

CR-2020-000103

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

**IN THE MATTER OF THE UNITED KINGDOM MUTUAL STEAM SHIP
ASSURANCE ASSOCIATION (EUROPE) LIMITED**

AND IN THE MATTER OF UK P&I CLUB NV

**AND IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND
MARKETS ACT 2000**

**SUMMARY STATEMENT OF THE
TERMS OF THE SCHEME AND
SUMMARY OF THE SCHEME REPORT**

SUMMARY OF THE TERMS OF THE SCHEME

1. The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited (**'UKE'**) is a mutual insurance company incorporated under the laws of England which has permission under Part 4A of the Financial Services and Markets Act 2000 (the **'Act'**) to effect and carry out certain contracts of general insurance in the United Kingdom.
2. UK P&I Club NV (**'UKNV'**) is an insurance company incorporated under the laws of the Netherlands under Section 2:27 of the Dutch Financial Supervision Act to effect and carry out contracts of general insurance in the Netherlands.
3. Certain risks insured by UKE are reinsured by third party external reinsurance. In addition, The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (**'UKB'**) provides internal reinsurance for 90 per cent. of UKE's liabilities, net of external reinsurance.
4. UKE and UKNV have entered into a scheme for the transfer of certain of the insurance and reinsurance business written by or on behalf of UKE from UKE to UKNV under Part VII of the Act (the **'Scheme'**). The Scheme requires the approval of the High Court of Justice in England (the **'Court'**).
5. The Scheme is conditional upon sanction by the Court prior to noon Greenwich Mean Time on 31 December 2020 of the scheme to give effect to the insurance business transfer from The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited (**'UKL'**) to UKE of the whole of UKL's insurance business, in accordance with Part VII of the Act.
6. The Scheme will result in the transfer from UKE to UKNV of the insurance and reinsurance business carried on at any time by UKE which relates to policies of insurance and reinsurance written by or on behalf of UKE prior to noon Greenwich Mean Time on 31 December 2020 (the **'Effective Time'**) to the extent that such policies relate to (i) any vessel the flag state of which is noted in such policy as being an EEA state (other than the UK) and/or (ii) any policyholder the establishment of which is situated in an EEA state (other than the UK) (including all activities carried on by UKE or on behalf of UKE in connection with or for the purposes of such business)

but excluding certain assets and liabilities (the ‘**Transferred Business**’). UKNV will assume all rights and obligations under any policies of insurance and reinsurance which remain unsatisfied or outstanding which have been written by or on behalf of UKE (including any policy written by another entity and subsequently transferred to or assumed by UKE) other than those policies which are excluded from the Scheme.

7. The Scheme will also result in the transfer of certain of the assets of UKE to UKNV (including rights under or by virtue of policies of insurance and reinsurance which are transferring under the Scheme) but in each case excluding all rights under any policies excluded from the Scheme. Certain assets and liabilities will be excluded from the transfer under the Scheme. Such assets include rights and obligations of UKE arising out of or in connection with a protection and indemnity reinsurance contract between UKE and UKB dated 20 February 2007 and amended and restated on 20 February 2013.
8. The liabilities and obligations of UKE under policies of insurance and reinsurance which are transferring under the Scheme will also transfer to UKNV. In addition, all other liabilities attributable to the Transferred Business will transfer to UKNV save where they relate to excluded policies or where those liabilities have otherwise been excluded from the terms of the Scheme. Such excluded liabilities include any obligation of UKE to indemnify any party under the pooling agreements entered into by UKE from time to time with certain other P&I clubs for the pooling of certain risks.
9. The rights, benefits, powers and claims of UKE under any of the policies of insurance or reinsurance which are transferring under the Scheme will transfer to UKNV pursuant to the Scheme.
10. References to UKE in any contract of insurance or reinsurance (or other contract relating to the Transferred Business) transferring under the Scheme shall be read as references to UKNV.
11. Any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future (including to those not yet in contemplation)) relating to the policies of insurance or reinsurance, assets or liabilities which are transferring under the Scheme or which otherwise relate to the Transferred Business which are pending at, or

are commenced after, Effective Time will be continued or commenced by or against UKNV, and UKNV shall be entitled to the same defences, claims, counterclaims and rights of set-off that would have been available to UKE and UKE shall have no liability under those proceedings.

12. All premium and calls attributable or referable under a contract of insurance transferring under the Scheme will become payable to UKNV and any mandate or other instruction in force at the Effective Time and providing for the payment by a banker or other intermediary of such premiums and calls shall take effect as if it had provided for and authorised such payment to UKNV.
13. Subject to the approval of the Court at a hearing due to be held on 4 December 2020 the Scheme is expected to come into effect at noon Greenwich Mean Time on 31 December 2020.

SUMMARY OF THE SCHEME REPORT

1. Alex Lee of Ernst & Young LLP (the '**Independent Expert**') has been appointed to act as an independent expert to prepare a report (the '**Scheme Report**') in respect of the Scheme. His appointment has been approved by the Prudential Regulation Authority in accordance with section 109 of the Act.
2. Appended hereto is a brief summary of the Scheme Report which has been prepared by the Independent Expert. This summary does not cover all matters dealt with in the Scheme Report, which should be read in full by anyone wishing to have a detailed understanding of its content.

CLAIM NO CR-2020-000103
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In the matter of
The United Kingdom Mutual Steam Ship Assurance
Association (Europe) Limited

And in the matter of
UK P&I Club NV

And in the matter of
Part VII of the Financial Services and Markets Act
2000

SUMMARY STATEMENT OF THE
TERMS OF THE SCHEME AND
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Transfer of business from The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited to UK P&I Club N.V

INTRODUCTION

The proposed transfer (the ‘**Transfer**’) involves transferring various policies (the ‘**Transferring Policies**’) of The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited (‘**UKE**’) to UK P&I Club N.V (‘**UKNV**’). The transferring policies are those where the risk insured is located within the European Economic Area (‘**EEA**’).

- ▶ The Transfer is intended to be effected on 31 December 2020 (the **Transfer Date**), after the sanctions hearing scheduled for 17 December 2020.
- ▶ Post Transfer, transferring policyholders of UKE will have their policies administered and claims paid by UKNV.

UKE and UKNV are both part of a regulatory group of companies (the ‘**Club**’) operating under the trading name of UK P&I Club. It provides mutual marine insurance business which comprises Protection & Indemnity cover.

The Club also includes a reinsurer, The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (‘**UKB**’), which provides reinsurance protection to UKE.

There are various intra-group reinsurance contracts in place within the Club. The overall effect of these contracts is that a very high proportion (over 90%) of the net liabilities of UKE and UKNV are ultimately reinsured to UKB.

The Transfer is interdependent with a separate insurance transfer involving UKE which I have also considered and discuss in this document under “Associated Transaction”.

WHICH POLICIES WILL TRANSFER

The Transferring Policies are UKE policies where the risk insured is located within the EEA.

APPROVAL OF THE TRANSFER

The Transfer is subject to sanction by the High Court of England and Wales (the ‘**Court**’).

A report produced by a suitably qualified person (the ‘**Independent Expert**’) is required under Section 109 of the Financial Services and Markets Act 2000 as amended by the Financial Services Act 2012 (together the ‘**FSMA**’) in order that the Court and all affected policyholders may properly assess the impact of the Transfer. The report describes the Transfer and addresses its likely effect on all affected policyholders and any other parties affected by the Transfer. This document is a summary of that report.

PURPOSE OF THE TRANSFER

The purpose of the Transfer is to reorganise the European operations of the Club in such a way as to comply with the relevant insurance regulations. There is considerable uncertainty in the UK with regard to the future regulatory landscape as a result of UK leaving the EU. Therefore, the Club has elected to place all EEA risks into a European insurance carrier, UKNV, so that continuity of operations can be guaranteed. This will enable the Club to service the existing European client base, and also to write new business.

INDEPENDENT EXPERT’S CONCLUSIONS

I have considered the Transfer and its likely effects on policyholders and any other parties affected by the Transfer.

I will provide a Supplementary Report identifying any issues that have arisen between the date of the Independent Expert Report and the final Court hearing.

I conclude that the security provided to policyholders will not be materially adversely affected after the Transfer, that no group of policyholders would be adversely affected to a material extent by the Transfer, and that the level of customer service provided to policyholders would be unaffected by the Transfer.

I also conclude that there are no other parties (e.g. reinsurers) who will be materially adversely affected by the Transfer.

As a result, I conclude that there is no reason that the Transfer should not go ahead.

REASONS FOR REACHING MY CONCLUSION

My primary reason is that there are strong mutual relationships between the companies of the Club, and it is the Club as a whole which provides security to its policyholders. The key examples of these relationships are:

- UKE reinsures 100% of the claims liability of UKNV net of any external reinsurance (so for any claim paid by UKNV the full amount is reimbursed by UKE).
- UKB reinsures 90% of the claims liability of UKE (including those claims ceded from UKNV). This means that UKB is a very important part of the security provided to policyholders because UKB will ultimately pay for 90% of the policyholders’ insurance claims of UKNV and UKE.
- If the level of capital in UKE falls below a certain level, UKB has agreed to provide additional capital to UKE to ensure that UKE continues to meet its regulatory capital requirement. Similarly, UKE will agree to ensure that UKNV will meet its regulatory capital requirement.
- The Club is organised as a mutual association and does not pay dividends to external shareholders. Instead, the companies of the Club are owned by, and exist for the benefit of, their mutual policyholders. The Club can vary the premium charged from one policy year to the next, and this is the mechanism through which the mutual policyholders share in the profits and losses of the Club. Mutual policyholders might also be required to make an additional ‘premium call’ payment if the Club needs additional funds. This is an additional source of security for the Club and is levied across all mutual policyholders.

The mutual relationships described above will not change after the Transfer and the total amount of capital in the Club will also be unchanged.

I have carried out various analyses on the financial statements and data of UKE and UKNV in relation to the Transfer. Specifically, this included reviewing the adequacy of the claims reserves and the ability of the companies to meet their regulatory capital requirements before and after the Transfer.

I believe that all policyholders have a good level of security before the Transfer and they would continue to have a good level of security after the Transfer.

I do not anticipate any material adverse impact to any group of policyholders following the Transfer as a result of claims handling and policy servicing.

I have considered the effect of the Transfer upon all policyholders that I believe could be affected by the Transfer.

ANALYSIS CARRIED OUT

Policyholder groups

I have considered the effect of the Transfer upon all policyholders that I believe would be affected by the Transfer. I have identified three groups of policies:

- ▶ UKE policies with risks insured within the EEA (these are transferring to UKNV)
- ▶ Policies of UKE without risks insured within the EEA (these are remaining in UKE)
- ▶ Policies of UKNV (these are remaining in UKNV)

Claims reserve assessment

I have reviewed the technical provisions of UKE and UKNV.

Based on my review, I believe that the methodology and assumptions used are reasonable, and that the actuarial best estimate of the claims reserve is set on a reasonable basis. This applies to UKE and UKNV, and to the components in respect of the transferring policies.

Assets and regulatory capital requirements

I have carried out a review of the regulatory capital position for UKNV and UKE, before and after the Transfer. I am satisfied that the capital requirement amounts for each company have been calculated in an appropriate way, both before and after the Transfer.

The Capital Adequacy Ratio is a measure of the capital of an insurance company relative to its regulatory capital requirement. Based on the material I have reviewed, I do not expect that the Capital Adequacy Ratio of UKE will change materially after the Transfer.

The Club and UKE is rated 'A' by the rating agency Standard & Poor's, and I would expect that this would be maintained after the Transfer. This suggests a good level of financial strength.

I believe that UKE and UKNV will continue to have a strong balance sheet after the Transfer, and that the probability of it becoming insolvent or otherwise unable to pay policyholders' claims is remote.

Other factors that might affect policyholders

I have considered a variety of other factors that could affect various groups of policyholders, and summarise the key points here:

- ▶ The **Policy and claims administration** will be largely unchanged for policyholders of both UKE and UKNV after the Transfer. There will be no change to the overall number of policies, or the workload required to manage the policies and claims at a Club level.
- ▶ The **governance frameworks** for UKE and UKL are as I would expect for firms of this size and complexity, and I did not identify any material differences between the two frameworks.
- ▶ **Brexit.** Without the Transfer, I believe that there are some key risks related to Brexit; in particular, that UKE could be prevented by law from paying claims and servicing policies. This would be detrimental to policyholders, and I believe that effecting the Transfer would remove this risk.
- ▶ The **regulatory framework** in the Netherlands is not, in my opinion, materially different.
- ▶ The **Financial Ombudsman Service** ('FOS') provides private individuals and micro-enterprises with a free, independent service for resolving disputes with financial companies. A small number of the transferring policyholders currently benefit from FOS and would lose these rights after the Transfer. However, this does not affect my conclusion on the Transfer because the proportion of transferring policyholders impacted is very small and historically policyholders of UKE have not exercised this right.
- ▶ The **Covid-19 pandemic** could have a significant adverse effect on the global economy and the insurance industry. These effects could, in some scenarios, reduce the financial strength of the Club and have an adverse effect on its day-to-day operation. At the time of writing this document, the pandemic is ongoing, and its longer-term effects are unknown and uncertain. However, I do not believe that any of the pandemic issues I have identified would be made any worse by effecting the Transfer, and therefore this does not affect my conclusion on the Transfer. I will comment again on the effect of the pandemic in my Supplementary Report.

Associated Transaction

There is a separate interdependent transfer which also involves UKE with a planned effective date of 30 December 2020. This involves transferring all the policies of The United Kingdom Mutual Steam Ship Assurance Association (London) Limited ('UKL') to UKE. This means that as a result of the two interdependent transfers the current UKL policies will transfer to UKE (non-EEA policyholders) or to UKNV (EEA policyholders). I have considered these policyholders within my assessment and determined they are not disadvantaged by the combination of the two Transfers. The full Report covering this separate transfer can be downloaded from the UK P&I Club website.

ABOUT THE INDEPENDENT EXPERT

I, Alex Lee, am an associate partner in the Insurance Risk and Actuarial Services practice of Ernst & Young LLP, a global leader in assurance, tax, transaction and advisory services. I am a Fellow of the Institute and Faculty of Actuaries and have over 20 years' experience in all areas of general insurance actuarial work (including reserving, capital, Solvency II compliance, pricing, and transactions). I have been nominated by UKE to act as the Independent Expert for the Transfer. This nomination has been approved by the Prudential Regulation Authority ('PRA') in consultation with the Financial Conduct Authority ('FCA').

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ABOUT THE INDEPENDENT EXPERT'S REPORT

Section 109 of the FSMA requires that an application in respect of an insurance business transfer is accompanied by a report on the terms of the scheme (the '**Report**'). This document is a summary of the Report, but should not replace a full reading of the Report. This is because the Report contains more detailed information that is not shown in this summary document. The Report complies with the applicable rules on expert evidence and with the guidance for scheme reports set out in Chapter 18 of the PRA/FCA Supervision Handbook. The form of the Report has been approved by the PRA in accordance with section 109 of the FSMA and in the context of the Transfer. This summary and the Report have been prepared solely for the purposes of the FSMA requirements for insurance business transfers. This summary is subject to the same limitations as those set out in the Report and in the event of any real or perceived conflict between this summary and the Report, the Report shall prevail.

Alex Lee 12 August 2020

**Fellow of the Institute and Faculty of Actuaries
Associate Partner - Ernst & Young LLP**

A copy of the Report is available to be downloaded from UK P&I Club website at www.ukpandi.com. Alternatively, it can be requested by contacting UK P&I Club in writing at www.ukpandi.com, or by emailing contactus@thomasmiller.com or by calling +44 (0)20 7283 4646.