

INSURANCE ACT 1973
(PART III DIVISION 3A)

**SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS OF AIOI
NISSAY DOWA INSURANCE CO LTD TO AIOI NISSAY DOWA INSURANCE
COMPANY AUSTRALIA PTY LTD**

Background

- A. Aioi Nissay Dowa Insurance Co Ltd (ABN 39 096 302 466) (**AIOI**) and Aioi Nissay Dowa Insurance Company Australia Pty Ltd (ABN 11 132 524 282) (**ADICA**) 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 1973 (Cth) to give effect to the terms of an agreement by which AIOI has agreed to transfer, and ADICA has agreed to accept the transfer of all of the Business carried on by AIOI.
- C. If confirmed by the Federal Court of Australia, the Scheme will become binding on all persons.
- D. 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 23 March 2023 prepared by Don Johnstone of Taylor Fry, the Independent Actuary, upon which the Scheme is based.

APRA means the Australian Prudential Regulation Authority.

Assets means the assets of AIOI used for the purposes of conducting the Insurance Business as at the Transfer Effective Date including (without limiting the generality of the foregoing):

- (a) the rights, benefits and powers of AIOI under or by virtue of the Transferring Policies and Transferring Reinsurances;
- (b) all rights and Claims (present or future, actual or contingent) against any third party in relation to the Insurance Business or arising as a result of AIOI having carried on the Insurance Business;
- (c) the rights, benefits and powers of AIOI under or by virtue of any contracts or arrangements in connection with the Insurance Business;
- (d) the Business Intellectual Property;
- (e) the Fixed Assets; and
- (f) all book, trade and other debts owing to AIOI as at the Transfer Effective Date and all deposits and bills receivables held by AIOI as at the Transfer Effective Date, in each case relating to the Business, and all rights in relation thereto and the benefit of all guarantees or other security in respect thereof.

but excluding the Excluded Assets.

Business means the business carried on by AIOI in Australia as at the Transfer Effective Date including:

- (a) the Insurance Business;
- (b) the Assets;
- (c) the Liabilities; and
- (d) the Records,

and all rights and liabilities arising under, by virtue of, attributable to or in connection with these (including the Transferring Reinsurances).

Claim means any claim form or other legal proceedings or a demand, threat or notification of the same.

Excluded Assets means cash and liquid assets of AIOI which will be retained by AIOI after the Transfer Effective Date in accordance with the Transfer Agreement.

Insurance Act means the *Insurance Act 1973* (Cth), including any act or enactment which amends or replaces, or has amended or replaced it and shall include any subordinate legislation made under it.

Independent Actuary means the independent qualified actuary instructed by AIOI and ADICA to provide the Actuarial Report in compliance with the requirements of section 17C(2) of the Insurance Act.

Insurance Business means the business carried on by AIOI in or from Australia in connection with its undertaking of liability under the Transferring Policies.

Liabilities means all liabilities whatsoever (whether present or future, certain or contingent) of AIOI as at the Transfer Effective Date under or by virtue of the Business or any cost, expense ((including the fees and expenses of professional advisers), liability under any contracts or arrangements in connection with the Business, and damage or Loss of any kind in connection with the Business.

Records means the books and records (held in whatever medium) referable to the Business in the possession or control of AIOI up to the Transfer Effective Date, including (but not limited to) any books and records relating to sales, marketing, underwriting and outstanding claims in respect of the Insurance Business, and any related accounting and financial records.

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 ADICA.

Transfer Agreement means the Transfer Agreement dated on or about 22 March 2023 between AIOI and ADICA pursuant to which AIOI agrees to transfer, and ADICA agrees to accept, the Business.

Transfer Effective Date means the time and date on which the Transferring Policies are transferred to the Transferee pursuant to an order made by the Court pursuant to section 17F of the Insurance Act confirming the Scheme.

Transfer Value means an amount equal to the net book value of all Assets and Liabilities directly relating to the AIOI Business as at the Transfer Effective Date, calculated in accordance with the Australian Accounting Standards.

Transferring Policies means any policies forming part of the portfolio of general insurance policies issued by AIOI in Australia on or before 31 December 2013.

Transferring Reinsurances means any reinsurance agreements or arrangements in respect of the Insurance Business including any reinsurance policies under which AIOI is reinsured in respect of the Transferring Policies.

1.2 Interpretation

In this Scheme:

- (a) the singular includes the plural and the plural includes the singular;
- (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 party includes the party's executors, administrators, successors and permitted assigns;
- (e) a reference to a clause or schedule is a reference to a clause of or a schedule to, this Scheme;
- (f) a reference to an agreement or document (including, without limitation, a reference to the Transfer 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;
- (g) a reference to a statute or to a provision of a statute includes any amendment to or re-enactment of that statute, including any subordinate legislation issued under it; and
- (h) headings are for convenience only and do not form part of the Scheme or affect its interpretation.

2. Conditions Precedent

This Scheme and the Transfer Agreement are conditional upon and will have no effect unless and until:

- (a) the Scheme is confirmed by the Federal Court of Australia and, if made on conditions, on such conditions as are acceptable to the parties; and
- (b) the Treasurer of the Commonwealth of Australia or his permitted delegate makes a go-ahead decision confirming that the Treasurer has no objection to the acquisition by ADICA of the Business under section 41 of the *Insurance Acquisitions and Takeovers Act 1991* (Cth) and, if made on conditions, on such conditions as are acceptable to the parties.

3. Transfer of Business

In accordance with the terms of the Transfer Agreement, AIOI agrees to transfer and ADICA agrees to accept the transfer of the Business, with effect on and from the Transfer Effective Date.

4. Consideration

In consideration of the transfer of the Business from AIOI to ADICA, AIOI agrees to pay to ADICA an amount equal to the Transfer Value and ADICA agrees to assume the Liabilities.

5. Proceedings

- (a) If any proceedings are pending or any proceedings are brought on or after the Transfer Effective Date by or against AIOI in any court or tribunal in respect of the Business, AIOI and ADICA shall determine whether such proceedings will be continued:
 - (i) by or against ADICA 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 AIOI to ADICA; or
 - (ii) by or against AIOI for and on behalf of ADICA and any judgement or determination for and against AIOI in any such proceedings will have effect as between AIOI and ADICA as if such judgement or determination had been made for or against ADICA and ADICA will indemnify and keep AIOI indemnified accordingly.
- (b) ADICA will be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to AIOI in relation to any such proceedings.
- (c) ADICA, in its absolute discretion, may determine after the Transfer Effective Date to continue, discontinue or settle any proceedings relating to the Business that have been brought by AIOI.
- (d) Any judgement, settlement, order or award (or relevant part thereof) obtained by or against AIOI whether before or after the Transfer Effective Date to the extent that it relates to any part of the Business and which is not fully satisfied before the Transfer Effective Date shall, on that date and to the extent to which it was enforceable by or against immediately AIOI prior to such date (or, if later, the date on which the judgement, settlement, order or award is obtained), become enforceable by or against ADICA (to the exclusion of AIOI).
- (e) All documents which would before the Transfer Effective Date have been evidence in respect of any matter for or against AIOI shall on and from the Transfer Effective Date be evidence in respect of the same matter for or against ADICA.

6. Transfer of Assets

On and from the Transfer Effective Date, ADICA is legally and beneficially entitled to the benefit of the Assets and ADICA assumes responsibility for the Assets and shall indemnify and keep AIOI indemnified from and against all Claims under or in connection with the Assets.

7. Transfer of Liabilities

On and from the Transfer Effective Date, AIOI transfers the Liabilities to ADICA and ADICA accepts the transfer of the Liabilities, and ADICA assumes and takes over and

must indemnify and keep AIOI indemnified from and against all Claims under or in connection with the Liabilities.

8. Transfer Effective Date

The sale and purchase of the Business from AIOI to ADICA, and the transfer to and assumption of the Insurance Business, Assets, Liabilities and Records by ADICA pursuant to this Scheme take effect on and from the Transfer Effective Date.

9. Implementation

AIOI and ADICA 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.

10. 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 ADICA out of shareholder funds.

11. Consequences of the transfer of the Business

- (a) The Scheme does not change the terms of any Transferring Policies, or affect any claim in respect of any Transferring Policies, issued by AIOI other than that ADICA will become the insurer in place of AIOI. Policyholders will continue to have the same rights and obligations under or in respect of any Transferring Policies or claim but with ADICA as the insurer.
- (b) Subject to confirmation of the Scheme by the Federal Court of Australia, on and from the Transfer Effective Date:
 - (i) all outstanding claims-related rights and liabilities of AIOI in respect of the Transferring Policies will be transferred to ADICA such that any claims arising under or in connection with any Transferring Policies underwritten by AIOI must be made against ADICA;
 - (ii) all premiums and other amounts payable to or recoverable by AIOI under the Transferring Policies will be payable to and recoverable by ADICA instead of AIOI;
 - (iii) ADICA will be entitled to enforce all rights and remedies which but for the Scheme would have been enforceable by AIOI under or in respect of the Transferring Policies (including but not limited to any claims by way of subrogation, contribution, outstanding premium and any other recoveries related directly or indirectly to any Transferring Policies);
 - (iv) any policyholder under a Transferring Policy or other person who has a Claim on or obligation to AIOI under or in respect of a Transferring Policy will have the same Claim on or obligation to ADICA in substitution for his or her Claim on or obligation to AIOI irrespective of when such Claim or obligation arose; and
 - (v) any authority granted to AIOI by a policyholder under or in respect of a Transferring Policy will be vested in ADICA as if ADICA was, and at all time had been so authorised. This includes all directions, authorities, mandates or instructions given to AIOI to deduct premium or fees payable

in respect of the Transferring Policies (including by debiting a bank account/credit card or through electronic bank transfer) or 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 ADICA instead of AIOI.

- (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 11 and any other provision of this Scheme or the Transfer Agreement, the other provision shall prevail to the extent of the inconsistency.
- (e) The terms of this clause 11 apply *mutatis mutandis* to the Transferring Reinsurances and any other third party contracts that form part of the Assets.