

INSURANCE ACT 1973

(PART III DIVISION 3A)

SCHEME FOR THE TRANSFER OF THE INSURANCE BUSINESS OF REALCOVER INSURANCES PTY LIMITED TO QBE INSURANCE (AUSTRALIA) LIMITED

Background

- A. Realcover Insurances Pty Limited ACN 103 975 355 (**Realcover**) is authorised under the Insurance Act 1973 (Cth) to carry on insurance business in Australia only for the purposes of discharging liabilities arising under policies issued by it prior to 1 July 2017. QBE Insurance (Australia) Limited ACN 003 191 035 (**QBE**) is authorised by APRA to carry on insurance business in Australia.
- B. This Scheme has been prepared in accordance with Part III Division 3A of the Insurance Act to give effect to the terms of an agreement between Realcover and QBE, under which Realcover has agreed to transfer, and QBE has agreed to accept the transfer of, all of the Insurance Contracts and Insurance Liabilities relating to Realcover's insurance business.
- C. QBE's acquisition of the Insurance Contracts and Insurance Liabilities relating to Realcover's insurance business is conditional on:
 - a. the grant of a 'go-ahead' decision under section 41 of the *Insurance Acquisitions and Takeovers Act 1991* (Cth); and
 - b. the acquisition being carried out by way of a Scheme confirmed by the Federal Court of Australia.
- D. The Realcover Appointed Actuary, QBE Appointed Actuary and the Independent Actuary have prepared Actuarial Reports in connection with the Scheme.

1. Definitions and Interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

Actuarial Reports means the report dated 6 May 2020 prepared by the QBE Appointed Actuary, the report dated 27 April 2020 prepared by the Realcover Appointed Actuary and the report dated 7 February 2020 prepared by the Independent Actuary in connection with the Scheme.

APRA means the Australian Prudential Regulation Authority.

Assumed Liabilities has the meaning given to that expression in clause 3.

Business means all insurance business carried on by Realcover as specified in the Transfer Agreement relating to:

- (a) the Insurance Contracts and Insurance Liabilities; and
- (b) the Business Assets and Business Liabilities.

Business Assets means the assets used by Realcover for the purposes of conducting the Business.

Business Liabilities means Claims, losses, liabilities, costs or expenses of any kind of the Business, which have arisen and remain unsatisfied or which may arise in the future or which are prospective or contingent and whether or not the amount of the liability is ascertained or ascertainable other than the Insurance Liabilities.

Claim means, in relation to any person, a claim, action, proceeding, judgment, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, future or contingent, whether ascertained or unascertained and whether arising before or after the Effective Date.

Effective Date means 30 June 2020 or such other date that the Federal Court of Australia may specify as the commencement date of the Scheme should the Scheme be confirmed by the Court.

Independent Actuary means Warrick Gard of Ernst & Young.

Insurance Act means the *Insurance Act 1973* (Cth).

Insurance Contracts means all contracts of insurance issued or entered into by Realcover as insurer prior to 1 July 2017 in the conduct of its Business.

Insurance Liabilities means claims, losses, liabilities, costs or expenses of any kind under the Insurance Contracts, which have arisen and remain unsatisfied or which may arise in the future or which are prospective or contingent and whether or not the amount of the liability is ascertained or ascertainable and includes any insurance liability described in *Prudential Standard GPS 320 Actuarial and Related Matters* made under the Insurance Act.

QBE Appointed Actuary means Francois Rademeyer, the Appointed Actuary of QBE.

Realcover Appointed Actuary means Kaise Stephan, the Appointed Actuary of Realcover.

Transfer Agreement means the agreement of that name entered into between Realcover and QBE in respect of the transfer of the Business.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply in this Scheme unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) a reference to a clause or schedule is a reference to a clause of or a schedule to, this Scheme;
- (e) a reference to a deed, agreement or document (including, without limitation, a reference to this Scheme) is to the deed, agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Scheme or that other deed, agreement or document;
- (f) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

2. Transfer of Business

Realcover agrees to transfer, and QBE agrees to accept the transfer of, the Business on the Effective Date in accordance with the terms of the Transfer Agreement. In particular, the following will be transferred:

- (a) the Insurance Contracts and the Insurance Liabilities;
- (b) the Business Assets; and
- (c) the Business Liabilities.

3. Assumed Liabilities

On and from the Effective Date, Realcover transfers to QBE, and QBE accepts the transfer of, the Insurance Contracts, the Insurance Liabilities and the Business Liabilities (**Assumed Liabilities**) and QBE assumes and takes over and must indemnify and keep Realcover indemnified from and against all Claims under or in connection with the Assumed Liabilities. On and from the Effective Date, the Assumed Liabilities will be liabilities of QBE.

4. Proceedings

Any legal proceedings by or against Realcover in respect of or in connection with any Insurance Contract, Insurance Liability, Business Asset or Business Liability will be continued by or against QBE, as the case may be.

5. Effective Date

The transfer of the Business from Realcover to QBE, and the transfer of the Insurance Contracts to QBE, pursuant to this Scheme, take effect on and from the Effective Date such that QBE will be entitled to all benefits and rights in respect of the Insurance Contracts, and will assume all of the obligations in respect of the Assumed Liabilities as from and including the Effective Date.

6. Implementation

Realcover and QBE will do all such things and execute all such deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Transfer Agreement, this Scheme and the transactions contemplated by them.

7. Costs of the Scheme

Any stamp duty and other costs and expenses incurred in connection with the Scheme will not be paid by or charged to policyholders, but will be met by QBE out of shareholder funds. Realcover and The Real Estate Institute of New South Wales Limited have agreed to reimburse QBE for external legal costs, external actuarial costs, stamp duty and other external costs agreed between the parties that are reasonably incurred by QBE.

8. Rights and Obligations of Policyholders

- (a) The Scheme will not change the terms of any Insurance Contract, or affect any claim in respect of any Insurance Contract, other than that QBE will become the insurer in place of Realcover;
- (b) Policyholders will continue to have the same rights and obligations under or in respect of any Insurance Contract or claim but with QBE as the insurer. The Scheme and Transfer Agreement will also reflect the change in insurer as follows:

- (i) all outstanding claims-related rights and liabilities of Realcover in respect of the Insurance Contracts will be transferred to QBE such that any claims arising under or in connection with any Insurance Contract must be made against QBE instead of Realcover;
 - (ii) all premiums and other amounts payable to or recoverable by Realcover under the Insurance Contracts will be payable to and recoverable by QBE instead of Realcover;
 - (iii) QBE will be entitled to enforce all rights and remedies which but for the Scheme would have been enforceable by Realcover under or in respect of the Insurance Contracts; and
 - (iv) any policyholder under an Insurance Contract or other person who has a claim on or obligation to Realcover under or in respect of an Insurance Contract will have the same claim on or obligation to QBE in substitution for his or her claim on or obligation to Realcover irrespective of when such claim or obligation arose.
- (c) Policyholders are not required to take any action before or as a result of the Scheme, however they have a right to attend the Federal Court of Australia and request to be heard regarding the application. Due to the COVID-19 pandemic, policyholders may do so by notifying Court (by contacting the Associate to Justice Lee by email at Associate.LeeJ@fedcourt.gov.au), of their intention to do so at least seven (7) days prior to the hearing on 26 June 2020. The Court will then make arrangements to allow Policyholders to be heard and advise any such Policyholders of those arrangements.

9. Reinsurance

In order to effect the transfer of the Business, Realcover will transfer, by way of novation, all of the agreements that its reinsurers have with Realcover to QBE. These novations will not transfer Realcover's rights in relation to reinsurance recoveries that have been requested but which remain outstanding as at the Effective Date. These recoveries will remain payable to Realcover.

At the same time that the Federal Court of Australia is asked to confirm the Scheme, QBE will also seek orders to give effect to these novations. The novations will take effect on the same day as the transfer of the Business, on and from which date QBE will assume all of the rights and obligations of Realcover under the reinsurance agreements, other than Realcover's rights in relation to the outstanding reinsurance recoveries referred to above.