

INSURANCE ACT 1973

(PART III DIVISION 3A)

SCHEME FOR THE TRANSFER OF THE INSURANCE AND REINSURANCE BUSINESS IN AUSTRALIA OF SWISS REINSURANCE COMPANY LTD, AUSTRALIA BRANCH TO SWISS RE ASIA PTE. LTD., AUSTRALIA BRANCH

Background

- A. The Australian Branches of Swiss Reinsurance Company Ltd (ABN 43 007 479 941) (**SRAU**) and Swiss Re Asia Pte. Ltd. (ARBN 631 490 447) (**SRALAU**), both registered as a foreign company in Australia under the Corporations Act, are authorised under the Insurance Act to carry on insurance/reinsurance business in Australia.
- B. This Scheme has been prepared under Division 3A of Part III of the Insurance Act to give effect to the terms of an agreement by which SRAU and SRALAU have agreed that the Business of SRAU (including all Reinsurance Contracts), inter alia, be transferred from SRAU to SRALAU and liabilities under those Reinsurance Contracts be assumed by SRALAU on the basis that the liabilities are liabilities in Australia for the purposes of the Insurance Act.
- D. If confirmed by the Federal Court of Australia, the Scheme will become binding on all persons.
- E. An actuarial report dated 6 September 2019 has been prepared by the Appointed Actuary of SRAU, Evelyn Chow, 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 6 September 2019 prepared by Evelyn Chow in connection with the Scheme.

Adjustment Amount has the meaning given to that term in clause 8.

Adjustment Date means a date which is within four (4) months of the Effective Date or such later date as may be agreed between the parties to the Business Transfer Agreement after the determination of the Transfer Value.

APRA means the Australian Prudential Regulation Authority.

Business means the:

- (a) Insurance Business carried on by SRAU in Australia, including all Reinsurance Contracts, Insurance Assets and Insurance Liabilities; and

(b) the Business Assets and Business Liabilities.

Business Assets means all the property, rights and assets of SRAU for the purposes of carrying on and conducting the Business as at the Effective Date, including but not limited to:

- (a) Licences;
- (b) Technical Data;
- (c) Investments;
- (d) intellectual property;
- (e) goodwill;
- (f) Business Contracts;
- (g) Business Records;
- (h) Receivables;
- (i) IT systems;
- (j) business information;
- (k) fixed assets;
- (l) moveable assets; and
- (m) assets associated with Taxes,

but excluding the Insurance Assets and the Excluded Assets.

Business Contracts means the oral or written contracts, deeds and arrangements made by SRAU with customers, suppliers or otherwise in connection with the Business and subsisting at the Effective Date, including but not limited to Retrocession Agreements but excluding the Reinsurance Contracts.

Business Liabilities means any or all Liabilities (including but not limited to Liabilities associated with Taxes) in conducting the Business, but excluding the Insurance 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.

Business Transfer Agreement means the Business Transfer Agreement between SRAU and SRALAU for the transfer of the SRAU's reinsurance business to SRALAU which will not take effect until such time, if any, as certain regulatory approvals are obtained and the Scheme is confirmed by the Federal Court of Australia.

Claim means, in relation to any person, a claim, action, proceeding, judgement, 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)*.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Tax Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them.

Effective Date means 1 January 2020 at 0001 hours (Sydney time) or at such other time and on such other date as the parties to the Business Transfer Agreement may agree upon and the Federal Court of Australia may allow or such other date as the Federal Court of Australia shall stipulate.

Excluded Assets means the amount of AUD 5.1 million (AUD5,100,000) in cash to be retained by SRAU after the Effective Date.

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

Funds Flow Agreement means the agreement of that name entered into between SRAU, SRALAU, Swiss Reinsurance Company Ltd and Swiss Re Asia Pte. Ltd. on or about the date of the Business Transfer Agreement.

Government Agency means a government or governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under a statute or a stock exchange.

GST has the meaning given by the GST Law.

IFRS means International Financial Reporting Standards as adopted in standards issued by the Australian Accounting Standards Board.

Initial Transfer Value means the amount to be paid by SRALAU to SRAU in accordance with clause 4.2 of the Business Transfer Agreement, being the net asset value of the Business based on the financial statements of SRAU as at 30 June 2019 as attached in Appendix 1 to the Business Transfer Agreement, less the Excluded Assets.

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

Insurance Assets means the assets of SRAU used for the purposes of conducting the Insurance Business.

Insurance Business has the meaning given to that expression in the Insurance Act, including but not limited to all Reinsurance Contracts and businesses incidental to the insurance business, carried on by SRAU in Australia.

Insurance Liabilities means all of the Liabilities in conducting the Insurance Business.

Investments means cash and investments held by SRAU including but not limited to bonds, debt securities and other financial instruments issued by governments, corporations, statutory entities.

Liabilities means Claims, losses, liabilities, charges, costs or expenses of any kind, including those which are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Licences means all transferable licences, permits, quotas, consents or authorities held by SRAU in connection with the Business, but excludes the Business Contracts.

Receivables means all the debts and other sums due on or after the Effective Date to SRAU in connection with the Business, including but not limited to recoveries under the Retrocession Agreements, premium receivable, general debtor and intercompany balances.

Reinsurance Contracts means all contracts, treaties, binders, policies, offers, proposals, quotations and slips, any indemnity or other similar obligation covering or having the effect of covering reinsurance liability and insurance liability and any endorsements or amendments thereto, of reinsurance and insurance issued or entered into by SRAU as reinsurer or insurer prior to and as at the Effective Date in the conduct of its Business.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Retrocession Agreements means all contracts of outwards retrocession entered into by SRAU (including both intra-group and external outwards retrocession contracts), for the protection of its book of Insurance Business.

Scheme means the scheme for the transfer of the Insurance Business of SRAU to SRALAU pursuant to Division 3A of Part III of the Insurance Act, subject to such modifications as may be made by the Federal Court of Australia which are acceptable to SRAU and SRALAU.

Tax Authority means any Government Agency responsible for the assessment, collection, withholding or administration of Taxes in Australia.

Taxes means any tax, assessment, withholding or similar governmental charge imposed by a Tax Authority (including, for the avoidance of doubt, GST and Duty) together with any interest, additions to tax or penalties with respect thereto and any interest in respect of such additions or penalties.

Technical Data means all drawings, specifications, formulae, processes, operating procedures and other technical data relating solely to the Business.

Transfer Value means the amount to be paid by SRALAU to SRAU in accordance with clause 4.1 of the Business Transfer Agreement, being the net asset value of the Business as per local statutory book value calculated in accordance with the requirements of IFRS as at the date falling one day before the Effective Date, less the Excluded Assets.

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.
- (g) *includes, including* and similar expressions are not intended to operate as words of limitation or imply any limitation.
- (h) A reference to *writing* includes any communication sent by letter, facsimile transmission or email or any other means of reproducing words in a tangible and permanently visible form.
- (i) A reference to time is to Sydney time.

2. Conditions Precedent

The Scheme and the Business Transfer Agreement are conditional upon and will have no effect until:

- (a) the Scheme is confirmed by the Federal Court of Australia; and
- (b) the Treasurer of the Commonwealth of Australia or their permitted delegate approving or otherwise confirming that they have no objection to, the acquisition by SRALAU of the Business under section 41 of the *Insurance Acquisitions and Takeovers Act 1991* (Cth).

3. Transfer of Business

On the Effective Date, SRAU transfers and SRALAU agrees to accept the transfer of the Business including all rights, title and interests in all assets and all Liabilities in respect of the Business, in accordance with the terms of the Business Transfer Agreement.

4. Consideration for the transfer of SRAU's Business

4.1 Business

The consideration payable by SRALAU to SRAU for the transfer of the Business shall be the Transfer Value, which is payable by SRALAU to SRAU in accordance with clauses 4.2 and 4.3 of the Business Transfer Agreement and as may be adjusted in accordance with clause 8.1 of the Business Transfer Agreement.

4.2 Payment of Initial Transfer Value

On the Effective Date, SRALAU shall pay to SRAU the Initial Transfer Value.

4.3 Funds Flow Agreement

On the Effective Date, SRALAU shall discharge its obligation to pay the Initial Transfer Value as set out at clause 4.2 of the Business Transfer Agreement to SRAU in the manner described in the Funds Flow Agreement.

5. Indemnity

On and from the Effective Date and pursuant to clause 3:

- (a) SRAU transfers to SRALAU and SRALAU accepts the transfer of any and all Insurance Liabilities of SRAU; and
- (b) SRALAU assumes and takes over and shall indemnify and keep SRAU indemnified from and against all Claims under or in connection with the Insurance Liabilities and SRAU will be released and discharged from its obligations under or in connection with the Insurance Liabilities.

6. Proceedings

If any proceedings are pending or any proceedings are brought on or after the Effective Date by or against SRAU in any court or tribunal in respect of the Reinsurance Contracts, such proceedings will be continued by or against SRAU for and on behalf of SRALAU and any judgment or determination for or against SRAU in any such proceedings will have effect as between SRAU and SRALAU as if such judgment or determination had been made for or against SRALAU and SRALAU will indemnify and keep indemnified SRAU accordingly.

7. Effective Date

The transfer of the Business from SRAU to SRALAU, and the assumption of the Insurance Liabilities by SRALAU, pursuant to this Scheme shall take effect on and from the Effective Date such that SRALAU will be entitled to all benefits and rights in respect of the Reinsurance Contracts, and will assume all of the obligations in respect of the Insurance Liabilities as, from and including the Effective Date.

8. Adjustment

On the Adjustment Date, the parties to the Business Transfer Agreement shall calculate whether there is any difference between the Transfer Value and the Initial Transfer Value (**Adjustment Amount**). If the Transfer Value differs from the Initial Transfer Value paid by SRALAU to SRAU under clauses 4.2 and 4.3 of the Business Transfer Agreement on the Effective Date, an adjustment to the Initial Transfer Value shall be paid as follows:

- (a) in the case of an overpayment, SRAU shall pay the Adjustment Amount to SRALAU; or
- (b) in the case of a shortfall, SRALAU shall pay the Adjustment Amount to SRAU.

9. Implementation

SRAU and SRALAU will do all acts and things and execute all documents necessary or desirable to give effect to the provisions of the Business Transfer Agreement, this Scheme and the Actuarial Report and the transactions contemplated by them.

10. Effect of the Scheme on Policyholders

Upon confirmation of the Scheme by the Federal Court of Australia, all outstanding claims-related rights and liabilities of SRAU in respect of the Reinsurance Contracts will be transferred to SRALAU such that any claims arising under or in connection with any Reinsurance Contract underwritten by SRAU must be made against SRALAU.

All premiums and other amounts payable to or recoverable by SRAU under the Reinsurance Contracts will be payable to and recoverable by SRALAU instead of SRAU.

The Reinsurance Contracts will be transferred to SRALAU with the same benefits, conditions and premium rates as applied prior to the Scheme.

Any policyholder under the Reinsurance Contracts or other person who has a claim on or obligation to SRAU pursuant to the Reinsurance Contracts will have the same claim on or obligation to SRALAU in substitution for his or her claim on or obligation to SRAU.

Policyholders are not required to take any action before or as a result of the Scheme.

11. Costs of Scheme

SRAU will bear all costs and expenses of and incidental to the preparation and confirmation of this Scheme and its implementation.