

Insurance Act 1973 (Part III Division 3A)

SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS OF WFI INSURANCE LIMITED TO INSURANCE AUSTRALIA LIMITED

Background

- A WFI Insurance Limited ABN 24 000 036 279 (**WFI**) and Insurance Australia Limited ABN 11 000 016 722 (**IAL**) 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 WFI has agreed to sell and transfer, and IAL has agreed to purchase and accept the transfer of, all of the Business carried on by WFI. In particular, WFI has agreed to transfer and IAL 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 22 September 2016 prepared by Estelle Pearson of Finity Consulting Pty Limited ABN 89 111 470 270 on which the Scheme is based.

APRA means the Australian Prudential Regulation Authority.

Australian Accounting Standards means the Australian Accounting Standards (including the Australian Accounting Interpretations) adopted by the Australian Accounting Standards Board and other authoritative pronouncements of the Australian Accounting Standards Board.

Business means the insurance business carried on by WFI in Australia within the meaning of the Insurance Act, including:

- (a) the Insurance Contracts and the Insurance Liabilities; and
- (b) 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 WFI used for the purposes of conducting the Business and, without limiting the foregoing, includes the following as may be applicable to the Business:

- (a) right, title and interest in:
 - (i) the Reinsurance Contracts;
 - (ii) the Business Contracts;

- (iii) the Leases;
- (b) Business Records;
- (c) Intellectual Property;
- (d) Investment Assets;
- (e) goodwill in the Business;
- (f) Licences;
- (g) Plant and Equipment;
- (h) Receivables; and
- (i) intangible assets (including software distribution rights and customer lists),

but excluding the Insurance Contracts and the Excluded Business Assets.

Business Contracts means the right, title and interest under any oral or written contracts, deeds and arrangements made by WFI in connection with the Business and subsisting at the Effective Date (including with distributors, authorised representatives, intermediaries and suppliers), but excluding:

- (a) the Insurance Contracts;
- (b) any contracts entered into by WFI with its current or former employees, contractors, consultants or agency personnel; and
- (c) any contract to which IAL is already a party, unless IAL or WFI identifies a need to novate or assign that contract to IAL for any reason.

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.

Business Records means all books of account, accounts, records and data and all other documents relating solely to the Business other than the Excluded Business Records.

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.

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

Effective Date means 1 August 2017 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) the Excluded Business Records;
- (b) Investment Assets retained by WFI in order to meet its minimum capital requirements after the Effective Date for the purposes of GPS 110 in force at the Effective Date;
- (c) any intercompany accounts between WFI and any related body corporate, where those assets do not relate to the Business; and
- (d) any other assets that are identified by WFI to IAL as being unrelated to the Business or that should not be transferred to IAL.

Excluded Business Liabilities means Claims, losses, liabilities, costs or expenses of any kind of WFI that:

- (a) relate to any Excluded Business Asset; or
- (b) are otherwise unrelated to the Business,

including but not limited to certain intercompany loans between WFI and any related body corporate that do not relate to the Business or which WFI identifies to IAL should not be transferred to IAL.

Excluded Business Records means records or documents relating to the Business or the Business Assets which WFI is required by law, or by a binding obligation to a third party, to retain.

GPS 110 means APRA Prudential Standard GPS 110 Capital Adequacy made under the Insurance Act.

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

Insurance Contracts means:

- (a) all contracts of insurance or reinsurance that are referable to the Business issued, entered into or assumed by WFI as insurer or reinsurer prior to the Effective Date (including, for clarity, contracts of insurance or reinsurance which may have lapsed or expired but under which benefits remain payable);
- (b) to the extent not included in paragraph (a), any agreement to insure or reinsure that is referable to the Business issued, entered into or assumed by WFI 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.

Insurance Liabilities means Claims, losses, liabilities, costs or expenses of any kind under or in relation to 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.

Intellectual Property means any and all intellectual property owned by WFI as at the Effective Date, including:

- (a) any domain names;
- (b) any business names;
- (c) any patent, copyright (including future copyright), software, design, circuit layout right, or other proprietary right, or any right to register such rights; and
- (d) all present and future rights in an invention, discovery, trade secret, know-how, concept, idea, data or formula and rights in information, including any discoveries, granted by law or equity from time to time.

Investment Assets means all cash or cash at bank and all bonds, loans (secured or unsecured), securities or other forms of investment held by or on behalf of WFI which relate to the Business including the right, title or interest of WFI under any derivative held in respect of the Business.

Leases means, in relation to the Business, any lease or sub-lease to which WFI is a party.

Licences means all transferable licences, permits, quotas, consents or authorities held by WFI in connection with the Business. For the avoidance of doubt, this definition does not include:

- (a) WFI's authorisation to carry on insurance business in Australia held pursuant to section 12 of the Insurance Act; or
- (b) WFI's Australian financial services licence.

Plant and Equipment means any plant and equipment owned by WFI immediately prior to the Effective Date relating to the Business as more fully described in the asset register or registers or other business records of WFI.

Post-Effective Date Insurance Contract means any contract of insurance or reinsurance that is referable to the Business inadvertently or mistakenly issued, entered into or assumed by or on behalf of WFI as insurer or reinsurer in the three months following the Effective Date.

Receivables mean all the debts and other sums due on or after the Effective Date to WFI in connection with the Business, but not including any amounts due to WFI under the Insurance Contracts.

Reinsurance Contract means any reinsurance or retrocession entered into or assumed by WFI as reinsured in respect of any Insurance Contract to be transferred under this Scheme.

Scheme means the scheme, as set out in this document, to be confirmed by the Federal Court of Australia in accordance with Part III Division 3A of the Insurance Act for the transfer of the Business to IAL.

Transfer Agreement means the Transfer Agreement dated on or about 3 July 2017 between CGU Insurance Limited ABN 27 004 478 371, CGU-VACC Insurance Limited ABN 73 004 167 953, HBF Insurance Pty Ltd ABN 11 009 268 277, IAG Re Australia Limited ABN 96 001 948 278, Mutual Community General Insurance Proprietary Limited ABN 59 007 895 543, Swann Insurance (Aust) Pty Ltd ABN 80 000 886 680 and WFI (together the **Transferors**) and IAL for the sale and transfer of the Transferors' insurance businesses to IAL.

Transfer Value means, in relation to the Business, the net carrying value of assets and liabilities as recorded in the balance sheet of WFI as at the Effective Date in accordance with the Australian Accounting Standards.

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 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 a party to an agreement or document includes the party's successors and permitted substitutes or assigns (and, where applicable, the party's legal personal representatives).

- (g) 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 prudential standard or statutory instrument issued under it.
- (h) **includes, including** and similar expressions are not intended to operate as words of limitation or imply any limitation.
- (i) A reference to time is to New South Wales, Australia time.
- (j) A reference to '\$' is to Australian dollars.
- (k) A word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act.

2. Transfer of Business

- (a) On the Effective Date, WFI agrees to sell and transfer and IAL agrees to purchase and accept the transfer of all of the Business and, in particular:
 - (i) the Insurance Contracts and the Insurance Liabilities; and
 - (ii) the Business Assets (including, without limitation, the Reinsurance Contracts) and the Business Liabilities,from WFI 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.
- (b) The terms of the Transfer Agreement form part of this Scheme.

3. Consideration for the transfer of Business

In consideration of the transfer of the Insurance Contracts and Business Assets to IAL, IAL agrees to:

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

4. Transfer of Insurance Contracts and Insurance Liabilities

- (a) On and from the Effective Date, WFI transfers to IAL and IAL accepts the transfer of the Insurance Contracts and the Insurance Liabilities, and IAL assumes and takes over and must indemnify and keep WFI indemnified from and against all Claims under or in connection with the Insurance Contracts or Insurance Liabilities. Each Insurance Contract remains the same contract of insurance, other than the substitution of IAL for WFI as the insurer, and there will be no new contract of insurance created.
- (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 IAL will take effect on and from the date on which the Post-Effective Date Insurance Contract is issued or entered into by WFI.

5. Transfer of Business Assets

On and from the Effective Date, IAL is beneficially entitled to the benefit of the Business Assets and IAL assumes responsibility for the Business Assets and shall indemnify and keep WFI

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 WFI in any court or tribunal in respect of the Insurance Contracts, the Insurance Liabilities, the Business Assets or the Business Liabilities, IAL and WFI shall determine whether such proceedings will be continued:

- (a) by or against IAL, 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 WFI to IAL; or
- (b) by or against WFI for and on behalf of IAL, in which case any judgment or determination for or against WFI in any such proceedings will have effect as between WFI and IAL as if such judgment or determination had been made for or against IAL and IAL will indemnify and keep WFI indemnified accordingly.

7. Effective Date

The sale and purchase of the Business from WFI to IAL, and the transfer to and assumption of the Insurance Contracts and Insurance Liabilities by IAL 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 WFI).

8. Implementation

WFI and IAL 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 IAL out of shareholder funds.

10. Consequences of the transfer of Business

10.1 Rights and obligations of policyholders and insureds

- (a) With effect on and from the Effective Date, the rights, benefits and liabilities of policyholders under Insurance Contracts, and of all persons claiming through or under them, on the one hand and IAL on the other hand, will be the same in all respects as they would have been if the Insurance Contracts had been issued or entered into by IAL instead of WFI.
- (b) All proposals, applications, declarations and representations made to WFI on which any Insurance Contract is based shall as and from the Effective Date be taken to have been made to and accepted by IAL instead of by WFI.
- (c) Any policyholder under an Insurance Contract or other person having any claim on or obligation to WFI under or in respect of an Insurance Contract will, as and from the Effective Date, have the same claim on or obligation to IAL in substitution for that person's claim on or obligation to WFI irrespective of when such claim or obligation arose.

- (d) IAL will, on and from the Effective Date, be entitled to enforce all rights and remedies as against any policyholder or third party arising under or by virtue of any Insurance Contract (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 receive and appropriate all premiums and other monies which, but for the Scheme would have been enforceable or recoverable by WFI under or in respect of the Insurance Contracts.
- (e) Policyholders are not required to take any action before or as a result of the Scheme.
- (f) For the purposes of any Post-Effective Date Insurance Contracts, the provisions of this clause 10.1 will apply with effect on and from the date on which the Post-Effective Date Insurance Contract is issued or entered into by WFI.
- (g) Upon confirmation of the Scheme by the Federal Court of Australia, the Scheme becomes binding on all parties.

10.2 Authorities

On and from the Effective Date, all directions, authorities, mandates or instructions given to WFI:

- (a) to deduct premiums or fees payable in respect of the Insurance Contracts (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 IAL instead of WFI.

10.3 Commissions, Remuneration and other benefits

On and from the Effective Date, IAL:

- (a) bears the obligation to provide all commissions, remuneration and other benefits (whether monetary or non-monetary) to any person in respect of an Insurance Contract or related services; and
- (b) is entitled to seek repayment of such commissions, remuneration or benefits (whether originally provided by IAL or WFI) in excess of the recipient's entitlement, instead of WFI.