

IN THE HIGH COURT OF JUSTICE

CR- 2018-005187

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

IN THE MATTER OF
PEDIGREE LIVESTOCK INSURANCE LIMITED

and

IN THE MATTER OF
AMTRUST EUROPE LIMITED

and

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

INSURANCE BUSINESS TRANSFER SCHEME
for the transfer of the whole of the insurance business of
Pedigree Livestock Insurance Limited to AmTrust Europe
Limited pursuant to Part VII of the Financial Services and
Markets Act 2000

 NORTON ROSE FULBRIGHT

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PART A - 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:

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 paragraph 3.8;

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

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

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

Data Protection Law means the Data Protection Act 1998 and the Data Protection Directive (95/46/EC) (up to and including 24 May 2018) and the GDPR (or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data) (on and from 25 May 2018);

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 the Data Protection Law;

EEA means the European Economic Area and **EEA State** means a state which is a contracting party to the agreement on the EEA signed at Oporto on 2 May 1992;

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

Encumbrance means any 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;

FCA means the Financial Conduct Authority or any successor UK regulatory authority for insurance and/or reinsurance companies;

FSMA means the Financial Services and Markets Act 2000;

GDPR means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection 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;

Independent Expert means Mr Michael Tripp of Mazars LLP;

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 paragraph 1 of Schedule 2 of the DPA) 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 Transferring Policies is or has been reinsured or retroceded, and which are in force immediately prior to the Effective Date;

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

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 Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361)), 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 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 any successor UK prudential regulatory authority for insurance and/or reinsurance companies;

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 judgement, 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 Transferring Business which would be a Transferring Asset (including any right, benefit or power of the Transferor under any Transferring 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 paragraph 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 relates to or is otherwise attributable to any Residual Policy;
- (g) such Asset cannot be transferred or vested in the Transferee for any other reason;
or
- (h) 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 paragraphs (a) to (g),

but excluding for the avoidance of doubt, all rights, benefits and powers under the Residual Policies Reinsurance Arrangement;

Residual Liability means any Liability of the Transferor (other than a Liability arising under the Residual Policies Reinsurance Arrangement) comprised in or relating to the Transferring Business which would be a Transferring 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;

Residual Policies Reinsurance Arrangement means a reinsurance arrangement implemented in respect of Residual Policies pursuant to and in accordance with paragraph 5.1;

Residual Policy means any Policy which would be a Transferring 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;

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 paragraph 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 paragraph (a) or (b) of the definition of Residual Policy;
- ii. any Residual Asset falling within paragraph (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 paragraph (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 paragraph (b) of the definition of Residual Policy;
- ii. any Residual Asset falling within paragraph (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 paragraph (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 paragraph 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 Tax authority;
- (b) all charges, interest, penalties and fines incidental or relating to any Tax falling within (i) above or which arise as a result of the failure to pay any Tax on the due date or to comply with any obligation relating to Tax;

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

- (a) the benefit of Outwards Reinsurance Agreements;
- (b) the rights, benefits and powers of the Transferor under or by virtue of the Transferring Policies and the Transferring Third Party Contracts;
- (c) any right to repayment of Tax or any available Tax credits;
- (d) all books, records, files and papers, whether in hard copy or computer format, of the Transferring 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; and
- (e) all goodwill (including the renewal rights) associated with the Transferring Assets, but excluding:
 - (f) until the relevant Subsequent Transfer Date, the Residual Assets and Residual Liabilities; and
 - (g) all rights, benefits and powers under the Residual Policies Reinsurance Arrangement;

Transferring Business means the entirety of the business of the Transferor comprising all insurance and reinsurance business and all reinsurance and retrocession of such business and all business ancillary thereto including, but not limited to:

- (a) the Transferring Assets; and
- (b) the Transferring Liabilities,

but excluding: (i) all rights, benefits and powers; and (ii) Liabilities, in each case under the Residual Policies Reinsurance Arrangement;

Transferring Liabilities means all Liabilities of the Transferor to the extent arising from or relating to the Transferring 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 Transferring 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 Transferring 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 Transferring 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 Transferring Policy; or the marketing, sale, underwriting, issuance, delivery, cancellation or administration of such Transferring Policy;
- (e) any Liabilities arising under or in connection with the Outwards Reinsurance Agreements to the extent such Liabilities relate to the Transferring Policies;
- (f) all Liabilities arising under or in connection with the Transferring Third Party Contracts; and
- (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),

but excluding (i) all Liabilities under the Residual Policies Reinsurance Arrangement; and (ii) until the relevant Subsequent Transfer Date, the Residual Liabilities;

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

Transferring Policyholder means an insured, 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 Transferring Policy;

Transferring Third Party Contracts means all subsisting contracts to which the Transferor is party or beneficiary which relate to the Transferring 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:
- 1.2.1 **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;
- 1.2.2 **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;
- 1.2.3 any reference to the contracts, assets or liabilities of the Transferor relating to the Transferring Business is a reference to the contracts, assets or liabilities relating to the Transferring Business to which the Transferor is entitled or subject (whether beneficially or in any fiduciary capacity):
- (a) wherever they are situated or arise;
 - (b) whether or not they are capable of being transferred or assigned by the Transferor;
 - (c) whether or not they are expressed to be binding on the successors or assignees of the Transferor;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 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;
- 1.2.7 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;

- 1.2.8 expressions used which have meanings under FSMA shall bear those meanings unless stated otherwise;
- 1.2.9 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:
- (a) if any shares in that other company are held by a person acting on behalf of the company or any of its subsidiaries;
 - (b) if any of its subsidiaries is a member of that other company; or
 - (c) 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;
- 1.2.10 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;
- 1.2.11 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 paragraphs, parts or Schedules are to paragraphs of, parts of or the Schedules to this Scheme;
- 1.2.12 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;
- 1.2.13 headings are inserted for convenience only and shall not affect the construction of this Scheme;
- 1.2.14 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;
- 1.2.15 any reference to writing shall include any mode of reproducing words in a legible and non-transitory form;
- 1.2.16 references to time are to London time; and

1.2.17 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.

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PART B – INTRODUCTION

2 Introduction

- 2.1 Pedigree Livestock Insurance Limited (the **Transferor**) is a private limited company registered in England and Wales with registered company number 00746184 and its registered office at Market Square House, Saint James's Street, Nottingham, NG1 6FG.
- 2.2 AmTrust Europe Limited (the **Transferee**) is a private limited company registered in England and Wales with registered company number 01229676 and its registered office at 10th Floor Market Square House, Saint James's Street, Nottingham, Nottinghamshire, NG1 6FG.
- 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, carry out contracts of general insurance in the UK under classes of business 7 to 9 (inclusive) set out in Part I of Schedule 1 to the Regulated Activities Order. The Transferring Business consists of business carried on by the Transferor in the UK.
- 2.4 The Transferee is a "UK authorised person" as defined in section 105(8) of FSMA. The Transferee has permissions under Part 4A of FSMA to, inter alia, to effect and carry out contracts of general insurance in the UK under classes of business 1 to 3, 7 to 10 and 13 to 18 set out in Part I of Schedule 1 to the Regulated Activities Order. The Transferee also has permission to effect and carry out contracts of general insurance on a freedom of establishment basis in Italy and Sweden and on a freedom of services basis in each of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden under the Passporting Regulations.
- 2.5 The Transferring Business will be carried on by the Transferee through an establishment in the United Kingdom.
- 2.6 Both the Transferor and the Transferee are part of the AmTrust group, with the Transferor being a wholly-owned subsidiary of the Transferee.
- 2.7 The Transferor and the Transferee have agreed that, subject to the sanction of the Scheme by the Court, the Transferring Business will transfer to the Transferee in accordance with this Scheme with effect from the Effective Date.

PART C – THE TRANSFER

3 Transfer of the Transferring Business, Assets and Liabilities

3.1 Transferring Business

3.1.1 With effect on and from the Effective Date, the Transferring 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 Transferring Assets

3.2.1 With effect on and from the Effective Date, each Transferring 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 Transferring Assets.

3.2.2 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.

3.2.3 The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferring Assets and, at each Subsequent Transfer Date, to the Residual Assets then transferred.

3.3 Transferring Liabilities

3.3.1 With effect on and from the Effective Date, each Transferring 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 Transferring Liability as if in all respects it were the same person in law as the Transferor and such Transferring Liability shall cease to be a liability of the Transferor.

3.3.2 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 Transferring 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 Transferring Asset, Transferring 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 Transferring Asset, Transferring 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 paragraphs 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 the Scheme, such amount of the Transferring 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**). With effect on and 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 paragraph 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 Transferring Policies and be subject to all the obligations and Transferring Liabilities of the Transferor under the Transferring Policies whatsoever subsisting on the Effective Date.
- 4.2 Save as provided in this Scheme, every Transferring 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 Transferring Policy shall continue in force as between the Transferee and the relevant policyholder or other party thereto on the terms which applied to that Transferring Policy prior to the Effective Date, but without prejudice to any right which the Transferee may have subsequently to vary, terminate or avoid such Transferring 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 Transferring Business by virtue of the Order and this Scheme shall not:
- 4.3.1 invalidate or discharge any contract, security interest or any other agreement or arrangement having a similar effect; or
 - 4.3.2 require further registration in respect of any security; or
 - 4.3.3 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
 - 4.3.4 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
 - 4.3.5 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
 - 4.3.6 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 Transferring Policyholder shall, on and from the Effective Date and to the exclusion of any rights he may have against the Transferor under any Transferring Policy, be entitled to the same rights against the Transferee as were available to him against the Transferor under such Transferring Policies.
- 4.5 All premiums and other amounts attributable or referable to the Transferring 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 Transferring Policies which would have been available to the Transferor including, without limitation, as a result of the commutation of any Transferring Policy.
- 4.7 Every Transferring 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 Transferring Policy (to the extent they relate to the Transferor's participation on that Transferring 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 Transferring 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 paragraphs 4.1 to 4.8 shall apply, *mutatis mutandis*, to all Outwards Reinsurance Agreements and Transferring Third Party Contracts.

5 Residual Policies

5.1 Subject to paragraphs 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 Transferring Policies;
- (c) the premiums payable by the Transferor to the Transferee in connection with the provision of the reinsurance described in this paragraph 5.1 shall comprise an amount equal to the sum of:
 - (i) the Transferring Assets which relate to such Residual Policies and which have been received by the Transferee;
 - (ii) all premiums received by the Transferor in respect of such Residual Policies at any time after the Effective Date, which premiums 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 Transferring 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 Transferring Policy, would be a Transferring Liability) shall be transferred to the Transferee and shall thereafter be treated in all respects as if it were a Transferring 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 Transferring 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 With effect on and from the Effective Date, the Transferee shall discharge on behalf of the Transferor or, failing that, indemnify the Transferor against:
- 7.1.1 all Transferring Liabilities whether the same shall arise prior to or following the Effective Date but, where such Transferring 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
- 7.1.2 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 Transferring Business (other than regulatory capital costs) including, without limitation, the conduct of the trust arrangements, and the conduct of claims under paragraph 9, whether the same shall arise prior to or following the Effective Date.

8 Outwards Reinsurance Agreements

- 8.1 Notwithstanding anything in paragraph 3:
- 8.1.1 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
- 8.1.2 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 Arrangement 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 With effect on and from the Effective Date, any Proceedings in connection with or relating to the Transferring Business (or any part of it) (including in respect of the Transferring Assets and the Transferring 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 Transferring 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 Transferring Policy.
- 9.2 Paragraph 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 On and from the Effective Date, the Transferee shall owe to the Transferring 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 Transferring Business immediately prior to the Effective Date.
- 9.5 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 paragraphs 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.

- 9.6 Any judgment, settlement, order or award obtained by or against the Transferor which relates to any part of the Transferring Business, the Transferring Assets or the Transferring 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 Transferring 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 Transferring 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 Transferring 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 paragraphs 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 paragraphs to Transferring Policies were to such Residual Policies.

11 Privacy and data protection

- 11.1 In this paragraph 11, terms shall be construed in accordance with the definitions in the Data Protection Law.
- 11.2 With effect from the Effective Date, the Transferee shall:
- 11.2.1 succeed to all rights, Liabilities and obligations of the Transferor in respect of data which relates to the Transferring Business and which is subject to the Data Protection Law;
- 11.2.2 become the data controller of any data which relates to the Transferring Business and which is subject to the Data Protection Law 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
- 11.2.3 in respect of data which relates to the Transferring 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 paragraph 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 paragraph 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 Transferring Policyholder has provided Marketing Preferences to each of the Transferor and the Transferee, the Transferee's record of the Transferring Policyholder's Marketing Preference shall be deemed to apply with effect on and from the Effective Date whether or not it is the same as any Marketing Preference given by the Transferring Policyholder to the Transferor.
- 11.5 Where a Transferring 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 Data Protection Law before the Effective Date, the Transferee shall respond to the request, in accordance with the Data Protection Law, 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 Transferring Assets.
- 11.6 On and from the Effective Date, the Transferee shall owe to the Transferring Policyholder s 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 Transferring Business immediately prior to the Effective Date.

PART D – MISCELLANEOUS PROVISIONS

12 Effective Date

- 12.1 Subject to paragraphs 12.2, 12.3 and 12.4, this Scheme shall become effective at 23:59 GMT on [30 June] 2019 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 [30 September] 2019, this Scheme will only become effective on such date and time if the conditions set out in paragraph 12.4 are satisfied.
- 12.2 This Scheme shall lapse if it does not become effective on or before the later of:
- (a) [1 October] 2019; and
 - (b) such date as the Court may allow on the application of the Transferor and the Transferee.
- 12.3 Notwithstanding paragraphs 12.1, 12.3 and 12.4 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.
- 12.4 Subject to paragraph 12.2, if the Transferor and the Transferee agree that this Scheme should become effective after 23:59 GMT on [30 September] 2019, the Transferor and the Transferee must apply to the Court for a further order, specifying any time and date after 23:59 GMT on [30 September] 2019, 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 www.amtrustinternational.com/portfoliotransfers within five days of the making of such further order.
- 12.5 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 will be borne by the policyholders of the Transferor or 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 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:

14.2.1 the PRA and the FCA have been notified of the proposed amendment, and

14.2.2 each of the PRA and the FCA has indicated that it does not object to the proposed amendment or no objection to such amendment is received by the Transferee within 28 days of the PRA and the FCA acknowledging receipt of the notice from the Transferee and, if in existence at the relevant time, the Transferor.

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 paragraph 14, for all purposes shall be evidence of the transfer to, and vesting in, the Transferee of the Transferring 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 paragraphs 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 paragraph 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, assignation, 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 [11th] day of [June] 2019.