

Undertakings Pursuant to s126 Insurance Act 1973

These Undertakings are given by Florian Salzgeber of Rässengüetli 20, 9050 Appenzell, Switzerland are accepted by Australian Prudential Regulation Authority of Level 26, 400 George Street, Sydney, New South Wales ('APRA') under section 126 of the *Insurance Act 1973* (the Act).

BACKGROUND

1. Mr Salzgeber was employed by Zurich Financial Services Australia Limited, ABN 11 008 423 372 (ZFSA) to carry out duties in relation to Zurich Australian Insurance Limited, ABN 13 000 296 640 (ZAIL) and ZFSA's related companies (the Zurich group) from about January 1999 to June 2003.
2. During most of this time, Mr Salzgeber held the position of Head of Capital and Financial Management.
3. ZAIL's parent company was and remains to be Zurich Insurance Company, a company incorporated in Switzerland (ZIC);
4. In 2000 and by transactions until 2003, ZAIL entered into and carried out a reinsurance transaction with General and Cologne Reinsurance Australia Limited (GCRA) and its related companies (the GCR Group).
5. Mr Salzgeber accepts that the transaction between ZAIL and the GCR group is appropriately described in "APRA's Statement of Common Facts and Contentions GCR Transaction and Effect" filed by APRA on 11 July 2008 in AAT review proceedings N2007/0927 (the GCR transaction) as follows:
 - (a) In September 2000, ZAIL and GCRA entered into an Aggregate Liability Excess of Loss reinsurance agreement in relation to ZAIL's loss portfolio, (the LPT Agreement);
 - (b) In October 2000, GCRA retroceded the LPT Agreement to Cologne Reinsurance Company (Dublin) Limited, a company within the GCR group, (CRD);
 - (c) In December 2000, ZAIL entered into a Stop Loss Agreement with Koelnische Rueckversicherungs Gesellschaft AG, a company within the GCR group, (CRAUS);
 - (d) In early 2001, CRAUS retroceded the Stop Loss Agreement to CRD for a premium equal to the entire Stop Loss premium paid by to it ZAIL less CRAUS' fee of \$100,000.00 per annum;
 - (e) CRD then retroceded the whole of its exposure under the LPT Agreement and the Stop Loss Agreement to ZIC's branch in Bermuda, Zurich Insurance Company – Bermuda Branch (ZIBB) and subsequently to ZIC itself;

Liquilla F. Salzgeber

- (f) By agreement between CRD and ZIBB, CRD credited the premiums paid to it by GCRA under the retroceded LPT Agreement and the premiums paid to it by CRAUS under the retroceded Stop Loss Agreement into a single off balance sheet fund known as Pool Z for investment by Scudder Investments Australia Limited (Scudder) under an agreement with CRD;
 - (g) The Stop Loss Agreement contained 2 conditions required to trigger CRAUS' liability and these conditions were not expected to be met except under very extraordinary circumstances;
 - (h) The premiums payable by ZAIL under the Stop Loss Agreement were not based on any risk analysis;
 - (i) The premiums payable by ZAIL under the Stop Loss Agreement were accordingly excessive, uncommercial and calculated to fund the difference between GCRA's losses arising from the LPT Agreement and the premiums paid by CRD into Pool Z less the premiums payable by CRD to ZIBB;
 - (j) By agreement between CRD and ZIBB, the funds paid by CRD into Pool Z were to be invested by Scudder and used to meet claims paid out under the LPT Agreement over and above the net premium paid to GCRA;
 - (k) By agreement between CRD and ZIBB and later, ZIC, CRD was covered for any losses in excess of the funds available from Pool Z less the premium payable by CRD to ZIBB up to the amount of the loss transferred under the LPT Agreement;
 - (l) By means of the GCR transaction, ZAIL intended to and would pay the whole of the liability that it would have paid had it not reinsured its loss portfolio with GCRA plus fees to GCR and CRAUS for their participation in the GCR transaction;
 - (m) ZAIL characterised the GCR transaction as amounting to reinsurance involving a genuine transfer of risk, when in fact, it was not. Accordingly, ZAIL's accounts did not reflect the company's true financial position;
 - (n) By reason of the GCR transaction, ZAIL could by disclosing the LPT Agreement but not the Stop Loss Agreement or the connection between them, present to its auditors, APRA and rating agencies a state of affairs which provided the opportunity to report significantly improved solvency ratios and a profit and thereby increased shareholders' funds.
6. On 17 May 2004, APRA appointed an Inspector to conduct an investigation into a transaction between ZAIL and the GCR Group.
7. The Inspector reported his findings to APRA on 1 July 2005 and as a consequence, on 19 December 2006, a delegate of APRA disqualified Mr Salzgeber pursuant to section 25A of the Act from being or acting as a person referred to in section 24 of the Act.

Liquill F Salzgeber

8. On 2 February 2007, Mr Salzgeber requested an internal reconsideration of the delegate's decision pursuant to section 63(2) of the Act. On 26 February 2007 a delegate of APRA confirmed the original disqualification decision.
9. On 22 March 2007, Mr Salzgeber commenced proceedings N2007/0925, by filing an application for review of his disqualification at the Administrative Appeals Tribunal, (the AAT review proceedings).
10. In the course of the AAT review proceedings, mediation was held on 26 and 27 November 2008 which resulted in Mr Salzgeber and APRA entering into Heads of Agreement.
11. APRA has power under s 126 of the Act to accept undertakings from Mr Salzgeber.
12. Mr Salzgeber makes the acknowledgments below and he further acknowledges that he has obtained legal advice before executing these undertakings.
13. On 25 May 2005, ZAIL and ZFSA gave undertakings to APRA pursuant to section 126 of the Act. ZAIL and ZFSA acknowledged that information was withheld and the statements were made that resulted in APRA, auditors and approved actuaries, the independent directors of ZFSA and ZAIL, and other officers not having complete and accurate information and being misled as to the true nature of the GCR transaction. It was further acknowledged that as a result, a number of people knowingly misled APRA about the true nature of the GCR transaction over an extended period of time.

ACKNOWLEDGMENTS

14. Mr Salzgeber acknowledges that:
 - (a) he was directed to and played an integral role in ZAIL entering into and implementing the GCR transaction, knowing that the transaction contained impropriety and was intended to artificially improve the appearance of ZAIL's financial position for 2000 to 2003;
 - (b) he was directed to and became a key implementer of 2 of the aspects of the GCR transaction, being the Stop Loss Agreement and Pool Z, which he knew did not have a legitimate commercial purpose;
 - (c) he understood that ZAIL had to fund the losses arising from ZAIL's liability portfolio which was the subject of the LPT Agreement, notwithstanding the LPT Agreement;
 - (d) he was aware that premiums arising from both the LPT Agreement and Stop Loss Agreement were to be paid into Pool Z and then invested to meet GCR's liabilities under the LPT Agreement;

Liquilla

F Salzgeber

- (e) he participated in preparing a written submission to ZIC for approval of the GCR transaction and an incomplete version of the submission for disclosure to ZAIL's external auditors, PriceWaterhouseCoopers (PWC);
 - (f) he participated in discussions and internal meetings conducted by ZAIL, in respect of the calculation of the premium payable under the Stop Loss Agreement and was also involved in and responsible for the calculation and review of cash flow projections relating to the expected difference between the premium paid to GCR under the LPT Agreement and the liabilities arising from ZAIL's liability portfolio, on the basis that ZAIL would have to fund the payment of this difference by means of the premium payable under the Stop Loss Agreement before the difference emerged;
 - (g) in 2001, he was aware that the premium paid to GCR under the LPT Agreement would be unlikely to be sufficient to cover all liabilities and that the expected difference of about \$64 million would be funded by paying the premiums under the Stop Loss Agreement into Pool Z;
 - (h) he helped negotiate the accounting treatment and negotiated the accounting detail with PWC for the LPT Agreement with knowledge that PWC had incomplete information regarding the LPT Agreement;
 - (i) he knew that there was an implicit understanding among ZAIL executives who understood the transaction that the GCR transaction, and in particular the Stop Loss Agreement, was not to be disclosed in its entirety to APRA, PwC and Standard and Poors; and
 - (j) he acknowledges and accepts the reliability of the evidence given by Richard Mayo and John Stanbridge in the present Tribunal proceedings.
15. APRA accepts that Mr Salzgeber suggested to John Stanbrige, Richard Mayo and Paul Baker to drop or reconsider the GCR transaction but his suggestion was rejected.

THE UNDERTAKINGS

16. Mr Salzgeber undertakes not to:
- (a) be or act as a Senior Manager, director or agent in Australia of a general insurer or of an authorised NOHC (as defined under the Act);
or
 - (b) be or act as a Senior Manager, director, agent in Australia (for the purposes of s 118 of the Act) or a director or Senior Manager of the agent in Australia, of a foreign general insurer;


For a period of:

Liquill *F. Salzger*

(c) 12 years from the date of his disqualification commencing on 19 December 2006.

17. Mr Salzgeber undertakes to fully cooperate with APRA and its legal representatives in relation to the current AAT disqualification proceedings (or other related proceedings) involving Messrs Butler, Jones and Parsonson, and will cooperate with APRA in making a statement for the purposes of those proceedings.
18. Mr Salzgeber also undertakes to give evidence by way of video link or other agreed means in those proceedings. Mr Salzgeber is entitled to have his legal representative present at any conferences with APRA or its legal representatives and APRA will consent to his legal representatives having a right of appearance in the disqualification proceedings referred to above.
19. Mr Salzgeber may apply for the period of the undertaking as described above to be reduced to a period of six (6) years from the date his disqualification commenced on 19 December 2006 if Mr Salzgeber provides full cooperation to APRA's reasonable satisfaction. APRA will consider such an application in good faith.
20. If Mr Salzgeber accepts any employment with a general insurer before expiration of this undertaking, he undertakes to notify APRA as soon as practicable of that fact, and provide details of the name of the employer and the nature of the duties to be performed by Mr Salzgeber during that employment.
21. These undertakings come into immediate effect upon signing by the parties.
22. Nothing in these undertakings is intended to prevent Mr Salzgeber engaging in employment in the general insurance industry other than as a senior manager of a general insurer or foreign general insurer, or as a director of a general insurer or authorised NOHC, or as an agent in Australia of a foreign general insurer. Insofar as these undertakings provide for APRA to accept a shortened period during which Mr Salzgeber is not to be approved as a senior manager, director or agent in Australia, that discretion is only intended to be exercised in the circumstances set out in this undertaking.

SIGNED by Mr Salzgeber:


.....

Florian Salzgeber

In the presence of:

Liquill

[Signature of witness]

Christophe Viguille

[Print name of witness]

Accepted by a delegate of APRA pursuant to s 126 of the Act:

[Signature]

[Name of delegate] *PATRICK MEANEY 13/2/09*

In the presence of:

[Signature]

[Signature of witness]

DAVID CHARLES SULLIVAN

[Print name of witness]

Date: *10* February 2009