

THE HIGH COURT

2020 Record No.

COS

IN THE MATTER OF AMTRUST INTERNATIONAL UNDERWRITERS DESIGNATED
ACTIVITY COMPANY

AND IN THE MATTER OF AMTRUST ASSICURAZIONI S.P.A

AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909

AND THE INSURANCE ACT 1989

AND IN THE MATTER OF THE EUROPEAN UNION (INSURANCE AND REINSURANCE)
REGULATIONS 2015

SCHEME

This Scheme Records that:

1. AmTrust International Underwriters Designated Activity Company (the “**Transferor**”) is a non-life insurance company, incorporated in Ireland on 28 January 1991, under registration number 169384. It has its registered office at 6-8 College Green, Dublin 2. The sole shareholder of the Transferor is AmTrust Equity Solutions Limited (being a company incorporated under the laws of Bermuda).
2. The Transferor is authorised by the Central Bank of Ireland (the “**Central Bank**”) to conduct non-life insurance business in Ireland in classes 1, 2, 3, 7, 8, 9, 10, 13, 14, 15, 16 and 18 as set out in Schedule 1 of the 2015 Regulations (as defined herein). This authorisation remains in full force and effect.
3. AmTrust Assicurazioni S.p.A (the “**Transferee**”) is a non-life insurance company incorporated in Italy on 3 April 2007 under the companies’ registration number 01917540518. It has its registered office at 14 Via Clerici, Milano 20121, Italy. The sole shareholder of the Transferee is AmTrust Italia Holdings LLC.
4. The Transferee is licensed by the Italian Supervisory Authority for Insurance and Reinsurance Undertaking (“**IVASS**”) in classes 1, 2, 8, 9, 13, 16, 17 and 18 as set forth in the Legislative Decree no. 2019 of 7 September 2005, and is therefore licenced to undertake and carry on the business of professional liability coverage for healthcare sector professionals.

5. Pursuant to this Scheme, the Transferor has agreed to transfer the economic risks, benefits, legal title and primary gross exposure of the Italian Med-mal Transferring Business (as defined herein) and the Transferee has agreed to acquire same, once this Scheme of Transfer (the "**Scheme**") is approved and implemented. The transfer of the Italian Med-mal Transferring Business is conditional upon the Scheme taking effect.
6. The purpose of the Scheme is to set out the basis upon which the Transferee will acquire such risk, benefit, right, title and interest as the Transferor has in the Italian Med-mal Transferring Business.
7. It has been agreed by the board of directors of the Transferor and by the board of directors of the Transferee in accordance with their respective internal governance requirements, to approve the draft Scheme, subject to the requirements of the Central Bank and the sanction of the Court (as defined herein).
8. It is intended that the Transferee should acquire the entirety of the Italian Med-mal Business, with effect from the Scheme Effective Date (as defined herein) and in accordance with the terms and conditions set out in the Scheme subject to and in accordance with all Applicable Laws (as defined herein).
9. The Transferor has notified the Central Bank of the terms of the Scheme in accordance with Regulation 41 of the 2015 Regulations.
10. The Transferor and the Transferee hereby agree to appear by Counsel on the hearing of the Petition to sanction this Scheme and have undertaken to be bound by the Scheme and to take all reasonable steps (including the execution of documents) which may be necessary or expedient to give effect to the Scheme.

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1 **Defined Terms**

1.1 In this Scheme the following expressions bear the meanings respectively set opposite them:

“**1909 Act**” means the Assurance Companies Act 1909;

“**1989 Act**” means the Insurance Act, 1989;

“**2015 Regulations**” means the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015);

“**Applicable Laws**” means the European Union (Insurance and Reinsurance) Regulations 2015, the Insurance Acts and any other legally binding applicable laws, regulations, rules, codes of practice, guidance or orders which relate to the Italian Med-mal Transferring Business and / or the proposed transfers of such business from time to time;

“**Business Day**” means a day on which banks generally are open for business in Ireland and Italy;

“**Central Bank**” means the Central Bank of Ireland or any replacement substitute or successor body;

“**Court**” means the High Court of Ireland;

“**Data Controller**” has the meaning ascribed to it in the Data Protection Laws;

“**Data Protection Laws**” means all applicable laws and regulatory requirements in relation to data protection and privacy i.e. protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data, or similar laws that apply in relation to the processing of personal data, including all laws implementing the EU Data Protection Directive and EU Data Privacy Regulations;

“**EU Data Privacy Regulations**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such

data, and repealing the EU Data Protection Directive (General Data Protection Regulation);

“EU Data Protection Directive” means directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“Independent Actuary” means Stewart Mitchell of Lane Clark & Peacock LLP, the independent actuary appointed to report on the terms of the Scheme, or any successor appointed to report on the Scheme;

“Insurance Acts” means the Insurance Acts 1909 to 2018, regulations relating to insurance business made under those acts and regulations made under the European Communities Act 1972;

“Insureds” means the individuals who benefit from the coverage provided to the Policyholders in the Italian Med-mal Transferring Policies and **“Insured”** means any one of them;

“Italian Branch” means the Italian branch of the Transferor, established in Italy, conducting its business under the Transferor’s name or the trade name “AmTrust” at 14 Via Clerici, Milano 20121, Italy, with identification number 2093047.

“Italian Med-mal Business” means the Transferor’s non-life insurance business of providing professional liability coverage, general liability coverage and legal expenses coverage to healthcare sector institutions in Italy and the Vatican City, and includes indemnifying a client where they are subjected to a medical malpractice claim as a result of an error or omission.

“Italian Med-mal Policies” means any policy or policies issued by the Transferor in relation to the Italian Med-mal Business which are, or may be deemed to have been, in existence on or prior to the Scheme Effective Date.

“Italian Med-mal Transferring Ancillary Contracts” means all contracts (other than the Italian Med-mal Transferring Contracts and the Residual Contracts) to which the Transferor is a party which relate to the Italian Med-mal Transferring Business;

“Italian Med-mal Transferring Assets” means all of the following assets, but excluding the Residual Assets, as on the Scheme Effective Date: (a) the rights,

benefits and powers (whether actual or contingent) of the Transferor whatsoever under or by virtue of the Italian Med-mal Transferring Policies; (b) the rights, benefits and powers (whether actual or contingent) of the Transferor whatsoever under or by virtue of the Italian Med-mal Transferring Contracts; (c) all investments and other assets (if any) representing or held in connection with the Italian Med-mal Transferring Policies, including all assets representing the technical provisions relating to the Italian Med-mal Transferring Policies; and (d) the benefit and burden of all amounts of reinsurance relating to the Italian Med-mal Transferring Policies;

“Italian Med-mal Transferring Business” means the Italian Med-mal Business as carried on by the Transferor on the Scheme Effective Date insofar as it comprises the Italian Med-mal Transferring Policies, the Italian Med-mal Transferring Assets, the Italian Med-mal Transferring Liabilities, the Italian Med-mal Transferring Contracts and the Italian Med-mal Transferring Ancillary Contracts;

“Italian Med-mal Transferring Contracts” means any agreement corresponding to any Italian Med-mal Policies, including but not limited to reinsurance contracts entered into by AIU with Swiss Re, AmTrust International Insurance and Maiden, but excluding the Residual Contracts;

“Italian Med-mal Transferring Liabilities” means all risks, obligations and liabilities of the Transferor on the Scheme Effective Date to the extent arising out of or relating to the Italian Med-mal Transferring Policies and the Italian Med-mal Transferring Business but excluding the Residual Liabilities;

“Italian Med-mal Transferring Policies” means the Italian Med-mal Policies, but excluding the Residual Policies.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge security interest, lease, encumbrance or other adverse claim of any kind in respect of such property or asset;

“Order” means an order made by the Court pursuant to Section 13 of the 1909 Act sanctioning this Scheme and any order (including any subsequent order, which is ancillary thereto) in relation to this Scheme made by the Court pursuant to Section 36 of the 1989 Act;

“Policyholders” means the policyholders of the Italian Med-mal Transferring Policies and **“Policyholder”** means any one of them;

“Policyholder Data” means the personal data (as defined in the Data Protection Laws) of the Policyholders or any of them;

“Records” means all books and records (including underwriting records, data, documents, books of account, files, memoranda and other papers) of the Transferor relating to the Italian Med-mal Transferring Business;

“Regulatory Authorities” means the Central Bank, IVASS and any other person, body, authority, government, local government, regulatory agency with regulatory enforcement, administrative and/or criminal powers in any jurisdiction, and any other governmental authority that regulates the Transferor, the Transferee, the Italian Med-mal Transferring Business other than a Tax Authority and **“Regulatory Authority”** means any one of them;

“Residual Asset” means any asset, including the rights, benefits and powers (whether actual or contingent) of the Transferor whatsoever under or by virtue of the Residual Policies or the Residual Contracts, to be transferred from the Transferor to the Transferee pursuant to the Scheme, the transfer of which asset from the Transferor to the Transferee (a) requires as on the Scheme Effective Date either the consent of any person (other than the Transferor, the Transferee or the Court) or the waiver by any person of any right to acquire, or to be offered the right to, or to offer to, acquire or procure the acquisition by some other person of, all or any part of such property, being a right which directly or indirectly arises or is exercisable as a consequence of such transfer being proposed or taking effect, (b) which the Court does not have jurisdiction to transfer or determines for any other reason not to transfer it or the transfer of which is not recognized by the laws of any relevant jurisdiction in which such asset is situated or to which the asset is subject or (c) cannot be effected pursuant to the Scheme for any other reason;

“Residual Contracts” means those Italian Med-mal Transferring Contracts which do not transfer to the Transferee for any reason on the Scheme Effective Date;

“Residual Liability” means any Italian Med-mal Transferring Liability which is attributable to or connected with a Residual Asset and arises at any time before any Subsequent Transfer Date applicable to that Residual Asset;

“Residual Policies” means the policies relating to the Residual Contracts;

“Scheme” means this scheme of transfer to be submitted to and approved by the Central Bank and the Court in relation to the transfer of the Italian Med-mal Transferring Business;

“Scheme Effective Date” means the time and date when this Scheme shall become operative in accordance with clause 4.1;

“Subsequent Transfer Date” means in relation to any Residual Asset or Residual Liability, the date after the Scheme Effective Date on which such Residual Asset or Residual Liability is transferred to the Transferee namely: (a) in respect of any Residual Asset falling within paragraph (a) of the definition thereof, and of any Residual Liability falling within paragraph (a) of the definition thereof, the date on which any requisite consent, novation, waiver or order to enable the same to be transferred to the Transferee is obtained, no longer required or dispensed with by Order of the Court and (b) in respect of any Residual Asset falling within paragraphs (b) or (c) of the definition thereof and of any Residual Liability which falls within paragraph (b) of the definition thereof, the date on which the Transferor and the Transferee agree that the transfer of the relevant Residual Asset shall take effect;

“Tax” means all forms of taxation, rates, fines, duties, imposts, charges, contributions, withholdings and levies whether arising under the laws of Ireland or those of any other jurisdiction or territory and whether incurred as principal, agent, trustee, indemnitor, warrantor or otherwise, and regardless of whether such taxes, rates, fines, duties, imposts, charges, contributions, withholdings or levies are directly or primarily chargeable against or attributable to the Transferor or any other person, firm or company and whether or not the Transferee is or may be entitled to claim reimbursement thereof from any other person or persons and “Taxable” shall be construed accordingly;

“Tax Authority” means any taxing or other authority competent to impose any liability in respect of taxation or responsible for the administration and / or collection of Taxation or enforcement of any law in relation to taxation;

“Tax Liability” means any liability of the Transferor to Tax that arises in connection with the Italian Med-mal Transferring Business; and

“VAT” means value added tax provided for in Council Directive 2006/112/EC and charged under the provisions of any national legislation implementing that directive or Directive 77/388/EEC, together with any legislation supplemental thereto.

2 Interpretation Generally

2.1 In this Scheme:

2.1.1 words and expressions shall, save where the context otherwise requires, have the meanings set out in clause 1 (Defined Terms);

2.1.2 all references to statutory provisions of any country, state or territory shall be construed as including references to:

(a) any statutory modification or re-enactment thereof (whether before, on or after the date hereof) for the time being in force; and

(b) all statutory instruments or orders from time to time made pursuant thereto.

2.1.3 reference 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 and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation.

2.1.4 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

2.1.5 the headings in this Scheme are for ease of reference only and shall not affect its interpretation;

2.1.6 words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall unless the context clearly indicates to the contrary refer to the whole of this Scheme and not to any particular section, clause or paragraph hereof;

2.1.7 in construing this Scheme general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they

are followed by particular examples intended to be embraced by the general words and any reference to the word “include” or “including” is to be construed without limitation;

2.1.8 any reference to “Scheme” or to any other document or to any specified provision of this Scheme or of any other document is to this Scheme, that document or that provision as in force for the time being and as amended from time to time in accordance with the terms of this Scheme or that document;

2.1.9 any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

2.1.10 any reference to a person includes his successors, personal representatives and permitted assigns;

2.1.11 the term “writing” or any similar expression includes transmission by email;

2.1.12 if any action or duty to be taken or performed under any of the provisions of this Scheme would fall to be taken or performed on a day which is not a Business Day such action or duty shall be taken or performed on the Business Day next following such day;

2.1.13 unless otherwise stated, all references to time are references to Irish local time;

2.1.14 for the avoidance of doubt, any reference to Ireland does not include Northern Ireland;

2.1.15 and unless provided otherwise in the Scheme, “indemnify” and “indemnifying” any person against any circumstance include indemnifying and keeping him harmless from all actions, claims, demands, awards, penalties, fines and proceedings (including any liability to Tax) from time to time made against him and all loss or damage and all payments, costs or expenses (including legal and other professional costs) made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;

2.1.16 any reference to a “Party/Parties” shall mean the parties to this Scheme; and

2.1.17 references to books, records or other information means books, records or other information in any form, including paper, electronically stored data, magnetic media, film and microfilm.

3 Transfer of Insurance Business

3.1 Transfer of Business

3.1.1 On and with effect from the Scheme Effective Date, the Italian Med-mal Transferring Business shall by the Order and without any further act or instrument, be transferred to and be vested in the Transferee in accordance with this Scheme.

3.1.2 Subject to the provisions of this Scheme, every Policyholder shall on and from the Scheme Effective Date become entitled in substitution of any rights enforceable by or available under an Italian Med-mal Transferring Policy against the Transferor to the same right against the Transferee and the obligations of every such Policyholder shall on and after the Scheme Effective Date become enforceable (so far as still subsisting) by the Transferee in place of the Transferor. The Transferee shall carry out, perform and complete all of the terms and conditions of the Italian Med-mal Transferring Policies.

3.1.3 All premiums and other amounts attributable or referable to the Italian Med-mal Transferring Policies shall on and after the Scheme Effective Date be payable to the Transferee and shall be receivable and received by the Transferee and every person who is a holder of or party to any of the Italian Med-mal Transferring Policies shall be liable to the Transferee for any outstanding, further or additional premiums or other sums attributable or referable to the Italian Med-mal Transferring Policies as and when the same become due and payable.

3.1.4 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Italian Med-mal Transferring Policies which would have been available to the Transferor.

3.2 Transfer of Assets

3.2.1 In addition to clause 3.1, on and with effect from the Scheme Effective Date, the Italian Med-mal Transferring Assets shall, by the Order and without any

further act or instrument, be transferred to and be vested in the Transferee free and clear from all Liens affecting such Italian Med-mal Transferring Assets.

3.2.2 The Transferor and the Transferee shall, as and when appropriate, execute all documents and perform all things as may be required to effect or perfect the transfer to, and vesting in, the Transferee of any Italian Med-mal Transferring Assets on the Scheme Effective Date in accordance with the terms of this Scheme.

3.3 **Transfer of Contracts**

3.3.1 In addition to clauses 3.1 and 3.2, on and with effect from the Scheme Effective Date, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers, and be subject to all the obligations and liabilities of the Transferor whatsoever subsisting on the Scheme Effective Date under or by virtue of the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts and all such rights, benefits and powers shall be vested in the Transferee.

3.3.2 Every person who immediately prior to the Scheme Effective Date is a holder of or party to the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts shall, with effect from the Scheme Effective Date, in substitution for any liability or obligation owed thereunder to the Transferor, be under the same liability or obligation to the Transferee and shall become entitled, to the exclusion of any rights which he may have had against the Transferor under any of the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts (or any of them) to the same rights against the Transferee as were available to him against the Transferor under such Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts (or any of them).

3.3.3 All amounts attributable or referable to the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts shall on and after the Scheme Effective Date be payable to the Transferee and shall be receivable and received by the Transferee and every person who is a holder of or party to any of the Italian Med-mal Transferring Contracts and / or

the Italian Med-mal Transferring Ancillary Contracts (or any of them) shall be liable to the Transferee for any outstanding, further or additional sums attributable or referable to the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts as and when the same become due and payable.

3.3.4 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Italian Med-mal Transferring Contracts (or any of them) and / or the Italian Med-mal Transferring Ancillary Contracts (or any of them) which would have been available to the Transferor.

3.3.5 All references in the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts to the Transferor, the board of directors of the Transferor or any other officers or agents of the Transferor shall with effect from the Scheme Effective Date be read as references to the Transferee, the board of directors of the Transferee, or any other officers or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration of the Transferee has been delegated. In particular, but without limitation, all rights and / or duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the board of directors of the Transferor, or any other officers or agents of the Transferor in relation to the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts shall, with effect from the Scheme Effective Date be exercisable or required to be performed by the Transferee, the board of directors of the Transferee or any other officers, employees or agents of the Transferee.

3.4 Transfer of Liabilities

3.4.1 On and with effect from the Scheme Effective Date, the Italian Med-mal Transferring Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of the Transferee and shall cease to be liabilities of the Transferor.

3.5 Transfer of Residual Assets

- 3.5.1 No Residual Assets or Residual Liabilities shall be transferred to or vested in the Transferee under or by virtue of the terms of the Scheme at the Scheme Effective Date.
- 3.5.2 The Residual Assets, Residual Liabilities and the Residual Policies will transfer from the Transferor to the Transferee on the Subsequent Transfer Date upon fulfilment of the conditions specified in the definition of Subsequent Transfer Date.
- 3.5.3 Pending a Subsequent Transfer Date, the Transferor shall hold any Residual Assets as trustee and in trust for and on behalf of the Transferee absolutely. The Transferor shall be subject to the Transferee's directions in respect of any Residual Assets and the Transferee shall discharge on the Transferor's behalf or, failing that, indemnify the Transferor against all Residual Liabilities.

3.6 Rights of Policyholders

- 3.6.1 Subject to the provisions of this Scheme, every Policyholder insured under the Italian Med-mal Transferring Policies shall as and from the Scheme Effective Date become entitled in substitution of any rights enforceable by or available to him under his policy(ies) against the Transferor to the same right or rights against the Transferee and the obligations of such Policyholder shall as and from the Scheme Effective Date become enforceable (so far as still subsisting) by the Transferee in place of the Transferor.
- 3.6.2 The Transferee shall carry out, perform and complete all of the terms and conditions of the Italian Med-mal Transferring Policies.

4 Scheme Effective Date

- 4.1 Subject to clause 4.2, this Scheme shall become operative at 23.59 on 31 July 2020 or such other time and date as may be specified in the Order and unless this Scheme shall become operative on or before 23.59 on 31 July 2020 or such later date as the Court may allow upon the application of the Transferor and the Transferee, this Scheme shall lapse.
- 4.2 Notwithstanding clause 4.1, this Scheme shall not become operative on the Scheme Effective Date unless:

- 4.2.1 the Court has approved the Scheme pursuant to the 1909 Act, the 1989 Act and the 2015 Regulations;
- 4.2.2 the Central Bank has given its consent or indicated that it has no objection to the Scheme; and
- 4.2.3 any other required regulatory approvals having been obtained from any other Regulatory Authority.

5 Effect of the Scheme

- 5.1 The transfer and vesting of the Italian Med-mal Transferring Assets and / or the Italian Med-mal Transferring Liabilities relating to any part of the Italian Med-mal Transferring Business shall not:
 - 5.1.1 invalidate or discharge any contract, security or other thing;
 - 5.1.2 require further registration in respect of any security or charge;
 - 5.1.3 constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise be the case under any instrument or contract or arrangement to which any of, or all of, the Transferor is a party or is bound;
 - 5.1.4 entitle any party to a contract or arrangement to which any of, or all of, the Transferor is a party to terminate such contract or arrangement when, in the absence of this transfer, that party would not otherwise be entitled to terminate it; and
 - 5.1.5 save as provided elsewhere in this Scheme, confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, under a contract on any party to such contract to which any of, or all of, the Transferor is a party where such greater or lesser rights, benefits or obligations would not otherwise have been conferred or imposed.

6 Further Assurances

- 6.1 The Parties to this Scheme shall take all reasonable steps, do such further acts and execute such documents as may be necessary to effect the transfer and the vesting

of the Italian Med-mal Transferring Business in the Transferee, in accordance with the terms of this Scheme.

- 6.2 In respect of the Residual Assets, the Residual Liabilities and the Residual Policies, the Transferor and the Transferee shall, following the Scheme Effective Date, use their respective reasonable best efforts to procure, as soon as practicable, any consents (including deemed consents) or waivers and take any additional steps as determined by the Court required in order to effect the transfer of any Residual Assets, Residual Liabilities and Residual Policies from the Transferor to the Transferee on a Subsequent Transfer Date.

7 Books and Records

On and with effect from the Scheme Effective Date, the Transferor shall hand over and / or make available to the Transferee all Records relating to the Italian Med-mal Transferring Business and which are not otherwise in the Transferee's possession.

8 Data Protection

- 8.1 On and with effect from the Scheme Effective Date and by virtue of the Order, the Records, which may include Policyholder Data protected under the Data Protection Laws, shall be transferred to the Transferee (such that the Transferee shall be deemed to be the Data Controller of the Policyholder Data from the Scheme Effective Date), and may be used by the Transferee for, and disclosed by the Transferee to, and used by, any agent or contractor of the Transferee to the same extent that they were used by the Transferor and its agents or contractors prior to the Transfer for all purposes in connection with the Italian Med-mal Transferring Policies including, in particular, administration thereof and all matters relevant or incidental thereto.
- 8.2 To the extent that an authority has been given to the Transferor in connection with the Italian Med-mal Transferring Policies (or any of them) by the Policyholders (or any of them) or counterparty thereto or by any other relevant person, whether pursuant to Data Protection Laws or otherwise, such authority shall, on or after the Scheme Effective Date, be deemed to have been given to the Transferee.
- 8.3 Nothing in this clause 8 shall be effective to the extent it would be unlawful under, or inconsistent with, Data Protection Laws.

9 **Mandates and Other Instructions**

- 9.1 Any mandate or other instruction in force on the Scheme Effective Date (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums payable under or in respect of any of the Italian Med-mal Transferring Policies shall, on and from the Scheme Effective Date (and in the case of the Residual Policies, from the respective Subsequent Transfer Date), take effect as if it had provided for and authorised such payment to the Transferee.
- 9.2 Any mandate or other instruction in force on the Scheme Effective Date in respect of any of the Italian Med-mal Transferring Policies as to the manner of payment of any benefit or other amount by the Transferor shall, on and from the Scheme Effective Date (and in the case of the Residual Policies, from the respective Subsequent Transfer Date), continue in force as an effective authority to the Transferee.
- 9.3 All premiums attributable or referable to the Italian Med-mal Transferring Policies shall from the Scheme Effective Date be payable to the Transferee.

10 **VAT**

- 10.1 Any amounts of other consideration payable under or in connection with this Scheme are exclusive of any VAT. It is the common understanding of AIUD and AmTrust Italy that the transfer of the Italian Med-mal Transferring Business shall be considered without any doubt as a transfer of an undertaking capable of carrying out an independent business activity for value added tax purposes and that all the requirements in order to consider the transaction as a transfer of an ongoing concern, according to article 19 and 29 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the relevant legislation implementing such articles in the relevant EU jurisdiction are fulfilled. AIUD and AmTrust Italy will use their respective reasonable endeavours to ensure that this is the case, but notwithstanding the foregoing, if any value added tax is held to be payable then AIUD and AmTrust Italy shall refer to the payment mechanics as outlined in a business transfer agreement, to be agreed and executed by AIUD and AmTrust Italy before the Sanctions Hearing of the transfer.

11 **Costs and Expenses**

11.1 Except as otherwise agreed in writing, all costs and expenses relating to the preparation of the Scheme and application for the sanction of the Scheme, including the costs of the Independent Actuary and complying with the Order shall be borne jointly by the Transferor and the Transferee in equal proportions. No costs or expenses shall be borne by the Policyholders.

12 **Continuity of Proceedings**

12.1 On and with effect from the Scheme Effective Date, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim (whether current or future) by or against the Transferor on the Scheme Effective Date in connection with the Italian Med-mal Transferring Business shall be continued by or against the Transferee. It being understood that the Transferee is entitled to intervene in the relevant proceeding and the Transferor can request its exclusion from the proceeding (due to Transferee's intervention). The Transferor remains entitled to all defences, claims, counterclaims and rights of set-off in relation to any such proceedings. The Transferor remains liable under those proceedings.

12.2 On and with effect from the Subsequent Transfer Date, all actual and potential Proceedings by or against the Transferor in connection with the relevant Residual Assets, the relevant Residual Liabilities and / or the relevant Residual Policies shall be continued by or against the Transferee. It being understood that the Transferee is entitled to intervene in the relevant proceeding and the Transferor can request its exclusion from the proceeding (due to Transferee's intervention). The Transferor remains entitled to all defences, claims, counterclaims and rights of set-off in relation to such Residual Assets and Residual Liabilities.

13 **Publication and Notification Requirements**

13.1 The Transferor and the Transferee shall co-operate to publish appropriate pre-transfer and post-transfer notices in each case as required by any Applicable Law, the Order or by any Regulatory Authority.

14 **Notices**

14.1 Any notice required to be given by either Party under this Scheme shall be in writing and in English and may be delivered by hand or sent by pre-paid first class post to the address of the addressee as set out below or to such other address as the addressee may have notified for the purposes of this clause.

14.2 A Notice to the Transferor shall be sent to the following addresses, or such other persons or addresses as the Transferor may notify to the Transferee from time to time:

For Transferor:

Address: AmTrust International Underwriters DAC
6-8 College Green,
Dublin 2
Ireland

Telephone: +353 1 775 2900

Attention: Jonathan O'Brien

Email: dublin@amtrustgroup.com

For Transferee:

Address: 14, Via Clerici
Milano 20121
Italy

Telephone: +39 0283438150

Attention: Matteo Baviello

Email: Amtrust.assicurazioni@pec.it

With a copy to: Padraic Roche, Matheson

Email: Padraic.roche@matheson.com

15 Modifications or Additions

15.1 The Transferor and the Transferee may consent for and behalf of themselves, and may consent on behalf of all other persons concerned (other than the Regulatory Authorities) to any amendment, modification of or addition to this Scheme or to any other further condition or provision effecting the same which the Court may approve or impose prior to the sanction of this Scheme.

15.2 After the Scheme Effective Date, the Transferee may vary the terms of this Scheme with the consent of the Court, including, without limitation, if at any time, the provisions of this Scheme, in the opinion of the board of directors of the Transferee, prove to be impossible, impracticable or inequitable to implement, provided that in any such case:

15.2.1 the Central Bank shall be notified of and have the right to be heard at the hearing of the Court at which such application is considered; or

15.2.2 such application shall be accompanied by a report from an independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the interests of the Policyholders affected by the proposed amendment; and

15.2.3 to the extent any such variation affects any right, obligation or interest of the Transferor, the Transferor has consented thereto.

15.3 If the consent of the Court is granted in accordance with clause 15.2, the Transferee may amend the terms of this Scheme in accordance with the terms of the Court.

16 Governing Law

16.1 This Scheme shall be governed by and construed in accordance with the laws of Ireland and the Parties agree to submit to the exclusive jurisdiction of the Irish courts.

17 No Third Party Rights

17.1 Subject to the provisions of clause 15 (Modifications or Additions) of this Scheme, nothing in this Scheme shall confer or purport to confer on any third party any benefit or the right to enforce any term of this Scheme.

18 **Successor and Assigns**

18.1 This Scheme will bind and enure to the benefit of the successors and assigns of each of the Transferor and the Transferee.

19 **Evidence of Transfer**

19.1 The production of a copy of the Order, with any modifications, amendments and/or additions made pursuant to clause 15 (Modifications or Additions) shall, for all purposes, be evidence of the transfer to and vesting in the Transferee of the Italian Med-mal Transferring Business.

THE HIGH COURT
2020 Record No. **COS**

**IN THE MATTER OF AMTRUST
INTERNATIONAL UNDERWRITERS
DESIGNATED ACTIVITY COMPANY**

**AND IN THE MATTER OF
AMTRUST ASSICURAZIONI S.P.A**

**AND IN THE MATTER OF THE
ASSURANCE COMPANIES ACT
1909**

AND THE INSURANCE ACT 1989

**AND IN THE MATTER OF THE
EUROPEAN UNION (INSURANCE
AND REINSURANCE)
REGULATIONS 2015**

SCHEME

MATHESON
70 Sir John Rogerson's Quay
Dublin 2
Ireland
DM/PR/CP 658088/61
TEL: + 353 1 232 2000
FAX: +353 1 232 3333