

# INSURANCE ACT 1973

## (PART III DIVISION 3A)

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### SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS OF PROGRESSIVE DIRECT INSURANCE COMPANY TO THE HOLLARD INSURANCE COMPANY PTY LIMITED

#### Background

- A. PDIC and Hollard are each authorised under the Insurance Act to carry on insurance business in Australia.
- B. PDIC is a registered foreign company under the Corporations Act, owned by its ultimate US parent, The Progressive Corporation, incorporated in Ohio, USA, and is seeking to transfer its entitlements and liabilities under all contracts of motor vehicle insurance that it has issued, renewed, underwritten or assumed as insurer in Australia (being its only insurance business in Australia) to Hollard, in order to facilitate an orderly exit from the Australian market.
- C. PDIC wishes to be relieved of its liabilities and obligations and to relinquish its entitlements under all contracts of motor vehicle insurance that it has issued, renewed, underwritten or assumed as insurer in the course of carrying on insurance business in Australia, to enable it to apply to APRA to have its authorisation to carry on insurance business in Australia under the Insurance Act revoked.
- D. PDIC wishes therefore to transfer to Hollard:
  - (a) all rights, benefits, and obligations of PDIC under and in respect of the Insurance Contracts; and
  - (b) the Business Assets.
- E. Hollard wishes to have transferred to it PDIC's rights and benefits under and in respect of the Insurance Contracts and the Business Assets and is willing to assume the Assumed Liabilities.
- F. This Scheme is based on an actuarial report prepared by Tim Andrews at Finity Consulting.

# 1. Definitions and Interpretation

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## 1.1 Definitions

In this Scheme, unless the context requires otherwise:

**Actuarial Report** means the report dated 8 June 2017 and letter dated 15 September 2017 prepared by the Actuaries, upon which this Scheme is based.

**Actuaries** means Finity Consulting, the actuarial firm appointed by PDIC and Hollard for the purpose of this Scheme in accordance with the Insurance Act.

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

**Assumed Liabilities** means all of the liabilities and obligations of PDIC under or arising from the Insurance Contracts, being the Insurance Liabilities, and the Specified Liabilities, in each case as at the Effective Time.

**Branch** means the Australian Branch of PDIC.

**Business** means the business of marketing, issuing and administering Motor Insurance Contracts conducted by PDIC but only to the extent conducted by it in Australia.

**Business Assets** means each of the following items, to the extent that they are used by PDIC exclusively in the Business but in each case excluding the Excluded Assets:

- (a) the goodwill of or relating to the Business;
- (b) all rights under all Insurance Contracts (regardless of when issued, renewed or entered into, including, without limitation, before or after the Effective Time and whether those Insurance Contracts have expired or terminated);
- (c) all Records;
- (d) all Recovery Rights (regardless of when arising, including, without limitation, before or after the Effective Time and whether those Recovery Rights relate to contracts that have expired or terminated);
- (e) all Confidential Information;
- (f) all books and records of or in respect of the items described in paragraphs (a) through (d) above that are not required by law to be retained by PDIC (other than those relating to Excluded Assets); and
- (g) all the legal right, title and interest of PDIC in and to any of the above.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria or Sydney, New South Wales.

**Business Hours** means from 9:00 am to 5:00pm Australian Eastern Standard Time on a Business Day.

**Capital** means the value of shareholder's equity attributable to the shareholders of PDIC as reported to APRA by the Branch in compliance with GPS 115 and any other applicable GPS and includes Minimum Capital.

**Claim** includes, without limitation, any action, dispute, claim, counter-claim, demand, investigation, inquiry, prosecution, litigation, proceedings, arbitration, mediation or dispute resolution process.

**Confidential Information** means:

- (a) Customer Information; and
- (b) all information contained in any Database,

other than information which is generally available in the public domain except as a result of a disclosure in breach of any obligation on any person, and known to PDIC, to keep the information confidential.

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

**Court** means the Federal Court of Australia.

**Customer Information** means the following, to the extent owned by PDIC and in its possession or control:

- (a) the identity of all PDIC Customers;
- (b) all files of, or relating to, the affairs of PDIC Customers (and information contained in them); and
- (c) all other books and records in respect of PDIC Customers (and information contained in them).

**Databases** means all customer lists and all other databases (and information contained in them) owned by PDIC and used by PDIC exclusively in respect of the Business provided, however, that Databases does not include any database or information owned by a third party and used by PDIC pursuant to a license agreement granted by such third party.

**Effective Time** means 12am Australian Eastern Standard Time on 4 November 2017.

**Estimated Supporting Asset Payment** means \$500,000 being the amount estimated by the parties (and reviewed by the Actuaries) as the likely Supporting Asset Payment as at the Effective Time.

**Excluded Assets** means:

- (a) all cash and investments held in respect of the Business;
- (b) all bank accounts of PDIC;
- (c) the goodwill (whenever created) in respect to the trade marks used by PDIC in the Business and the name "Progressive Direct Insurance Company," including the goodwill in respect of such trade marks and name in relation to services claimed from time to time in the trade marks and any other goods and services in respect of which goodwill exists in relation to such trade marks and such name in Australia from time to time;
- (d) all records of PDIC related to its APRA authorisation and its compliance with such authorisation, including, without limitation, regulatory filings and communications between PDIC (or its legal counsel) and APRA;
- (e) all rights of PDIC in and under, and any Claims of PDIC related to, the Transaction Documents other than the Transfer Agreement; and
- (f) all other books and records related to any of the foregoing.

**Excluded Liabilities** means Claims, losses, liabilities, costs or expenses of any kind relating to any Excluded Asset or being otherwise unrelated to the Insurance Contracts and the Business Assets, including, without limitation, Claims, losses, liabilities, costs or expenses arising from or in connection with:

- (a) any violation by PDIC prior to the Effective Time of a law relating to the conduct by or on behalf of PDIC of the Business including, without limitation, PDIC's authorisation, registration or licensing in connection with the Business (including, without limitation, PDIC's authorisation under the Insurance Act and Australian financial services licence);
- (b) any tax, duty, levy or other mandatory amount imposed on PDIC with respect to its carrying on the Business prior to the Effective Time (including any tax, duty, levy or other mandatory amount directly applicable to the issue or renewal of an Insurance Contract by PDIC prior to the Effective Time) and in any event income tax on PDIC's income;

- (c) any membership or other fees payable by PDIC to any industry association or group;
- (d) any accounting, audit or legal fees payable by PDIC provided that any obligations of PDIC or Hollard under any Transaction Document will be unaffected; and
- (e) a breach of PDIC's obligations under this Scheme.

**GPS** means an APRA general insurance prudential standard.

**Hollard** means The Hollard Insurance Company Pty Limited ABN 78 090 584 473.

**Increased Insurance Loss** means each of the following:

- (a) an amount payable by PDIC or Hollard as insurer under or in connection with an Insurance Contract that is greater than the amount that would have been payable if there were no Defect (as defined in the definition of Recovery Rights); or
- (b) an amount payable to PDIC or Hollard as insurer under or in connection with an Insurance Contract that is less than the amount that would have been payable if there were no Defect (as defined in the definition of Recovery Rights).

For example, if, before the Effective Time, a motor vehicle repairer did not properly repair a motor vehicle insured under an Insurance Contract and, after the Effective Time, Hollard is obliged under an Insurance Contract to rectify the repair, the cost of rectification is an Increased Insurance Loss.

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

**Insurance Business** has the meaning given in section 3 of the Insurance Act.

**Insurance Contracts** means all Motor Insurance Contracts issued or renewed by PDIC (including all right, title and benefit including any entitlement to receive or recover any money or property under or in relation to those insurance contracts entered into) in the conduct of the Business and being (with the exception of the Reinsurance Treaty):

- (a) all Motor Insurance Contracts of insurance issued, renewed, entered into or assumed by PDIC as insurer prior to the Effective Time;
- (b) any agreement to insure or reinsure issued, renewed, entered into or assumed by PDIC prior to the Effective Time where the insurance or reinsurance is to commence or does commence on or after the Effective Time;
- (c) any offer to insure or reinsure issued, renewed, entered into or assumed by PDIC prior to the Effective Time and capable of acceptance after the Effective Time; and

- (d) expired or terminated Motor Insurance Contracts issued, renewed, entered into or assumed by PDIC as insurer or reinsurer prior to the Effective Time.

Insurance Contracts do not include such items in respect of risks located outside of Australia.

**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 GPS 320.

**Minimum Capital** means the minimum amount of capital required as the Branch's prescribed capital amount in accordance with GPS 110.

**Motor Insurance Contracts** has the meaning in Part 5, Division 1 of the *Insurance Contracts Regulations 1985*, namely, contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of one or more of the following:

- (a) loss of, or damage to, a motor vehicle; or
- (b) liability for loss of, or damage to, property caused by or resulting from impact of a motor vehicle with some other thing,

except that there is no requirement that the insured, or one of the insureds, is a natural person.

**PDIC** means Progressive Direct Insurance Company (Australia branch business) ABN 28 140 389 528.

**PDIC Customer** means a person to whom PDIC issued, renewed or entered into, or offered to issue, a Motor Insurance Contract at any time.

**Post-Effective Time Insurance Contract** means any contract of insurance inadvertently or mistakenly issued, renewed or entered into by or on behalf of the Branch as insurer in the 3 months after the Effective Time. Each Post Effective Time Insurance Contract is deemed to be a contract between Hollard as insurer and the insured rather than a contract between PDIC as insurer and the insured.

**Records** means all records owned by PDIC in respect of Insurance Contracts (regardless of when issued, renewed or entered into, including, without limitation, before or after the Effective Time and whether those Insurance Contracts have expired or terminated) and in PDIC's possession or control as at the Effective Time, including, without limitation, databases and lists of insureds and their personal details, insurance proposals and applications, policy documents, insurance premium receipts, payments records, Claims records, correspondence and file notes, and all policy data necessary for accurate pricing, servicing and historical record

referencing in respect of Insurance Contracts, whether recorded on paper, electronically or otherwise.

**Recovery Rights** means all rights that PDIC has, or but for this Scheme would have had, to make a Claim against any person (**Provider**) where each of the following applies:

- (a) at any time (regardless of when provided, including, without limitation, before or after the Effective Time), the Provider provided or provides goods or services to PDIC or PDIA in connection with, or a claimant under, an Insurance Contract;
- (b) the goods or services were, or are, defective or the provision of the goods or services did not, or do not, comply with the obligations of the Provider to PDIC or PDIA or a claimant under an Insurance Contract (including, without limitation, under law relating to contract, tort, equity, statute or legal doctrine) (**Defect**); and
- (c) at any time (regardless of when provided, including, without limitation, before or after the Effective Time), PDIC or Hollard suffers or incurs any Increased Insurance Loss in connection with the Defect.

Recovery Rights do not include the proceeds of Claims for Increased Insurance Losses suffered by PDIC that were actually recovered by PDIC before the Effective Time.

**Reinsurance Treaty** means the Reinsurance Agreement between PDIC and Hollard executed on 8 March 2017 and effective as of 31 March 2017.

**Scheme** means this document which embodies a Scheme pursuant to Part III, Division 3A of the Insurance Act 1973.

**Specified Liabilities** means Claims, losses, liabilities, costs or expenses relating to the Business Assets (other than 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 other than the Insurance Liabilities and the Excluded Liabilities. Specified Liabilities do not include Claims, losses, liabilities, costs or expenses arising from a breach of PDIC's obligations under this Scheme nor from any contract, arrangement or understanding to which PDIC is a party that is not an Insurance Contract.

**Supporting Asset Payment** means the amount required to support (in accordance with all applicable laws and APRA prudential standards) all Insurance Liabilities and all Specified Liabilities (if any) as at the Effective Time. The amount must:

- (a) take account of actual experience of claims under the Insurance Contracts up to the Effective Time and include reserves required under any GPS including, without limitation, for incurred but not reported claims, policy administration expenses,

allowance for claims handling, risk margin, and have a probability of adequacy of 75% that the Insurance Liabilities, when finally settled, will not exceed the total value of assets transferred from PDIC to Hollard to meet those liabilities;

- (b) reconcile accounting liabilities and cash payments;
- (c) exclude any double counting between the calculation of the Supporting Asset Payment and the obligations of PDIC and Hollard contemplated in the Transfer Agreement; and
- (d) exclude Capital required to support such liabilities (to the intent that Hollard will provide its own capital support for the Assumed Liabilities).

For the avoidance of doubt, the Supporting Asset Payment may be such amount as agreed by PDIC and Hollard or, failing agreement, will be as determined by the Actuaries. PDIC, Hollard and, if applicable, the Actuaries must ensure that the Supporting Asset Payment is calculated within 90 days after the Effective Time.

**Transfer Agreement** means the Transfer Agreement dated **26 September 2017** between PDIC and Hollard for the sale and transfer of the Insurance Contracts and Business Assets to Hollard and the implementation of this Scheme.

## 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 Scheme) 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 Insurance Contracts and Business Assets**

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- (a) With effect at the Effective Time, PDIC transfers and Hollard accepts the transfer of:
- (i) all rights, benefits and entitlements of PDIC under and arising from the Insurance Contracts; and
  - (ii) the Business Assets,
- from PDIC, including all right, title, interest, benefit and powers that have arisen, or may in the future arise under or from any of the above.
- (b) For the avoidance of doubt, Hollard is entitled to enforce all those rights, title, interest, and benefits and to exercise all those powers in Hollard's own name and without the need to join PDIC as a party to any proceedings or to obtain any consent or approval from PDIC.

## **3. Assumption of Liabilities**

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- (a) With effect at and from the Effective Time:
- (i) all rights, benefits and entitlements of PDIC under the Insurance Contracts and the Business Assets are assumed by Hollard;
  - (ii) Hollard is substituted for PDIC in respect of all Assumed Liabilities (including, without limitation, as if each Insurance Contract had been entered into by Hollard as insurer and not by PDIC as insurer); and
  - (iii) PDIC ceases to be liable to any person for the Assumed Liabilities except to Hollard as expressly set out in this Scheme.
- (b) From the Effective Time, Hollard must indemnify and keep PDIC indemnified from and against all Claims under or arising from the Assumed Liabilities.
- (c) With effect at and from the time at which each Post-Effective Time Insurance Contract is issued, renewed or entered into by PDIC:
- (i) the Post-Effective Time Insurance Contract is deemed to be entered into by Hollard as insurer and not by PDIC as insurer;

- (ii) without the need for any other document, Hollard is substituted for PDIC in those contracts and assumes liability as insurer under those contracts; and
- (iii) PDIC ceases to be liable to any person for the liabilities of the insurer under or arising from those contracts except to Hollard as expressly set out in this Scheme.

#### **4. Consideration**

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- (a) In consideration of the assumption by Hollard of the Assumed Liabilities, PDIC must pay to Hollard the Supporting Asset Payment in immediately available funds in Australian dollars as follows:
  - (i) as to the Estimated Supporting Asset Payment, if the Effective Time falls on a Business Day, during Business Hours on that Business Day, or if not, on the immediately preceding Business Day; and
  - (ii) as to the balance of the Supporting Asset Payment, within 14 days of the final calculation of the Supporting Asset Payment.
- (b) For the avoidance of doubt, if the Estimated Supporting Asset Payment is greater than the Supporting Asset Payment, Hollard must refund the difference within 14 days of the final calculation of the Supporting Asset Payment.
- (c) PDIC remains liable for, and must pay, any tax, duty, levy or other mandatory amount directly applicable to the issue or renewal of an Insurance Contract by PDIC prior to the Effective Time.

#### **5. Proceedings**

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At and from the Effective Time:

- (a) Hollard is deemed substituted for PDIC in respect of all proceedings brought by or against PDIC under or in connection with the Insurance Contracts, the Insurance Liabilities, all other Business Assets or the Specified Liabilities; and
- (b) PDIC is deemed to be relieved from such proceedings.

#### **6. Confirmation of Scheme**

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Upon confirmation of this Scheme by the Court:

- (a) this Scheme becomes binding on all persons;

- (b) this Scheme has effect in spite of anything in the constitution of any body corporate affected by this Scheme; and
- (c) PDIC ceases to:
  - (i) have any liabilities under and in respect of the Insurance Contracts; and
  - (ii) be liable for the Assumed Liabilities.

## **7. Further Assurance**

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PDIC and Hollard must 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 this Scheme.

## **8. Costs of the Scheme**

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All costs and expenses incurred in connection with this Scheme, including the cost and expenses associated with preparing and filing the Actuarial Report must be borne by PDIC and Hollard in equal portions and at no cost to the policyholders of either PDIC or Hollard.

## **9. Rights and Obligations of Insureds**

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- (a) This Scheme will not change the terms of any Insurance Contract, or affect any Claim in respect of any Insurance Contract, issued, renewed or entered into by PDIC other than, with effect at and from the Effective Time, Hollard will become the insurer in place of PDIC.
- (b) Policyholders under the Insurance Contracts will continue to have the same rights and obligations under or in respect of any Insurance Contract or Claim but, with effect at and from the Effective Time, with Hollard as the insurer.
- (c) With effect at and from the Effective Time:
  - (i) all outstanding Claims-related rights and liabilities of PDIC in respect of the Insurance Contracts are transferred to Hollard such that any Claims arising or outstanding as at the Effective Time under or in connection with any Insurance Contract must be made or pursued against Hollard;
  - (ii) all premiums and other amounts payable to or recoverable by PDIC as at the Effective Time under the Insurance Contracts are payable to and recoverable by Hollard instead of PDIC;
  - (iii) Hollard is entitled to enforce all rights and remedies which but for this Scheme would have been enforceable by PDIC under or in respect of the Insurance Contracts (including, without limitation, any Claims by way

of subrogation, contribution, outstanding premium and any other recoveries related directly or indirectly to any Insurance Contracts);

- (iv) any misrepresentations or breaches of the duty of disclosure made to PDIC constitute misrepresentations or breaches likewise made to Hollard and Hollard is entitled to all defences to Claims that PDIC could have enforced despite misrepresentation was to PDIC rather than Hollard; and
  - (v) any policyholder under an Insurance Contract or other person who has a Claim on or obligation to PDIC under or in respect of an Insurance Contract, has the same Claim on or obligation to Hollard in substitution for the policyholder's Claim on or obligation to PDIC irrespective of when such Claim or obligation arose.
- (d) Policyholders are not required to take any action before or as a result of this Scheme.
- (e) In the event of any inconsistency between this clause 9 and any other provision of this Scheme, this clause 9 prevails to the extent of the inconsistency.