

Summary of the Scheme and Independent Expert report

In the high court of justice Business and property courts of
England and Wales Companies court (ChD)



**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)**

IN THE MATTER OF QBE UK LIMITED

and

IN THE MATTER OF QBE EUROPE SA/NV

and

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

Summary of the scheme and the report

Contents

1	Introduction	1
2	Background of QBE UK and QBE Europe	2
3	Process and timings of the scheme	2
4	Summary of the scheme	3
5	Summary of the report about the scheme	5
6	Supplemental report	9
7	Further information	9

1 Introduction

1.1 QBE UK Limited (**QBE UK**) is proposing to transfer to QBE Europe SA/NV (**QBE Europe**) all of the general insurance and reinsurance policies written on a freedom of services basis throughout the European Economic Area (**EEA**) from QBE UK's head office in the United Kingdom (**UK**) between 1 January 1970 and 31 December 2018 (including certain general insurance policies which were previously proposed to be transferred by QBE UK to East West Insurance Company Limited, referred to herein as the **Project Fall Business**), which:

- (a) relate solely to a risk (or risks) situated in an EEA member state;
- (b) relate to a risk (or risks) situated in an EEA member state and the UK; or
- (c) relate to a risk (or risks) situated in an EEA member state and another jurisdiction (other than the UK),

(the **Transferring Business**).

1.2 The transfer of the Transferring Business (the **Transfer**) is 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 (**FSMA**).

1.3 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**).

1.4 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 QBE UK and QBE Europe

2.1 QBE UK is a company incorporated in England and Wales with registered number 01761561. The registered office of QBE UK is at 30 Fenchurch Street, London, EC3M 3BD.

2.2 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.

2.3 QBE UK is authorised and regulated by the UK Prudential Regulation Authority (**PRA**) and is also regulated by the UK Financial Conduct Authority (**FCA**).

2.4 QBE Europe is authorised and regulated by the National Bank of Belgium (Banque Nationale de Belgique/Nationale Bank van België) (**NBB**) and is also regulated by the Financial Services and Markets Authority (***Autoriteit voor Financiële Diensten en Markten/Autorité des Services et Marchés Financiers***).

3 Process and Timings of the Scheme

3.1 The proposed timings for the Scheme are as follows:

Key Milestone	Date
High Court hearing	21 October 2020
Proposed Effective Date (when the Transferring Business will transfer to QBE Europe)	1 November 2020

3.2 The Scheme will not go ahead unless the High Court approves it on 21 October 2020.

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

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, QBE UK and QBE Europe have prepared a series of policyholder communications which are available at the QBE website (at <https://qbееurope.com/>).

The Effect of the Scheme

4.3 As stated above, the Scheme is intended to transfer all of the Transferring Business from QBE UK 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 Transferring Business will automatically transfer to QBE Europe and will no longer rest with QBE UK. This means that QBE Europe will be responsible for paying all claims and meeting all the other obligations which were previously obligations of QBE UK in relation to the Transferring 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 Policies or Residual Policies respectively. These are described in more detail in the full version of the Scheme. Any Residual 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 insurer will be QBE Europe and not QBE UK.

Policy administration

4.7 The Transferring Business will be administered in the same manner regardless of whether the Scheme is sanctioned or not. In particular, there will be continuity in terms of the personnel who are responsible for administering the transferring policies. This is because:

- (a) in respect of the Project Fall Business, Armour Risk Management Limited will continue to be responsible for the administration of the transferring policies from the UK following the Effective Date; and
- (b) in respect of the remainder of the Transferring Business, the personnel who are currently responsible for the administration of the transferring policies are parties to a joint employment contract with QBE Europe and QBE Management Services (UK) Limited (which seconds such personnel to QBE UK). Following the Effective Date, those personnel who are currently responsible for the day-to-day administration of the transferring policies in the UK will continue to administer the transferring policies on behalf of QBE Europe (rather than QBE UK) in the manner they do currently.

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 QBE UK in connection with the Transferring Business (or any other claims or complaints which may be brought in the future against QBE UK, 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 QBE UK.

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 QBE UK in relation to the Transferring Business shall be enforceable by or against QBE Europe in place of QBE UK.

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 QBE UK 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 QBE UK 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. In particular, this summary provides a simplified expression of the conclusions contained in the Report, and so 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. In summary, it is now generally accepted that, following Brexit, it will not be possible for UK-based insurance undertakings to provide insurance-related

cross border services from the UK into the EEA beyond the EEA-wide implementation period provided for in the European Union (Withdrawal Agreement) Act 2020, which ends on 31 December 2020 or any additional jurisdiction-specific transition periods. The Scheme facilitates the transfer of the Transferring Business from QBE UK to QBE Europe, so that such business can be properly serviced by QBE Europe, the principal European (re)insurance company in the QBE group, regardless of the political outcome.

The Independent Expert's Work

5.5 The Independent Expert has reviewed the terms of the Scheme and considered its impact on the security of policyholders of QBE UK and QBE Europe. The Independent Expert has also considered the impact of the Scheme on the reinsurers of the Transferring Business (Reinsurers) and the approach adopted by QBE UK and QBE Europe to notifying policyholders affected by the Scheme and the accompanying publicity arrangements.

5.6 To reach his conclusions the Independent Expert has:

(a) reviewed the technical provisions of QBE UK and QBE Europe (and the process for determining them);

(b) reviewed the process for, and the results of, splitting the technical provisions of QBE UK between those QBE UK policyholders who hold a policy comprised within the Transferring Business (and whose policies will, therefore, transfer to QBE Europe) and those QBE UK policyholders who will remain with QBE UK after the Effective Date;

(c) reviewed the balance sheets of QBE UK and QBE Europe before and after the Transfer;

(d) considered the position of other companies within the QBE group on which QBE UK and QBE Europe rely for explicit or implicit financial support;

(e) reviewed the way in which QBE UK and QBE Europe determine their required amount of capital (referred to as the **QBE EO Internal Model**) and compared the risks, capital requirements and available financial resources of each company;

(f) considered the impact on the results of the QBE EO Internal Model of: (i) the increased business volumes of QBE Europe; and (ii) the Covid-19 pandemic;

(g) considered the financial resources of QBE UK and QBE Europe in light of the Covid-19 pandemic (and the actual or planned injections of financial resources into each entity prior to the Transfer);

(h) looked at how the Transfer will affect non-financial matters, including: (i) the way in which QBE UK and QBE Europe are managed and their policies are administered; and (ii) any changes in the legal and regulatory protections provided to policyholders;

(i) assessed whether there is a risk that the Scheme will not be recognised by any relevant jurisdiction (on the basis of the information provided to the Independent Expert regarding the governing law of the transferring policies);

(j) considered whether differences between QBE UK and QBE Europe before and after the Transfer could affect the level of claims arising under the reinsurance policies being transferred; and

(k) reviewed the proposed notification and publicity arrangements.

Conclusions of the Independent Expert - Financial Security of Policyholders

5.7 Based on his review of QBE UK and QBE Europe, the Independent Expert has concluded that the policyholders of the Transferring 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).

5.8 For similar reasons, the Independent Expert has concluded that the policyholders remaining in QBE UK and the existing policyholders of QBE Europe will not be materially adversely affected by the Scheme.

Conclusions of the Independent Expert - Levels of Service

5.9 Based on his review of QBE Europe's proposed arrangements for policy administration and claims handling, compared to those which QBE UK has in place, the Independent Expert has concluded that the Scheme will have no practical effect on the administration of each of the Transferring Business, the remaining (i.e. non-transferring) business of QBE UK and the existing business of QBE Europe.

Conclusions of the Independent Expert – Other Non-Financial Considerations

5.10 The Independent Expert did not identify any aspects of the Scheme that he considered to be potentially disadvantageous in respect of the Transferring Business. For example, while there are some theoretical scenarios under which a small number of the policyholders of the Transferring Business could lose their right to access the Financial Services Compensation Scheme (**FSCS**) or the Financial Ombudsman Service (**FOS**), the Independent Expert has concluded that these are remote.

The FSCS

5.11 In the event of the insolvency of QBE UK, eligible policyholders of the Transferring Business currently have recourse to the FSCS to have their claims paid. If the Scheme goes ahead, as policyholders of QBE Europe, these policyholders may, in certain circumstances, no longer have the same recourse to the FSCS in the event of QBE Europe's insolvency. Although there are compensation schemes in Belgium, the Independent Expert does not believe that they provide equivalent protection to the FSCS.

5.12 The rules relating to the FSCS include 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 QBE UK. Unexpired periods of cover at the time of the Transfer (i.e. the Effective Date) will, however, only be covered by the FSCS to the extent that QBE Europe remains a "relevant person" under FSMA (i.e. retains a Part 4A permission by maintaining its UK branch).

5.13 In any event:

- (a) the number of policyholders potentially affected by this change is small owing to the profile of the business that QBE UK has underwritten (being predominantly focussed on medium to large corporates) and the eligibility criteria for the FSCS (which, generally speaking, only provides protection to individuals and very small enterprises);
- (b) QBE Europe has no plans to close its UK branch (and currently intends to apply for full third country branch status when required following Brexit);
- (c) almost all of the Transferring Business will have expired by the Effective Date; and
- (d) the Independent Expert concludes in the Report that the likelihood of the insolvency of QBE Europe appears remote (meaning that the need to claim under the FSCS is unlikely to ever arise).

The FOS

5.14 In the event of a dispute with QBE UK, eligible policyholders of the Transferring Business currently have recourse to the FOS, which provides a free, independent service for resolving disputes.

5.15 The eligibility criteria for the FOS is restricted to individuals and very small enterprises, meaning that most QBE UK policyholders will be too large to be eligible.

5.16 The Independent Expert has assessed the situation regarding the potential loss of such access for certain policyholders and has concluded that eligible policyholders of the Transferring Business will only lose the right to refer a claim to the FOS if their claim relates to an act or omission of QBE Europe which took place outside of the UK. As policy

administration activities are expected to take place in the UK (please refer to paragraph 4.7 above), disputes and complaints in connection therewith will continue to remain subject to the jurisdiction of the FOS. While a theoretical disadvantage would arise if policies comprised within the Transferring Business were administered elsewhere and/or QBE Europe takes any act or makes any omission outside of the UK, the Independent Expert has concluded that, taking into account the absence of any referrals to the FOS from policyholders in respect of the Transferring Business over the last five years, the chance of there being a policyholder who: (a) is eligible to use the FOS; (b) wishes to use the FOS; and (c) will lose that ability, is remote. He has therefore concluded that any loss of access to FOS does not represent a material adverse effect as a result of the Scheme.

5.17 The Scheme will have no effect on the ability of eligible non-transferring policyholders of QBE UK to bring complaints to the FOS. In addition, QBE Europe has undertaken in the Scheme to comply with the relevant UK rules concerning dispute resolution.

Conclusions of the Independent Expert - Effect of the Scheme on Reinsurers

5.18 The reinsurance arrangements protecting the Transferring 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 QBE UK and QBE Europe following the Transfer. The amount of the liabilities of each external reinsurer of QBE UK 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 QBE UK whose contracts of reinsurance are to be transferred by the Scheme because the commercial relationship will remain with subsidiaries of the parent company of the European division of the QBE Group, QBE European Operations Plc. There are no changes proposed to the manner in which the reinsurance contracts are to be managed following the Transfer.

Conclusions of the Independent Expert - Notification and publicity arrangements

5.19 The Independent Expert has reviewed the notification and publicity arrangements and concluded that the approach being proposed with regard to notifying policyholders 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

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 2019. He has also taken into account updated financial information which has been made available. Since the proposed Effective Date for the Scheme is 1 November 2020, 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://qbееurope.com/>); or
- telephone the dedicated helpline at +44 (0)20 3465 3330; or
- email QBE at [brexit.queries@uk.qbe.com](mailto:brexіt.queries@uk.qbe.com); or
- write to QBE at 30 Fenchurch Street, London EC3M 3BD.

QBE Insurance Group

30 Fenchurch Street, London, EC3M 3BD
United Kingdom

Telephone +44 (0)20 7105 4000
www.QBEurope.com

CFD-#31366269-v5