

CR-2020-002341

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

IN THE MATTER OF AMT MORTGAGE INSURANCE LIMITED

and

IN THE MATTER OF AMTRUST INTERNATIONAL UNDERWRITERS DAC

and

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

SCHEME

(pursuant to Part VII of the Financial Services and Markets Act 2000)

Contents

Clause	Page
Part°1 - Definitions and interpretation	2
1 Definitions and interpretation	2
Part°2 – Introduction	14
2 Introduction.....	14
Part°3 – The Transfer	15
3 Transfer of the Transferred Business, Assets and Liabilities.....	15
4 Consequences of the Transfer	16
5 Residual Policies	18
6 Declaration of Trust by the Transferor	19
7 Indemnities in favour of the Transferor	20
8 Outwards Reinsurance Agreements	21
9 Continuity of Proceedings	21
10 Payment mandates	22
11 Privacy and data protection.....	23
Part°4 – Miscellaneous Provisions	25
12 Effective Date	25
13 Costs and Expenses	26
14 Modifications, Amendments or Additions	26
15 Retained Records.....	27
16 Contracts (Rights of Third Parties) Act 1999.....	27
17 Successors and Assigns	27
18 Evidence of transfer	27
19 Governing Law	27

Part^o1 - Definitions and interpretation

1 Definitions and interpretation

1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions bear the meanings respectively set opposite them:

Applicable Privacy Laws means all applicable data protection laws, rules and regulations, including 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, as amended or replaced from time to time (including by the General Data Protection Regulation), and any applicable national laws, rules and regulations implementing the foregoing

Asset(s) means any assets and property of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, whether owned, leased or licensed including without limitation all rights, benefits and powers under any contract and all rights, claims and powers against any third party

CA 2006 means the Companies Act 2006

Capital Assets has the meaning given to that expression in clause 3.7

Capital Requirements means the obligation to hold sufficient own funds to cover the higher of the following:

- (a) the Minimum Capital Requirement; and
- (b) the Solvency Capital Requirement;

Court means the High Court of Justice in England and Wales

Data Subject Request means a request by a person to access, correct, amend, transfer or delete that person's personal data consistent with that person's rights under Applicable Privacy Laws

EEA means the European Economic Area as constituted at the Effective Date and each member of the EEA being an **EEA State**

Effective Date means the time and date on which this Scheme shall take effect in accordance with clause 12

Encumbrance means any mortgage, charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other

encumbrance or security interest of any kind and any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar effect

Excluded Assets means:

- (a) the Retained Records;
- (b) the rights, benefits and powers of the Transferor under or by virtue of the Excluded Policies;
- (c) any property of the Transferor attributable to the Transferred Business (including any right or benefit of the Transferor under any Transferred Policy) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred at all; and
- (d) all rights, benefits and powers under the Residual Policies Reinsurance Arrangement

Excluded Liabilities means any liability whatsoever of the Transferor:

- (a) that is attributable to or connected with an Excluded Asset;
- (b) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred at all;
- (c) which cannot be transferred to or vested in the Transferee for any other reason on the Effective Date other than the Residual Liabilities; or
- (d) all obligations and liabilities under the Residual Policies Reinsurance Arrangement

Excluded Policies means Policies:

- (a) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred; or
- (b) in relation to which the policyholder is included on any of the Sanctions Lists

FCA means the Financial Conduct Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such regulatory and supervisory functions in relation to general insurance carried on in the United Kingdom as are at the date of this Scheme allocated to the Financial Conduct Authority under FSMA

FCA Handbook means the handbook of rules and guidance issued by the FCA from time to time pursuant to FSMA

FSMA means the Financial Services and Markets Act 2000

General Data Protection Regulation means:

- (a) 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 Directive 95/46/EC (General Data Protection Regulation) (the Regulation); and
- (b) laws implementing the Regulation

Governmental Authority means any national, supra-national, federal, state, provincial or local government, political subdivision, governmental, regulatory, department, bureau, board or other administrative authority, instrumentality, agency, body or commission, self-regulatory organization or any court (including, without limitation, the Court), tribunal, or judicial or arbitral body

Group means, in relation to a company, that company and any subsidiary, subsidiary undertaking or holding company of such company and any subsidiary or subsidiary undertaking of any such holding company

Guarantees means:

- (a) the guarantee between the Transferor and Genworth Financial Inc. dated 18 July 2005 (as amended and restated on 15 May 2009 and as further amended by order of the Court dated 11 June 2019); and
- (b) the Support Agreement and Adverse Development Guaranty between AmTrust North America, Inc and the Transferor dated 31 December 2016

Independent Expert means Stewart Mitchell of Lane Clark & Peacock LLP or any other independent expert approved pursuant to section 109(2)(b) of FSMA

Liability means any debt, liability, duty or obligation (in each case, whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) including, without limitation, all costs and expenses relating thereto

Marketing Preference means a consent (for the purposes of clause 1 of Schedule 2 of the Data Protection Act 2018) given by a data subject for use of his personal data to market directly to him by any means, or an indication (by act or omission as appropriate) by the data subject that such consent is withheld

Minimum Capital Requirement means the Minimum Capital Requirement as required by Article 128 of the Solvency II Directive

Order means an order made by the Court pursuant to Section 111(1) of FSMA 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 112 of FSMA;

Outwards Reinsurance Agreements means all agreements pursuant to which any portion of the Liabilities under the Transferred Policies is or has been reinsured or retroceded, and which are in force immediately prior to the Effective Date, including (without limitation) those which are listed in Schedule 1

Passporting Regulations means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511)

Payment has the meaning given to that expression in clause 7.3

Person means any natural person, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, joint venture, joint stock company, trust, unincorporated organization, association or organization or other legal entity

Policies means all policies (as defined in the Policyholder Order), treaties, facultative certificates, binders, slips and other contracts of or for insurance, reinsurance or retrocession and all binding quotations (and including at any time any constituent part of a Policy which gives rise to any separately identifiable benefit) written by or on behalf of or assumed by the Transferor as insurer, reinsurer or retrocessionaire (where such policy, treaty, facultative certificate, binder, slip or other contract was not written or assumed solely by or on behalf of the Transferor, to the extent and only for and in respect of the proportion written by or on behalf of or assumed by the Transferor) (including, without limitation, all supplements, endorsements and riders thereto and all ancillary agreements in connection therewith) prior to the Effective Date

policyholder has the meaning set out in the Policyholder Order

Policyholder Order means the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361)

PRA means the Prudential Regulation Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such prudential and supervisory functions in relation to general insurance carried on in the United Kingdom as are at the date of this Scheme allocated to the Prudential Regulation Authority under FSMA

Proceedings means any action or other legal or administrative proceedings or step (whether direct or indirect, by way of a claim, demand, legal proceedings, execution of judgment, arbitration, complaint or otherwise howsoever) including:

- (a) arbitration;

- (b) mediation;
- (c) any other dispute resolution procedure (whether or not it involves submission to any court);
- (d) any judicial, quasi-judicial, administrative or regulatory review or process; and
- (e) any complaint or claim to any ombudsman (including the Financial Ombudsman Service);

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

Residual Asset means each Asset of the Transferor comprised in or relating to the Transferred Business which would be a Transferred Asset (including any right, benefit or power of the Transferor under any Transferred Policy) but for the fact that, in relation to the relevant Asset

- (a) the Court has declined to order the transfer of such Asset to the Transferee under FSMA (either at all or without the consent of a person other than the Transferee or the Transferor);
- (b) the Transferor and the Transferee have agreed, prior to the Effective Date, that the transfer of such Asset to the Transferee should be delayed or should not be transferred at all (including where the Court has made an order as to the enforceability of an interest or right relating to such Asset as referred to in section 112A(2)(b) of FSMA);
- (c) the transfer of such Asset to the Transferee is outside the jurisdiction of the Court;
- (d) such Asset is subject to the law of any country or territory outside the UK and such law provides that further steps, in addition to the Order, are required to be taken to effect the transfer of such Asset pursuant to such law;
- (e) the laws of a jurisdiction in which such Asset is situated or which are otherwise relevant to any security relating to such Asset do not recognise the security trustee arrangement referred to in clause 6, or under such laws these security trustee arrangements are not sufficient to provide in all material respects the same rights to the Transferor as security trustee, or the same benefits to the Transferee, as were available to the Transferor prior to the Effective Date;
- (f) such Asset cannot be transferred or vested in the Transferee for any other reason; or
- (g) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Date in respect of any Asset referred to in the preceding clauses (a) to (h),

but excluding for the avoidance of doubt, the Excluded Assets

Residual Liability means any Liability of the Transferor (other than a Liability arising under the Residual Policies Reinsurance Arrangements) comprised in or relating to the Transferred Business which would be a Transferred Liability, but for the fact that, in relation to the relevant Liability:

- (a) the Court has declined to order the transfer to the Transferee under FSMA;
- (b) the Transferor and the Transferee have agreed, prior to the Effective Date, that the transfer to the Transferee should be delayed;
- (c) the transfer of such Liability to the Transferee is outside the jurisdiction of the Court;
- (d) such Liability is subject to the law of any country or territory outside the UK and such law provides that further steps, in addition to the Order, are required to be taken to effect the transfer of such Liability pursuant to such law;
- (e) it is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset; or
- (f) it relates to or is otherwise attributable to or connected with a Residual Policy;
- (g) that cannot be transferred or vested in the Transferee for any other reason,

but excluding for the avoidance of doubt, the Excluded Liabilities

Residual Policies Reinsurance Arrangements means a reinsurance arrangement implemented in respect of Residual Policies pursuant to clause 5.1

Residual Policy means any Policy which would be a Transferred Policy save that:

- (a) the Order requires further steps be taken to make the transfer of such Policy to the Transferee fully effective or such Policy is not otherwise capable of being transferred to the Transferee pursuant to FSMA at the Effective Date; or
- (b) the Transferor and the Transferee agree prior to the Effective Date that its transfer is to be delayed

Retained Records means any accounting and financial and other records of the Transferor which the Transferor is required by law to retain, including VAT records

Sanctions Lists means the sanctions lists maintained by the following as at the Effective Date:

- (i) the United Nations; (ii) the European Union; (iii) the US Department of the Treasury; (iv) Switzerland (including any relevant governmental or regulatory body); (v) the Office of Foreign

Asset Control; (vi) Her Majesty's Treasury; and (vii) Canada (including any relevant governmental or regulatory body)

Scheme means this scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with clause 14

Solvency II Directive means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and reinsurance

Solvency Capital Requirement means the Solvency Capital Requirement as required by Article 100 of the Solvency II Directive

Subsequent Transfer Date means in relation to any Residual Policy, Residual Asset or Residual Liability, the date (and each date) after the Effective Date on which such Residual Policy, Residual Asset or Residual Liability is or is to be transferred to the Transferee, namely:

- (a) in respect of:
 - (i) any Residual Policy falling within clause (a) or (b) of the definition of Residual Policy;
 - (ii) any Residual Asset falling within clause (a), (c), (d), (e) or (f) of the definition of Residual Asset, and of any Residual Liability which is attributable to or connected with that Residual Asset; or
 - (iii) any Residual Liability falling within clause (a), (c) or (e) of the definition of Residual Liability,

the date on which any impediment to its transfer shall have been removed or overcome;
and

- (b) in respect of
 - (i) any Residual Policy falling within clause (b) of the definition of Residual Policy;
 - (ii) any Residual Asset falling within clause (b) of the definition of Residual Asset and of any Residual Liability which is attributable to or connected with that Residual Asset; or
 - (iii) any Residual Liability falling within clause (b) of the definition of Residual Liability,

the date on which the Transferor and the Transferee agree the transfer should take effect;
and

- (c) in respect of any Residual Asset falling within the final clause of the definition of Residual Asset, the date on which such Residual Asset is received or earned by the Transferor

Tax means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the United Kingdom or elsewhere, payable to or imposed by any authority responsible for the collection or management of any such tax, levy, duty, charge, impost, withholding or other amount; and
- (b) all charges, interest, penalties and fines incidental or relating to any sum falling within (a) above or which arise as a result of the failure to pay that sum on the due date or to comply with any obligation relating to it

Transferor means AMT Mortgage Insurance Limited

Transferee means AmTrust International Underwriters designated activity company

Transferred Assets means all of the Assets comprised in or relating to the Transferred Business, including without limitation all right, title and interest of the Transferor in, to or under:

- (a) the rights, benefit and powers of the Transferor under the Outwards Reinsurance Agreements;
- (b) all rights and claims (present or future, actual or contingent and known or unknown) against any third party in relation to the Transferred Business or arising as a result of the Transferor having carried on the Transferred Business
- (c) the rights, benefits and powers of the Transferor under or by virtue of the Transferred Policies and the Transferred Third Party Contracts;
- (d) any right to repayment of Tax or any available Tax credits;
- (e) all books, records, files and papers, whether in hard copy or computer format, of the Transferred Business, including insurance and reinsurance contracts, claims and underwriting files, sales and promotional literature, manuals and data, sales and purchase correspondence and lists of present and former customers, excluding the Retained Records;
- (f) all goodwill (including the renewal rights) associated with the Transferred Assets; and
- (g) the rights, benefit and powers of the Transferor under the Guarantees,

but excluding:

- (h) until the relevant Subsequent Transfer Date, the Residual Assets and Residual Liabilities;
- (i) the Excluded Assets

Transferred Business means the entire insurance business of the Transferor including, without limitation, the underwriting, management and administration of the Transferred Policies and all activities carried on by the Transferor in relation or in connection thereto, the Transferred Assets, the Transferred Liabilities, the Transferred Policies and the Transferred Outwards Reinsurance Agreements but excluding: (i) the Excluded Assets; (ii) the Excluded Liabilities; (iii) the Residual Assets; and (iv) the Residual Liabilities

Transferred Liabilities means all Liabilities of the Transferor to the extent arising from or relating to the Transferred Business, and irrespective of whether the Liabilities shall arise prior to or following the Effective Date, including, without limitation:

- (a) all Liabilities arising under or in connection with the Transferred Policies;
- (b) all Liabilities arising under or in connection with lapsed, surrendered, expired and reinstated policies written and/or assumed by or on behalf of the Transferor;
- (c) all Liabilities in connection with quotations made by or on behalf of the Transferor which were not proceeded with and/or which did not become policies of insurance for any reason whatsoever (including due to an administrative or proceeding error);
- (d) all Liabilities for damages (including compensatory, consequential, exemplary, punitive, bad faith or similar or other damages) which relate to the marketing, sale, underwriting, issuance, delivery, cancellation or administration of any Transferred Policy, including (without limitation): (i) any amount in respect of interest arising in connection thereto or in connection with any payment made in respect thereof; (ii) any amount in respect of any additional liability or an increase in liability to taxation of a policyholder, potential policyholder or former policyholder when compared to that person's liability to taxation if the event or series of events giving rise to the relevant damages had not occurred; and (iii) any liability arising out of or relating to any alleged or actual act, error or omission by the Transferor or its agents, whether intentional or otherwise, with respect to any such Transferred Policy, including: (A) any alleged or actual reckless conduct or bad faith in connection with the handling of any claim arising out of or under such Transferred Policy; or the marketing, sale, underwriting, issuance, delivery, cancellation or administration of such Transferred Policy;
- (e) any Liabilities arising under or in connection with the Outwards Reinsurance Agreements to the extent such Liabilities relate to the Transferred Policies;

- (f) all Liabilities arising under or in connection with the Transferred Third Party Contracts;
- (g) Liabilities to make a payment of or in respect of or an amount representing, equal to, equivalent to, or deemed to be, Tax (whether actual, present, future, contingent or deferred); and
- (h) all Liabilities arising under or in connection with the Guarantees,

but excluding (i) the Excluded Liabilities; and (ii) until the relevant Subsequent Transfer Date, the Residual Liabilities

Transferred Policies means the Policies comprised in or relating to the Transferred Business, together or individually as the context may indicate, excluding any Residual Policy

Transferred Policyholder means a policyholder, insurer, reinsurer or syndicate at Lloyd's that has ceded a risk to or insured a risk with or whose risk has been assumed by the Transferor pursuant to a Transferred Policy;

Transferred Third Party Contracts means all subsisting contracts to which the Transferor is party or in respect of which the Transferor is a beneficiary which relate to the Transferred Business other than the Policies and the Outwards Reinsurance Agreements;

UK means the United Kingdom of Great Britain and Northern Ireland; and

VAT means value added or similar turnover or sales taxes, wheresoever imposed (including any interest, surcharges or penalties in respect of the same).

1.2 In this Scheme:

- (a) **property** and **asset** includes property, assets, rights (including contingent rights as to the repayment of tax) and powers of every description (whether present or future, actual or contingent) and includes property and assets held on trust, securities (quoted or unquoted), benefits (including tax benefits), powers of any description and any interest whatsoever in any of the foregoing;
- (b) **transfer** includes (as the context may require) **assign, assignation, assignment, dispose, disposal, novate, novation, convey** and **conveyance** and shall include a transfer by operation of law;

- (c) any reference to the contracts, assets or liabilities of the Transferor relating to the Transferred Business is a reference to the contracts, assets or liabilities relating to the Transferred Business to which the Transferor is entitled or subject (whether beneficially or in any fiduciary capacity):
 - (i) wherever they are situated or arise;
 - (ii) whether or not they are capable of being transferred or assigned by the Transferor;
 - (iii) whether or not they are expressed to be binding on the successors or assignees of the Transferor;
- (d) any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine;
- (e) any reference to a **court, tax, accounting or regulatory authority** shall be deemed to include a reference to such authority's successors from time to time;
- (f) any 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;
- (g) any reference to any rules, regulations or guidance made by the PRA and/or the FCA (as applicable) shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time, and any reference to any provision of the PRA Rulebook or FCA Handbook (as applicable) which is not in force at the date of this Scheme but will be in force by the Effective Date shall, in respect of the period before it comes into force, be deemed to include a reference to such rules or regulations issued by the PRA and/or the FCA (as applicable) as most closely corresponded to that provision at the date of this Scheme;
- (h) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, Court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to that English legal term;
- (i) expressions used which have meanings under FSMA shall bear those meanings unless stated otherwise;
- (j) the expressions **subsidiary** and **holding company** shall have the meanings given in section 1159 of the CA 2006, save that for the purposes only of the membership

requirement contained in sections 1159(1)(b) and (c) of the CA 2006 a company shall be treated as a member of another company:

- (i) if any shares in that other company are held by a person acting on behalf of the company or any of its subsidiaries;
 - (ii) if any of its subsidiaries is a member of that other company; or
 - (iii) if any shares in that other company are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the company or any of its subsidiaries;
- (k) the expression **subsidiary undertaking** shall have the meaning given in section 1162 of the CA 2006, save that for the purposes of section 1162(2) of the CA 2006, an undertaking shall also be treated as a member of another undertaking if any shares in that other undertaking are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the undertaking or any of its subsidiary undertakings;
- (l) any reference to this Scheme shall include the recitals and Schedules to it and (unless inconsistent with the subject or context) references in this Scheme to clauses, parts or Schedules are to clauses of, parts of or the Schedules to this Scheme;
- (m) the rule known as the *ejusdem generis* rule shall not apply, and accordingly words introduced by words and phrases such as **include, including, other and in particular** shall not be given a restrictive meaning or limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;
- (n) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (o) any reference to a person shall include a reference to a body corporate, a partnership, an unincorporated association or to a person's executors or administrators;
- (p) any reference to writing shall include any mode of reproducing words in a legible and non-transitory form;
- (q) references to time are to London time; and
- (r) if a period of time is specified from a given day or date or from the day or date of an act or event, it shall be calculated exclusive of that day or date.

Part°2 – Introduction

2 Introduction

- 2.1 The Transferor is a company incorporated in England and Wales with registered company number 02624121. The Transferor's registered office at Exchequer Court, 33 St Mary Axe, London, England, EC3A 8AA.
- 2.2 The Transferee is a company incorporated in Ireland with registered number 169384. The Transferee's registered office is at 6-8 College Green, Dublin 2, D02 VP48, Ireland.
- 2.3 The Transferor is a "UK authorised person" as defined in section 105(8) of FSMA. The Transferor has permissions under Part 4A of FSMA to, inter alia, effect and carry out contracts of general insurance in the UK under classes of business 14 to 16 (inclusive) set out in Part I of Schedule 1 to the Regulated Activities Order. The Transferor also has permission to effect and carry out contracts of general insurance on a freedom of establishment basis in Ireland, Italy and Spain and on a freedom of services basis in Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, the Netherlands, Poland, Portugal and Sweden, in each case under the Passporting Regulations.
- 2.4 The Transferee is an EEA firm as defined in Schedule 3 to FSMA falling within clause 5(d) of Schedule 3 to FSMA which qualifies for authorisation under that Schedule. The Transferee is authorised by the CBI to carry on general insurance in Ireland in classes 1 to 3, 7 to 10 and 13 to 18 (in each case inclusive) as set out in Schedule I to the European Union (Insurance and Reinsurance) Regulations 2015. The Transferee has also established a branch in each of Italy and Sweden and has received permission to operate in each of the aforementioned jurisdictions
- 2.5 The Transferor and the Transferee are both members of the same Group.
- 2.6 The Transferor and the Transferee have agreed pursuant to a business transfer agreement dated [●] 2020, subject to the sanction of this Scheme by the Court, the Transferred Business will transfer to the Transferee in accordance with this Scheme with effect from the Effective Date.

Part°3 – The Transfer

3 Transfer of the Transferred Business, Assets and Liabilities

3.1 Transferred Business

With effect on and from the Effective Date, the Transferred Business shall by the Order and without any further act or instrument be transferred to, and vested in, the Transferee in accordance with this Scheme.

3.2 Transferred Assets

- (a) With effect on and from the Effective Date, each Transferred Asset shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances affecting such Transferred Assets.
- (b) With effect on and from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances affecting such Residual Asset.
- (c) The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferred Assets and, at each Subsequent Transfer Date, to the Residual Assets then transferred.

3.3 Transferred Liabilities

- (a) With effect on and from the Effective Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and the Transferee shall succeed to each Transferred Liability as if in all respects it were the same person in law as the Transferor and such Transferred Liability shall cease to be a liability of the Transferor.
- (b) With effect on and from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and the Transferee shall succeed to each such Residual Liability as if in all respects it were the same person in law as the Transferor and each such Residual Liability shall cease to be a liability of the Transferor.

Further provisions relating to the transfer

- 3.4 The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferred Assets and, at each Subsequent Transfer Date, to the Residual Assets then transferred.
- 3.5 Each of the Transferor and the Transferee shall execute and deliver (or, if applicable procure the execution and deliverance of) all such documents (including assignments or novation, as appropriate) and shall, as and when appropriate, use reasonable endeavours to perform such other acts and things as may be required to effect or perfect the transfer and vesting in the Transferee of any Transferred Asset, Transferred Liability, Residual Asset or Residual Liability in accordance with the terms of this Scheme including, for the purposes of clarity, obtaining any required consent or waiver in respect of any Residual Asset or Residual Liability.
- 3.6 The transfer of any Transferred Asset, Transferred Liability, Residual Asset or Residual Liability to the Transferee shall have effect notwithstanding any provision (whether express or implied) to the contrary in any contract or arrangement with any policyholder or any other person.
- 3.7 The transfers effected pursuant to clause 3.1 to 3.3 above shall have effect whether or not the Transferor would, other than pursuant to the terms of this Scheme, have capacity to effect the same.
- 3.8 Notwithstanding any other provision of this Scheme, such amount of the Transferred Assets as is necessary to ensure that the Transferor continues to comply with its Capital Requirements after the Effective Date shall be retained by the Transferor and shall not transfer to the Transferee on the Effective Date (the **Capital Assets**). On and with effect from the date on which the PRA confirms in writing to the Transferor that all the Transferor's authorisations under Part 4A of FSMA have been cancelled, the Capital Assets shall without further act or instrument be transferred to and vest in the Transferee in accordance with and subject to the terms of the Scheme.

4 Consequences of the Transfer

- 4.1 In addition to the provisions of clause 3 and save as otherwise provided in this Scheme, with effect on and from the Effective Date, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers under the Transferred Policies and be subject to all the obligations and Transferred Liabilities of the Transferor under the Transferred Policies whatsoever subsisting on the Effective Date.
- 4.2 Save as provided in this Scheme, every Transferred Policy shall be construed and have effect on and from the Effective Date as if the Transferee had always been an original party thereto from inception instead of the Transferor (such that the Transferred Policy shall continue in force as between the Transferee and the relevant policyholder or other party thereto on the terms

which applied to that Transferred Policy prior to the Effective Date, but without prejudice to any right which the Transferee may have subsequently to vary, terminate or avoid such Transferred Policy, whether under the terms thereof or at law).

- 4.3 Save as provided in this Scheme, the transfer and vesting of any Asset or Liability relating to any part of the Transferred Business by virtue of the Order and this Scheme shall not:
- (a) invalidate or discharge any contract, security interest or any other agreement or arrangement having a similar effect; or
 - (b) require further registration in respect of any security; or
 - (c) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the Transferee or the Transferor are a party or are bound; or
 - (d) allow any party to a contract to which the Transferee or the Transferor are a party to terminate that contract when he would not otherwise have been able to terminate it; or
 - (e) entitle any party to any contract to which the Transferee or the Transferor are a party to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right or benefit on him which he would not otherwise have had; or
 - (f) confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, on any party to any contract to which the Transferor or the Transferee are a party when that greater or lesser obligation would not otherwise have been imposed.
- 4.4 Every Transferred Policyholder shall, on and from the Effective Date and to the exclusion of any rights he may have against the Transferor under any Transferred Policy, be entitled to the same rights against the Transferee as were available to him against the Transferor under such Transferred Policies.
- 4.5 All premiums and other amounts attributable or referable to the Transferred Policies which are payable to the Transferor shall on and after the Effective Date be payable to the Transferee and shall be receivable and received by the Transferee.
- 4.6 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under the Transferred Policies which would have been available to the Transferor including, without limitation, as a result of the commutation of any Transferred Policy.
- 4.7 Every Transferred Policyholder shall, from and after the Effective Date, in substitution for any Liability or obligation owed by him thereunder to the Transferor, be under the same Liability or obligation to the Transferee.

- 4.8 All references in any Transferred Policy (to the extent they relate to the Transferor's participation on that Transferred Policy) to the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the board of directors of the Transferee, or any other officers, employees or agents of the Transferee. In particular 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, employees or agents of the Transferor in relation to any of the Transferred Policies shall, from and after the 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.
- 4.9 The provisions of clauses 4.1 to 4.8 shall apply, *mutatis mutandis*, to all Outwards Reinsurance Agreements and Transferred Third Party Contracts.

5 Residual Policies

- 5.1 Subject to clauses 5.2 and 5.3, the Residual Policies shall not be transferred to the Transferee by this Scheme and all liabilities attributable to the Residual Policies shall remain liabilities of the Transferor and be fully reinsured with effect from the Effective Date on the following basis:
- (a) all liabilities of the Transferor attributable to and arising under the Residual Policies shall be reinsured in full to the Transferee with effect on and from the Effective Date;
 - (b) the liability of the Transferee with effect on and from the Effective Date shall be such that the rights, benefits and powers provided to holders of Residual Policies shall, to the extent possible, be the same as the rights, benefits and powers which would have been provided to such holders if the Residual Policies had been Transferred Policies;
 - (c) the premiums payable by the Transferor to the Transferee in connection with the provision of the reinsurance described in this clause 5.1 shall comprise an amount equal to the sum of:
 - (i) the Transferred Assets which relate to such Residual Policies and which have been received by the Transferee;
 - (ii) all premiums and reinsurance recoveries received by the Transferor in respect of such Residual Policies at any time after the Effective Date, which premiums and reinsurance recoveries shall be paid to the Transferee as soon as practicable after they are received; and
 - (iii) all charges due to or deductible or receivable received by the Transferor in accordance with the relevant Residual Policy's terms and conditions; and

- (iv) less any fees, charges and expenses in respect of the Residual Policies to the extent that such fees, charges and expenses are deducted from amounts received by the Transferor in accordance with the terms and conditions of the Residual Policies; and
 - (d) the Transferee shall assume from the Transferor the administration of the Residual Policies and shall bear all expenses and liabilities in relation thereto, save as otherwise agreed in writing between the parties.
- 5.2 If all consents, permissions or other requirements for the transfer of a Residual Policy from the Transferor to the Transferee are obtained:
 - (a) such Residual Policy shall be transferred to the Transferee and shall thereafter be treated in all respects as if it were a Transferred Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be); and
 - (b) any liability attributable to such Residual Policy (which, if it were attributable to a Transferred Policy, would be a Transferred Liability) shall be transferred to the Transferee and shall thereafter be treated in all respects as if it were a Transferred Liability save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).
- 5.3 If any Residual Policy is novated by written agreement to the Transferee, the property and liabilities relating to such Residual Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Residual Policy shall thereafter be dealt with by the Transferee under the provisions of this Scheme in all respects as if such Residual Policy were a Transferred Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).

6 Declaration of Trust by the Transferor

- 6.1 The Transferor shall from the Effective Date, until the relevant Subsequent Transfer Date or for so long as is legally permissible (but save to the extent that giving effect to such a trust would have the effect of transferring any interest falling within the definition of Residual Assets), hold the Residual Assets as trustee and in trust for the Transferee absolutely.
- 6.2 The Transferor shall be subject to the Transferee's direction in respect of any such Residual Asset until it is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof). The Transferee

shall have authority (with authority to sub-delegate) to act as the attorney of the Transferor in respect of any such Residual Asset for all such purposes.

- 6.3 In the event of any payment (including any reinsurance receipts) being made to, property being received by, or a right being conferred upon the Transferor in relation to any Residual Asset, the Transferor shall as soon as is reasonably practicable notify the Transferee and pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to the Transferee or otherwise in accordance with the reasonable directions of the Transferee and the Transferee shall on demand indemnify the Transferor against any reasonable costs properly incurred by it to complete such transaction.

7 Indemnities in favour of the Transferor

- 7.1 On and with effect from the Effective Date, the Transferee shall discharge on behalf of the Transferor or, failing that, indemnify the Transferor against:
- (a) all Transferred Liabilities whether the same shall arise prior to or following the Effective Date but, where such Transferred Liabilities are the subject of a policy of indemnity insurance or a claim or right of recovery against a third party which constitutes a Residual Asset that has not yet transferred to the Transferee, the Transferee shall not discharge on behalf of or indemnify the Transferor to the extent that the Transferor has successfully claimed under such a policy or against such third party. The Transferee shall indemnify, and keep indemnified, the Transferor against any cost or Liability it may incur in taking such action; and
 - (b) save as otherwise provided in this Scheme or the agreements referred to herein, any other cost, claim, loss, damages, Liability or expense (whatsoever) incurred in connection with the Transferred Business (other than regulatory capital costs) including, without limitation, the conduct of the trust arrangements, and the conduct of claims under clause 9, whether the same shall arise prior to or following the Effective Date.
- 7.2 Where the Transferor is entitled to receive an amount pursuant to the indemnities contained in clause 7.1, it shall be entitled to receive such amount on the basis that the amount payable by the Transferee pursuant to such obligation (the **Payment**) shall be calculated in such a manner as will ensure that the Transferor is in the same position as that in which it would have been if the matter giving rise to the Payment had not occurred, including by taking into account:
- (a) any taxation required to be deducted or withheld by the Transferee from the Payment;
 - (b) the amount of any additional taxation which becomes payable by the Transferor as a result of the Payment being subject to taxation in the hands of the Transferor; and

- (c) the amount of any tax relief which is obtained by the Transferor or another member of the Transferor's Group, to the extent that such tax relief is attributable to the matter giving rise to the Payment or as a result of receiving the Payment,

(which taxation and tax relief is to be determined, by taking into account its value, certainty of its availability and timing of its utilisation, by the Transferor, acting reasonably and in good faith, to the reasonable satisfaction of the Transferee).

- 7.3 For the avoidance of doubt, the Transferor shall not be entitled to obtain payment or indemnity more than once in respect of any shortfall or other event or any other circumstances which give rise to a claim under this Scheme or any other related agreement between the parties.

8 Outwards Reinsurance Agreements

- 8.1 Notwithstanding anything in clause 3:

- (a) any commutations entered into by the Transferor (whether globally or on any other basis) with any of its reinsurers or retrocessionaires before the Effective Date shall not in any way affect any reinsurance, retrocession or similar protection entered into by the Transferee before the Effective Date; and
- (b) any commutations entered into by the Transferee (whether globally or on any other basis) with any of its reinsurers or retrocessionaires before the Effective Date shall not in any way affect any reinsurance, retrocession or similar protection transferred from the Transferor to the Transferee pursuant to this Scheme.

- 8.2 To the extent that the risk under any Residual Policy has been ceded to a third party under an Outwards Reinsurance Agreement, any payment in respect of such risk made to the Policyholder by the Transferee on behalf of the Transferor under the relevant Residual Policy or to the Transferor under the Residual Policies Reinsurance Arrangements shall be deemed to be a payment by the Transferee for the purposes of such Outwards Reinsurance Agreement, and shall give rise to a claim by the Transferee thereunder as if it were the reinsured under the relevant Outwards Reinsurance Agreement.

9 Continuity of Proceedings

- 9.1 On and with effect from the Effective Date, any Proceedings in connection with or relating to the Transferred Business (or any part of it) (including in respect of the Transferred Assets and the Transferred Liabilities) which have been issued, served, are pending, current or threatened or any other claims or complaints which may be brought in the future (including those not yet in contemplation) by, or on behalf of, or against the Transferor in connection with the Transferred Business shall be continued or commenced by or against the Transferee (in place of the Transferor) who shall be entitled to all defences, claims, counterclaims and rights of set-off that

would have been available to the Transferor in relation thereto including as a result of the commutation of any Transferred Policy.

- 9.2 Clause 9.1 shall apply, *mutatis mutandis* to Proceedings in connection with any Residual Policies, Residual Asset or Residual Liability as if references therein to the Effective Date were to the Subsequent Transfer Date applicable to such Residual Policy, Residual Asset or Residual Liability (as the case may be).
- 9.3 All documents which would before the Effective Date have been evidence in respect of any matter for or against the Transferor shall be admissible in evidence in respect of the same matter for or against the Transferee.
- 9.4 With effect on and from the Effective Date, the Transferee shall be entitled to direct the Transferor as to the conduct of any on-going Proceedings referred to in clauses 9.1 or 9.2 and the Transferee shall have full authority (with authority to sub-delegate) to act on behalf of the Transferor in respect of any such Proceedings.
- 9.5 Any judgment, settlement, order or award obtained by or against the Transferor which relates to any part of the Transferred Business, the Transferred Assets or the Transferred Liabilities and which is not fully satisfied before the Effective Date or (in relation to the Residual Assets or Residual Liabilities) the Subsequent Transfer Date (as the case may be) shall, on that date and to the extent to which it was enforceable by or against the Transferor immediately prior to such date, become enforceable by or against the Transferee (to the exclusion of the Transferor).

10 Payment mandates

- 10.1 All premiums and other payments payable to the Transferor attributable or referable to the Transferred Policies shall from the Effective Date be payable to the Transferee.
- 10.2 Any mandate, standing order or other instruction or authority in force on the 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 payment by a bank or other intermediary of premiums or any other amount payable under any Transferred Policy shall continue in force as an effective mandate, instruction or authority to the Transferee.
- 10.3 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 Transferred Policy shall continue in force as an effective mandate, instruction or authority to the Transferee.
- 10.4 In the case of premiums attributable or referable to Residual Policies the provisions of clauses 10.1 to 10.3 shall apply to each such Residual Policy with effect from the relevant Subsequent Transfer Date as if references in those clauses to Transferred Policies were to such Residual Policies.

11 Privacy and data protection

- 11.1 In this clause 11, terms shall be construed in accordance with the definitions in the Applicable Privacy Laws.
- 11.2 With effect from the Effective Date, the Transferee shall:
- (a) succeed to all rights, Liabilities and obligations of the Transferor in respect of data which relates to the Transferred Business and which is subject to the Applicable Privacy Laws;
 - (b) become the data controller of any data which relates to the Transferred Business and which is subject to the Applicable Privacy Laws in place of the Transferor and shall be deemed to have been the data controller of all such data at all material times when data was processed; and
 - (c) in respect of data which relates to the Transferred Business 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 data and shall be bound by any specific notice given or request made by the data subject which was binding on the Transferor and which required the Transferor not to use data for marketing purposes.
- 11.3 In any consent given by a data subject in respect of such data as is mentioned in clause 11.2, any reference to the Transferor (or to any member of the Transferor's Group) shall be deemed to include a reference to the Transferee (and to any member of the Transferee's Group) provided however that where any data subjects referred to in clause 11.2 continue also to be data subjects of the Transferor after the Effective Date then any consent given by a data subject shall also continue to apply to the Transferor (or to any member of the Transferor's Group).
- 11.4 Where, prior to the Effective Date, a Transferred Policyholder has provided Marketing Preferences to each of the Transferor and the Transferee, the Transferee's record of the Transferred Policyholder's Marketing Preference shall be deemed to apply on and with effect from the Effective Date whether or not it is the same as any Marketing Preference given by the Transferred Policyholder to the Transferor.
- 11.5 Where a Transferred Policyholder has made a Data Subject Request to the Transferor before the Effective Date and, where applicable, the Transferor has not responded with a copy of the personal data controlled by it in accordance with the Applicable Privacy Laws before the Effective Date, the Transferee shall respond to the request, in accordance with the Applicable Privacy Laws, where applicable by providing copies of the personal data that were held by the Transferor immediately before the Effective Date and transferred as part of the Transferred Assets.

- 11.6 On and from the Effective Date, the Transferee shall owe to the Transferred Policyholders or to any other person the same duties of confidentiality and privacy (whether pursuant to statute or contract) as those which the Transferor owed in relation to the Transferred Business immediately prior to the Effective Date.

Part^o4 – Miscellaneous Provisions

12 Effective Date

- 12.1 Subject to clauses 12.3, 12.4 and 12.5, this Scheme shall become effective at 23:59 GMT on 31 October 2020 or such other time and date as the Transferor and the Transferee, acting by their respective boards, may agree in writing (being a date and time falling after the making of the Order sanctioning this Scheme), provided that if such time and date for the Scheme to become effective is after 23:59 GMT on 31 October 2020, this Scheme will only become effective on such date and time if the conditions set out in clause 12.5 are satisfied.
- 12.2 The PRA and the FCA shall be notified by the Transferor and Transferee in advance of the Effective Date if it is proposed that the Scheme will become effective at a date between 1 November 2020 and 31 December 2020.
- 12.3 This Scheme shall lapse if it does not become effective on or before the later of:
- (a) 23:59 on 31 December 2020; and
 - (b) such date as the Court may allow on the application of the Transferor and the Transferee.
- 12.4 Notwithstanding clauses 12.1, 12.4 and 12.5 this Scheme shall not become operative unless any modification of or addition to this Scheme or any further condition or provision affecting the same imposed by the Court (or recommended by the Court with a view to it being imposed) has been consented to by the Transferor and the Transferee.
- 12.5 Subject to clause 12.3, if the Transferor and the Transferee agree that this Scheme should become effective after 23:59 GMT on 31 December 2020, the Transferor and the Transferee must apply to the Court for a further order, specifying any time and date after 23:59 GMT on 31 December 2020, which, subject to the consent of the Court, shall then become the Effective Date for the purposes of this Scheme and this Scheme shall then become operative on and from the time and date so specified, provided that:
- (a) the PRA and the FCA shall be notified in advance and as soon as reasonably practicable, and shall have the right to be heard at any hearing of the Court at which such application is considered; and
 - (b) a notice of the making of such further order is published on the AmTrust International website (expected to be at amtrustfinancial.com/amtrustinternational/legal/portfolio-transfers) within five days of the making of such further order.
- 12.6 This Scheme shall not become effective on the Effective Date unless on or prior thereto the Order shall have been made.

13 Costs and Expenses

All costs, fees and expenses, including the costs and expenses of the Independent Expert, the fees of the Court and fees and disbursements of legal and financial advisers and accountants, incurred in connection with this Scheme and the transactions contemplated by this Scheme and the Transfer shall be paid by the Transferee. No costs or expenses relating to this Transfer shall be borne by the policyholders of the Transferor or the Transferee.

14 Modifications, Amendments or Additions

14.1 The Transferee and the Transferor may consent on their own behalf and on behalf of all other persons concerned (other than the PRA or the FCA) to any modification, amendment or addition to this Scheme or to any further condition or provision affecting the same which the Court may approve or impose prior to the sanction of this Scheme.

14.2 Subject to clause 14.3, at any time after the sanction of this Scheme, the Transferee and, if in existence at the relevant time, the Transferor shall be at liberty to apply to the Court for consent to amend clauses 1 to 11 inclusive, provided that in any such case:

- (a) the PRA and the FCA shall be notified in advance and in good time of (and, in any event, not less than twenty eight (28) days prior to), and shall have the right to be heard at, any hearing of the Court at which such application is considered; and
- (b) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from the Independent Expert or another independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the Transferred Policyholders.

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

14.3 The Transferee and, if in existence at the relevant time, the Transferor may amend this Scheme without further sanction of the Court to correct a manifest error or minor or technical amendment (including to reflect changes required by law or regulation, including changes in generally accepted actuarial practice) provided that:

- (a) the PRA and the FCA have been notified of the proposed amendment, and
- (b) a period of twenty eight (28) days commencing on the date of an acknowledgement of receipt of the relevant notification by both the PRA and the FCA has passed without the PRA or the FCA indicating any objection thereto.

15 Retained Records

For the avoidance of doubt, notwithstanding any other provision of this Scheme, the Retained Records shall remain with the Transferor and shall not transfer to the Transferee pursuant to this Scheme.

16 Contracts (Rights of Third Parties) Act 1999

A person not party to this Scheme may not enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

17 Successors and Assigns

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

18 Evidence of transfer

18.1 The production of a copy of the Order with any modifications made under clause 14, for all purposes shall be evidence of the transfer to, and vesting in, the Transferee of the Transferred Business in accordance with the Order and the provisions of this Scheme.

18.2 In order to enable the Transferee to complete any title to any property or interest in land transferred to, and vested in, it by virtue of this Scheme and, without prejudice to clauses 3 to 12 inclusive and 14, by notice of title or otherwise, or to deduce title, this Scheme and/or the Order, with any modifications made under clause 14, together with any document ancillary thereto (including a certificate of any officer or employee of the Transferee identifying the relevant property or interest in land) shall be deemed to be, and may be used as, a general disposition, conveyance or as the case may be, assignment, of such property or interest in favour of the Transferee.

19 Governing Law

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

Dated this  day of October 2020

Schedule 1
Outwards Reinsurance Agreements

Policy Market Reference Number	Type	Inception Date	Expiry Date