

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission

Section 93AA Australian Securities and Investments Commission Act 2001

The commitments in this undertaking are offered to the Australian Securities & Investments Commissions ("ASIC") by:

Zurich Financial Services Australia Limited
ABN 11 008 423 372

Zurich Australian Insurance Limited
ABN 13 000 296 640

Both of 5 Blue Street, North Sydney NSW 2060

1 Background

- 1.1 Zurich Australian Insurance Limited ("**ZAIL**") carries on a general insurance business in Australia.
- 1.2 **ZAIL** is wholly owned by Zurich Financial Services Australia Limited ("**ZFSA**"). **ZFSA** is wholly owned by Zurich Insurance Company ("**ZIC**"), a company incorporated in Switzerland, which is part of the global Zurich Financial Services group.
- 1.3 In May 2004, ASIC and the Australian Prudential Regulation Authority ("**APRA**") each commenced an investigation into certain reinsurance arrangements entered into by **ZAIL** and General Reinsurance Australia Limited ABN 16 008 427 450 (formerly General & Cologne Reinsurance Australasia Limited) ("**GCRA**") during 2000. The investigations have also considered certain related transactions and arrangements entered into by related entities of **ZAIL** and **GCRA**.
- 1.4 The transactions and arrangements the subject of the ASIC investigation (the "**Reinsurance Arrangements**") comprise:
 - (a) The Aggregate Liability Excess of Loss Reinsurance Agreement (also known as the Loss Portfolio Transfer agreement or "**LPT**") dated 28 September 2000 between **ZAIL** and **GCRA**. This contract reinsured part of **ZAIL**'s general liability portfolio for losses incurred on or prior to 31 December 1999 and paid on or after 1 January 2000. The limit of cover was \$254 million, in excess of \$10 million. A single premium of \$137.75 million (which included a fee to **GCRA** of \$3.75 million) was paid in 2000;
 - (b) agreements between **GCRA** and Cologne Reinsurance Company (Dublin) Limited ("**CRD**") (a related corporation of **GCRA**), and between **CRD** and Zurich Insurance Company – Bermuda Branch ("**ZIBB**") (a related corporation of **ZAIL**). In or about February 2003, Zurich Insurance Company ("**ZIC**") was substituted for **ZIBB**;

- (c) a Stop Loss Reinsurance Agreement with the Australian branch of a related company of GCRA ("Stop Loss Policy"). This contract reinsured ZAIL's whole account against deterioration in its net incurred loss ratio. The contract commenced on 1 January 2000 and was renewed until 31 December 2003;
- (d) the retrocession of the risks under the Stop Loss Policy to CRD and the entry into of a Stop Loss Retrocession of Pool Z agreement between CRD and ZIC which related to both the LPT and the Stop Loss Policy.

Relevantly, the issue is whether the Stop Loss Policy (or any additional arrangement) was an arrangement whereunder ZAIL assumed financial responsibility for the risks which were the subject of the LPT.

1.5 The financial statements issued by ZFSA and ZAIL for the financial years 2000 to 2003 inclusive accounted for the LPT on the basis that it involved a transfer of risk from ZAIL and hence was a genuine reinsurance transaction.

1.6 In response to the matters uncovered, the Boards of ZFSA and ZAIL met on 29 November 2004 to consider the accounting treatment of the LPT and resolved to:

"DETERMINE, on the basis of the information before the Board concerning the transactions, that the Loss Portfolio Transfer Agreement dated 28 September 2000 (the "LPT") under which ZAIL purportedly reinsured certain insurance liabilities to General & Cologne Reinsurance Australia and related transactions involving Cologne Re Dublin and Zurich Insurance Company did not involve a transfer of risk from ZAIL and so the LPT ought properly to be characterised as financial reinsurance."

1.7 ZFSA and ZAIL accept that, having regard to all the circumstances considered together, ultimately ZAIL had assumed financial responsibility for the risks which were the subject of the LPT.

1.8 ZFSA and ZAIL have reviewed, with their auditors, the accounting treatment for the accounts for the years 2000 to 2003, and ZFSA and ZAIL acknowledge that those accounts, on the basis of the determination of the Board, contain errors which require correction. Critically, ZAIL's profit after tax for the year to 31 December 2000 was overstated by \$61,457,000 as a result of not accounting for the LPT transaction as financial reinsurance. The accounts for each of the years 2000 to 2003 have been lodged with ASIC, and can be presently accessed on ASIC's public register, together with Forms 902 "Notification of Supplementary Information" and Forms 492 "Request for Correction" lodged by ZFSA and ZAIL on 20 August 2004 and 28 February 2005 respectively.

1.9 ASIC has the regulatory power (but ZFSA and ZAIL reserve their position) to require ZFSA and ZAIL to restate and reissue their respective accounts for the years 2000 to 2003. However, having regard to all facts presently known to it, ASIC has agreed that ZFSA and ZAIL should be permitted to present the restated position by means of a note to the companies' 2004 accounts ("the Note"), and by the addition of an amending note to the companies' lodged 2000 to 2003 accounts, to be lodged with ASIC by Form 492/388.

2 Undertakings by ZFSA and ZAIL

2.1 Pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001, ZFSA and ZAIL provide the undertakings set out below:

2.2 The directors of ZAIL undertake that:

- (a) the company will prepare a note to the company's 2004 accounts and supplementary notes to the company's financial reports for the years ended 31 December 2000, 31 December 2001, 31 December 2002 and 31 December 2003 ("Supplementary Notes") for lodgement with ASIC that comply with the applicable accounting standards and, in particular, contain:

 - (i) an acknowledgement that ZAIL failed to properly account for the LPT and the Stop Loss Policy in its financial statements for the years ended 31 December 2000, 2001, 2002 and 2003 in accordance with accounting standards having the force of law under the Corporations Law and the Corporations Act 2001;
 - (ii) a narrative description of the LPT and the Stop Loss Policy, the manner in which they were accounted, and the manner in which they should have been accounted;
 - (iii) quantification of the effects on the financial statements of ZAIL for each of the years had the correct treatment in relation to the LPT and the Stop Loss Policy been adopted in each year. As a minimum, the adjustments to, and revised amounts of, total assets, total liabilities and profit should be shown for each year, disclosing separately potential taxation assets/liabilities and income tax expense/benefit (if any) arising from the proper recognition of the LPT and the Stop Loss Policy; and
- (b) each of the Supplementary Notes will be accompanied by a statement signed by two directors of ZAIL in accordance with a resolution of the Board of Directors of ZAIL. That statement will state whether the directors are of the opinion that had the financial statements for each year disclosed the matters now set out in the Supplementary Note prepared in accordance with paragraph (a) and been adjusted at the time that the director's declaration for that year was signed by the amounts disclosed in accordance with paragraph (a)(iii) above, the financial statements would have:

 - (i) in respect of the LPT and the Stop Loss Policy, complied with the recognition and measurement requirements of accounting standards that applied at the relevant time; and
 - (ii) given a true and fair view of the financial position at the end of the year and performance for the year in respect of the LPT and the Stop Loss Policy; and
- (c) each of the Supplementary Notes will be accompanied by a report signed by the auditor of ZAIL stating whether in the auditor's opinion had the financial statements for each year disclosed the matters now set out in the Supplementary Note prepared in accordance with paragraph (a) and been adjusted at the time that

the director's declaration for that year was signed by the amounts disclosed in accordance with paragraph (a)(iii) above, the financial statements would have:

- (i) in respect of the LPT and the Stop Loss Policy, complied with the recognition and measurement requirements of accounting standards that applied at the relevant time; and
- (ii) given a true and fair view of the financial position at the end of the year and performance for the year in respect of the LPT and the Stop Loss Policy.

2.3 The directors of ZFSA undertake that:

- (a) the company will prepare a note to the company's 2004 accounts and supplementary notes to the company's financial reports for the years ended 31 December 2000, 31 December 2001, 31 December 2002 and 31 December 2003 ("Supplementary Notes") for lodgement with ASIC that comply with the applicable accounting standards and, in particular, contain:
 - (i) an acknowledgement that ZFSA failed to properly account for the LPT and the Stop Loss Policy in its consolidated financial statements for the years ended 31 December 2000, 2001, 2002 and 2003 in accordance with accounting standards having the force of law under the Corporations Law and the Corporations Act 2001;
 - (ii) a narrative description of the LPT and the Stop Loss Policy, the manner in which they were accounted, and the manner in which they should have been accounted;
 - (iii) quantification of the effects on the consolidated financial statements of ZFSA for each of the years had the correct treatment in relation to the LPT and the Stop Loss Policy been adopted in each year. As a minimum, the adjustments to, and revised amounts of, total assets, total liabilities and profit should be shown for each year, disclosing separately potential taxation assets/liabilities and income tax expense/benefit (if any) arising from the proper recognition of the LPT and the Stop Loss Policy; and
- (b) each of the Supplementary Notes will be accompanied by a statement signed by two directors of ZFSA in accordance with a resolution of the Board of Directors of ZFSA. That statement will state whether the directors are of the opinion that had the financial statements for each year disclosed the matters now set out in the Supplementary Note prepared in accordance with paragraph (a) and for each year been adjusted at the time that the directors' declaration for that year was signed by the amounts disclosed in accordance with paragraph (a)(iii) above, the financial statements would have:
 - (i) in respect of the LPT and the Stop Loss Policy, complied with the recognition and measurement requirements of accounting standards that applied at the relevant time; and

- (ii) given a true and fair view of the financial position at the end of the year and performance for the year in respect of the LPT and the Stop Loss Policy;
- (c) each of the Supplementary Notes will be accompanied by a report signed by the auditor of ZFSA stating whether in the auditor's opinion had the financial statements for each year disclosed the matters now set out in the Supplementary Note prepared in accordance with paragraph (a) and been adjusted at the time that the directors' declaration for that year was signed by the amounts disclosed in accordance with paragraph (a)(iii) above, the financial statements would have:
 - (i) in respect of the LPT and the Stop Loss Policy, complied with the recognition and measurement requirements of accounting standards that applied at the relevant time; and
 - (ii) given a true and fair view of the financial position at the end of the year and performance for the year in respect of the LPT and the Stop Loss Policy.


3. Acknowledgements

3.1 ZFSA and ZAIL acknowledge that ASIC:

- (a) is continuing its investigation into the circumstances concerning the Reinsurance Arrangements;
- (b) has not formed any final view as to:
 - (i) the individual transactions and arrangements which comprised the Reinsurance Arrangements; and
 - (ii) the legal effect of such transactions and arrangements;
- (c) may, should a court make a determination in relation to the LPT and the Stop Loss Policy which has implications for the accounting treatment of these transactions, request and, if the request is not complied with, seek to compel ZFSA and ZAIL either to:
 - (i) amend, by means of a note and amending notes (as applicable), their respective accounts for all years on and from the year ended 31 December 2000; or
 - (ii) restate and reissue their respective accounts for all years on and from the year ended 31 December 2000,
 so as to correct all errors (if any) in the respective accounts identified by, or arising as a result of, such court determination;
- (d) by entering into this Enforceable Undertaking, has in no manner fettered its discretion or ability to bring one or more proceedings (whether criminal, civil, civil penalty or administrative) against the companies or the relevant officers and employees of the companies concerning:

- (i) the lodgement of false and misleading accounts by ZFSA and ZAIL for the years 2000 to 2003 ; or
 - (ii) the contents of the documents required by clauses 2.2 and 2.3 hereof or other accounts of ZFSA and ZAIL (save as provided in clause 3.5 below);
 - (iii) any other matter relating to ASIC's investigation;
- (e) may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (f) may from time to time publicly refer to this Enforceable Undertaking; and
 - (g) will make this Enforceable Undertaking available for public inspection.
- 3.2 ZFSA and ZAIL acknowledge that this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking.
- 3.3 ZFSA and ZAIL acknowledge that ASIC's acceptance of an Enforceable Undertaking does not affect ASIC's power to investigate a contravention arising from future conduct (save as provided in clause 3.5 below) or its rights to enforce any provisions of this Enforceable Undertaking.
- 3.4 Save as for the purposes of this undertaking, the matters contained herein do not constitute an admission by ZAIL, ZFSA or ZIC or any of their officers or employees or creates any estoppel against any of them.
- 3.5 ASIC accepts that, on the material presently available to it in respect of the LPT and the Stop Loss Policy, the directors of ZFSA and ZAIL, having made reasonable and diligent enquiries, have acted in good faith in the preparation of the accounts for the year ended 31 December 2004. On this basis, ASIC agrees to treat compliance with this Undertaking as full discharge by ZAIL and ZFSA of their present obligations to correct the accounts of ZAIL and ZFSA for the years ended 31 December 2000 to 2003 in respect of the LPT and the Stop Loss Policy and that it will not require or seek any further action by ZAIL or ZFSA in relation to these accounts except as provided in clause 3.1(c) above.


EXECUTED by ZURICH FINANCIAL SERVICES AUSTRALIA LIMITED:



 Signature of director

TOM BROWN

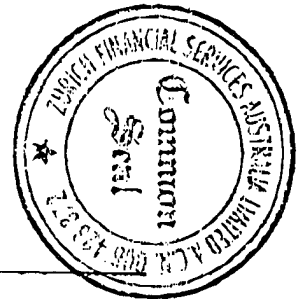
 Name



 Signature of director/secretary

IAN PAYNE

 Name



EXECUTED by ZURICH AUSTRALIAN
INSURANCE LIMITED:



J Brown

Signature of director

J Payne

Signature of director/secretary

TOM BROWN

Name

JAN PAYNE

Name

Agreed, and accepted by the Australian Securities & Investments Commission pursuant to Section 93AA of the Australian Securities and Investments Commission Act 2001 by its duly authorised delegate:

Jan Redfern

Ms Jan Redfern
Executive Director, Enforcement
Australian Securities and Investments Commission

This Enforceable Undertaking was offered by ZFSA and ZAIL, and accepted by ASIC on 25 May 2005.