

**Summary of the Terms of the Scheme of Transfer**

**between**

**AmTrust International Underwriters Designated Activity Company and AmTrust Assicurazioni  
Societa' Per Azioni**

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## **1. General**

This document contains a summary of the Scheme relating to the transfer by AmTrust International Underwriters Designated Activity Company (**Transferor**) to AmTrust Assicurazioni S.p.A. (**Transferee**) of part of the Transferor's insurance business underwritten on a freedom of establishment basis through the Transferor's branch located in Milan, Italy (**Transfer**).

***Any capitalised term within this document that is not otherwise defined within this document has the same meaning as ascribed to it in the Scheme and is replicated under Schedule 1 for ease of reference.***

## **2. Nature/Scope of the Scheme**

The Scheme provides for the transfer of the Transferring Business, including the Transferring Assets, Transferring Liabilities and Transferring Contracts but excluding Excluded Policies, Residual Assets and Residual Liabilities from the Transferor to the Transferee on the Effective Date. The Scheme also considers other matters relating to the Transfer which will consequentially arise.

The Transfer shall be effected pursuant to Section 13 of the 1909 Act, Section 36 of the 1989 Act and Regulation 41 of the 2015 Regulations.

## **3. The Transfer**

On and with effect from the Effective Date, the Transferring Business, Transferring Assets, and Transferring Contracts shall, by the Order, be transferred from the Transferor to the Transferee and shall become vested in the Transferee.

On and with effect from the Effective Date, the Transferring Liabilities shall, by the Order, be transferred to and become liabilities of the Transferee and cease to be liabilities of the Transferor.

## **4. Proceedings**

On and with effect from the Effective Date, any judicial, quasi-judicial, arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim which are pending or commenced by or against the Transferor in connection with the Transferring Business shall be continued or commenced (as appropriate) by or against the Transferee.

After the Effective Date, the Transferee shall have absolute discretion to discontinue any proceedings which have been brought by the Transferor.

On and with effect from the Effective Date, any award, order or judgment made by any applicable court, ombudsman, arbitrator or competent authority against the Transferor in connection with the Transferring Business will be recognised and accepted by, and enforceable against, the Transferee.

## **5. Rights of Policyholders**

Holders of Transferring Policies will retain the same rights under the Transferring Policies with the Transferee as they had with the Transferor.

## **6. Excluded Policies**

Any and all policies of insurance under which any liability remains unsatisfied or outstanding at the Effective Date are excluded from the scope of the Transferring Business and will not transfer from the Transferor to the Transferee on the Effective Date:

- a) which the Court determines for any reason not to transfer by virtue of the Order; or
- b) which are not otherwise capable of being transferred pursuant to Section 13 of the 1909 Act, Section 36 of the 1989 Act, and Regulation 41 of the 2015 Regulations,

in each case, any such policy will not transfer together with the rights, benefits, powers, debts, liabilities and obligations of the Transferor under any such policies.

## **7. Residual Assets and Residual Liabilities**

Certain assets and liabilities may not transfer under the Order or may be dependent upon other factors in order to effect their transfer. These are known as the Residual Assets and Residual Liabilities.

The Residual Assets comprise of any Asset of the Transferor and any right, benefit or power of the Transferor under an agreement relating to any such asset of which:

- a) the Court has declined to order the transfer of such asset to the Transferee at all or without the consent of a third party;
- b) the Transferor and the Transferee agree in writing that the transfer of such property should be delayed or such property should not be transferred at all;
- c) it is outside the jurisdiction of the Court or in respect of which its transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated; or
- d) the transfer of the asset cannot occur or vest in the Transferee for any other reason.

The Residual Liabilities comprise of any Liability of the Transferor in respect of the Transferring Assets:

- a) attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- b) in respect of which the Court has declined to order the transfer to the Transferee under the 1909 Act, the 1989 Act or the 2015 Regulations (as applicable);
- c) which cannot be transferred to or vested in the Transferee for any other reason as at the Effective Date; or
- d) where the Transferor and the Transferee agree in writing that the transfer of such liability should be delayed or that such liability should not be transferred to the Transferee.

## **8. Effect of the Scheme**

The transfer of the Transferring Business from the Transferor to the Transferee shall not invalidate or discharge any contract or security, require further registration of any security or charge, constitute a breach or default on the part of the Transferor under any contract or arrangement to which it is bound, entitle any party to a contract or arrangement to which the Transferor is bound to terminate the contract or arrangement where no such entitlement would exist in the absence of the transfer, or (unless

otherwise provided in the Scheme) confer greater or lesser rights on any party to a contract or arrangement to which the Transferor is bound.

#### **9. Costs and Expenses**

Costs and expenses associated with the Scheme shall be borne by the Transferor and Transferee exclusively. No costs or expenses associated with the Scheme shall be borne by any policyholder of the Transferor or Transferee.

#### **10. Governing Law**

The Scheme is governed by the laws of Ireland.

## **SCHEDULE 1**

### **Definitions**

<b>1909 Act</b>	means the Assurance Companies Act 1909 (as amended);
<b>1989 Act</b>	means the Insurance Act 1989 (as amended);
<b>2015 Regulations</b>	means the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) (as amended);
<b>Asset</b>	<p>means any asset and property of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, that is owned, leased by or licenced to the Transferor and comprised within the Transferring Business including:</p> <p>(a) all rights, benefits and powers of the Transferor under any Transferring Contract;</p> <p>(b) all rights, including any right to repayment or recovery of Tax relating to the Transferring Business or to the transfer thereof;</p> <p>(c) claims and powers of the Transferor against any third party relating exclusively to the Transferring Business,</p> <p>and, for the avoidance of doubt, any such asset or property to which legal title is held by another party, provided and to the extent that the Transferor has an interest in such asset or property, including beneficial ownership of such asset or property;</p>
<b>BEL</b>	means the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash flows), using the relevant risk free interest rate term structure, calculated in accordance with Article 77 of the EU Solvency II Directive, arising under the Transferring Policies, or any of the Residual Policies, in each case immediately prior to the Relevant Date;
<b>Books and Records</b>	means to the extent that such data, files and information are maintained or controlled by or on behalf of the Transferor for use wholly or mainly in connection with the operation of the Transferring Business and which are in the possession, custody or control of the Transferor or held on its behalf, the books, records and correspondence relating to the

	Transferring Business including (without prejudice to the generality of the foregoing) policy slips, policy wordings, underwriting cards, certificates of insurance, policy renewal or cancellation documents, claims information, reserving documentation, reinsurance information, books of account, financial information and other accounting records (in each case in whatever medium) (other than the Retained Records);
<b>Cash</b>	means cash in hand or credited to any account with a financial institution and securities with a maturity date of less than one year which are readily convertible into cash;
<b>Contract</b>	means any written contract, terms of business, commitment, agreement (including a facility agreement), deed, indenture, note, bond, mortgage, loan, instrument, lease or licence, each as amended, supplemented, varied or substituted from time to time and including, without limitation, the Transferring Contracts;
<b>Court</b>	means the High Court of Ireland;
<b>Effective Date</b>	means the time and date on which the Scheme shall take effect in accordance with paragraph 9.1 of the Scheme;
<b>EU Solvency II Directive</b>	means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance;
<b>Excluded Assets</b>	means all Assets of the Transferor which are not the Transferring Assets (including for the avoidance of doubt, all rights, benefits and powers of the Transferor under the Excluded Contracts and any amounts due to the Transferor from any Tax Authority), it being understood that no premises or personnel are transferred;
<b>Excluded Business</b>	means together: <ul style="list-style-type: none"> <li>(a) the Excluded Assets;</li> <li>(b) the Excluded Contracts;</li> <li>(c) the Excluded IP;</li> <li>(d) the Excluded Liabilities; and</li> <li>(e) the Excluded Policies;</li> </ul>
<b>Excluded Contracts</b>	means all Contracts of the Transferor that are not Transferring Contracts (including, for the

avoidance of doubt, any intra-group agreement to which the Transferor is a party to and any secondment arrangement to which the Transferor is a party to);

**Excluded IP**

means any Intellectual Property relating to the Transferor other than Intellectual Property relating to the management of the Transferring Policies;

**Excluded Liabilities**

means all Liabilities of the Transferor that are not the Transferring Liabilities (including, for the avoidance of doubt, all Liabilities under or by virtue of the Excluded Contracts);

**Excluded Policies**

means any Policies of the Transferor which are not the Transferring Policies (including, for the avoidance of doubt, (i) any Policies that cover risks situated in any jurisdiction other than Italy; (ii) any Policies covering Italian situated risks that are underwritten and managed by the Transferor from Ireland into Italy including any of its pan European business (i.e. programmes that include risk in Italy and one or more other territories) ; (iii) any Policies covering risks that are situated in any jurisdiction that are underwritten by or on behalf of the Transferor as part of its mortgage and credit book of business and (iv) any Policies, different from the Residual Policies, ascribable to lines of insurance business to which the Transferee is not duly authorised at the time of Effective Date (including, without limitation, those relating to lines of business no. 3 Land Vehicles – Motor Warranty (“CVT”) – and no. 10 MTPL – Motor Vehicle Liability (“RC Auto”));

**Intellectual Property**

means each of the following:

- (a) trade or business names, service marks and trademarks (whether registered or not), registered and unregistered designs, design rights, copyrights and know-how and the goodwill therein and applications for any of the same and any other forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;
- (b) all rights to, and the exclusive ownership of, all client lists and customer databases;

- (c) all design rights, database rights, software and systems developed by the Transferor and any other intellectual property rights (whether registerable or not in any country);

**Investment Assets**

means such Assets agreed between the Parties to comprise investment grade assets (determined in accordance with the Solvency II Requirements) or Cash equal to the aggregate of the BEL and Risk Margin, determined as at the Relevant Date and in accordance with the prevailing actuarial and treasury procedures and controls used by the Transferor and prevailing good actuarial practice and reflecting appropriate maturity and currency matching in accordance with the prevailing internal policies and controls of the Transferor;

**Liability**

means any debt, liability, duty or obligation of any kind or description (whether direct or indirect, present or future, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) including any liability to Taxation, and including all costs and expenses relating thereto;

**Order**

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

**Policy**

means a contract of insurance, including under which an existing liability has already accrued or, as the case may be, any instrument evidencing such a contract of insurance;

**Relevant Date**

means the Effective Date except in the case of any Residual Policy, Residual Asset or Residual Liability, in which case it means the applicable Subsequent Transfer Date;

**Residual Assets**

Means any property or other rights falling within the definition of Transferring Assets:

i)

- (a) in respect of which the Court has declined to order the transfer to the Transferee under the 1909 Act, the 1989 Act or the 2015 Regulations (as applicable);



- (b) where the Transferor and the Transferee agree in writing that the transfer of such property should be delayed or such property should not be transferred at all;
  - (c) which is outside the jurisdiction of the Court or in respect of which its transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated; or
  - (d) which cannot be transferred or vested in the Transferee for any other reason,
- ii) together with any proceeds of sale or income or other accrual or return, whether or not in the form of Cash, earned or received from time to time after the Effective Date, in respect of any property referred to in paragraphs (i)(a) to (d) of this definition;

### **Residual Liabilities**

means any Liability whatsoever of the Transferor in respect of the Transferring Assets:

- (a) that is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (b) in respect of which the Court has declined to order the transfer to the Transferee under the 1909 Act, the 1989 Act or the 2015 Regulations (as applicable);
- (c) which cannot be transferred to or vested in the Transferee for any other reason as at the Effective Date; or
- (d) where the Transferor and the Transferee agree in writing that the transfer of such liability should be delayed or that such liability should not be transferred to the Transferee;

### **Residual Policies**

means Policies under which any Liability remains unsatisfied or outstanding at the Effective Date:

- (a) which the Court, for any reason, determines not to transfer by virtue of the Order;
- (b) which are not otherwise capable of being transferred pursuant to Section 13 of the 1909 Act, Section 36 of the 1989 Act and Regulation 41 of the 2015 Regulations, or
- (c) in respect of which the Transferee does not hold from IVASS the requisite non-life insurance class authorisation under the Italian Insurance Regulations;

in each case, together with the rights, benefits and

powers and debts, liabilities and obligations of the Transferor under any such Policies;

**Retained Books and Records**

means any accounting and financial and other records of the Transferor relating to the Transferring Business that the Transferor is required to retain by law;

**Risk Margin**

means the risk margin calculated in accordance with Article 77 of the EU Solvency II Directive and the relevant EU Solvency II Requirements in respect of the Transferring Policies or any Residual Policies, in each case immediately prior to the Relevant Date;

**Solvency II Requirements**

means the EU Solvency II Directive and any directive, legislation, regulation, decision, order, decree, determination, award, standard, guidance or rule which implements, gives effect to or is made pursuant to Solvency II including Regulation (EU) 2015/35 of the European Commission supplementing the EU Solvency II Directive;

**Subsequent Transfer Date**

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

(a) in respect of any Residual Asset falling within paragraph (a) of the definition of Residual Assets or any Residual Liability falling within paragraph (a) of the definition of Residual Liabilities and of any other Residual Liability which is attributable to or connected with any such Residual Asset, the date on which the requisite steps or, where applicable, the requisite consent or waiver to enable the same to be transferred from the Transferor to the Transferee upon the provisions of this Scheme (where applicable, without any third party right to terminate or to compensation) is:

(i) obtained;

(ii) no longer required; or

(iii) dispensed with by order of the Court;

(b) in respect of any Residual Asset falling within paragraph (b) of the definition of Residual Assets or any Residual Liability falling within paragraph (b) of definition of Residual Liabilities and of any other Residual Liability which is attributable to or connected with such Residual Asset, the date

agreed in writing by the Transferor and the Transferee;

(c) in respect of any Residual Asset falling within paragraph (c) of the definition of Residual Assets or any Residual Liability falling within paragraph (c) of the definition of Residual Liabilities, the date on which such Residual Asset is received or earned by the Transferor or, in the case of a Residual Liability, the date on which such Liability is incurred by the Transferor;

(d) in respect of any Residual Policy falling within paragraph (a) or (b) of the definition of Residual Policies, the date on which the transfer of all rights, title, interest in, and obligations under such Residual Policy is fully effective in Ireland and under the law of any other country or territory to which it is subject;

(e) in respect of any Residual Policy falling within paragraph (c) of the definition of Residual Policies, the date on which the transfer of all rights, title, interest in, and obligations under such Residual Policy is authorised in favour of the Transferee.

## **Tax or Taxation**

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

## **Transferring Assets**

means:

- (a) all rights, benefits and powers of the Transferor under or by virtue of the Transferring Policies;
- (b) all rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts;
- (c) all rights and claims (in contemplation, present or future, actual or contingent) against any third party not within paragraphs (a) and (b) above of this

definition to the extent that such right or claim relates to any of the Transferring Policies or the Transferring Contracts, or arises as a result of the Transferring Policies or the Transferring Contracts;

- (d) the Investment Assets;
- (e) the Books and Records;

but excluding the Excluded Assets;

### **Transferring Business**

means together the assets and liabilities operated by the Italian branch of the Transferor as a going concern:

- (a) the Transferring Assets;
- (b) the Transferring Contracts;
- (c) the Transferring Liabilities; and
- (d) the Transferring Policies,

and all activities carried on in connection therewith;

### **Transferring Contracts**

means:

- (a) those Contracts listed in Part 2 of Schedule 1 of the Scheme; and
- (b) such other Contracts to which the Transferor is a party that relate exclusively to the Transferring Business but excluding the Excluded Contracts,

provided that where a Contract relates to both the Transferring Business and the Excluded Business, only that part of the Contract that relates to the Transferring Business shall be transferred and any such Contract shall on and with effect from the Effective Date apply respectively to both the Transferring Business and the Excluded Business, as appropriate;

### **Transferring Liabilities**

means all Liabilities whatsoever of the Transferor (other than to the extent discharged prior to the Effective Date) comprised in or attributable to the Transferring Business or arising in connection with or in relation to that business, as at the Effective Date, including (without prejudice to the generality of the foregoing):

- (a) all Liabilities under or by virtue of the Transferring Policies; and
- (b) all Liabilities arising under or by virtue of the Transferring Contracts,

but excluding the Excluded Liabilities;

## Transferring Policies

means, as further described in Part 1 of Schedule 1 to the Scheme, all Policies effected by or on behalf of Transferor on a freedom of establishment basis under the EU Solvency II Directive from Ireland into Italy and in respect of which the Transferor's records show that, immediately prior to the Effective Date, the risk is situated in Italy and under which any Liability remains unsatisfied or outstanding at the Effective Date, including in respect of the same:

(a) any Policies which have lapsed (or which have been treated by the Transferor as having lapsed) on or before the Effective Date and which are reinstated by the Transferee on or after the Effective Date;

(b) any Policies written as options or increments in respect of Policies falling within the scope of this definition; and

(c) all proposals for insurance received by or on behalf of the Transferor before the Effective Date which have not become Policies in force by the Effective Date, but which subsequently become Policies falling within the scope of this definition,

but excluding the Excluded Policies;