mistakenly issued or entered into by or on behalf of Aust Alliance as insurer or reinsurer in the 3 months after the Effective Date.

Reinsurance Contract means any reinsurance or retrocession entered into or assumed by Aust Alliance as reinsured in respect of any Insurance Contract to be transferred under this Scheme, except any contract where AAI is the reinsurer.

Transfer Agreement means the Transfer Agreement dated 22 March 2013 between Suncorp Metway Insurance Limited, GIO General Limited, Aust Alliance and Australian Associated Motor Insurers Limited (together the **Transferors**) and AAI for the sale and transfer of the Transferors' insurance businesses to AAI.

Transfer Value means an amount equal to the net book value of all assets and liabilities directly related to Aust Alliance's general insurance business for the period ending 30 June 2013 as contained in the balance sheet for Aust Alliance on that date and in accordance with the Transfer Agreement.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply in this Scheme unless the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (d) A reference to a clause or schedule is a reference to a clause of or a schedule to, this Scheme.
- (e) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Scheme or that other agreement or document.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

2. Transfer of Business

On the Effective Date, Aust Alliance agrees to sell and transfer and AAI agrees to purchase and accept the transfer of all of the Business and, in particular:

- (a) the Insurance Contracts and the Insurance Liabilities; and
- (b) the Business Assets and the Business Liabilities,

from Aust Alliance in accordance with the terms of the Transfer Agreement, including all right, title, interest, benefit and powers that have arisen, or may in the future arise under any of the above.

3. Consideration for the transfer of the Business

In consideration of the transfer of the Business to AAI, AAI agrees to:

- (a) assume the Business Liabilities and the Insurance Liabilities; and
- (b) pay to Aust Alliance an amount equal to the Transfer Value.

4. Transfer of Liability

- (a) On and from the Effective Date Aust Alliance transfers to AAI and AAI accepts the transfer of the Insurance Contracts and the Insurance Liabilities, and AAI assumes and takes over and must indemnify and keep Aust Alliance indemnified from and against all Claims under or in connection with the Insurance Contracts or Insurance Liabilities.
- (b) In the case of any Post-Effective Date Insurance Contracts, the transfer of those contracts to and the assumption of liabilities under those contracts by AAI will take effect on and from the date on which the Post-Effective Date Insurance Contract is issued or entered into by Aust Alliance.

5. Transfer of Business Assets

On and from the Effective Date, AAI is beneficially entitled to the benefit of the Business Assets and AAI assumes responsibility for the Business Assets and shall indemnify and keep Aust Alliance indemnified from and against all Claims under or in connection with the Business Assets in accordance with the terms of the Transfer Agreement.

6. Proceedings

If any proceedings are pending or any proceedings are brought on or after the Effective Date by or against Aust Alliance in any court or tribunal in respect of the Insurance Contracts, the Insurance Liabilities, the Business Assets or the Business Liabilities, AAI and Aust Alliance shall determine whether such proceedings will be continued:

- (a) by or against AAI, in which case the parties agree to take all necessary action to effect a change of the name of the party in those proceedings from Aust Alliance to AAI; or
- (b) by or against Aust Alliance for and on behalf of AAI, in which case any judgment or determination for or against Aust Alliance in any such proceedings will have effect as between Aust Alliance and AAI as if such judgment or determination had been made for or against AAI and AAI will indemnify and keep Aust Alliance indemnified accordingly.

7. Effective Date

The sale and purchase of the Business from Aust Alliance to AAI, and the transfer to and assumption of the Insurance Contracts and Insurance Liabilities by AAI pursuant to this Scheme take effect on and from the Effective Date (or in the case of any Post-Effective Date Insurance Contract, on the date that it is issued by Aust Alliance) such that AAI will be entitled to all benefits and rights in respect of the Insurance Contracts and Business Assets, and will assume all of the obligations in respect of the Insurance Liabilities and Business Liabilities as from and including that date.

8. Implementation

Aust Alliance and AAI will 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 Transfer Agreement, this Scheme, the Actuarial Report and the transactions contemplated by them.

9. 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 AAI out of shareholder funds.

10. Rights and Obligations of Insureds

- (a) The Scheme will not change the terms of any Insurance Contract, or affect any claim in respect of any Insurance Contract, issued by Aust Alliance other than that AAI will become the insurer in place of Aust Alliance.
- (b) Policyholders will continue to have the same rights and obligations under or in respect of any Insurance Contract or claim but with AAI as the insurer. The Scheme and Transfer Agreement will also reflect the change in insurer as follows:
 - (i) all outstanding claims-related rights and liabilities of Aust Alliance in respect of the Insurance Contracts will be transferred to AAI such that any claims arising under or in connection with any Insurance Contract underwritten by Aust Alliance must be made against AAI;
 - (ii) all premiums and other amounts payable to or recoverable by Aust Alliance under the Insurance Contracts will be payable to and recoverable by AAI instead of Aust Alliance;
 - (iii) AAI will be entitled to enforce all rights and remedies which but for the Scheme would have been enforceable by Aust Alliance under or in respect of the Insurance Contracts (including but not limited to any claims by way of subrogation, contribution, outstanding premium and any other recoveries related directly or indirectly to any Insurance Contracts); and
 - (iv) any policyholder under an Insurance Contract or other person who has a claim on or obligation to Aust Alliance under or in respect of an Insurance

Contract will have the same claim on or obligation to AAI in substitution for his or her claim on or obligation to Aust Alliance irrespective of when such claim or obligation arose.

- (c) Policyholders are not required to take any action before or as a result of the Scheme.
- (d) In the event of any inconsistency between this clause 10 and any other provision of this Scheme or the Transfer Agreement, the other provision shall prevail to the extent of the inconsistency.