

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

IN THE MATTER OF

QBE INSURANCE (EUROPE) LIMITED

and

IN THE MATTER OF

QBE RE (EUROPE) LIMITED

and

IN THE MATTER OF

QBE EUROPE SA/NV

and

IN THE MATTER OF

THE FINANCIAL SERVICES AND MARKETS ACT 2000

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SUMMARY OF THE SCHEME AND THE REPORT

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## 1 Introduction

- 1.1 QBE Insurance (Europe) Limited (**QIEL**) is proposing to transfer all of its general insurance and reinsurance business: (i) written through its active branches in Denmark, France, Germany, Italy, Spain and Sweden; and (ii) previously written by its branches in Belgium, Bulgaria, Estonia, Ireland and Norway, which is now in run-off ((i) and (ii) together being the **QIEL Branches**), which comprises the entirety of QIEL's freedom of establishment business in Belgium, Bulgaria, Denmark, Estonia, France, Germany, Ireland, Italy, Norway, Spain and Sweden (the **Transferred QIEL Business**) to QBE Europe SA/NV (**QBE Europe**).
- 1.2 QBE Re (Europe) Limited (**QBE Re**) is proposing to transfer all of its general and long-term reinsurance business written through its Belgian, Bermudan and Irish branches (together the

**QBE Re Branches**), which comprises the entirety of QBE Re's business (the **Transferred QBE Re Business**) to QBE Europe.

- 1.3 These two transfers of the Transferred QIEL Business and the Transferred QBE Re Business (the **Transferred Business**) (the **Transfers**) are proposed to be effected through an insurance business transfer scheme (the **Scheme**). The Scheme will be carried out through the High Court of Justice in England (the **High Court**) in accordance with Part VII of the UK Financial Services and Markets Act 2000. On the Effective Date, it is also intended that: (a) QBE Re will merge with QBE Europe by means of a cross border merger by absorption; and (b) QBE Europe's shareholders, QBE Holdings (EO) Limited and QBE European Operations Plc, will ensure that it is sufficiently capitalised to undertake the Transferred Business.
- 1.4 This document sets out a summary of the effect of the Scheme and of the report prepared by the Independent Expert (see paragraph 5.1 below) on the Scheme (the **Report**).
- 1.5 This document is only a summary. Full details of the Scheme and the Report can be found in the complete versions which are available free of charge (please refer to paragraph 7 below for further information).

## **2 Background of QIEL, QBE Re and QBE Europe**

- 2.1 QIEL is a company incorporated in England and Wales with registered number 01761561. The registered office of QIEL is at Plantation Place, 30 Fenchurch Street, London, EC3M 3BD.
- 2.2 The Transferred QIEL Business includes all QIEL's general insurance and reinsurance business written through the QIEL Branches.
- 2.3 QBE Re is a company incorporated in England and Wales with registered number 01378853. The registered office of QBE Re is at Plantation Place, 30 Fenchurch Street, London, EC3M 3BD.
- 2.4 The Transferred QBE Re Business includes all of QBE Re's general and long-term reinsurance business written through the QBE Re Branches, which comprises the entirety of QBE Re's business.
- 2.5 QBE Europe is a company incorporated in Belgium with registered number 0690537456. The registered office of QBE Europe is at Boulevard du Régent 37, BE 1000, Brussels.
- 2.6 QIEL and QBE Re are both authorised and regulated by the UK Prudential Regulation Authority (**PRA**) and are also regulated by the UK Financial Conduct Authority (**FCA**).
- 2.7 QBE Europe is authorised and regulated by the National Bank of Belgium (*Banque Nationale de Belgique/Nationale Bank van België*) (**NBB**).

### 3 Process and Timings of the Scheme

3.1 The proposed timings for the Scheme are:

|   |                  |
|---|------------------|
|   |                  |
| High Court hearing  | 19 December 2018 |
| Proposed "Effective Date" (when the Transferred Business will transfer to QBE Europe) | 1 January 2019   |

3.2 The Scheme will not go ahead unless the High Court approves it on 19 December 2018.

3.3 If the High Court imposes any change or conditions to the proposed Scheme, the Scheme will not take effect unless QIEL, QBE Re and QBE Europe consent.

### 4 Summary of the Scheme

4.1 The following is a summary of the main points of the Scheme. As noted above, the full version of the scheme document is available free of charge (please refer to paragraph 7 below for further information).

4.2 In addition, QIEL, QBE Re and QBE Europe have prepared a series of policyholder communications which are available at the QBE website (at <https://qbeeurope.com/>).

#### The Effect of the Scheme

4.3 As stated above, the Scheme is intended to transfer all of the Transferred Business from QIEL and QBE Re to QBE Europe.

#### Claims paid by QBE Europe after the Effective Date

4.4 It is intended that from the Effective Date, all the rights and obligations arising from the Transferred Business will automatically transfer to QBE Europe and will no longer rest with QIEL or QBE Re (as applicable). This means that QBE Europe will be responsible for paying all claims and meeting all the other obligations which were previously obligations of QIEL or QBE Re (as applicable) in relation to the Transferred Business.

#### Exceptions

4.5 Despite the intention explained in 4.4 above, there are a small number of policies which will or may fall outside the Scheme, referred to as "**Excluded QIEL Policies**" or "**Residual QIEL Policies**" respectively. These are described in more detail in the full version of the Scheme. Any Residual QIEL Policies will transfer to QBE Europe as soon as possible following the Effective Date.

## **No Changes to Policy Terms and Conditions**

- 4.6 There will be no changes to the terms and conditions of the transferring policies, save that the (re)insurer will be QBE Europe and not QIEL or QBE Re (as applicable).

## **Policy administration**

- 4.7 The administration (including claims handling) of the Transferred Business currently undertaken in Belgium, Bermuda, Bulgaria, Denmark, Estonia, France, Germany, Ireland, Italy, Norway, Spain, Sweden and the UK by QIEL or QBE Re (as applicable) will be carried out in the same manner regardless of whether the Scheme is sanctioned or not. The employees of QIEL and QBE Re (as applicable) in Belgium, Bermuda, Denmark, France, Germany, Italy, Spain and Sweden will, subject to the completion of appropriate employee consultation procedures and the Scheme becoming effective, transfer to and be employed by QBE Europe (in the case of the Belgian employees) or the corresponding branch of QBE Europe (in the case of all other employees). These staff will continue to administer the business in the same way after the Transfers as it is carried on before the Transfers. QIEL and QBE Re do not have any employees in the UK and Ireland but instead appoint QBE Management Services (UK) Limited and QBE Management (Ireland) Limited to act as service companies and employing entities in these jurisdictions. QBE Europe will enter into arrangements with the above entities, pursuant to which the relevant employees in the UK and Ireland who currently administer transferring policies will continue to do so after the Transfers. Additionally, the business previously underwritten in Norway is currently serviced by employees in Denmark and Sweden; the business previously underwritten in Bulgaria is serviced by Euroins Insurance Group LLC; and the business previously underwritten in Estonia is serviced by AAS "BTA Baltic Insurance Company" Estonian Branch. QBE Europe intends to retain these arrangements following the Transfers. The Scheme should therefore not have any effect on the policy administration arrangements for the Transferred Business.

## **Continuity of proceedings or litigation**

- 4.8 From the Effective Date, any proceedings or litigation (or any relevant part thereof) which have been issued, served, commenced, threatened or contemplated by or against QIEL or QBE Re (as applicable) in connection with the Transferred Business (or any other claims or complaints which may be brought in the future against QIEL or QBE Re (as the case may be), including those not yet in contemplation) shall be continued by or against QBE Europe, and QBE Europe shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to QIEL or QBE Re (as applicable).
- 4.9 From the Effective Date, any judgement, settlement, order or award (or relevant part thereof) under current or past proceedings obtained by or against QIEL or QBE Re (as applicable) in

relation to the Transferred Business shall be enforceable by or against QBE Europe in place of QIEL or QBE Re (as applicable).

### **Costs and Expenses**

- 4.10 None of the costs and expenses relating to the preparation of the Scheme or High Court process will be borne by the policyholders.

## **5 Summary of the Report About the Scheme**

- 5.1 QIEL, QBE Re and QBE Europe have appointed Mr Alex Marcuson of Marcuson Consulting Ltd, as the **Independent Expert** to provide a **Report** to the High Court on the effect of the Scheme on the policyholders of QIEL, QBE Re and QBE Europe. Mr Marcuson is a Fellow of the Institute and Faculty of Actuaries. His appointment has been approved by the PRA, in consultation with the FCA.
- 5.2 The Report contains the reasoning behind Mr Marcuson's conclusions, including his assumptions, the detailed analysis underpinning his work, a number of important limitations relevant to understanding the conclusions reached, and a statement of the Report's purpose and the terms of its use. This additional material has not been included within this summary.
- 5.3 While Mr Marcuson is satisfied that this summary provides an appropriate synopsis of the Report, reliance on this summary alone may not give you the whole picture and anyone wishing to understand the analysis that has led to Mr Marcuson's conclusions should request a copy of the full Report. Copies of the full Report and any supplementary Report can be obtained free of charge (please refer to paragraph 7 below for further information).

### **The Rationale behind the Scheme**

- 5.4 The Report explains the Independent Expert's understanding of the purpose of the Scheme. This is to enable the parent company of the European division of the QBE group (the **European Division**), QBE European Operations Plc (**QBE EO**), to avoid the risk of disruption to its business and to provide certainty to the policyholders of its EEA branches in the context of the departure of the UK from the European Union (**Brexit**).
- 5.5 The Scheme will enable QBE Europe, as QBE EO's Belgium-domiciled subsidiary (re)insurer, to continue to administer the Transferred Business following Brexit. Following the Effective Date, it is intended that QBE Europe will be the European Division's sole carrier in respect of new non-Lloyd's risks situated in the European Economic Area (**EEA**).

### **The Independent Expert's Work**

- 5.6 The Independent Expert has reviewed the terms of the Scheme and considered its impact on the security of policyholders of QIEL and QBE Re (the Report does not consider the impact of

the Scheme on the policyholders of QBE Europe as, prior to the Effective Date, there are no such policyholders). The Independent Expert has also considered the impact of the Scheme on the reinsurers of the Transferred Business (**Reinsurers**) and the approach adopted by QIEL and QBE Re to notifying policyholders of QIEL and QBE Re affected by the Scheme and the accompanying publicity arrangements.

5.7 To reach his conclusions the Independent Expert has:

- (a) reviewed the actual and/or projected balance sheets of QIEL, QBE Re and QBE Europe, including the technical provisions of each company;
- (b) considered the position of other companies within the QBE group on which QIEL, QBE Re and QBE Europe rely for explicit or implicit financial support;
- (c) reviewed the way in which QIEL, QBE Re and QBE Europe determine their required amount of capital and compared the risks, capital requirements and available financial resources of each company;
- (d) looked at how the Transfers will affect non-financial matters, including: (i) the way in which the companies are managed and their policies are administered; and (ii) any changes in the legal and regulatory protections provided to policyholders;
- (e) considered the governing law of each of the transferring policies and assessed whether there is a risk that the Scheme will not be recognised by any jurisdiction;
- (f) considered whether differences between the companies before and after the Transfers could affect the level of claims arising under the reinsurance policies being transferred; and
- (g) reviewed the proposed notification and publicity arrangements.

5.8 The Independent Expert has also considered the possibility of either Transfer not proceeding and has confirmed that this will not impact his conclusions.

#### **Conclusions of the Independent Expert – Financial Security of Policyholders**

5.9 Based on his review of QIEL, QBE Re and QBE Europe, the Independent Expert has concluded that the policyholders of the Transferred Business will not be materially adversely affected by the Scheme (i.e. the likelihood that the claims of these policyholders will be paid in full will for all practical purposes be the same before and after the Scheme comes into effect).

5.10 For similar reasons, the Independent Expert has concluded that the policyholders remaining in QIEL will not be materially adversely affected by the Scheme.

### **Conclusions of the Independent Expert – Levels of Service**

- 5.11 Based on his review of QBE Europe's proposed arrangements for policy administration and claims handling, compared to those which QIEL and QBE Re have in place, the Independent Expert has concluded that the Scheme will have no effect on the administration of either the Transferred Business of QIEL or QBE Re, or the remaining (i.e. non-transferring) business of QIEL.

### **Conclusions of the Independent Expert – Other Non-Financial Considerations**

- 5.12 The Independent Expert identified two aspects of the Scheme that he considered to be potentially disadvantageous in respect of the Transferred QIEL Business and one aspect in respect of the Transferred QBE Re Business. Based on his analysis he did not consider any of them to be material. These aspects are explained in the following paragraphs and relate to:

- (a) access to the Policyholder Protection Scheme (**PPS**);
- (b) policyholder complaints; and
- (c) the priority of policyholders on insolvency.

- 5.13 The Independent Expert has also considered the governing law of the transferring policies.

#### **(a) The Policyholder Protection Scheme**

- 5.14 In the event of the insolvency of QIEL, eligible policyholders of the Transferred QIEL Business currently have recourse to the PPS to have their claims paid (as a reinsurer, none of QBE Re's policyholders will satisfy the eligibility criteria). If the Scheme goes ahead, as policyholders of QBE Europe, these policyholders may no longer have the same recourse to the PPS in the event of QBE Europe's insolvency. For unpaid claims arising in such a scenario, although there are compensation schemes that may provide protection in Belgium, the Independent Expert does not believe that they provide equivalent protection to the PPS.
- 5.15 The PPS includes provisions that mean that claims from eligible policyholders occurring prior to the transfer (whether reported or not) will be protected in the event of the failure of QBE Europe as they would following the failure of QIEL. Unexpired periods of cover at the time of the transfer (i.e. the Effective Date) will not, however, retain the benefit of the PPS.
- 5.16 Other than in Bulgaria and Estonia and in respect of certain business bound for QIEL's account by its European coverholders (**Coverholder Business**), the number of policyholders potentially affected by this change is small owing to the profile of the business that QIEL currently underwrites (being predominantly focussed on medium to large corporates) and the eligibility criteria for the PPS (which, generally speaking, only provides protection to individuals and very small enterprises).

- 5.17 As all of the policies underwritten by the Bulgarian and Estonian branches of QIEL expired on or before April 2015, the Independent Expert believes that any policyholders who meet the eligibility criteria and purchased a policy from these branches should retain the benefit of PPS.
- 5.18 For Coverholder Business, in respect of which the Independent Expert understands that almost all policyholders are likely to be eligible to benefit from the PPS, and other eligible policyholders, there will be a loss of PPS protection in respect of claims relating to unexpired periods of cover at the time of the transfer (i.e. the Effective Date).
- 5.19 As the likelihood of the insolvency of QBE Europe currently appears remote, the Independent Expert does not consider that this loss of access to the PPS will materially adversely affect the security afforded to the transferring policyholders.

#### **(b) Policyholder Complaints**

- 5.20 In the event of a dispute with QIEL, eligible policyholders of the Transferred QIEL Business currently have recourse to the UK Financial Ombudsman Service (**FOS**), which provides a free, independent service for resolving disputes (as a reinsurer, none of QBE Re's policyholders will satisfy the eligibility criteria).
- 5.21 As for the PPS, the eligibility criteria for the FOS is restricted to individuals and very small enterprises, meaning that, other than in Bulgaria and Estonia and in respect of the Coverholder Business, most QIEL policyholders will be too large to be eligible. In addition, the FOS will only have jurisdiction in respect of a policy underwritten by one of the QIEL Branches if the eligibility criteria is satisfied and judgement in relation to a claim or complaint has been exercised by QIEL staff in the UK. Therefore, only those policyholders who both meet the eligibility criteria and have had their claims or complaints referred to staff based in QIEL's London office, currently have access to FOS. These policyholders will cease to have such access after the Transfers. The vast majority of policyholders (who have not had their claims or complaints referred to staff based in QIEL's London office) cannot currently bring complaints to the FOS, and this will not change as a result of the Scheme.
- 5.22 The Independent Expert has assessed the situation regarding the loss of such access and, while he has recognised the theoretical disadvantage arising, has concluded that taking into account the absence of any referrals to the FOS from the QIEL Branches (including from the Bulgarian and Estonian branches and in respect of the Coverholder Business) over the last five years, the chance of there being a policyholder who: (a) wishes to use the FOS; and (b) will lose that ability, is remote. All instances of policyholder complaints have been handled under local arrangements and this will continue unchanged after the transfer. He has therefore concluded that any loss of access to FOS does not represent a material adverse effect as a result of the Scheme.



5.23 The Scheme will have no effect on the ability of eligible non-transferring policyholders of QIEL to bring complaints to the FOS.

5.24 In addition, QBE Europe has undertaken to comply with the relevant UK rules concerning dispute resolution.

**(c) The priority of policyholders on insolvency**

5.25 QBE Europe will have permission to write both insurance and reinsurance risks. In the event of the insolvency of QBE Europe, Belgian law provides that any sums due to direct insurance policyholders will be given priority over those due to reinsurance policyholders. While the position is the same under English law, QBE Re does not currently write any direct insurance business and its policyholders would not, therefore, rank behind any other class of policyholder if it became insolvent.

5.26 The Independent Expert has therefore identified that there is a potential disadvantage to the policyholders of the Transferred QBE Re Business, as they will be moving to a firm that also has direct insurance policyholders (being those transferring from QIEL and any future direct policyholders). They will, therefore, have a theoretical diminution in their rights following insolvency as they would, on the insolvency of QBE Europe, rank behind those direct insurance policyholders.

5.27 The Independent Expert has considered this issue in his Report and has concluded that while it would adversely affect the benefits afforded to those policyholders who are currently insured by QBE Re, the impact will not be material because he has concluded that the likelihood of the insolvency of QBE Europe appears remote.

**Governing Law**

5.28 The Independent Expert has also identified that, while a very small proportion of the transferring QIEL policies (circa 1%) are governed by the laws of a non-EEA member state, a significant minority (approximately 40%) of the transferring QBE Re policies do not apply an EEA member state's governing law. Where a policy is governed by the laws of a non-EEA member state, there is a risk that the Transfers may not be recognised by that non-EEA member state.

5.29 The Independent Expert is, however, satisfied that this will not have an adverse impact on the policyholders of the Transferred Business because QBE Europe has confirmed to the Court that it will:

- (a) not seek to rely on the non-recognition of the Transfers under the governing law of a relevant policy as a basis for avoiding that policy;

- (b) meet any reasonable legal costs and expenses incurred by the policyholder in question to the extent they relate to the enforcement of a policy in a jurisdiction which does not recognise the Transfers; and
- (c) enter into a deed poll documenting the above commitments.

### **Conclusions of the Independent Expert – Effect of the Scheme on Reinsurers**

5.30 The reinsurance arrangements protecting the Transferred Business will transfer by virtue of the Scheme and continue to protect the business once it has transferred to QBE Europe. For some policies this may mean that the reinsurance is effectively split between QIEL and QBE Europe following the Transfers. The amount of the liabilities of each external reinsurer of QIEL and QBE Re will not change as a result of the Scheme. The Independent Expert is satisfied that the Scheme will not have a materially adverse effect on the reinsurers of QIEL and QBE Re whose contracts of reinsurance are to be transferred by the Scheme because the commercial relationship will remain with subsidiaries of QBE EO. There are no changes proposed to the manner in which the reinsurance contracts are to be managed following the Transfers.

### **Conclusions of the Independent Expert – Notification and publicity arrangements**

5.31 The Independent Expert has reviewed the notification and publicity arrangements and concluded that the approach being proposed with regard to notifying policyholders of QIEL and QBE Re of the Scheme, including the dispensations being sought from the High Court and additional publicity arrangements beyond the strict legal requirements, is appropriate.

## **6 Supplemental Report**

6.1 Mr Marcuson's analysis is based upon the material supplied to him, including balance sheets and other information, based on accounting positions as at 31 December 2017. He has also taken into account updated financial information which has been made available. Since the proposed Effective Date for the Scheme is 1 January 2019, he will revisit the analysis closer to the time to confirm that there have been no material changes to the arrangements that he has reviewed that would affect his overall opinion. He will then prepare and issue a **Supplemental Report** to be made available to the High Court prior to the second High Court hearing. Paragraph 7 explains how copies of the Supplemental Report can be obtained.

## **7 Further Information**

If you have any further questions or require full versions of the Scheme, the Report and the Supplemental Report please:

- go to the QBE website (at <https://qbeurope.com/>); or

- telephone the dedicated helpline at + 44 20 7105 5566 (UK), + 32 2224 9889 (Belgium), + 359 2905 1063 (Bulgaria), + 45 3345 0303 (Denmark), +372 5 68 668 (Estonia), + 33 1 8004 3355 (France), + 49 21 1994 1991 (Germany), + 353 1605 3666 (Ireland), + 39 02 3626 3515 (Italy), + 47 2405 5231 (Norway), + 34 9 1789 5000 (Spain) or + 46 8 5875 1444 (Sweden); or
- write to QBE at:
  - UK – Plantation Place, 30 Fenchurch Street, London EC3M 3BD;
  - Belgium – Boulevard du Régent 37, BE 1000, Brussels;
  - Bulgaria – 132 Mimi Balkanska Str., Sofia, 1540;
  - Denmark – Vester Farimagsgade 7, 6, DK 1606 Copenhagen V;
  - Estonia – Tornimäe 5, Tallinn, 10145;
  - France – Cœur Défense, Tour A, 110, Esplanade du Général de Gaulle, 92931 La Défense Cedex;
  - Germany – Breite Straße 31, 40213 Düsseldorf;
  - Ireland – 6-10 Suffolk Street, Dublin 2, Dublin, Ireland;
  - Italy – Via Melchiorre Gioia 8, 20124 Milano;
  - Norway – Postboks 447, 4664 Kristiansand;
  - Spain – Paseo de la Castellana, 31 – 5ª Planta, 28046 Madrid; and
  - Sweden – Sveavägen 13, 111 57, Stockholm.