

THE HIGH COURT

2022 Record No.

COS

IN THE MATTER OF AMTRUST INTERNATIONAL UNDERWRITERS DESIGNATED  
ACTIVITY COMPANY

AND IN THE MATTER OF BOTHNIA INTERNATIONAL INSURANCE COMPANY LIMITED

AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909

AND THE INSURANCE ACT 1989

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

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PETITION

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TO THE HIGH COURT

The Humble Petition of the directors of AmTrust International Underwriters Designated Activity Company (“**AIUD**”) (whose respective names and addresses are set out in the **First Schedule** hereto) shows as follows:

**Section 1: AIUD**

1. AIUD was incorporated in the State on 28 January 1991 under the laws of Ireland as a private limited company under registered number 169384.
2. AIUD was initially registered as International Insurance Service Limited. On 20 March 1991 it changed its name to International Insurance Services Limited. On 21 February 2003 it changed its name to AmTrust International Underwriters Limited. On 15 August 2016 AIUD converted to a designated activity company under part 16 of the Companies Act 2014.
3. The registered office of AIUD is at 6-8 College Green, Dublin 2.
4. The constitution of AIUD provides that the objects for which AIUD is established are, *inter alia*,:
  - (a) to carry on all business of insurance in the class(es) authorised by the Central Bank of Ireland as the same are defined in the European Union (Insurance and Reinsurance) Regulations 2015 (Statutory Instrument No. 485 of 2015)

(as the same may at any time be amended, modified and / or supplemented by statute, regulation or otherwise);

- (b) to carry on the business of reinsurance and to reinsure all or any risks and to undertake all kinds of reinsurance business; and
  - (c) to carry on such other businesses as may be incidental to the carrying on of any business referred to in paragraph (a) or (b) above or as may be conveniently carried on in connection therewith.
5. AIUD is empowered by clause 3 (14) of its constitution to *“sell or otherwise dispose of the whole or any part of the business, undertaking, property or investments of the Company, either together or in portions for such consideration and on such terms as may be considered expedient.”*
  6. AIUD is authorised by the Central Bank of Ireland (the **“Central Bank”**) to carry on non-life insurance business under Classes 1, 2, 3, 7, 8, 9, 10 (carrier's liability only), 13, 14, 15 (run-off liability only), 16, 17 and 18 as set forth in Schedule I to the European Union (Insurance and Reinsurance) Regulations 2015 (the **“2015 Regulations”**).
  7. The authorised share capital of AIUD is USD \$50,000,000.00 divided into 25,000,000 Ordinary Shares of USD \$1.00 each and 25,000 Cumulative Redeemable Preference Shares of US\$1,000.00 each. The issued share capital is 2,000,000 Ordinary Shares of US\$1.00.
  8. AmTrust Equity Solutions Limited (a company registered under the laws of Bermuda having its registered office at 7 Reid Street, Suite 400, Hamilton HM 11, Bermuda) holds the entire issued share capital of AIUD.

## **Section 2: Background**

9. AIUD has agreed to transfer its French Med-Mal Business (as defined in the scheme of transfer, a copy of which is scheduled to this petition (the **“Scheme”**)) to Bothnia International Insurance Company Limited (**“Bothnia”**), a Finnish non-life insurance undertaking. The French Med-Mal Business portfolio consists of public, and some private, profit and non-profit hospitals situated in France (including Saint Barthélemy, an overseas collectivity of France). The Transferring Business consists of circa 200 hospitals holding circa 580 separate policies.

10. The terms of the transfer of the French Med-Mal Business (which includes the Transferring Policies, the Transferring Contracts, the Transferring Assets and the Transferring Liabilities) are set out in the Scheme.
11. It is intended that the transfer of the French Med-Mal Business to Bothnia will take effect from 00:01 (Finnish time) on 1 April 2023 (the “**Scheme Effective Date**”).

### **Section 3: The Transferee**

12. Bothnia is a limited liability company incorporated under the laws of Finland under the name Bothnia International Insurance Company Limited. Bothnia was incorporated in Finland as an insurance limited company (in Finnish: *Vakuutusosakeyhtiö*) on 22 September 1993. It is registered under registration number 0947118-3. Bothnia has its registered office at Ruoholahdenkatu 8, FI-00180 Helsinki, Finland.
13. Bothnia is licensed by the Finanssivalvonta Finansinspektionen Financial Supervisory Authority (“**FIN-FSA**”) to undertake and carry on the business of a non-life insurance undertaking transacting non-life insurance under Classes 1 – 17, as well as reinsurance business in all non-life insurance classes within the European Union and the European Economic Area (“**EEA**”) and outside of it but excluding non-life insurance business in Classes 1 and 10 to the extent such insurance is as referred to under the Finnish Motor Liability Insurance Act (460/2016, previously 279/1959), insurance falling under the non-life insurance class 13, to the extent the insurance in question is as referred to under the Finnish Patient Injuries Act (585/1986) or insurance referred to under the Finnish Nuclear Liability Act (484/1972), or insurance referred to under the Finnish Occupational Accidents, Injuries and Diseases Act (459/2015, previously 608/1948).
14. Bothnia is also authorised by the Central Bank to carry out non-life insurance business in Ireland on a freedom of services basis and is therefore subject to regulation by the Central Bank for conduct of business rules.
15. The objects for which Bothnia was incorporated are detailed in Article 2 of its Articles of Association as, *inter alia*:

*"The Company [Bothnia] is engaged in insurance business in non-life insurance classes 1-17 as well as reinsurance business in all non-life insurance classes within the European Economic Area and outside of it, excluding, however, insurance*

*business in non-life insurance classes 1 and 10 as provided for in the Finnish Third Party Motor Liability Insurance Act (279/59)."*

16. Bothnia's licence from FIN-FSA is sufficiently wide to entitle it to acquire and carry on the Transferring Business that has heretofore been carried on by AIUD pursuant to the 2015 Regulations.
17. Bothnia is authorised to acquire the Transferring Business pursuant to its Articles of Association dated 30 July 2015 whereby it is authorised to engage in insurance business in non-life insurance Classes 1 to 17 as well as reinsurance business in all non-life insurance classes within the European Economic Area and outside of it, excluding however, insurance business in non-life insurance classes 1 and 10 as provided for in the Finnish Third Party Motor Liability Insurance Act (279/59).
18. Bothnia's registered and paid-up share capital is EUR 3,825,006.80 divided into 2,250,004 shares of no nominal value. Compre Holdings Limited holds the 2,250,004 issued shares of Bothnia. Compre Holdings Limited is a wholly owned subsidiary of Compre Group Holdings Limited, domiciled in Bermuda (registration number 56052) having its registered office at 4th Floor, Victoria Place, 31 Victoria Street Hamilton HM 10, Bermuda.

#### **Section 4: The Proposed Transfer**

19. The primary commercial purpose of the Scheme is to make provision for the transfer of the Transferring Business (as defined in the Scheme) from AIUD, as legal and beneficial owner, to Bothnia and the consequent assumption of the Transferring Assets and the Transferring Liabilities (which terms are defined in the Scheme) by Bothnia such that Bothnia shall succeed to the rights and obligations of AIUD under the Transferring Policies, with effect from the Scheme Effective Date ("**Proposed Transfer**"). AIUD wishes to transfer the French Med-Mal Business which was written from 2009 to 2021 as part of its European restructuring plan. Bothnia is a specialist provider of run-off solutions for legacy books of business. Through the Proposed Transfer, Bothnia aims to add to its liabilities under management and, in particular, medical malpractice.
20. Pallas Reinsurance Company Limited ("**Pallas Re**") (which is part of the Compre Group) currently reinsures the Transferring Business through a 100% quota share reinsurance arrangement with AIUD. Pallas Re provides an 85% quota share

reinsurance agreement to Bothnia which will include the Transferring Business following the Proposed Transfer.

21. It has been resolved by the board of directors of AIUD on 23 November 2022 and by Bothnia on 20 June 2022 in accordance with their respective internal governance requirements, that subject to the sanction of this Honourable Court and subject to receiving the approval of the relevant regulatory authorities, the Transferring Business will be transferred from AIUD to Bothnia with effect from the Scheme Effective Date.
22. The transfer of the Transferring Business is subject to the approval of this Honourable Court.
23. Under the terms of the Scheme as and from the Scheme Effective Date, Bothnia will assume the Transferring Business carried on by AIUD which includes the Transferring Policies, the Transferring Assets, the Transferring Liabilities and the Transferring Contracts.
24. The Transferring Policies to be transferred pursuant to the Scheme consist entirely of policies of non-life insurance falling within Class 13 as set forth in Schedule I to the 2015 Regulations. The Transferring Policies are all French medical malpractice insurance policies issued by AIUD to a number of hospitals (the "**Policyholders**", as defined in the Scheme) in France and one in Saint-Barthélemy, which pursuant to Article 300-1 of the French Insurance Code, is part of the territory of France for the purposes of the Proposed Transfer. The Policies provide medical malpractice cover for medical professionals employed by the Policyholders.
25. The Proposed Transfer of the Transferring Business to Bothnia will not cause prejudice to any of the Policyholders, insureds or creditors generally, nor will it cause prejudice to any other third parties.

#### **Section 5: Report of Independent Actuary**

26. Pursuant to section 13(3)(b) of the Assurance Companies Act 1909 (as amended) (the "**1909 Act**"), in the context of the portfolio transfer of non-life insurance policies by an Irish insurance undertaking, there is no requirement to prepare an Independent Actuary Report. However, for the sake of good order and to assist this Honourable Court, the Central Bank and the Policyholders of AIUD and Bothnia in their assessment of the Proposed Transfer, an independent actuary, Stewart Mitchell of Lane Clark & Peacock LLP, with almost 30 years of experience in the general insurance industry (the "**Independent Actuary**"), has been appointed by AIUD and

Bothnia to prepare a report which is dated 30 November 2022 (the “**Report**”) on the terms of the Proposed Transfer and his opinion on the likely effects of the Scheme on the policyholders of AIUD and Bothnia. The Central Bank was notified of the Independent Actuary's appointment. The Report is for the benefit of the Central Bank, this Honourable Court and the policyholders of AIUD and Bothnia.

27. A summary of the conclusions of the Independent Actuary are set out at section 1.3 of the Report.
28. In order to assess the Proposed Transfer, the Independent Actuary has performed the following five steps analysing evidence provided by AIUD and Bothnia to support the Proposed Transfer:
  - i. assessing the appropriateness of the provisions included on AIUD's and Bothnia's balance sheets and the approach to be used for the calculation of provisions for both AIUD and Bothnia pre- and post-transfer;
  - ii. assessing the appropriateness of the projected capital requirements of AIUD and Bothnia;
  - iii. assessing overall policyholder security;
  - iv. assessing the appropriateness of AIUD's and Bothnia's joint communication strategy to inform policyholders and other stakeholders of the Proposed Transfer; and
  - v. considering how the level of customer service provided to policyholders could change following the Proposed Transfer, along with other factors that might affect policyholders, such as ongoing expense levels and tax implications.
29. In completing the Report, the Independent Actuary considered the consequences of the Scheme from the following perspectives:
  - i. “Non-Transferring Policyholders”, ie, existing AIUD policyholders who will remain with AIUD after the Proposed Transfer;
  - ii. “Transferring Policyholders” ie, existing AIUD policyholders who will transfer from AIUD to Bothnia as a result of the Proposed Transfer;
  - iii. “Bothnia Policyholders”, ie, existing policyholders of Bothnia who will remain with Bothnia after the Proposed Transfer; and

- iv. Any potential beneficiaries and claimants in relation to the Transferring Policies.

### **Appropriateness of the Provisions (Section 5 of the Report)**

- 30. The Independent Actuary concludes that the Non-Transferring Policyholders will not be materially adversely affected by the reserving aspect of the Proposed Transfer. The key reasons for the Independent Actuary reaching such conclusions are:
  - i. AIUD's calculation of provisions for the Transferring Business has been performed using appropriate techniques and approaches; and
  - ii. as the French Med-Mal Business is currently 100% reinsured, there will be no change to the net reinsurance exposure for the Non-Transferring Policyholders as a result of the Proposed Transfer.
  
- 31. For Transferring Policyholders, the Independent Actuary concludes that they will not be materially adversely affected by the reserving aspects of the Proposed Transfer. The key reasons for the Independent Actuary reaching such conclusions are:
  - i. there is no material difference between AIUD's and Bothnia's reserve estimates for the Transferring Business;
  - ii. claims handling for the Transferring Business will continue to be performed by the same team following the Proposed Transfer; and
  - iii. the quota share reinsurance agreement between AIUD and Pallas Re in respect of the Transferring Business will remain in place following the Proposed Transfer, although the ceded percentage will reduce from 100% to 85%.
  
- 32. For Bothnia Policyholders, the Independent Actuary concludes that an appropriate level of provisions will be maintained for such policyholders and that they also will not be materially adversely affected by the reserving aspect of the Proposed Transfer. The key reasons for the Independent Actuary reaching such conclusions are:
  - i. the calculation of provisions for Bothnia has been performed using appropriate techniques and approaches;
  - ii. Bothnia has confirmed that the reserving process and governance following the Proposed Transfer will be unchanged post-transfer; and

- iii. the Transferring Business will continue to be materially reinsured through the quota share arrangement with Pallas Re.

### **Capital Considerations (Section 6 of the Report)**

- 33. Section 6.8 of the Report sets out tables showing the Solvency Capital Requirement (“SCR”) and coverage ratios for AIUD and Bothnia pre and post the Proposed Transfer. These figures are current projections and may be updated in any supplementary report.
- 34. In relation to the SCR, the Independent Actuary notes that following the Proposed Transfer:
  - i. the SCR coverage ratio for Non-Transferring Policyholders is projected to increase from 151% to 163%, remaining above AIUD's risk appetite level of 140%. The Independent Actuary notes that AIUD remains well-capitalised following the Proposed Transfer;
  - ii. the SCR coverage ratio for Transferring Policyholders is projected to increase from 151% to 169%. The Independent Actuary notes that this increase will mean that the Transferring Policyholders will remain in a well-capitalised insurance company following the Proposed Transfer; and
  - iii. the SCR coverage ratio for Bothnia Policyholders is expected to decrease from 219% to 169%. While the Independent Actuary notes that such a decrease would appear to be a significant reduction, he is nonetheless of the opinion that Bothnia will remain well-capitalised after the Proposed Transfer. The Independent Actuary notes in the Report that the difference in SCR coverage ratios of 219% and 169% does not, in his opinion, equate to a material difference in the probability of insolvency and therefore he has concluded that the Proposed Transfer will not lead to any material adverse changes in the strength of capital protection for the Bothnia Policyholders as a result of the Proposed Transfer.
- 35. The Independent Actuary concludes, in relation to the capital requirements that following the Proposed Transfer, he does not expect there to be any material adverse change in the strength of the capital protection for any group of policyholders.

### **Policyholder Security (Section 7 of the Report)**



36. The Independent Actuary assessed whether the likelihood of valid policyholder claims being paid is maintained following the Proposed Transfer for Transferring Policyholders and whether any change in policyholder security results in policyholders being materially adversely affected by the Proposed Transfer. In order to make these assessments, the Independent Actuary considered the following areas: (i) the Solvency II balance sheets of AIUD and Bothnia; (ii) the solvency positions of AIUD and Bothnia; (iii) reinsurance arrangements with external reinsurers; (iv) access to insurance compensation schemes; (v) access to insurance ombudsman services, (vi) insurance regulation and (vii) applicable winding-up regulations. The Independent Actuary concluded that the Transferring Policyholders are unlikely to be materially adversely affected by the Proposed Transfer.

### **Communications Strategy (Section 8 of the Report)**

37. The Independent Actuary reviewed the communications strategy and is satisfied that the planned communications strategy will ensure adequate coverage of the affected parties. Based on his review of the planned communications strategy, he concluded that the communications plan meets the requirements of Section 13 of the 1909 Act, that the communication to policyholders regarding the Proposed Transfer is clear, fair and not misleading and the strategy is sufficiently clear for policyholders to understand the effects of the Proposed Transfer. The Independent Actuary further notes in his Report that AIUD and Bothnia have sufficient resources to deal with any objections, enquiries or complaints received following the communication exercise.

### **Customer Service and Other Considerations (Section 9 of the Report)**

38. The Independent Actuary concluded that he did not expect that any cohort of affected policyholders will receive a materially different level of customer service following the Proposed Transfer.

### **Section 6: Regulatory Matters**

39. For the purposes of Article 41 of the 2015 Regulations, AIUD notified the Central Bank of the transfer of the French Med-Mal Business proposed by the Scheme on 7 November 2022.
40. Pursuant to the Regulation 41(3)(a) of the 2015 Regulations, the proposed Scheme cannot be effected without obtaining the certification of FIN-FSA (as the EEA Member State supervisory authority of Bothnia) that, taking the proposed Scheme into account, Bothnia has the necessary authorisation to validly underwrite the

Transferring Policies and possesses the necessary eligible own funds to cover its SCR thereafter.

41. Pursuant to Regulation 41(3)(b) of the 2015 Regulations, the proposed Scheme cannot be effected without also obtaining the agreement of the competent authority of each EEA Member State where the contracts "*were concluded, either under the right of establishment or the freedom to provide services*". The only EEA Member State in which the Transferring Policies "*were concluded, either under the right of establishment or the freedom to provide services*" was France. It is noted that there is one Policyholder established in the jurisdiction of Saint-Barthélemy, however the same French regulatory notification requirements apply in respect of this Policyholder as pursuant to Article 300-1 of the French Insurance Code, Saint-Barthélemy is part of the territory of France for the purposes of the Proposed Transfer. If the Autorité de Contrôle Prudentiel et de Résolution ("**ACPR**") (as the EEA Member State supervisory authority in France) does not respond to the Central Bank within 3 months, the Central Bank shall be entitled to deem the ACPR to have consented to the transfer in accordance with the provisions of Regulation 41(4) of the 2015 Regulations.

#### **Section 7: Notification / Advertisements**

42. In circumstances where the Transferring Business does not comprise life assurance business, but relates to policies of non-life insurance, there is no requirement under section 13 of the 1909 Act to transmit the documents specified by section 13(3)(b) of the 1909 Act to the individual policyholders of the Transferor or the Transferee.
43. Notwithstanding that there is no legislative requirement to write to the Transferring Policyholders in advance of the Proposed Transfer, AIUD proposes to write to each Transferring Policyholder following the presentation of this Petition to the Court and before the hearing of this Petition to inform them of the Proposed Transfer, including the material facts about the Proposed Transfer, the stages for approval and the Transferring Policyholders' opportunity to object. A copy of the proposed letter to the Transferring Policyholders is set out at Tab 14 of the Folder exhibited to the Grounding Affidavit of Ronan Conboy sworn 1 December 2022. It is proposed that the letter will be issued in the French language (in circumstances where French is the language through which Transferring Policyholders are ordinarily communicated).
44. In compliance with Section 13(3)(a) of the 1909 Act and subject to the directions of this Honourable Court, a Notice of Intention to make this application together with the

hearing date shall be published in Iris Oifigiúil, the Irish Independent and the Irish Examiner. Notice will also be published in the Financial Times (International Edition).

45. Copies of this Petition and its schedules will be served on the Central Bank following the directions hearing.
46. In accordance with the requirements of section 13(3)(c) of the 1909 Act, the Report together with the Petition and the Scheme (the “**Transfer Documents**”) will be available for inspection, Monday to Friday (public holidays excepted) between the hours of 9:00 a.m. to 5:00 p.m. at (i) the offices of AIUD at 6-8 College Green, Dublin 2, (ii) the offices of AGRM at Espace 84, 84 Quai Joseph Gillet, Lyon 4EME, Rhone, 69004, France, (iii) the offices of AIUD’s solicitors, Matheson LLP, 70 Sir John Rogerson’s Quay, Dublin 2, (iii) the offices of Bothnia at Ruoholahdenkatu 8, FI-00180 Helsinki, Finland, and (v) the offices of Bothnia’s solicitors, A&L Goodbody LLP, 3 Dublin Landings, North Wall Quay, Dublin 1, for not less than 15 clear working days between the date of the advertisement of the Petition in Iris Oifigiúil, the Irish Examiner and the Irish Independent and the date fixed for the hearing of the Petition. In addition, the transfer documents will be available online at <https://amtrustfinancial/amtrustinternational/legal/portfolio-transfers> and <https://compre-group.com/notices/amtrust-international-underwriters-dac/>.
47. The Petitioners have separately considered whether any notification requirements arise in any other jurisdictions where AIUD carries on the Transferring Business. In accordance with Regulation 41(5)(b) of the 2015 Regulations, a notice of the proposed Scheme will also be published in the relevant jurisdictions to the extent required by the laws of relevant Member States.
48. Pursuant to Directive 2009/138/EC, and in accordance with Regulation 41(5)(b) of the 2015 Regulations, the risks written by AIUD are deemed to be situated (as defined by Regulation 3 of the 2015 Regulations) where the Policyholders are established.
49. The Transferring Policyholders are all established in France.
50. From an Irish, Finnish and French law perspective, because of the nature of the insurance business proposed to be transferred, there is no specific obligation on AIUD to notify the Policyholders after the Transfer has occurred. However, from a Finnish law perspective, there is a requirement for Bothnia to announce the Transfer within one month of it occurring, by publishing details of the Transfer in the Finnish Official Gazette and at least one newspaper in the domicile of AIUD.

51. Therefore it is proposed that following the Transfer an announcement will be published in periodicals in Finland, Ireland and France and these notices will be published in Finnish, English and French respectively. It is acknowledged that this approach goes beyond what is required from a strict legislative perspective, however both AIUD and Bothnia have agreed that it is the most prudent approach to adopt.

### **Section 8: Costs & Expenses**

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

### **YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:**

- (1) An Order pursuant to the provisions of Section 13 of the 1909 Act, the 2015 Regulations and Section 36 of the Insurance Act 1989 (as amended) sanctioning the Scheme (annexed hereto);
- (2) An Order pursuant to Section 36 of the Insurance Act 1989 making the following ancillary provisions for implementing the Scheme with each such provision to take effect from the Scheme Effective Date unless otherwise stated herein: -
  - (i) the Transferring Business (which includes the Transferring Policies, the Transferring Assets, the Transferring Liabilities and rights of AIUD in the Transferring Contracts, all defined in the Scheme) will be transferred to Bothnia;
  - (ii) the Transferring Assets shall be transferred to and vested in Bothnia and shall cease to be assets of AIUD;
  - (iii) that all rights, benefits and powers conferred on or vested in AIUD and the liabilities imposed on AIUD by or under the Transferring Contracts shall be transferred to Bothnia;
  - (iv) that all premiums or amounts attributable or referable to the Transferring Policies shall be payable to Bothnia;

- (v) that Bothnia shall be entitled to any and all defences, claims, counterclaims and rights of set-off in respect of the Transferring Policies and the Transferring Contracts which would have been available to AIUD;
- (vi) all references in any Transferring Policy and Transferring Contract to AIUD, the board of directors of AIUD, or any other officers or agents of AIUD shall be read as references to Bothnia, the board of directors of Bothnia, or any other officers, employees or agents of Bothnia or, where appropriate, agents of Bothnia to which the administration carried on by Bothnia has been delegated. In particular, but without limitation, all rights and / or duties exercisable or expressed to be exercisable or responsibilities to be performed by AIUD, the board of directors of AIUD, or any other officers or agents of AIUD in relation to any of the Transferring Policies shall, from and after the Scheme Effective Date be exercisable or required to be performed by Bothnia, the board of directors of Bothnia or any other officers, employees or agents of Bothnia;
- (vii) that the Transferring Liabilities shall be transferred to and shall become the liabilities of Bothnia and shall cease to be liabilities of AIUD;
- (viii) that any mandate or other instruction in force on the Scheme Effective Date (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums payable under of in respect of any of the Transferring Contracts or the Transferring Policies shall take effect as if it had provided for and authorised such payment to Bothnia;
- (ix) that any mandate or other instruction in force on the Scheme Effective Date in respect of any of the Transferring Contracts or the Transferring Policies as to the manner of payment of any benefit or other amounts by AIUD shall (and in the case of the Residual Policies as defined in the Scheme) from the respective Subsequent Transfer Date (as defined in the Scheme) continue in force as an effective authority to Bothnia;

- (x) that 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 by or against AIUD in connection with the Transferring Business shall be continued by or against Bothnia and Bothnia shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to AIUD in relation to any such proceedings;
- (xi) on and with effect from each Subsequent Transfer Date, all actual and potential proceedings by or against AIUD in connection with the Residual Assets (as defined in the Scheme) or the Residual Liabilities (as defined in the Scheme) shall be continued by or against Bothnia, and Bothnia shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to AIUD in relation to such Residual Assets and Residual Liabilities;
- (xii) AIUD is given liberty to transfer to Bothnia all data (including personal data) held by or on behalf of AIUD in relation to the Transferring Policies, the Transferring Assets, the Transferring Liabilities and the Transferring Contracts;
- (xiii) the Records (as defined in the Scheme), which may include Policyholder Data (as defined in the Scheme) protected under the Data Protection Laws (as defined in the Scheme), shall be transferred to Bothnia, such that Bothnia shall be deemed to be the Data Controller of the Policyholder Data, and may be used by Bothnia for, and disclosed by AIUD to, and used by, any agent or contractor of Bothnia to the same extent that they were used by AIUD and its agents or contractors prior to the Scheme Effective Date for all purposes in connection with the Transferring Contracts or the Transferring Policies including, in particular, administration thereof and all matters relevant or incidental thereto;
- (xiv) to the extent that an authority has been given to AIUD in connection with a Transferring Policy or a Transferring Contract by a Policyholder or counterparty thereto or by any other relevant person, whether pursuant to Data Protection Laws or otherwise, such authority shall be deemed to have been given to Bothnia;

- (xv) that on or from the Scheme Effective Date any document evidencing or constituting a policy contained within the Transferring Policies issued by AIUD or the right of any person to participate in benefits secured by the Transferring Policies effected with AIUD or references to AIUD or any short form or abbreviation thereof and/or to rights, powers, duties and/or obligations imposed on AIUD shall to the extent necessary to give full effect to the Scheme be read, construed and treated as references to Bothnia and/or to the rights, powers, duties and/or obligations imposed on Bothnia subject to and in accordance with the Scheme.
  
- (3) An Order directing that notice of said transfer be published once in each of Iris Oifigiuil, The Irish Independent, The Irish Examiner and be further published as required in accordance with the laws of the Member States where the risks are situated.
  
- (4) Such further or other Order as to this Honourable Court shall appear proper.

**NOTE**

It is intended to serve a copy of this Petition (together with the Schedules) on such parties as this Honourable Court may direct.

Presented this        day of        , 2022 in the Central Office by Matheson LLP, Solicitors for the Petitioners, of 70 Sir John Rogerson's Quay, Dublin 2.

## **SCHEDULE 1**

### **NAMES AND ADDRESSES OF THE DIRECTORS OF AMTRUST INTERNATIONAL UNDERWRITERS DESIGNATED ACTIVITY COMPANY**

- (1) Robert Brannock, Strawberry Fields, Drumconora, Nutfield, Ennis, Co Clare, V95 P9K3.
- (2) Ronan Conboy, 17 Pinewood Park, Dublin 14, D14 AE13.
- (3) Peter Dewey, 3 Connolly Court, Virginia Park, Virginia Water, Surrey, GU25 4SR United Kingdom
- (4) Yvonne Hill, Derryveagh, 10 Carrickmines Chase, Carrickmines Wood, Dublin 18, D18PY96
- (5) Aidan Holton, 5 Temple Wood, Carton Demesne, Maynooth, Co. Kildare, W23 RX74.
- (6) Iain Lever, 16 Ballynakelly View, Ballynakelly Village, Newcastle, Ireland, D22A4P9 .



## **SCHEDULE 2**

### **Scheme**

**THE HIGH COURT**

2022 Record No.            COS

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**PETITION**

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**Matheson LLP**

70 Sir John Rogerson's Quay  
Dublin 2  
Ireland

ELCA/CM 658088/195  
TEL + 353 1 232 2000  
FAX + 353 1 232 3333