

THE CENTRAL FUND BYELAW

Commencement

This byelaw commenced on 15 July 1986.

Amendments

This byelaw was amended by

Central Fund (Amendment) Byelaw (No. 10 of 1987)
Central Fund (Amendment No. 2) Byelaw (No. 9 of 1988)
Corporate Members (Consequential Amendments) Byelaw (No. 20 of 1993)
New Central Fund Byelaw (No. 23 of 1996)
Amendment Byelaw (No. 9 of 2001)

Explanatory Note

(This note is not part of the byelaw.)

This Byelaw, in place of the Central Fund Agreement 1927, provides for the management, investment and application of Lloyd's Central Fund under the direction of the Council of Lloyd's. It requires that as a condition of underwriting insurance business at Lloyd's members contribute to the Central Fund at rates prescribed from time to time by the Council. Annual contributions are payable, together with any further contributions which the Council may from time to time prescribe by special resolution.

Paragraphs 8 and 10 of the Byelaw re-enact the provision of Byelaw No. 2 of 1985 (Recovery of Monies) which empower the Society to apply monies out of funds and property of the Society (other than the Central Fund) for the purposes specified in paragraph 8 of the Byelaw, and to recover from members monies paid out of the Central Fund or from other funds of the Society in accordance with this Byelaw.

The Council of Lloyd's in exercise of its powers under section 6(2) and paragraphs (1) and (4) of schedule 2 of Lloyd's Act 1982 and section 7 of Lloyd's Act 1911 (as amended) by special resolution hereby makes the following byelaw.

1. Interpretation

The provisions of the schedule to this byelaw shall have effect.

2. Administration of the Central Fund

The Society shall:

- (a) hold, manage and apply in accordance with the provisions of this byelaw a fund to be known as the Central Fund;
- (b) levy contributions to the Central Fund in accordance with the provisions of this Byelaw from members of the Society; and
- (c) have such other powers and duties as respects the Central Fund as are conferred or imposed by this byelaw.

3. Assets of the Central Fund

The Central Fund shall consist of:

- (a) the assets of the fund constituted by an agreement in writing made on 18 May 1927 (and therein described as “the Central Fund”) between the Society and the members of the Society whose names were subscribed thereto;
- (b) contributions to the Central Fund levied pursuant to paragraph 4;
- (c) monies borrowed by the Society pursuant to paragraph 5;
- (d) the investments and other property for the time being representing such fund and contributions;
- (e) income arising from the investments or other assets from time to time constituting the Central Fund;
- (f)
 - (i) recoveries made from members of the Society pursuant to paragraph 10(1)(a) of this byelaw;
 - (ii) recoveries made from members of the Society pursuant to paragraph 10A(5) or (6) of this byelaw and transferred to the Central Fund pursuant to paragraph 10A(9) of this byelaw;
- (g) any other monies or assets which may at any time be added to or accrue to the Central Fund.

4. Contributions to the Central Fund
 - (2) The amount of contributions payable by members of the Society to the Central Fund and the manner of calculating such amounts shall be such as the Council shall from time to time by special resolution prescribe.
 - (3) Contributions shall be payable on such date or dates as the Council shall from time to time by special resolution prescribe.
 - (4) Contributions shall be levied on members of the Society by service on each member of the Society or his underwriting agent or agents of a notice specifying the amount due, which shall be paid by such member not later than the date specified for that purpose in such notice.
 - (6) The Council may from time to time by special resolution exempt any member or class of members of the Society from liability to make contributions pursuant to this paragraph.
 - (7) Any exception granted pursuant to sub-paragraph (6)
 - (a) may apply indefinitely or for such period as the Council may specify;
 - (b) may be general or limited to a particular levy or levies whether made under sub-paragraph (1) or sub-paragraph (5).
 - (8) Every member of the Society shall furnish to the Society such information as the Council may from time to time require in writing for the purposes of this byelaw.
 - (9) Any information required pursuant to sub-paragraph (8) shall be furnished in such manner and at such time or times as the Council may specify in writing.
 - (10) A member of the Society shall only be required under this paragraph to furnish such information as he or his underwriting agent or agents possess or can reasonably be expected to obtain.
 - (11) Payment of contributions to the Central Fund in accordance with this byelaw shall be a condition relating to permission to underwrite insurance business at Lloyd's and the provisions of Membership Byelaw (No. 17 of 1993) shall apply accordingly where any member of the Society fails to comply with such condition.

5. Borrowing for the Central Fund

The Society may from time to time, to hold, manage and apply as assets of the Central Fund, borrow monies in such amounts as are in the opinion of the Council desirable.

6. Management and investment of the Central Fund

Monies in the Central Fund for the time being may be invested by the Society in such manner as the Council may from time to time determine.

6A. Where any member fails to pay any contribution, or part thereof, levied pursuant to this byelaw by the date specified by the Council for payment he shall be liable to pay interest on the balance remaining unpaid after the date so specified until the date on which payment is made at such rates as the Council may from time to time prescribe.

7. Application of the Central Fund

Monies out of the Central Fund may be applied and the Central Fund may be charged for any of the following purposes:

- (a) making good any default by any member of the Society under any contract of insurance underwritten at Lloyd's;
- (b) preventing the occurrence or reducing the extent of such default by any member of the Society;
- (c) compensating in whole or in part any person (including the Society) for making for or on behalf of any member of the Society any payment which has the effect of preventing or reducing such default by any such member;
- (d) extinguishing or reducing the liability of any member of the Society to any person whatsoever whether or not arising under a contract of insurance;
- (e) repaying monies previously borrowed for the purposes of this byelaw and paying interest, premium or other charges on such monies;
- (f) any other purpose;

where in the opinion of the Council it is expedient for the advancement and protection of the interests of the members of the Society in connection with the business carried on by them as such members.

8. Application of other funds or property of the Society

Monies out of the funds or property of the Society other than the Central Fund may be applied and such funds or property may be charged for any of the following purposes:

- (a) making good any default by any member of the Society under any contract of insurance underwritten at Lloyd's;
- (b) preventing the occurrences or reducing the extent of such default by any member of the Society;
- (c) compensating in whole or in part any person for making for or on behalf of any member of the Society any payment which has had the effect of preventing or reducing such defaults by any such member;
- (d) extinguishing or reducing the liability of any member of the Society to any person whatsoever, whether or not arising under a contract of insurance where in the opinion of the Council it is expedient for the advancement and protection of the interests of the members of the Society in connection with the business carried on by them as such members.

8A. Interim application of Central Fund or of other funds or property of the Society

- (1) Monies or other assets forming part of the Central Fund, or forming part of other funds or property of the Society, may be put in trust, charged, appropriated or set apart, conditionally or otherwise, with a view to their application under paragraph 7 or 8.
- (2) Without prejudice to the generality of sub-paragraph (1), where at any time the general insurance business assets of a member of the Society are less than the required amount calculated under LLD 11.2.6R or the long term insurance business assets of a member of the Society are less than the required amount calculated under LLD 11.2.7R the Council may direct that monies or other assets in the Central Fund or any other monies or assets of the Society be put in trust, charged, appropriated or set apart, conditionally or otherwise (whether separately or part of monies or assets so dealt with in respect of more than one member), with a view to their application out of the Central Fund or, as the case may be, out of the other fund or property of the Society in question, for any of the purposes mentioned in paragraph 7(a) to (d) or paragraph 8(a) to (d) respectively.
- (3) In this paragraph references to a "member of the Society" shall be taken to refer also to former members and the estates of deceased members.
- (4) In this paragraph "general insurance business assets", "long term insurance business assets" and "required amount" have the same meanings as in LLD 11.2.1R.

9. Council discretion in administration of Central Fund
 - (1) No policyholder or any other person shall have any right to payment from the Central Fund or to any account of the management, investment or application of the assets comprised in the Central Fund.
 - (2) The decision of the Council on all matters as respects the Central Fund shall be final.

10. Liability of members of the Society in respect of payments made under this Byelaw
 - (1) Where
 - (a) monies out of the Central Fund (or any part thereof put in trust, charged, appropriated or set apart, conditionally or otherwise, with a view to such application) have been applied in any of the circumstances mentioned in paragraph 7(a) to (d); or
 - (b) monies out of the funds or property of the Society other than the Central Fund have been applied in any of the circumstances mentioned in paragraph 8 any member of the Society in respect of, on account of or for the benefit of whom such monies have been so applied shall on demand pay forthwith to the Society any amounts not exceeding any sums so applied in respect of, on account of or for the benefit of that particular member of the Society, together with (if so demanded) interest thereon at the rate prescribed from time to time as applicable to judgment debts from the date of such application to the date of payment, and the Society may bring proceedings to recover the same as a civil debt.
 - (2) The rights and liabilities conferred or created by this byelaw shall subsist notwithstanding that the member of the Society in respect of, or on account of or for the benefit of whom monies have been applied as aforesaid has ceased to be a member of the Society by reason of resignation, death or otherwise.

- 10A. Liability of members in respect of appropriation of assets for solvency test
 - (1) Where
 - (a) the Council has made a direction under paragraph 8A(2) in relation to a member of the Society; and
 - (b) it appears likely that but for the exercise of powers under this paragraph monies or assets put in trust, charged, appropriated or set aside pursuant to that direction would be likely to be applied under paragraph 7 or 8 for any one or more of the

purposes mentioned in paragraph 7(a) to (d) or paragraph 8(a) to (d) respectively in relation to that member, the Council may by written notice served on him or his underwriting agent require that member to pay to the Society within 28 days after the date of service of the notice a sum specified in the notice not exceeding the value of monies or assets which it appears would otherwise be likely to be applied in relation to that member.

- (2) Any monies paid to the Society by a member under sub-paragraph (1) (together with any interest thereon but excluding any legal costs recovered by the Society) shall be held by the Society in a separate interest-bearing account of the Society pending application under sub-paragraph (3), transfer under sub-paragraph (4) or return to that member under sub-paragraph (5) or (6).
- (3) Any monies held by the Society in an interest-bearing account pursuant to sub-paragraph (2) may, together with any interest earned thereon, be applied by the Society in relation to that member for any purpose specified in paragraph 7(a) to (d) in the case of a direction in relation to the Central Fund, or specified in paragraph 8(a) to (d) in the case of a direction in relation to other assets of the Society.
- (4) Where monies or other assets forming part of the Central Fund, or of any other funds or property of the Society (including any part thereof put in trust, charged, appropriated or set apart, conditionally or otherwise with a view to such application), have been applied for any of the purposes mentioned in paragraph 7(a) to (d) or 8(a) to (d) in relation to a member of the Society, any amount subsequently received by the Society from that member under sub-paragraph (1) of this paragraph, together with any interest (if any) thereon, shall be treated as having been paid in diminution or extinction, as the case may be, of the liability of that member under paragraph 10 and shall be transferred to the Central Fund (in a case where monies or assets have been applied out of the Central Fund) or to such other fund or account of the Society as the Council thinks fit (in a case where monies or assets have been applied out of other funds or property of the Society) save to the extent that the amount received exceeds the liability of the member under paragraph 10, in which case any such surplus shall be held in a separate interest-bearing account of the Society in accordance with sub-paragraph (2).
- (5) Subject to sub-paragraph (6), where it appears that for any reason the amount received by the Society from a member under sub-paragraph (1) of this paragraph, together with any interest earned thereon, exceeds the sum that is likely to be required by the Society be applied pursuant to sub-paragraph (3) for any purpose specified in paragraph 7(a) to (d) or 8(a) to (d) or to be transferred pursuant to sub-paragraph (4) of this paragraph, the Council may direct that there shall be repaid forthwith to the member such surplus together with any interest earned thereon from the date of receipt to the date of repayment.

(6) Where

- (a) the Council has made a direction under paragraph 8A(2) in relation to a member;
- (b) the Society has received an amount from that member under sub-paragraph (1);
and
- (c) it appears from accounts prepared by or on behalf of the Society for the preparation of the Lloyd's Return in a subsequent year that the amount for the time being held in respect of that member in an interest bearing account under sub-paragraph (2) exceeds the amount for the time being likely to be required by the Society to be applied pursuant to sub-paragraph (3) or transferred to the Central Fund or other fund or account of the Society under sub-paragraph (4),

such surplus, together with interest (if any) earned thereon from the date of receipt to the date of repayment, shall be repaid to that member forthwith after the Lloyd's Return is provided to the Financial Services Authority pursuant to LLD 15.2.R.

- (7) The Council may at any time agree to reduce or waive any amount required by the Society or owed by a member to the Society under this paragraph.
- (8) In this paragraph references to a "member" shall be taken to refer also to any person, or to the estate of any person, who has been a member at any time on or after 8 December 1988 (the date when this paragraph, as originally made, came into force), notwithstanding that that person is no longer a member at the time when any provision of this paragraph falls to be applied.

11. Revocation of Byelaw

Byelaw No. 2 of 1985 (Recovery of Monies paid out of Lloyd's Central Fund or the Funds and Property of the Society) is revoked.

12. Commencement

This byelaw shall come into force on 15th July 1986.

Schedule – Interpretation

In this byelaw, unless the context otherwise requires:

“Central Fund” means the fund held, managed and applied by the Society pursuant to paragraph 2;

“members’ agent” means an underwriting agent which is listed as a members’ agent on the register of underwriting agents maintained under the Underwriting Agents Byelaw (No. 4 of 1984).