

THE HIGH COURT

COMMERCIAL

2020 No. 83 COS

(2020 No. 29 COM)

MONDAY THE 27TH DAY OF JULY 2020

BEFORE MR. JUSTICE BARNIVILLE

IN THE MATTER OF AMTRUST INTERNATIONAL UNDERWRITERS

DESIGNATED ACTIVITY COMPANY

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

AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909

AND THE INSURANCE ACT 1989

AND IN THE MATTER OF THE EUROPEAN UNION (INSURANCE AND

REINSURANCE) REGULATIONS 2015

The Petition seeking sanction for the scheme presented on 2 March 2020 (the “**Scheme**”) by the directors of AmTrust International Underwriters Designated Activity Company (hereinafter called “**AIUD**” or “**the Petitioners**”, as relevant) coming on for hearing this day pursuant to the Order herein dated 19 May 2020. Defined terms used herein shall have the meanings as assigned to them in the Scheme, save where otherwise provided.

AND UPON reading the said Petition, the Notice of Motion dated 25 February 2020, the Grounding Affidavit of Ronan Conboy sworn on 24 February 2020, the Notice of Motion for entry into the Commercial List dated 25 February 2020, the Certificate of Solicitor Darren Maher of Matheson Solicitors dated 25 February 2020, the Second Affidavit of Ronan Conboy sworn on 24 February 2020, the Affidavit of Service of Clare Parsons sworn on 21 July 2020, the Verifying Affidavit of Ronan Conboy sworn on 21 July 2020, the Affidavit of Alice Whelan sworn on 16 July 2020, the Affidavit of Darren Maher sworn on 15

May 2020 and the documents and exhibits referred to in said Affidavits including the Scheme (which is exhibit “DM1” to the Affidavit of Darren Maher sworn 15 May 2020)

AND UPON hearing Counsel for the Petitioner

AND there being no appearance in Court by or on behalf of any other party

IT IS ORDERED as follows:

- (1) That the Scheme be sanctioned pursuant to the provisions of Section 13 of the Assurance Companies Act 1909 (as amended), Regulation 41 of the European Union (Insurance and Reinsurance) Regulations 2015 and Section 36 of the Insurance Act 1989 (as amended);
- (2) That notwithstanding any provision to the contrary in the Scheme, the Scheme shall take effect at 23.59 on 31 July 2020 (and for the avoidance of doubt, this date and time shall by virtue of this Order and without the need for any further act or instrument be the Scheme Effective Date for the purposes of the Scheme (and the Scheme shall be construed accordingly));
- (3) That pursuant to Section 36 of the Insurance Act 1989, the following ancillary provisions for implementing the Scheme shall be sanctioned by virtue of this Order without the need for any further act or instrument:
 - (i) that with effect from the Scheme Effective Date the Italian Med-mal Transferring Business (which includes the Italian Med-mal Transferring Policies, the Italian Med-mal Transferring Assets, the Italian Med-mal Transferring Liabilities and rights of AIUD in the Italian Med-mal Transferring Contracts and the Italian Med-mal Transferring Ancillary Contracts (all defined in the Scheme) will be transferred to AmTrust Assicurazioni S.P.A (hereinafter “**AmTrust Italy**”));

- (ii) that with effect from the Scheme Effective Date, the Italian Med-mal Transferring Assets shall be transferred to and vested in AmTrust Italy and shall cease to be assets of AIUD;
- (iii) that with effect from the Scheme Effective Date all rights, benefits and powers conferred on or vested in AIUD and the liabilities imposed on AIUD by or under the Italian Med-mal Transferring Contracts and the Italian Med-mal Transferring Ancillary Contracts shall be transferred to AmTrust Italy;
- (iv) that with effect from the Scheme Effective Date all premiums or amounts attributable or referable to the Italian Med-mal Transferring Policies shall be payable to AmTrust Italy;
- (v) that with effect from the Scheme Effective Date AmTrust Italy shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of any of the Italian Med-mal Transferring Contracts and / or the Italian Med-mal Transferring Ancillary Contracts, which would have been available to AIUD;
- (vi) that with effect from the Scheme Effective Date all references in any Italian Med-mal Transferring Contract and / or Italian Med-mal Transferring Ancillary Contract to AIUD, the board of directors of AIUD, or any other officers or agents of AIUD shall be read as references to AmTrust Italy, the board of directors of AmTrust Italy, or any other officers, employees or agents of AmTrust Italy or, where appropriate, agents of AmTrust Italy to which the administration carried on by AmTrust Italy 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 Italian Med-mal Transferring Policies shall, from and after the Scheme Effective Date be exercisable or required to be performed by AmTrust Italy, the board of directors of AmTrust Italy or any other officers, employees or agents of AmTrust Italy;

- (vii) that with effect from the Scheme Effective Date the Italian Med-mal Transferring Liabilities shall be transferred to and shall become the liabilities of AmTrust Italy and shall cease to be liabilities of AIUD;
- (viii) that with effect from the Scheme Effective Date 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 Italian Med-mal Transferring Contracts, the Italian Med-mal Transferring Ancillary Contracts or the Italian Med-mal Transferring Policies shall take effect as if it had provided for and authorised such payment to AmTrust Italy;
- (ix) that with effect from the Scheme Effective Date any mandate or other instruction in force on the Scheme Effective Date in respect of any of the Italian Med-mal Transferring Contracts, the Italian Med-mal Transferring Ancillary Contracts or the Italian Med-mal 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 AmTrust Italy;
- (x) that with effect from the Scheme 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 by or against AIUD in connection with the Italian Med-mal Transferring Business shall be continued by or against AmTrust Italy and AmTrust Italy 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) that 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 AmTrust Italy, and AmTrust Italy shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the AIUD in relation to such Residual Assets and Residual Liabilities;
- (xii) that with effect from the Scheme Effective Date AIUD is given liberty to transfer to AmTrust Italy all data (including personal data) held by or on behalf of the AIUD in relation to Italian Med-mal Transferring Policies, the Italian Med-mal Transferring Assets, the Italian Med-mal Transferring Liabilities, the Italian Med-mal Transferring Contracts and the Italian Med-mal Transferring Ancillary Contracts (as each such term is defined in the Scheme);
- (xiii) that with effect from the Scheme Effective Date 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 AmTrust Italy (such that AmTrust Italy shall be deemed to be the Data Controller of the Policyholder Data), and may be used by AmTrust Italy for, and disclosed by AIUD to, and used by, any agent or contractor of AmTrust Italy 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 Italian Med-mal Transferring Contracts or the Italian Med-mal Transferring Policies including, in particular, administration thereof and all matters relevant or incidental thereto;
- (xiv) that with effect from the Scheme Effective Date to the extent that an authority has been given to AIUD in connection with a Italian Med-mal Transferring Policy or a Italian Med-mal

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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 AmTrust Italy;


- (xv) that with effect from the Scheme Effective Date any document evidencing or constituting a policy contained within the Italian Med-mal Transferring Policies issued by AIUD or the right of any person to participate in benefits secured by the Italian Med-mal Transferring Polices 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 AmTrust Italy and/or to the rights, powers, duties and/or obligations imposed on AmTrust Italy subject to and in accordance with the Scheme.

Liberty to apply

**Marianne White
REGISTRAR**

Date of Perfection: 28th July 2020

Matheson,
Solicitors for the Petitioners

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FOR REGISTRAR