

**INSURANCE ACT 1973**  
**(PART III DIVISION 3A)**

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**SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS  
OF THE AUSTRALIAN BRANCH OF ATRADIUS CREDIT INSURANCE N.V. TO  
THE AUSTRALIAN BRANCH OF COMPAÑÍA ESPAÑOLA DE SEGUROS Y  
REASEGUROS DE CRÉDITO Y CAUCIÓN SOCIEDAD ANONIMA**

**Background**

- (A) Atradius Credit Insurance N.V. ABN 72 099 372 595, a company incorporated in the Netherlands in accordance with Dutch law and registered as a foreign company in Australia under the Corporations Act is authorised by APRA to carry on insurance business in Australia under the Insurance Act.
  - (B) Compañía Española de Seguros y Reaseguros de Crédito y Caución Sociedad Anonima ARBN 610 834 556, a company incorporated in Spain in accordance with Spanish law and registered as a foreign company in Australia under the Corporations Act, is authorised by APRA to carry on insurance business in Australia under the Insurance Act.
  - (C) This Scheme has been prepared under Division 3A of Part III of the Insurance Act to give effect to the relevant terms of the Transfer Deed pursuant to which the Business will be transferred from ATRADIUS to and accepted by CYC.
  - (D) If confirmed by the Federal Court of Australia, the Scheme will become binding on all persons.
  - (E) The Actuarial Report has been prepared in connection with the Scheme.
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**1 Definitions and interpretation**

- 1.1 In this Scheme, unless the context requires otherwise, the following definitions apply.

**Actuarial Report** means the actuarial report dated 13 September 2016 prepared by the Appointed Actuary, or any subsequent update to that report, upon which the Scheme will be based.

**Appointed Actuary** means the appointed actuary of ATRADIUS, being Adam Searle of KPMG.

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

**Assets** mean all the property, rights and assets of ATRADIUS for the purposes of carrying on and conducting the Business as at the Effective Date including the intellectual property, goodwill, Business Records, IT systems, business information, fixed assets, moveable assets and Receivables, but excluding the Excluded Assets.

**Assets Value** means the total value ascribed to the Assets as at 30 June 2016, as more particularly set out in the Actuarial Report.

**Assignment Agreements** means all those assignment of proceeds arrangements between an insured and a third party financier in respect of certain Insurance Contracts, which arrangements have been entered into, acknowledged and consented to by ATRADIUS, as applicable, prior to the Effective Date, a non-exhaustive list of such assignment of proceeds arrangements being attached as Schedule 2 to the Transfer Deed.

**Assumed Liabilities** means any and all Liabilities of ATRADIUS that have or may in the future arise in respect of the Insurance Contracts.

**Assumed Liabilities Value** means the total value ascribed to the Assumed Liabilities as at 30 June 2016, as more particularly set out in the IFRS Balance Sheet.

**ATRADIUS** means the Australian Branch of Atradius Credit Insurance N.V. ABN 72 099 372 595 with its principal place of business in Australia at Level 14, 1 Market Street, Sydney, New South Wales 2000.

**Business** means the Insurance Business carried on by the Australian branch of ATRADIUS in Australia as at the Effective Date including all Insurance Contracts, Assets and Assumed Liabilities of ATRADIUS as at the Effective Date of the Scheme.

**Claim** means any claim by a Policyholder or any other person who is legally entitled to make a claim arising out of or in relation to an Insurance Contract.

**Conditions Precedent** means the conditions precedent in clause 3 of this Scheme.

**Confirmation Order** means the order or orders of the Federal Court of Australia confirming the Scheme.

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

**CYC** means the Australia Branch of Compañía Española de Seguros y Reaseguros de Crédito y Caución Sociedad Anonima ARBN 610 834 556 with its office at Level 14, 1 Market Street, Sydney, New South Wales 2000.

**Effective Date** means 31 October 2016 or such other date on which the Scheme becomes effective and binding in accordance with the Confirmation Order.

**Excluded Assets** means the cash and liquid assets and investments of ATRADIUS which will be retained by ATRADIUS after the Effective Date, as more particularly set out in the Actuarial Report.

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

**Insurance Business** has the meaning given to that expression in the Insurance Act, including business incidental to the insurance business (and which, for the avoidance of doubt, includes the Assignment Agreements).

**Insurance Contracts** means all contracts of insurance and inwards reinsurance issued, assumed or entered into by or on behalf of ATRADIUS as insurer in the conduct of the Business prior to the Effective Date (whether in force or cancelled), a non-exhaustive list of which is attached at Schedule 1 of the Transfer Deed. The Insurance Contracts, apart from those expressly listed in Schedule 1 of the Transfer Deed also include any other contracts of insurance or inwards reinsurance issued,

assumed by or entered into by or on behalf of ATRADIUS as insurer in the conduct of the Business prior to the Effective Date.

**Liabilities** means any or all liabilities, Claims, losses, costs or expenses of any kind relating to the Insurance Contracts, including those which are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Parties** means each of ATRADIUS and CYC and "Party" will mean either one of them.

**Policyholder** means any policyholder who is insured by ATRADIUS under an Insurance Contract.

**Scheme** means the scheme for the transfer of the Business from ATRADIUS to CYC 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 the Parties.

**Transfer Deed** means the deed between ATRADIUS and CYC pursuant to which ATRADIUS agrees to transfer, and CYC agrees to accept, the Business.

**Valuation Date** means 30 June 2016 or such later date as may be identified in any update to the Actuarial Report prepared by the Appointed Actuary and upon which the Appointed Actuary's updated analysis of the value of the Insurance Assets and Assumed Liabilities is based.

1.2 In this Scheme:

- (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) "including" and similar expressions are not words of limitation;
- (f) money is in Australian dollars;
- (g) a reference to a deed is to the deed as amended, varied, novated or replaced;
- (h) 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;
- (i) 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; and
- (j) headings are for convenience only and do not form part of this Scheme or affect its interpretation.

## 2 Transfer of the Business

2.1 In accordance with the terms of the Transfer Deed, ATRADIUS will transfer and CYC will accept the transfer of the Business and in particular the Insurance Contracts and Assignment Agreements, with effect on and from the Effective Date.

### **3 Conditions Precedent**

- 3.1 This Scheme and the Transfer Deed are conditional upon and will have no effect unless and until:
- (a) the Scheme is confirmed by the Federal Court of Australia; 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 CYC 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.

### **4 Consideration**

- 4.1 In consideration of the transfer of the Assets by ATRADIUS to CYC, CYC will on the Effective Date or a later date to be agreed by the Parties (but in any event, no later than 31 December 2016), pay to ATRADIUS an amount equal to the Assets Value.
- 4.2 In consideration for the assumption by CYC of the Assumed Liabilities, ATRADIUS will on the Effective Date or a later date to be agreed by the Parties (but in any event, no later than 31 December 2016), pay to CYC an amount equal to the Assumed Liabilities Value.
- 4.3 The Parties agree to:
- (a) any adjustment of or change to the Assets Value or the Assumed Liabilities Value from the Valuation Date to the Effective Date, as may be determined by the Appointed Actuary (the “**Adjustment Amount**”); and
  - (b) any adjustment of or change to the amount payable by ATRADIUS to CYC pursuant to clause 4.3(a), as may be determined by the Appointed Actuary.
- 4.4 The Parties agree to offset the amounts payable pursuant to this clause 4, as appropriate.

### **5 Indemnification by CYC**

- 5.1 ATRADIUS will transfer to CYC and CYC will accept the transfer of any and all the Assumed Liabilities and the Assumed Liabilities will cease to be Liabilities of ATRADIUS.
- 5.2 CYC will assume and will take over and will indemnify and keep ATRADIUS indemnified from and against all Assumed Liabilities and all Claims under or in connection with the Assumed Liabilities and ATRADIUS will be released and discharged from its obligations under or in connection with the Assumed Liabilities.
- 5.3 CYC will assume all and any tax liabilities of ATRADIUS and ATRADIUS will be released and discharged from its obligations under or in connection with such liabilities.
- 5.4 ATRADIUS will transfer to CYC and CYC will accept the transfer of the Assignment Agreements, and replace ATRADIUS as the 'insurer' under and pursuant to the original Assignment Agreements as if the Assignment Agreements had been entered into or consented to, as applicable, by CYC.

## **6 Proceedings**

- 6.1 If any proceedings are pending or any proceedings are brought on or after the Effective Date by or against ATRADIUS in any court or tribunal in respect of an Insurance Contract, such proceedings will be continued by or against ATRADIUS for and on behalf of CYC and any judgment or determination for or against ATRADIUS in any such proceedings will have effect as between ATRADIUS and CYC as if such judgment or determination had been made for or against CYC and CYC.

## **7 Effective Date**

- 7.1 The Scheme takes effect on and from the Effective Date such that the Scheme transfers the Business from ATRADIUS to CYC. Further, by virtue of the Scheme taking effect the Liabilities arising under and in respect of the Insurance Contracts will be assumed by CYC.

## **8 Giving effect to the Scheme**

- 8.1 ATRADIUS and CYC must each promptly and at their own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to the Transfer Deed, the Scheme, the Actuarial Report and the transactions contemplated by them.

## **9 Rights and obligations of Policyholders**

- 9.1 The Scheme does not change the terms of any of the Insurance Contracts or Assignment Agreements, or the obligations and rights of the parties to each Insurance Contract and Assignment Agreement other than that CYC will become the insurer in place of ATRADIUS.
- 9.2 Subject to confirmation of the Scheme by the Federal Court of Australia, on and from the Effective Date:
- (a) the Assumed Liabilities will, without any further act or instrument, be transferred to and become Liabilities of CYC, and will cease to be Liabilities of ATRADIUS;
  - (b) CYC will indemnify and keep indemnified ATRADIUS from and against all obligations under the Insurance Contracts and Assignment Agreements including all actions, proceedings, Claims, costs, demands and expenses in respect of those obligations;
  - (c) CYC will assume and take over all of the obligations (actual or contingent) of ATRADIUS under the Insurance Contracts and the Assignment Agreements in respect of Claims and ATRADIUS will be released and discharged from its obligations (actual or contingent) under the Insurance Contracts and Assignment Agreements;
  - (d) CYC will be substituted for ATRADIUS in all Insurance Contracts and Assignment Agreements as if CYC was, and at all times had been, a party to the Insurance Contracts or Assignment Agreements in the place of ATRADIUS;
  - (e) the rights, benefits and Liabilities of all Policyholders, and any person claiming through or under them, under the Insurance Contracts and Assignment Agreements will be the same as if:

- (i) the proposals and applications on which they were based had been made to and accepted by CYC instead of ATRADIUS;
  - (ii) the respective Insurance Contract or Assignment Agreement had been entered into (or consented to, as applicable) by CYC instead of ATRADIUS; and
  - (iii) the Insurance Contracts and Assignment Agreements had been issued (or consented to, as applicable) by CYC instead of ATRADIUS,
- (f) any person having a Claim or an obligation to ATRADIUS under or in respect of an Insurance Contract or Assignment Agreement will have the same Claim or obligation to CYC in substitution for the Claim or obligation to ATRADIUS regardless of when the Claim or obligation arose; and
- (g) any authority granted to ATRADIUS by a Policyholder under, or by any other person in respect of, any Insurance Contract or Assignment Agreement will, by virtue of the Confirmation Order, be vested in CYC as if CYC was, and at all times had been so authorised.