

IN THE HIGH COURT OF JUSTICE

CR-2021-001163

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

IN THE MATTER OF

THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION LIMITED

AND

IN THE MATTER OF

R&Q GAMMA COMPANY LIMITED

AND

IN THE MATTER OF

PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

INSURANCE BUSINESS TRANSFER SCHEME

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1 **INTERPRETATION**

1.1 In this insurance business transfer scheme, unless the context otherwise requires, the following words or phrases have the following meanings:

"Accredited" means Accredited Insurance (Europe) Limited, a company incorporated and registered in Malta with company number C59505 whose registered office is at 3rd Floor, Development House, St Ann Street, Floriana, FRN 9010, Malta;

"Affiliate" means in relation to any person, any subsidiary undertaking or parent undertaking of that person, and any subsidiary of any such parent undertaking in each case from time to time;

"Act" means the Financial Services and Markets Act 2000 together with the rules and regulations implemented pursuant thereto;

"Capital Injection" means the contribution of cash and cash equivalents to be made by Randall & Quilter Investment Holdings Ltd to the Transferee to ensure that the Transferee has a solvency capital ratio of 173% at the Effective Date;

"Claims Float" means the USD claims float and GBP claims float maintained by RQCS for the purposes of paying Occupational Disease Claims insured by the Transferor;

"Claims Float Funds" means the amounts standing to the credit of the Claims Float as at the Effective Date;

"Court" means the High Court of Justice of England and Wales;

"Effective Date" means the date and time on which the Scheme takes effect in accordance with Clause 11;

"Existing ADC" means the adverse development cover agreement dated 27 February 2020 between the Transferor, UKNV and Accredited;

"Encumbrances" means any right, interest or equity of any person or any mortgage, charge, pledge, lien, restriction, assignment, hypothecation or other security interest of any kind or any other type of arrangement (including a title transfer or retention arrangement) having similar effect or any other encumbrance of any kind;

"Excluded Claims" means:

- (a) any regulatory fines and penalties incurred by the Transferor (other than pursuant to any insurance provided by the Transferor) due to any act or omission by or on behalf of the Transferor prior to 27 February 2020; and
- (b) any exemplary or punitive damages incurred by the Transferor (other than pursuant to any insurance provided by the Transferor) due to any act or omission by or on behalf of the Transferor prior to 27 February 2020;

"FCA" means the UK Financial Conduct Authority or any successor UK regulatory authority with the same functions in relation to insurance and/or reinsurance companies;

"Independent Accountant" means an independent practising chartered accountant whose identity is agreed by the Transferor and the Transferee or in the absence of such agreement, who is nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales;

"Independent Expert" means the person appointed in accordance with section 109 of the Act to prepare a report on the terms of the Scheme;

"Occupational Disease Claims" means claims relating to liabilities to seamen and any other persons for death, diseases or personal injury (including mesothelioma, asbestosis, lung and other cancers and hearing loss) arising as a result of exposures to hazardous material, conditions or other risk factors during the period prior to 20 February 2001;

"Order" means an order of the Court pursuant to section 111 of the Act sanctioning the Scheme and any order (including any subsequent order) in relation to the Scheme made by the Court making provision under section 112 of the Act;

"Outstanding Refund" means an amount equal to any sum withdrawn from the Segregated Account by the Transferor without the Transferee's written consent which has not been refunded to the Segregated Account prior to the Effective Date, together with the investment return that would have been earned on the withdrawn funds had they remained in the Segregated Account;

"Policy" and **"Policyholder"** each has the meaning set out in section 424(2) of the Act and Regulation 2 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361);

"PRA" means the UK Prudential Regulation Authority or any successor UK regulatory authority with the same functions in relation to insurance and/or reinsurance companies;

"Proceedings" means any judicial, quasi-judicial, administrative or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim (whether pending, current or future);

"RAO" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

"Records" means all documents, files and other records, whether in physical or electronic form, relating to the Transferring Business which are in the possession of, or under the control of, the Transferor;

"Replacement ADC" means an adverse development cover under which with effect from the Effective Date Accredited provides reinsurance cover to the Transferee in respect of the Transferring Risks above an attachment point of GBP 47,900,000 (or such other attachment point as the Independent Expert shall consider appropriate) up to the policy limit of GBP 55,000,000;

"Required Transfer Funds" means a sum equal to the aggregate of:

- (a) 95% of the aggregate value of Segregated Account Funds as at the Effective Date had the Transferor operated the Segregated Account in accordance with the terms, and invested the cash and securities in accordance with the investment guidelines, agreed by the Transferor and the Transferee (but excluding any challenge by the Transferee of any

amounts paid under the Existing ADC in accordance with the terms of the Existing ADC and any bordereaux agreed pursuant to the Existing ADC);

- (b) 95% of the amount of any Outstanding Refund due as at the Effective Date; and
- (c) 95% of the Claims Float Funds;

"Retained Risk" means a Transferring Risk in respect of which any liability (whether current or future, actual or contingent) remains unsatisfied or outstanding at the Effective Date and:

- (a) which the Court for any reason determines shall not be transferred by virtue of the Scheme or the Order and which is not transferred by any vesting order under section 112 of the Act or otherwise; or
- (b) which prior to the Court making the Order the Transferor and the Transferee agree should be excluded from the Scheme;

"RQCS" means R&Q Central Services Limited a company incorporated in England and Wales with company number 04179375 whose registered office is at 71 Fenchurch Street, London EC3M 4BS, United Kingdom;

"Scheme" means the insurance business transfer scheme set out in this document with or subject to any modification, addition or condition approved or imposed by the Court;

"Segregated Account" means the segregated cash and securities accounts of the Transferor holding cash and securities of an aggregate value which exceeds the sum expected to be needed to pay all future claims relating to the Transferring Business in full (adjusted for payments made in respect of Occupational Disease Claims net of applicable recoveries (excluding recoveries under outwards reinsurance with an Affiliate of the Transferor));

"Segregated Account Funds" means all of the cash, securities and other assets within the Segregated Account free from all withholdings, transfer taxes or deductions (save as required by law) and free from all Encumbrances as at the Effective Date;

"Services Agreement" means the claims handling and administration services agreement entered into between the Transferor, The United Kingdom Mutual Steam Ship Assurance Association (London) Limited, UKNV and RQCS on 27 February 2020;

"Subsequent Transfer Date" means the date on which the Transferor's rights and liabilities under a Retained Risk are transferred to the Transferee whether by means of novation or as a result of any necessary consent or waiver being obtained or the making of a court order dispensing with such consent or waiver or otherwise;

"Tax" or **"Taxation"** means any form of taxation, levy, duty, charge, contribution, withholding or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by, or payable to, a Tax Authority and includes, for the avoidance of doubt, income tax and amounts equivalent to or in respect of income tax required to be deducted or withheld from or accounted for in respect of any payment;

"Tax Authority" means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, customs or excise function including, without limitation, HMRC;

"Transfer Funds" means cash in an aggregate amount equal to 95% of each of:

- (a) the Segregated Account Funds; and
- (a) the Claims Float Funds.

"Transferee" means R&Q Gamma Company Limited, a company incorporated and registered in England and Wales with registered number 01335239 whose registered office is at 71 Fenchurch Street, London EC3M 4BS, United Kingdom;

"Transferee's Account" means the Transferee bank account details of which are notified to the Transferor by the Transferee;

"Transferring Business" means:

- (a) the Transferring Risks;
- (b) the activities carried out in connection with, and for the purposes of, the Transferring Risks;
- (c) the Transfer Funds including the Transferor's right, title and interest to such funds; and
- (d) all rights and title of the Transferor to the Records;

"Transferring Personal Data" means any personal data contained in the Records which is subject to the Data Protection Act 2018 and/or the General Data Protection Regulation (Regulation (EU) 2016/679) and which relates to the Transferring Business;

"Transferring Risks" means rights and liabilities of the Transferor under or by virtue of insurance of risks underwritten by the Transferor, or by another party and subsequently transferred to the Transferor, between 1 January 1935 and 20 February 2001 insofar as such risks relate to Occupational Disease Claims only and excluding Excluded Claims, save to the extent transferred by the Transferor to UKNV pursuant to an insurance business transfer effective at noon Greenwich Mean Time on 31 December 2020. For the avoidance of doubt, the Transferring Risks do not include cover which has been cancelled by the Transferor for non-payment of premium before the Effective Date;

"Transferor" means The United Kingdom Mutual Steamship Assurance Association Limited, a company incorporated and registered in England and Wales with registered number 00022215 whose registered office is at 90 Fenchurch Street, London, EC3M 4ST;

"VAT" means the tax imposed by EU Council Directive 2006/112/EC and any national legislation implementing that directive, together with legislation supplemental thereto, or any similar sales or turnover tax, whether of the United Kingdom or elsewhere;

"UKNV" means UK P&I Club N.V.; and

1.2 In the Scheme unless the context otherwise requires or expressly provides:

- (a) references to Clauses and Schedules are to Clauses and Schedules to the Scheme;
- (b) "**assets**" includes property, rights and powers of any description;
- (c) "**liabilities**" includes duties and obligations of every description (whether present or future, actual or contingent or otherwise);
- (d) "**novation**" includes transfer or assignment;
- (e) "**property**" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present, future or vested or contingent, arising out of, or incidental to, property;
- (f) "**rights**" includes benefits, powers and claims of every description (whether present, future, actual or contingent) including without limitation rights to the repayment of taxation, duties or other imposts;
- (g) the singular includes the plural and vice versa and any reference to one gender includes the other;
- (h) headings are for convenience only and shall not affect the interpretation of the Scheme;
- (i) the terms subsidiary undertaking and parent undertaking shall have the meanings ascribed to them in the Companies Act 2006;
- (j) save as expressly provided otherwise, any reference in the Scheme to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time after the date of the Scheme and to any instrument or order made from time to time after the date of the Scheme under such enactment, statutory provision or subordinate legislation;
- (k) any reference to a person shall include a reference to any individual, company, firm, partnership, joint venture, association, organisation, trust or agency, whether or not having a separate legal personality;
- (l) if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- (m) any reference to the time of day is to the time in London, England;
- (n) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (o) the expression variation or varied shall include any variation, supplement, deletion, replacement or termination, however effected; and
- (p) the interpretation of general words shall not be restricted by words indicating a particular class or particular examples and **including** shall mean **including without limitation**.

2 **INTRODUCTION**

2.1 The Transferor is a UK authorised insurer with permission, *inter alia*, to carry out contracts of general insurance in the UK in classes 1, 2, 4, 5, 6, 7, 11, 12, 13, 15, 16 and 17 of Part I of Schedule 1 to the RAO.

2.2 The Transferee is a UK authorised insurer with permission, *inter alia*, to effect and carry out contracts of general insurance in the UK in classes 1 to 17 of Part I of Schedule 1 to the RAO.

3 **TRANSFER OF THE TRANSFERRING BUSINESS**

3.1 On and with effect from the Effective Date, subject to Clause 5.1:

- (a) the Transferring Business and all the estate and interest of the Transferor in the Transferring Business shall by the Order and without any further act or instrument be transferred to and vest in the Transferee in accordance with and subject to the terms of the Scheme;
- (b) the Transferring Risks shall be transferred to and shall become liabilities of the Transferee and shall cease to be liabilities of the Transferor and the Transferee shall accept such liabilities (whether such Transferring Risk is governed by English law or the laws of another jurisdiction); and
- (c) in any document evidencing a Transferring Risk, references to the Transferor and/or to rights, powers, duties and/or obligations imposed upon the Transferor, its board of directors or other officers, employees or agents and/or to liabilities of the Policyholders to the Transferor shall, to the extent necessary to give full effect to the Scheme, be read, construed and treated as references to the Transferee and/or to rights, powers, duties and/or obligations imposed upon the Transferee, its board of directors or other officers, employees or agents and/or to liabilities of the Policyholders to the Transferee subject to and in accordance with the terms of the Scheme;
- (d) each contract of insurance concluded between 1 January 1935 and 20 February 2001 under which the Transferor provided cover in respect of Occupational Disease Claims shall, as a result of the transfer of Transferring Risks pursuant to the Scheme, be split such that the relevant Policyholder shall have two separate contracts of insurance, one with the Transferee relating to Occupational Disease Claims and one with the Transferor relating to all other losses or liabilities covered by the original contract, provided that:
 - (i) each such contract shall be subject to the same terms and conditions as applied prior to the Effective Date; and
 - (ii) the Transferor and the Transferee shall apply such contractual terms and conditions (including, where applicable, the deductibles, limits and any other applicable policy limitations) such that the Policyholder is no better or worse off in respect of the application of such contractual terms and conditions as a result of the splitting of the relevant contract of insurance pursuant to the Scheme.

3.2 On and with effect from the Effective Date, the Transferor shall pay to the Transferee all sums which may thereafter be received by the Transferor under the

Transferring Risks but, for the avoidance of doubt, the Transferor shall not be required to recover any sums in connection with the Transferring Risks.

3.3 The Transferor shall:

- (a) on the Effective Date, transfer the Transfer Funds to the Transferee's Account for same day value; and
- (b) on the Effective Date, to the extent in its possession or control, deliver or cause to be delivered to the Transferee the Records which are capable of being transferred by delivery.

3.4 Nothing in the Scheme shall operate to transfer any obligations or liabilities or any asset or right of the Transferor not included within the definition of Transferring Business including any liability, asset or right of the Transferor to or in respect of Tax (including any right to repayment of Tax) in relation to the Transferring Business with the exception for the avoidance of doubt of any VAT which may be or become chargeable on the transfer of the Transferring Business pursuant the Scheme which shall be the responsibility of the Transferee.

3.5 Unless and to the extent otherwise provided in the Order, the transfer of the Transferring Business or any other matter provided for by the Scheme shall not:

- (a) invalidate or discharge any agreement, document, instrument or other thing;
- (b) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise have been the case under, any agreement, document, instrument or other thing to which the Transferor or the Transferee is a party or is bound;
- (c) allow any party to any agreement, document, instrument or other thing to terminate that document, agreement or instrument or other thing when that party would not otherwise have been able to do so;
- (d) entitle any party to any agreement, document, instrument or other thing to which either of the Transferor or the Transferee is a party or is bound to vary the terms of that agreement, document, instrument or other thing when that party would not otherwise have been able to do so; or
- (e) cause the imposition of any greater or lesser obligation on any party to any such agreement, document, instrument or other thing when that greater or lesser obligation would not otherwise have been imposed including the release of any obligation or liability of any party which would not have otherwise been released or release such liability or obligation sooner or later than would have otherwise been the case.

4 **POST TRANSFER ADJUSTMENT**

4.1 If either the Transferee notifies the Transferor or the Transferor notifies the Transferee in writing within 20 Business Days of the Effective Date that the value of the Transfer Funds transferred at the Effective Date differed from the Required Transfer Funds:

- (a) in the event that the party receiving the notice (the **Recipient**) agrees, if the value of the Transfer Funds transferred on the Effective Date:

- (i) exceeds the Required Transfer Funds, the Transferee shall repay the excess to the Transferor; or
- (ii) is less than the Required Transfer Funds, the Transferor shall pay the deficit to the Transferee;

in each case for same day value within 10 Business Days of receipt of such written notice; and

- (b) in the event that the Recipient disagrees, it shall notify the party sending the notice in writing of the disputed matters and the question shall be determined by an Independent Accountant who shall notify the Transferor and the Transferee of their determination in writing.

4.2 The Independent Accountant shall act as an expert and not as an arbitrator and their decision shall be final and binding on the parties to the extent permitted by law. Either party to the dispute shall pay to the other the amount (if any) determined as being due by the Independent Accountant for same day value within 10 Business Days of receipt of notice of the Independent Accountant's determination.

5 **TRANSFER OF THE RETAINED RISKS**

5.1 The Transferor's rights and liabilities under Retained Risks shall by virtue of the Scheme and (unless required as a condition of any necessary consent or waiver being obtained of any court order providing for such transfer) without any further act or instrument being required transfer to, vest in and become rights and liabilities of the Transferee with effect from the applicable Subsequent Transfer Date. Until such date the rights and liabilities of the Transferor under such Retained Risks shall remain with the Transferor.

5.2 With effect from the applicable Subsequent Transfer Date, the provisions of the Scheme shall apply to the relevant Retained Risks as if references to the Effective Date were references to the applicable Subsequent Transfer Date.

5.3 The Transferor shall on, and with effect from, the Effective Date hold its rights under each Retained Risk on trust for the Transferee absolutely until:

- (a) the applicable Subsequent Transfer Date; or
- (b) such other date as the Transferor and the Transferee shall otherwise agree;
- (c) and until then the Transferee shall indemnify the Transferor in accordance with Clause 6.

5.4 Until the Subsequent Transfer Date or such other date as the Transferor and the Transferee shall agree pursuant to Clause 5.3(b):

- (a) the Transferee shall have authority to act as the attorney of the Transferor in respect of its rights under the Retained Risks for all purposes, and shall have the power to give reasonable directions to the Transferor for any lawful purpose in connection with such rights; and such authority and power shall include authority and power in relation to the exercise, enforcement, variation, commutation, compromise, settlement or transfer of such rights;

- (b) the Transferee shall procure that RQCS continues to provide the services in respect of the Retained Risks that it provided to the Transferor prior to the Effective Date materially in accordance with the terms, including as to reporting to the Transferor, of the Services Agreement.

6 **INDEMNITY**

- 6.1 From the Effective Date, the Transferee shall observe and perform the Transferor's obligations under the Retained Risks and shall indemnify and keep fully and effectively indemnified and hold harmless the Transferor on a continuing basis and on demand against and from any liability, loss or expense incurred by, or demand or claim made against, the Transferor under a Transferring Risk including for the avoidance of doubt any Transferring Risk forming part of the Retained Risks.

7 **LEGAL PROCEEDINGS AND CONTINUITY**

- 7.1 From the Effective Date, (or in the case of Proceedings relating to the Retained Risks the applicable Subsequent Transfer Date) any Proceedings in relation to the Transferring Business shall:

- (a) if commenced by, against or in relation to the Transferor before the Effective Date be continued by, against or in relation to the Transferee;
- (b) if commenced after the Effective Date, be commenced by or against the Transferee;
- (c) if commenced after the Effective Date against the Transferor be deemed to have been commenced and shall be continued against the Transferee;

without the need for further order, whether for substitution of parties or otherwise and the Transferor shall have no liability under such Proceedings.

- 7.2 The Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to such Proceedings. For the avoidance of doubt, the Transferee, in its absolute discretion, may discontinue any such Proceedings brought by the Transferor.

- 7.3 Without prejudice to Clause 7.1, from the Effective Date the Transferee shall have the right to direct the conduct of any Proceedings in relation to the Transferring Business which are pending at or commenced after the Effective Date in any jurisdiction outside the United Kingdom until such time as the Transferee is joined to such Proceedings in substitution for the Transferor.

- 7.4 The Transferee shall not assert in any dispute, controversy, claim or Proceeding in any jurisdiction arising out of or in connection with a Transferring Risk that the Scheme is ineffective or invalid under the law of that jurisdiction to transfer rights and obligations under the Transferring Risks to the Transferee.

- 7.5 Any final judgment, order or award in respect of a claim under a Transferring Risk that is not subject to further appeal obtained:

- (a) by or against the Transferor and which is not fully satisfied before the Effective Date shall, on and from that date, be enforceable by or against the Transferee;
- (b) by or against the Transferor on or after the Effective Date shall be enforceable by or against the Transferee,

without the need for further order, whether for substitution of parties or otherwise.

- 7.6 Until the relevant Subsequent Transfer Date, the Transferee shall have the right to direct the conduct of any Proceedings by or against the Transferor in relation to the Retained Risks which are pending at or commenced on or after the Effective Date.

8 **PREMIUMS, MANDATES ETC.**

- 8.1 Any direct debit mandate, standing order or other instruction or authority in force on the Effective Date including any instruction given to a bank by its customer in the form of a direct debit or standing order and providing for payment by a bank or other intermediary of premiums or other sums payable to the Transferor under or in respect of any Transferring Risk or other contract that forms part of the Transferring Business, shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.

- 8.2 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferor of any sum payable under any Transferring Risk shall continue in force as an effective mandate, instruction or authority to or of the Transferee.

9 **PERSONAL DATA**

- 9.1 On and with effect from the Effective Date, the Transferee shall:
- (a) succeed to all rights, liabilities and obligations of the Transferor in respect of Transferring Personal Data;
 - (b) in respect of the Transferring Business, become the data controller of any Transferring Personal Data in place of the Transferor;
 - (c) in respect of any Transferring Personal Data be under the same duty by virtue of any law as the Transferor was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound, by any specific notice or consent given, or request made by, the data subject which was binding on the Transferor and which required the Transferor not to use the personal data for marketing purposes; and
 - (d) without prejudice to Clause (c) in any consent given by a data subject in respect of such data as is mentioned in this Clause 9, any reference to the Transferor shall be deemed to include a reference to the Transferee.

10 **FURTHER ASSURANCE**

The Transferor and the Transferee shall each take such steps and execute such documents as may reasonably be required to effect or perfect the transfer to the Transferee of the Transferring Business.

11 **THE EFFECTIVE DATE**

- 11.1 Subject to the Court having made an Order under Section 111 of the Act sanctioning the Scheme and all conditions therein being satisfied in full, the payment of the Transfer Funds being made in accordance with Clause 3.3(a), and the Capital Injection having been made, the Scheme shall take effect at 23:59 (London time) on:

- (a) the date on which a period of 5 Business Days from the date or the Order expires, unless the directors of the Transferor and the Transferee have resolved before that date that it shall not take effect on such date; and
- (b) If the said directors do so resolve, such other date not being later than 3 calendar months after the date referred to in paragraph 11.1(a) as the said directors shall determine.

11.2 If the Scheme does not take effect on or before the date falling 3 calendar months after the date of the Order or such later date as the Court may allow upon the application of the Transferor and the Transferee, it shall lapse.

11.3 The Transferee shall notify the PRA and the FCA if a resolution is made deferring the date on which the Scheme is to become effective and shall provide the PRA and the FCA with sufficient notice of any application pursuant to Clause 11.2. The PRA and the FCA shall be entitled to be heard at the hearing of any such application.

12 **MODIFICATION**

12.1 The Transferee may, with the consent of the Transferor, agree on behalf of all persons concerned to any modification of or addition to the Scheme or to any further condition or provision affecting the same that the Court may approve or impose, whether before or after the Effective Date, provided that any modification to the substance of the Scheme (being a change to the terms of the Scheme which is not immaterial) may only be made with the consent of the PRA and the FCA.

12.2 The Transferee shall provide the PRA and the FCA with sufficient notice of any application to modify the Scheme. The PRA and the FCA shall be entitled to be heard at any such application.

13 **GOVERNING LAW**

The Scheme shall be governed by and construed in accordance with English law.

22 July 2021