

# Insurance Act 1973 (Part III Division 3A)

## SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS OF SUNDERLAND MARINE INSURANCE COMPANY LIMITED (AUSTRALIAN BRANCH) TO THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED (AUSTRALIAN BRANCH)

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### 1 Introduction and overview

- 1.1 This Scheme has been prepared under Division 3A of Part III of *the Insurance Act 1973* (Cth) (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 Sunderland Marine Insurance Company Limited ABN 89 007 508 401 (**SMI**) as transferor to the Australian branch of The North of England Protecting and Indemnity Association Limited ARBN 624 528 123 (**North**) as transferee.
- 1.2 SMI is authorised under section 12 of the Insurance Act to carry on insurance business in Australia. SMI is a wholly owned subsidiary of North, carrying on insurance business in Australia through a branch (**SMI Aus**).
- 1.3 North has applied to the Australian Prudential Regulation Authority (**APRA**) for authorisation under section 12 of the Insurance Act to carry on insurance business in Australia. Subject to its authorisation and confirmation of the Scheme, North will also carry on insurance business in Australia through a branch (**North Aus**).
- 1.4 SMI and North have agreed to transfer the Business Assets and the Insurance Contracts from SMI Aus to North Aus, and North Aus has agreed to assume the Business Liabilities and the Insurance Liabilities, in accordance with the terms and conditions of the Transfer Agreement.
- 1.5 The transfer of the Business Assets and the Insurance Contracts from SMI Aus to North Aus, and the assumption of Business Liabilities and the Insurance Liabilities by North Aus, contemplated by the Transfer Agreement 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 17 July 2018 prepared by Geoff Atkins of Finity Consulting Pty Limited ABN 89 111 470 270 on which the Scheme is based.

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

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

**Business** means the:

- (1) Insurance Business, including the Insurance Contracts and the Insurance Liabilities; and
- (2) Business Assets and Business Liabilities.

**Business Assets** means the assets of SMI used for the purposes of conducting the Business and, without limiting the foregoing, includes:

- (3) the Business Contracts;
- (4) the Leases;
- (5) Business Records;
- (6) Intellectual Property;
- (7) Investment Assets;
- (8) goodwill in the Business;
- (9) Licences;
- (10) Plant and Equipment;
- (11) Receivables; and
- (12) intangible assets (including software distribution rights and customer lists),

but excluding the Insurance Contracts, the Reinsurance Contracts and the Freehold Property.

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

**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 but excluding the Insurance Liabilities.

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

**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).

**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 SMI and North.

**Effective Date** means 2 November 2018 or such other date that the Court may specify as the commencement date of the Scheme should the Scheme be confirmed by the Court.

**Freehold Property** means all land, and all buildings, fixtures and other improvements on that land, owned by SMI, including the land described in the Transfer Agreement.

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

**Insurance Business** means the insurance business (within the meaning of that expression in the Insurance Act) carried on by SMI Aus in Australia prior to the Effective Date.

**Insurance Contracts** means all contracts of insurance issued or entered by or on behalf of SMI as insurer in the conduct of the Insurance Business prior to the Effective Date.

**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 SMI as at the Effective Date, including:

- (1) any domain names;
- (2) any business names, including Douglas Fishing Insurance;
- (3) the Trade Marks;
- (4) any patent, copyright (including future copyright), software, design, circuit layout right, or other proprietary right, or any right to register such rights; and
- (5) 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 SMI which relate to the Business including the right, title or interest of SMI under any derivative held in respect of the Business.

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

**Licences** means all transferable licences, permits, quotas, consents or authorities held by SMI in connection with the Business, but not including:

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

**North Aus** has the meaning given in paragraph 1.3.

**Plant and Equipment** means any plant and equipment owned by SMI 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 SMI.

**Purchase Price** has the meaning given in the Transfer Agreement.

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

**Reinsurance Contract** means any reinsurance or retrocession entered into by SMI 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 Court in accordance with Part III Division 3A of the Insurance Act for the transfer of the Business to North.

**SMI Aus** has the meaning given in paragraph 1.2.

**Trade Marks** has the meaning given in the Transfer Agreement.

**Transfer Agreement** means the Transfer Agreement dated on or about September 2018 between SMI and North governing the sale and transfer of the Business by and from SMI to North.

## 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;
  - (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 Business**

3.1 The terms of the Transfer Agreement form part of this Scheme.

3.2 SMI's and North's obligations under the Transfer Agreement are conditional on:

- (1) APRA having authorised North to carry on insurance business in Australia under the Insurance Act;
- (2) ASIC having issued North with an Australian financial services licence under the Corporations Act;
- (3) the Treasurer (or the Treasurer's delegate) providing all necessary approvals or consents required under the *Insurance Acquisitions and Takeovers Act 1991* (Cth) to permit North to acquire the Business Assets and to assume the Business Liabilities from SMI in accordance with the Scheme on conditions satisfactory to North and SMI; and
- (4) the Court providing the Court Confirmation.

3.3 In accordance with the terms of the Transfer Agreement, SMI Aus will transfer to North Aus, and North Aus will accept the transfer of:

- (1) the Insurance Contracts and the Insurance Liabilities; and
- (2) the Business Assets and the Business Liabilities,

with effect on and from the Effective Date.

### **4 Consideration for the transfer of Business**

4.1 In consideration of the transfer of the Insurance Contracts and Business Assets to North Aus, North Aus agrees to pay the Purchase Price to SMI Aus by paying the Purchase Price to SMI Aus on and in accordance with the Effective Date.

### **5 Indemnities**

5.1 On and from the Effective Date, North assumes and takes over and must indemnify and keep SMI indemnified from and against all Insurance Liabilities that have arisen or that may in the future arise in respect of the Insurance Contracts.

5.2 On and from the Effective Date, North assumes and takes over and must indemnify and keep SMI indemnified from and against all Business Liabilities that have arisen or that may in the future arise in respect of the Business Assets in accordance with the terms of the Transfer Agreement.

## **6 Proceedings**

- 6.1 If any proceedings are pending or any proceedings are brought on or after the Effective Date by or against SMI in any court or tribunal in respect of the Insurance Contracts, the Insurance Liabilities, the Business Assets or the Business Liabilities, such proceeding will be continued by or against North and any judgment or determination for or against SMI in any such proceedings will have effect as between SMI and North as if such judgment or determination had been made for or against North and North will indemnify and keep SMI indemnified accordingly.

## **7 Effective Date**

- 7.1 The transfer to and the assumption of the Business Assets and Business Liabilities from SMI to North pursuant to the Transfer Agreement, and the transfer to and assumption of the Insurance Contracts and Insurance Liabilities by SMI to North pursuant to this Scheme take effect on and from the Effective Date.

## **8 Implementation**

- 8.1 SMI and North 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**

- 9.1 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 North in accordance with the Transfer Agreement.

## **10 Consequences of the transfer of Business**

- 10.1 With effect on and from the Effective Date:
- (1) the rights, benefits and liabilities of policyholders under the Insurance Contracts, and of all persons claiming through or under them, on the one hand and North 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 North Aus instead of SMI.
  - (2) All proposals, applications, declarations and representations made to SMI on which any Insurance Contract is based shall as and from the Effective Date be taken to have been made to North instead of by SMI.
  - (3) Any policyholder under an Insurance Contract or other person having any claim on or obligation to SMI under or in respect of an Insurance Contract will have the same claim on or obligation to North in substitution for that person's claim on or obligation to SMI irrespective of when such claim or obligation arose.
  - (4) North will 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 SMI under or in respect of the Insurance Contracts.

- (5) All directions, authorities, mandates or instructions given to SMI:
- (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 North instead of SMI.

- (6) North bears the obligation to provide all commissions, remuneration and other benefits (whether monetary or non-monetary) to any person who in respect of an Insurance Contract or related services is entitled to such commissions, remuneration or other benefits (whether originally provided by SMI or North);
- (7) North will be entitled to seek repayment of any commissions, remuneration and other benefits (whether monetary or non-monetary) from any person who has received such commissions, remuneration or other benefits (whether originally provided by SMI or North) in excess of the recipient's entitlement, instead of SMI.

10.2 Policyholders are not required to take any action before or as a result of the Scheme and the terms of the Insurance Contracts will not be varied as a consequence of the Scheme, save for the substitution of North as the insurer.

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