

# THE LLOYD'S ARBITRATION SCHEME (MEMBERS AND UNDERWRITING AGENTS ARBITRATION SCHEME) BYELAW

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## Commencement

This byelaw commenced on 7 October 1992.

## Amendments

This byelaw was amended by

Lloyd's Arbitration Scheme (Members and Underwriting Agents Arbitration Scheme)  
(Amendment) Byelaw (No. 10 of 1996)  
Individual Registration Byelaw (No. 13 of 1996)  
Intermediary Amendment Byelaw (No. 10 of 2000)  
Annual Subscribers Byelaw (No. 15 of 2000)  
Amendment Byelaw (No. 9 of 2001)

## Explanatory Note

(This note is not part of the byelaw.)

This byelaw requires the Council to establish two administered schemes, the Tier 1 and the Tier 2 schemes, for the arbitration of disputes between Names and/or underwriting agents. It also empowers the Council to make, by special resolution, Rules for each scheme. Rules for both schemes were made by the Council on 7th October 1992.

The byelaw further provides for the appointment by the Council of a panel of arbitrators for each scheme. Members of the panel for the Tier 1 scheme must be lawyers qualified in England and Wales for not less than 5 years. The Tier 2 panel must include lawyers of not less than 10 years standing but may also have other persons as members. The Council is also required to appoint the Regulatory Board of Lloyd's to administer the schemes.

By virtue of the Agency Agreements (Amendment No. 3) Byelaw (No. 4 of 1992) made in April 1992, arbitrations under the standard agency agreements attached to the Agency Agreements Byelaw (No. 8

of 1988) must be conducted under the schemes established by this byelaw with effect from 1st January 1993.

The Modified Arbitration Procedure Byelaw (No. 14 of 1987) is revoked with effect from 1st January 1993 although arbitrations already commenced before that date under the Modified Arbitration Procedure Rules will continue to be governed by those Rules. After 1st January 1993 a dispute which would have qualified for arbitration under the Modified Arbitration Procedure Rules must be brought under the Rules of the Tier 1 scheme.

The Council of Lloyd's in exercise of its powers under section 6(2) of, and paragraphs (15), (24), (36) and (37) of Schedule 2 to, Lloyd's Act 1982 by special resolution hereby makes the following byelaw.

1. The Members and Underwriting Agents Arbitration Scheme
  - (1) The Council shall as part of a scheme to be known as the Lloyd's Arbitration Scheme establish and maintain forms of arbitration called the Members and Underwriting Agents Tier 1 and Tier 2 Arbitration Schemes for the arbitration of certain disputes between members of the Society and/or their underwriting agents, and in certain circumstances other persons.
  - (2) The Council may from time to time by special resolution make rules for the Members and Underwriting Agents Tier 1 and Tier 2 Arbitration Schemes, which shall be called the Tier 1 Arbitration Rules and the Tier 2 Arbitration Rules respectively.
  - (3) Rules made pursuant to sub-paragraph (2) above may inter alia include provisions for determining to which of the Members and Underwriting Agents Tier 1 and Tier 2 Arbitration Schemes disputes shall be referred or transferred.
2. Appointment of Panels
  - (1) The Council shall appoint individuals to be members of the Tier 1 and Tier 2 Arbitration Scheme Panels of Arbitrators in accordance with the provisions of this paragraph.
  - (2) Individuals appointed to the Tier 1 Arbitration Scheme Panel of Arbitrators shall be or shall have been either practising barristers or solicitors of not less than five years standing in England and Wales or persons who hold or have held judicial office in England and Wales.
  - (3) Individuals appointed to the Tier 2 Arbitration Scheme Panel of Arbitrators shall be or shall have been either practising barristers or solicitors of not less than ten years standing or persons who hold or have held judicial office or other suitable persons.
  - (4) Each Arbitration Scheme Panel Member shall be appointed for such periods and on such terms as to remuneration, reimbursement of expenses and otherwise as the Council shall determine and any appointment may be renewed or terminated at any time at the discretion of the Council.
  - (5) An individual who has ceased to be a member of the Tier 1 or the Tier 2 Arbitration Scheme Panel of Arbitrators may continue to act as an arbitrator in an arbitration which commenced before he ceased to be a member of the Arbitration Scheme Panel of Arbitrators.

3. Appointment of Administrator

- (1) The Council shall appoint the Regulatory Board of Lloyd's to be the Administrator of the Tier 1 and Tier 2 Arbitration Schemes.
- (2) The Administrator may delegate any of its powers or duties to one or more individuals specified by it.

4. Commencement and Application

- (1) This byelaw shall come into force on 7th October 1992.
- (2) The Modified Arbitration Procedure Byelaw (No. 14 of 1987) is revoked with effect from 1st January 1993.
- (3) Subject to sub-paragraph (4) below, the Modified Arbitration Procedure Rules are revoked with effect from 1st January 1993.
- (4) The Modified Arbitration Procedure Rules shall continue to apply to arbitrations in respect of which a request for arbitration under the Modified Arbitration Procedure Rules has been received by the Deputy Chairman and Chief Executive of the Society or the Head of Regulatory Services of the Society by 31st December 1992.
- (5) Subject to sub-paragraph (4) above, as from 1st January 1993 any reference in any agreement (whether made before on or after that date) to the Modified Arbitration Procedure shall be construed as a reference to the Members and Underwriting Agents Tier 1 Arbitration Scheme.
- (6) On and after 1st January 1993 any request for arbitration which could prior to that date have been made under the Modified Arbitration Procedure Rules shall be made under the Tier 1 Arbitration Rules.
- (7) Nothing in paragraph 22(a) of the Standard Agency Agreement in Schedule 1 to the Agency Agreements Byelaw (No. 1 of 1985) shall prevent a dispute being arbitrated under the Members and Underwriting Agents Tier 1 Arbitration Scheme or in an appropriate case being transferred to Tier 2.
- (8) The Tier 1 or, as the case may be, Tier 2 Arbitration Rules applicable to any arbitration shall be the Rules as in force at the date on which the first relevant request for arbitration is received by the Administrator.

(9) In this paragraph, “Modified Arbitration Procedure Rules” means any rules made under the Modified Arbitration Procedure Byelaw (No. 14 of 1987).

5. Disputes Relating to 1992 and Earlier Years of Account

(1) Subject to sub-paragraph (2) and (3), no dispute shall, to the extent that it relates to the 1992 years of account or any earlier year of account, be referable to arbitration under the Tier 1 or Tier 2 Arbitration Schemes after 3 April 1996; and, accordingly, no request for arbitration under either scheme shall be made after that date.

(2) Sub-paragraph (1) shall expire on 31 December 1996, or such sooner date as the Council may specify, if Equitas Reinsurance Limited has not before that date unconditionally reinsured members of Lloyd’s in respect of such liabilities allocated to 1992 or earlier years of account as the Council shall require under the Reconstruction and Renewal Byelaw (No. 22 of 1995).

(3) Sub-paragraph (1) does not apply to any dispute referred to arbitration under the Tier 1 Arbitration Scheme or the Tier 2 Arbitration Scheme by means of a request received by the Administrator before 4 April 1996.

## Tier 1 Arbitration Scheme Rules (1992)

Pursuant to its powers under paragraph 1 of the Lloyd's Arbitration Scheme (Members and Underwriting Agents Arbitration Scheme) Byelaw (No. 15 of 1992) the Council by special resolution hereby makes the following Tier 1 Arbitration Rules.

These Rules shall apply to every application for arbitration under the Tier 1 Arbitration Scheme received on or after 1st January 1993 by the Administrator of the Tier 1 Arbitration Scheme ("the Administrator") being a person or body appointed from time to time by the Council of Lloyd's or a person authorised by the Council to make such appointment.

### Introduction

- 1(1) These Rules provide a method of resolving disputes arising between any member of the Society ("the member", which expression shall where appropriate include assigns or personal representatives) as Claimant and his members' agent or his managing agent or his coordinating agent or any substitute agent ("the agent") where the sum (if any) claimed by the member does not exceed £100,000 or the claim is transferred from the Tier 2 Arbitration Scheme.
- 1(2) The Arbitration Rules applicable to any arbitration shall be the Rules in force at the date on which the first relevant request for arbitration is received by the Administrator.
- 1(3) For the purposes of rule 1(1) the expression "any member of the Society" shall be deemed to include -
  - (a) an individual who was at any time after 30 November 2001 but no longer is a member of the Society;
  - (b) a person or a Scottish limited partnership which was at any time after 30 November 2001 but no longer is a quasi-individual member.
2. The member but not the agent shall have the right to seek a reference under the Tier 1 Arbitration Scheme as respects any dispute of the kind mentioned in Rule 1.

## Procedure

### Commencement

- 3(1) Where the member wishes to commence an arbitration under these Rules he shall send to the Administrator a written request for arbitration under these Rules (“the Request”) which shall include:
- (a) the names and addresses of the intended parties to the arbitration, which addresses shall be the addresses for the service of documents, unless a party notifies a different address to the Administrator and other parties;
  - (b) a statement setting out the amounts claimed (if any) and describing the nature of the claim or claims;
  - (c) if possible the name of a proposed sole arbitrator from the Tier 1 Arbitration Scheme Panel of Arbitrators (such panel being approved by the Council) (the “Tier 1 Panel”) agreed by all parties to the arbitration, provided that the member has ascertained from the proposed arbitrator that he is willing and able to conduct the reference without undue delay and has no prior material involvement with the parties or the dispute; and
  - (d) copies of all relevant documents in the possession of the member, except documents which do not have to be disclosed in legal proceedings.
- 3(2) With the Request the member shall send to the Administrator a statement that to the best of his knowledge and belief the Society does not have any interest in the dispute and his claim does not involve any claim against the Society or, if the Society has an interest or the claim does involve any claim against the Society, a statement of the nature of such interest or claim.
- 3(3) If it appears to the Administrator that the statement referred to in Rule 3(1)(b) is not sufficiently precise the Administrator shall require the member to provide a further statement or statements before the Administrator takes any further steps with regard to the Request; and “the Request” shall hereafter in these Rules be taken to include any further statement required under this Rule in addition to the statement referred to in Rule 3(1)(b).
4. If any party contends that the Society has a material interest in the result of the dispute (in consequence of an allegation made by or against the Society or otherwise) the functions of the Administrator and any Council or Committee member or officer or employee of the Society under these Rules in relation to the dispute shall prior to the

appointment of the Arbitrator be performed by the Chartered Institute of Arbitrators and after the appointment of the Arbitrator be performed under Rules 7(4), 25(1) or 25(2) by the Chartered Institute of Arbitrators and otherwise by the Arbitrator or as the Arbitrator shall direct. The Arbitrator may direct that the Society has no material interest and that the arbitration should proceed accordingly.

5. The Administrator shall if satisfied that the Request accords with these Rules
  - (1) inform the member that the Request is accepted;
  - (2) inform the agent that the Request has been accepted and send to the agent a copy of it as soon as practicable;
  - (3) obtain a declaration from the agent, which the agent shall be obliged to give in the following terms within 5 working days of receipt of a copy of the Request:
    - (a) notifying any similar claims which have been made against the agent;
    - (b) undertaking to notify any further similar claims made against the agent prior to the issue of the Award;
  - (4) unless in exceptional circumstances the Administrator considers it inappropriate to do so inform the parties of any other disputes known to the Administrator which might appropriately be determined in conjunction with the dispute between the parties.
- 6(1) A member, upon submission by him of the Request, and the agent upon notification to him by the Administrator of the Request, shall be under a continuing obligation to preserve all documentation and other material which may be relevant to the Request and to keep confidential any information (including but not restricted to any document, report or award) received as a result of the arbitration and to which confidentiality attaches.
- 6(2) The Administrator may disclose
  - (a) the existence of the arbitration to other members or agents involved with similar claims;
  - (b) the Award (and the reasons) to other arbitrators under the Lloyd's Arbitration Scheme;
  - (c) a summary of the reasons for the Award in any manner deemed fit by the Administrator;
  - (d) such details as the Administrator deems appropriate in reports on this arbitration scheme made from time to time.



## Appointment of Arbitrator

- 7(1) Upon being advised by the Administrator that the Request has been accepted the parties shall (if they have not already done so) jointly appoint a sole arbitrator from the Tier 1 Panel. If the parties fail to agree on an arbitrator within 15 working days of the receipt of the notification of such acceptance they shall so inform the Administrator and the Administrator shall appoint the arbitrator from the Panel and notify the parties accordingly.
- 7(2) On or before the appointment of the Arbitrator the Administrator shall obtain the Arbitrator's or proposed Arbitrator's confirmation that he is ready willing and able to conduct the reference without undue delay and has no prior material involvement with the parties or the dispute.
- 7(3) As soon as possible after the appointment of the Arbitrator the Administrator shall inform the Arbitrator of any other relevant disputes or awards of which the Administrator is or becomes aware.
- 7(4) The Arbitrator will normally be appointed in accordance with the terms of appointment contained in the Schedule to these Rules, but the Administrator shall be entitled to vary these terms as the Administrator considers appropriate in any particular case.

## Preliminary consideration and hearings

8. The Arbitrator shall consider the Request and accompanying documents as soon as possible and shall when appropriate (as often as appropriate and before or after receipt of the Response referred to in Rule 10(1)) indicate to the parties:
  - (1) if he considers that the arbitration relates to more than one dispute (including any dispute in respect of a counterclaim by the agent) between the same or different parties and that it ought to be considered whether or not all of the disputes can or ought to be determined in the arbitration;
  - (2) if it appears to him that transfer of the claim to Tier 2 should be considered, and if so why, having regard to
    - (a) the amount at stake;
    - (b) whether the dispute is otherwise important and, in particular, whether it raises questions of importance to persons who are not parties or a question of general interest, on the basis of information provided by the Administrator;

- (c) the complexity of the dispute;
  - (d) the existence of related disputes including any counterclaim;
  - (e) any expressed wishes of the parties;
  - (f) the type of agent involved in the dispute;
  - (g) any other matters which the Arbitrator considers relevant;
- (3) if he considers that any other dispute might appropriately be determined in conjunction with the dispute between the parties;
- (4) what further documents should be produced by whom and when;
- (5) what clarification is required from whom and when.
- 9(1) If it appears to the Arbitrator that consideration should be given to the matters referred to in Rule 8(1) to (3) above, he shall immediately convene a hearing for the purpose of determining whether:
- (a) one or more of several disputes should not be determined in the arbitration;
  - (b) any claim should be transferred to Tier 2;
  - (c) with the agreement of any other arbitrator concerned the claim should be determined together with other appropriate claims between the same or different parties and if so establishing the procedure for such determination.
- 9(2) If there is a counterclaim for more than £100,000 the arbitration shall not be transferred for that reason to Tier 2 without the agreement of the member, but if the member does not agree to transfer to Tier 2, the Arbitrator may if appropriate make an award in favour of the agent in excess of £100,000.
- 9(3) Unless the Arbitrator determines otherwise, hearings shall take place in English in London.

#### Response and Reply

- 10(1) The agent may within 20 working days after the date of receipt by him from the Administrator of the Request send to the Administrator a written Response to the Request and if appropriate to any indication from the Arbitrator under Rule 8 (“the Response”) accompanied by any relevant documents in the possession of the agent not sent with the Request, except documents which do not have to be disclosed in legal proceedings. If he does so he shall send copies to the member and to the Arbitrator. The Response shall further state the names of any further parties against whom the agent wishes to pursue a related claim who have agreed that such claim shall be determined in

the arbitration and set out the nature of such claim.

10(2) The agent may in the Response make a counterclaim against the member.

10(3) Subject to Rule 19, if the agent does not send a Response within the time prescribed in Rule 10(1) he will be deemed to have waived the right to do so and the Arbitrator shall proceed accordingly.

10(4) Upon receipt of the Response, the member may within 15 working days after the date of receipt make further comments (“the Reply”) which shall be limited to points arising from the Response or any indications from the Arbitrator under Rule 8. If he does so he shall send copies to the Administrator, the agent and to the Arbitrator.

Further consideration and hearings

11(1) Unless the Arbitrator considers it to be unnecessary and even in such case if all the parties so request, the Arbitrator shall as soon as appropriate after receipt of the Reply or expiry of the time for Response or Reply request the Administrator to arrange a hearing at or following which the Arbitrator may:

- (a) decide upon any claim or counterclaim or some of the issues arising;
- (b) formulate any issues of fact to be investigated under Rule 13;
- (c) determine whether any further written comments are appropriate from whom and by when;
- (d) otherwise decide how the reference should proceed.

11(2) If the Arbitrator considers it appropriate the Arbitrator may exercise the powers under this Rule without a hearing, except (if the agent has served a Response) that in paragraph 11(1)(a).

12(1) Subject to any agreement to the contrary between all parties, the Arbitrator shall not be bound by any formal rule of evidence or procedure and shall endeavour to decide the claim or any individual issue on the documents before him, including any factual report, at any appropriate time.

12(2) The Arbitrator may, if he considers it appropriate, or if all parties so request, hear the evidence of any witness which any party may wish to call. The Arbitrator may also require before a hearing the exchange of witnesses’ statements and of experts’ reports on terms determined by the Arbitrator. In the event of a party being allowed to call a witness, the other party shall be notified by the Arbitrator accordingly and shall have

the right to attend, examine the witness and comment on the evidence given.

- 12(3) If it appears to the Arbitrator that any member, officer, or employee of the Society, any underwriting agent, any director, partner or employee of a Lloyd's broker or an underwriting agent, any annual subscriber or, any registered individual, has or may have knowledge or information relevant to any claim, or has or may have in his or its possession, custody, power or control documents or other material relevant thereto (including information, documents or other material relating to the affairs of principals and clients of Lloyd's brokers, underwriting agents or other persons), the Arbitrator may require him or it (in the case of a Lloyd's broker or an underwriting agent, by a director, partner or officer thereof) to attend before the Arbitrator to give oral evidence, to answer questions, to produce or make available such documents or other material and to permit copies thereof to be made. In the event of such request to attend all parties shall be notified by the Arbitrator accordingly and shall have the right to attend and comment on the evidence given or documents produced.
- 12(4) The Arbitrator may if he considers it necessary obtain the opinion of an expert, who shall if appropriate be an employee of the Society, on any question arising in the arbitration.
- 12(5) The Arbitrator shall at the earliest possible stage of the arbitration consider relevant awards already issued, but shall not rely on any award without previously communicating the substance of any part of the award relied on to the parties, or in exceptional circumstances without informing the parties why it is inappropriate to do so in order to preserve confidentiality or otherwise.
13. Unless the Arbitrator decides that it is unnecessary, employees of the Society and any professional advisers or experts employed by them ("the staff") shall, as soon as possible following a request from the Arbitrator to the Administrator, prepare a draft report setting out the facts relevant to the issues in dispute as determined by the Arbitrator. For this purpose the parties shall render the staff all assistance and facilities for the preparation of the report including making available such documentation or other material (except documents which do not have to be disclosed in legal proceedings) as the staff shall request and giving the staff reasonable opportunity to interview any witnesses upon whom any party wishes to rely.
14. The staff may apply to the Arbitrator for guidance at any time. Any guidance given shall (unless the Arbitrator in exceptional circumstances indicates otherwise) be noted in the appropriate report.
15. Upon receipt from the staff of the draft report referred to in Rule 15, the Administrator shall send copies to the Arbitrator and to the parties. The parties may comment thereon

within 15 working days after the date of receipt (or, in the case of a member principally resident outside the United Kingdom, such longer period as the Arbitrator shall in his discretion think fit). The Administrator shall send a copy of any comments received under this Rule to the Arbitrator and any other party.

16. After the expiry of the period referred to in Rule 15 the staff shall prepare a final report which when completed they shall send to the Administrator and the Administrator shall forward a copy to the Arbitrator and the parties. Any findings of fact made by the staff in the final report shall be prima facie evidence of the facts so found. Where a finding of fact is made by the staff on a material matter in dispute between the parties the report shall set down in full the arguments of all parties on that matter and the reason or reasons for the finding. Where the staff are unable to make a finding of fact on a material matter this shall be stated in the report.
17. Within 10 working days after receiving the final report referred to in Rule 16 the parties shall submit any comments thereon or on the future course of the arbitration to the Arbitrator, who shall as soon as possible after such period proceed with the arbitration as determined under Rule 11(1) or if no determination has been made, as he deems appropriate.
18. The Arbitrator may request the Administrator to direct the staff to prepare a supplemental report setting out on the basis referred to in Rules 13 to 17 further facts relevant to the issues in dispute. The Administrator shall send copies of any such supplemental report to the parties. The parties shall have a period of 10 working days from the date of receipt of the supplemental report in which to make comments thereon. On expiry of that period the Administrator shall send the supplemental report and any comments made by the parties to the Arbitrator.

#### Discretion of the Arbitrator

19. Subject to any procedural matters agreed by the parties or contained in these Rules, the Arbitrator shall have the widest discretion allowed by law to ensure the just, expeditious, economical and final determination of the dispute and to determine the procedure of the Arbitration as he deems fit including
  - (1) to convene a hearing whenever he deems it appropriate;
  - (2) in appropriate circumstances to extend any time limit under these Rules;
  - (3) to adjourn the arbitration at the request of any party or of his own motion.

## Legal Representation

20(1) If the claim is for £50,000 or less, no legally qualified representative shall attend any hearing unless either

- (a) the member gives notice to the contrary not less than 3 working days prior to the hearing, which notice shall apply to any subsequent hearing or
- (b) the Arbitrator decides otherwise.

20(2) If the agent wishes to be represented by a person having any legal qualification, the agent shall give notice of the name of the person and the nature of the qualification not less than 3 working days prior to the hearing, which notice shall apply to any subsequent hearing. The Arbitrator shall decide as soon as possible whether to allow such representation and on what conditions.

Otherwise nothing in these Rules shall prevent either party from having legal representation.

## Award

21(1) The Arbitrator shall as soon as reasonably possible make and sign the Award in England and send the Award to the parties and to the Administrator and he shall set out the reasons for his decision in his Award, together with a summary of such reasons for possible publication.

21(2) Within 10 working days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Arbitrator request the Arbitrator to correct in the Award any errors in computation, any clerical or typographical errors or any errors of a similar nature. If the Arbitrator considers the request to be justified, he shall make the corrections in England within 10 working days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

21(3) The Arbitrator may correct any error of the type referred to in Rule 21(2) on his own initiative in England within 10 working days of the date of the Award. Any such correction shall be notified in writing to the parties and shall become part of the Award.

21(4) The Award shall be final and binding on all parties.

## Costs and Security

- 22(1) Save in the circumstances set out in paragraph 2 of this Rule each party shall bear his own costs, and the Arbitrator's fees and expenses and all other costs and expenses shall be borne by the Society as part of the administrative expenses of the procedure.
- 22(2) If the Arbitrator considers one party to have acted unreasonably either in bringing the claim or in defending the same or in making or defending a counterclaim or in conducting the proceedings he may direct that such party bear a part or all of the costs of the other or a part or all of the Arbitrator's fees and expenses or any other costs or expenses or make one or several interim or final payments on account of the costs of the arbitration or provide security by way of deposit or bank guarantee or in any other manner the Arbitrator thinks fit for the legal or other costs of any other party or for all or part of any amount in dispute in the arbitration or for any interest or costs.
- 22(3) If an order under Rule 22(2) is not complied with, the Arbitrator may disregard claims or counterclaims or defences of the non-complying party, although he may proceed to determine upon claims or counterclaims or defences of complying parties.
- 22(4) By agreeing to arbitration under these Rules the parties shall be taken to have agreed to apply only to the Arbitrator, and not to any court of law or other judicial authority for an order under Rule 22(2).

## Interest

23. The Arbitrator has the discretion to award interest on any sum which is the subject of the reference but which is paid before the Award and on any sum he awards at such rate and for such period as he thinks fit.

## Delegation

24. The Administrator may delegate any of the Administrator's powers or duties under these Rules.

## Vacancy

- 25(1) If the Arbitrator should die, resign, withdraw, be disqualified or otherwise be unable or unwilling to act, the Administrator shall immediately notify the parties who shall thereupon jointly appoint a replacement Arbitrator from the Panel. If the parties cannot

agree upon such replacement within 10 working days of the receipt of the notification of the vacancy from the Administrator, they shall so inform the Administrator and the Administrator shall appoint an arbitrator from the Panel and notify the parties accordingly.

- 25(2) If the Arbitrator or any of the parties notifies the Administrator that, due to other commitments of the Arbitrator or otherwise, the Arbitrator is not able to proceed with the arbitration with reasonable expedition, the Administrator shall consult with the parties, if appropriate at a meeting convened for the purpose, and shall endeavour to agree with the parties what action, if any, should be taken. If the parties and the Administrator cannot agree as to what if any action should be taken, the Administrator shall decide what if any action is to be taken. The Administrator shall not at any time inform the Arbitrator that an application under this Rule has been made by a party. Rule 25(1) shall apply if it is decided that the Arbitrator should be replaced.

#### Governing Law

26. The arbitration shall be conducted and these Rules shall be governed by and construed in accordance with the laws of England, including the Arbitration Acts 1950 to 1979.

#### Limitation of actions

27. For the purposes of any limitation period the action shall be deemed to have been brought when the Request is sent to the Administrator pursuant to Rule 3.



## Schedule 1

### Terms of Appointment of Tier 1 Arbitrator

1. The Arbitrator understands that the purpose of the Tier 1 Arbitration Scheme is to determine disputes as quickly and economically as possible, and undertakes to conduct and conclude the arbitration in accordance with the Rules with this purpose in mind.
2. The Arbitrator undertakes to inform the Administrator and the parties if due to circumstances beyond his control or otherwise other commitments of the Arbitrator appear likely to cause substantial delay to the progress of the arbitration at any time, in which case Rule 25 may be applied.
3. The Arbitrator undertakes that if any papers or written submissions are submitted to him a reasonable time prior to any hearing, he will consider such documents prior to the hearing.
4. Fees and expenses as agreed between the Arbitrator and Lloyd's from time to time will be paid to the Arbitrator by Lloyd's.

## Tier 2 Arbitration Scheme Rules (1992)

Pursuant to its powers under paragraph 1 of the Lloyd's Arbitration Scheme (Members and Underwriting Agents Arbitration Scheme) Byelaw (No. 15 of 1992) the Council by special resolution hereby makes the following Tier 2 Arbitration Rules.

These Rules shall apply to every application for arbitration under the Tier 2 Arbitration Scheme received on or after 1st January 1993 by the Administrator of the Tier 2 Arbitration Scheme ("the Administrator") being a person or body appointed from time to time by the Council of Lloyd's or a person authorised by the Council to make such appointment.

### Introduction

- 1(1) These Rules provide a method of resolving disputes arising between any member or members of the Society ("the member" which expression shall where appropriate include assigns or personal representatives) and/or a members' agent or managing agent or coordinating agent or any substitute agent ("the agent") or any of them where the claim is made by the agent or the sum claimed by the member exceeds £100,000 or the dispute is transferred from the Tier 1 Arbitration Scheme or does not fall within the Tier 1 Arbitration Scheme.
- 1(2) The Arbitration Rules applicable to any arbitration shall be the Rules in force at the date on which the first relevant request for arbitration is received by the Administrator.
- 1(3) For the purposes of rule 1(1) the expression "any member of the Society" shall be deemed to include -
  - (a) an individual who was at any time after 30 November 2001 but no longer is a member of the Society;
  - (b) a person or a Scottish limited partnership which was at any time after 30 November 2001 but no longer is a quasi-individual member.
2. The member or the agent shall have the right to seek a reference under the Tier 2 Arbitration Scheme as respects any dispute of the kind mentioned in Rule 1.

### Procedure

### Commencement

- 3(1) Where the member or the agent (“the Claimant” which expression shall where appropriate include all claimants) wishes to commence an arbitration under these Rules he shall send to the Administrator a written request for arbitration under these Rules (“the Request”) which shall include:
- (a) the names and addresses of the Claimant and other intended parties to the arbitration (“the Respondents”), which addresses shall be the addresses for the service of documents, unless a party notifies a different address to the Administrator and other parties;
  - (b) a Statement of Case setting out the facts and the relief claimed in sufficient detail and a brief outline of any contentions of law on which he relies;
  - (c)
    - (i) the name of a proposed arbitrator resident in the European Community agreed by all Claimants; or
    - (ii) a proposed sole arbitrator resident in the European Community agreed by all parties to the arbitration, being on the Tier 2 Arbitration Scheme Panel of Arbitrators (the “Tier 2 Panel”) (such panel being approved by the Council) and a Judge or retired Judge appointed to sit in England or Wales or a barrister or solicitor qualified in England, provided in either case that the Claimant has ascertained from the proposed arbitrator that he is ready willing and able to conduct the reference without undue delay and has no prior material involvement with the parties or the dispute; or
    - (iii) a statement that all parties to the arbitration have agreed that there should be a sole arbitrator;
  - (d) copies of all relevant documents in the possession of the Claimant, except documents which do not have to be disclosed in legal proceedings.
- 3(2) With the Request the member shall send to the Administrator a statement that to the best of his knowledge and belief the Society does not have any interest in the dispute and his claim does not involve any claim against the Society or, if the Society has an interest or the claim does involve any claim against the Society, a statement of the nature of such interest or claim.
- 3(3) If it appears to the Administrator that the Statement referred to in Rule 3(1)(b) is not sufficiently precise the Administrator shall require the Claimant to provide a further statement or statements before the Administrator takes any further steps with regard to the Request; and “the Request” shall thereafter in these Rules be taken to include any further Statement required under this Rule in addition to the statement referred to in Rule 3(1)(b).

4. If any party contends that the Society has a material interest in the result of the dispute (in consequence of an allegation made by or against the Society or otherwise) the functions of the Administrator and any Council or Committee member or officer or employee of the Society under these Rules in relation to the dispute shall prior to the appointment of the Arbitrators be performed by the Chartered Institute of Arbitrators and after the appointment of the Arbitrators be performed under Rules 7(8), 26(1) or 26(2) by the Chartered Institute of Arbitrators and otherwise by the Arbitrators or as the Arbitrators shall direct. The Arbitrators may direct that the Society has no material interest and that the arbitration should proceed accordingly.
5. The Administrator shall if satisfied that the Request accords with these Rules
  - (1) inform the Claimant that the Request is accepted;
  - (2) inform all Respondents that the Request has been accepted and send to all Respondents a copy of it as soon as practicable;
  - (3) obtain a declaration from all Respondents, which all Respondents shall be obliged to give in the following terms within 5 working days of receipt of a copy of the Request:
    - (a) notifying any similar claims which have been made against any of them;
    - (b) undertaking to notify any further similar claims made against them prior to the issue of the Award;
  - (4) unless in exceptional circumstances the Administrator considers it inappropriate to do so inform the parties of any other disputes known to the Administrator which might appropriately be determined in conjunction with the dispute between the parties.
- 6(1) A Claimant, upon submission by him of the Request, and a Respondent upon notification to him by the Administrator of the Request, shall be under a continuing obligation to preserve all documentation and other material which may be relevant to the Request and to keep confidential any information (including but not restricted to any document, report or award) received as a result of the arbitration and to which confidentiality attaches.
- 6(2) The Administrator may disclose
  - (a) the existence of the arbitration to other members or agents involved with similar claims;
  - (b) the Award (and the reasons) to other arbitrators under the Lloyd's Arbitration Scheme;

- (c) a summary of the reasons for the Award in any manner deemed fit by the Administrator;
- (d) such details as the Administrator deems appropriate in reports on this arbitration scheme made from time to time.

#### Appointment of Arbitrators

- 7(1) Upon being notified by the Administrator that the Request has been accepted the parties may within 5 working days (if they have not already done so for Tier 2) jointly appoint a sole arbitrator resident in the European Community (being a Judge or retired Judge appointed to sit in England or Wales, or a barrister or solicitor qualified in England) on the Tier 2 panel or jointly invite the Administrator to do so.
- 7(2) Unless a sole arbitrator is appointed, the Respondents may together within 10 working days of the notification referred to in Rule 7(1) appoint one arbitrator resident in the European Community or request the Administrator to do so. If the Respondents do not appoint or request the appointment of an arbitrator within such period, the Arbitrator appointed by the Claimant shall be sole Arbitrator if a Judge or retired Judge appointed to sit in England or Wales, or a barrister or solicitor qualified in England, on the Tier 2 panel. If not, the Claimant shall be entitled to remove such Arbitrator and appoint as sole Arbitrator a Judge or retired Judge appointed to sit in England or Wales, or a barrister or solicitor qualified in England, on the Tier 2 panel and resident in the European Community.
- 7(3) If two Arbitrators are appointed, the Arbitrators thus appointed shall within 10 working days of the appointment by the Respondents appoint a Judge or retired Judge appointed to sit in England or Wales, or a barrister or solicitor qualified in England (who shall be resident in the European Community and on the Tier 2 panel or the Tier 1 arbitrator already appointed) as third arbitrator and Chairman.
- 7(4) If the arbitrators fail to agree on a Chairman within such period of 10 working days they shall so inform the Administrator and the Administrator shall appoint a Judge or retired Judge appointed to sit in England or Wales, or a barrister or solicitor qualified in England (who shall be resident in the European Community and on the Tier 2 panel or the Tier 1 arbitrator already appointed) as third arbitrator and Chairman and shall so notify the parties accordingly.
- 7(5) No-one shall be appointed as arbitrator unless resident in the European Community and the proposed arbitrator has confirmed that he is already willing and able to conduct the reference without undue delay and has no prior material involvement with the parties or

the dispute.

- 7(6) On or before the appointment of the Arbitrators the Administrator shall obtain the Arbitrators' or proposed Arbitrators' confirmation that they are ready willing and able to conduct the reference without undue delay and have no prior material involvement with the parties or the dispute.
- 7(7) As soon as possible after the appointment of the Arbitrators the Administrator shall inform the Arbitrators of any other relevant disputes or Awards of which the Administrator is or becomes aware.
- 7(8) The Arbitrators should normally be appointed in accordance with the terms of appointment contained in the Schedule to these Rules, but the parties shall be entitled to vary these terms as they consider appropriate in any particular case.

Preliminary consideration and hearings

8. The Arbitrators shall consider the Request and accompanying documents as soon as possible and shall when appropriate (as often as appropriate and before or after receipt of the Statement of Defence referred to in Rule 10(1)) indicate to the parties:
  - (1) if they consider that the arbitration relates or might relate to more than one dispute (including any dispute between any of the Respondents and any other party) between the same or different parties and that it ought to be considered whether or not all of the disputes ought to be determined in the arbitration;
  - (2) if it appears to them that transfer of the claim to Tier 1 should be considered, and if so why, having regard to
    - (a) the amount at stake;
    - (b) whether the dispute is otherwise important and, in particular, whether it raises questions of importance to persons who are not parties or a question of general interest, on the basis of information provided by the Administrator;
    - (c) the complexity of the dispute;
    - (d) the existence of related disputes;
    - (e) any expressed wishes of the parties;
    - (f) the type of agent involved in the dispute;
    - (g) any other matters which the Arbitrators consider relevant.
  - (3) if they consider that any other dispute might appropriately be determined in conjunction with the dispute between the parties;

- (4) what further documents should be produced by whom and when;
- (5) what clarification is required from whom and when.

9(1) If it appears to the Arbitrators that consideration should be given to the matters referred to in Rule 8(1) and 8(3) above, they shall immediately convene a hearing for the purpose of determining whether:

- (a) one or more of several disputes should not be determined in the arbitration;
- (b) any claim should be transferred to Tier 1;
- (c) with the agreement of any other arbitrator concerned the claim should be determined together with other appropriate claims between the same or different parties and if so establishing the procedure for such determination.

9(2) Unless the Arbitrators determine otherwise, hearings shall take place in English in London.

#### Statement of Defence and Reply

10(1) A Respondent may within 30 working days after the date of receipt by him of the Request from the Administrator send to the Arbitrators and the Claimant a Statement of Defence stating in sufficient detail which of the facts and claims and in outline which of the contentions of law in the Statement of Case he admits or denies, on what grounds, and on what other facts and (in outline) contentions of law he relies and if appropriate commenting on any indication from the Arbitrators under Rule 8. Any Counterclaim shall be submitted with the Statement of Defence setting out in sufficient detail the facts and the relief claimed and a brief outline of any contentions of law on which the Respondent relies. The Statement of Defence shall further state the names of any further parties against whom the Respondent wishes to pursue a related claim who have agreed that such claim shall be determined in the arbitration and set out the nature of such claim.

10(2) Subject to Rule 19(1), if the Respondent does not send a Statement of Defence within the time prescribed in Rule 10(1) he will be deemed to have waived the right to do so and the Arbitrators shall proceed accordingly.

10(3) Within 20 working days of receipt of the Statement of Defence, the Claimant may send to the Arbitrators and the Respondent a Statement of Reply which, where there is a Counterclaim that the Claimant wishes to defend, shall include a Defence to the Counterclaim.

10(4) If the Statement of Reply contains a Defence to Counterclaim, the Respondent may within a further 15 working days send to the Arbitrators and to the Claimant a Statement of Reply to the Defence to Counterclaim.

10(5) All Statements referred to in these Rules shall be accompanied by copies (or, if they are especially voluminous, lists) of all relevant documents in the possession of the party concerned and which have not previously been submitted by any party, except documents which do not have to be disclosed in legal proceedings.

10(6) Copies of all Statements referred to in these Rules shall be sent to the Administrator.

#### Further consideration and hearings

11(1) Unless the Arbitrators consider it to be unnecessary and even in such case if all of the parties so request, the Arbitrators shall as soon as appropriate after receipt of the last pleading under Rule 10 or expiry of the time for any further pleading request the Administrator to arrange a hearing at or following which the Arbitrators may:

- (a) decide upon any claim or counterclaim or some of the issues arising;
- (b) decide whether any issues of fact should be investigated under Rule 13, and if so formulate them;
- (c) determine whether any further written comments are appropriate from whom and by when;
- (d) otherwise decide how the reference should proceed.

11(2) If the Arbitrators consider it appropriate they may exercise the powers in this Rule without a hearing, except (if a Statement of Defence has been served) that in paragraph 11(1)(a).

12(1) Subject to any agreement to the contrary between all parties, the Arbitrators shall not be bound by any formal rule of evidence or procedure and shall endeavour to decide the claim or any individual issue on the documents before them, including any factual report, at any appropriate time.

12(2) The Arbitrators may, if they consider it appropriate, or if all parties so request, hear the evidence of any witness which any party may wish to call. The Arbitrators may also require before a hearing the exchange of witnesses' statements and of experts' reports on terms determined by the Arbitrator. In the event of a party being allowed to call a witness, the other party shall be notified by the Arbitrators accordingly and shall have the right to attend, examine the witness and comment on the evidence given.



- 12(3) If it appears to the Arbitrators that any member, officer, or employee of the Society, any underwriting agent, any director, partner or employee of a Lloyd's broker or an underwriting agent, or any annual subscriber, has or may have knowledge or information relevant to any claim, or has or may have in his or its possession, custody, power or control documents or other material relevant thereto (including information, documents or other material relating to the affairs of principals and clients of Lloyd's brokers, underwriting agents or other persons), the Arbitrators may require him or it (in the case of a Lloyd's broker or an underwriting agent, by a director, partner or officer thereof) to attend before the Arbitrators to give oral evidence, to answer questions, to produce or make available such documents or other material and to permit copies thereof to be made. In the event of such request to attend all parties shall be notified by the Arbitrators accordingly and shall have the right to attend and comment on the evidence given or documents produced.
- 12(4) The Arbitrators may if they consider it necessary obtain the opinion of an expert, who shall if appropriate be an employee of the Society, on any question arising in the arbitration.
- 12(5) The Arbitrators shall at the earliest possible stage of the arbitration consider relevant awards already issued, but shall not rely on any award without previously communicating the substance of any part of the award relied on to the parties, or in exceptional circumstances without informing the parties why it is inappropriate to do so in order to preserve confidentiality or otherwise.

#### Factual report

13. If the Arbitrators decide that the preparation of a factual report would contribute to the fair, expeditious and economical resolution of any dispute, employees of the Society and any professional advisers or experts employed by them ("the staff") shall, as soon as possible following a request from the Arbitrators to the Administrator, prepare a draft report setting out the facts relevant to the issues in dispute as determined by the Arbitrators. For this purpose the parties shall render that staff all assistance and facilities for the preparation of the report including making available such documentation or other material (except documents which do not have to be disclosed in legal proceedings) as the staff shall request and giving the staff reasonable opportunity to interview any witnesses upon whom any party wishes to rely. All parties shall be jointly and severally liable to pay to the Society the reasonable charges of the Society for the preparation of the report including all expenses incurred.
14. The staff may apply to the Arbitrators for guidance at any time. Any guidance given shall (unless the Arbitrators in exceptional circumstances indicate otherwise) be noted

in the appropriate report.

15. Upon receipt from the staff of the draft report referred to in Rule 13, the Administrator shall send copies to the Arbitrators and to the parties. The parties may comment thereon within 15 working days after the date of receipt (or, in the case of a member principally resident outside the United Kingdom, such longer period as the Arbitrators shall in their discretion think fit). The Administrator shall send a copy of any comments received under this Rule to the Arbitrators and any other party.
16. After the expiry of the period referred to in Rule 15, the staff shall prepare a final report which when completed they shall send to the Administrator and the Administrator shall forward a copy to the Arbitrators and the parties. Any findings of fact made by the staff in the final report shall be prima facie evidence of the facts so found. Where a finding of fact is made by the staff on a material matter in dispute between the parties the report shall set down in full the arguments of all parties on that matter and the reason or reasons for the finding. Where the staff are unable to make a finding of fact on a material matter this shall be stated in the report.
17. Within 10 working days after receiving the final report referred to in Rule 16 the parties shall submit any comments thereon or on the future course of the arbitration to the Arbitrators, who shall as soon as possible after such period proceed with the arbitration as determined under Rule 11(1) or if no determination has been made, as they deem appropriate.
18. The Arbitrators may request the Administrator to direct the staff to prepare a supplemental report setting out on the basis referred to in Rules 13 to 17 further facts relevant to the issues in dispute. The Administrator shall send copies of any such supplemental report to the parties. The parties shall have a period of 10 working days from the date of receipt of the supplemental report in which to make comments thereon. On expiry of that period the Administrator shall send the supplemental report and any comments made by the parties to the Arbitrators.

Discretion of the Arbitrators

- 19(1) Subject to any procedural matters agreed by the parties or contained in these Rules, the Arbitrators shall have the widest discretion allowed by law to ensure the just, expeditious, economical and final determination of the dispute and to determine the procedure of the Arbitration as they deem fit including
  - (a) to convene a hearing whenever they deem it appropriate;
  - (b) in appropriate circumstances to extend any time limit under these Rules;

(c) to adjourn the arbitration at the request of any party or of their own motion.

19(2) In the case of a three-member tribunal, the Chairman of the Arbitrators may make procedural rulings alone.

#### Legal Representation

20. Nothing in these Rules shall prevent any party from having legal representation.

#### Award

21(1) The Arbitrators shall as soon as reasonably possible make and sign the Award in England and send their Award to the parties and to the Administrator and they shall set out the reasons for their decision in their Award, together with a summary of such reasons for possible publication.

21(2) Within 10 working days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Arbitrators request the Arbitrators to correct in the Award any errors in computation, any clerical or typographical errors or any errors of a similar nature. If the Arbitrators consider the request to be justified, they shall make the corrections in England within 10 working days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

21(3) The Arbitrators may correct any error of the type referred to in Rule 21(2) on their own initiative in England within 10 working days of the date of the Award. Any such correction shall be notified in writing to the parties and shall become part of the Award.

21(4) The Award shall be final and binding on all parties.

#### Deposits and security

22(1) The Arbitrators may direct the parties, in such proportions as the Arbitrators think just, to make one or several interim or final payments on account of the costs of the arbitration.

22(2) The Arbitrators may order any party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner the

Arbitrators think fit.

22(3) By agreeing to arbitration under these Rules the parties shall be taken to have agreed to apply only to the Arbitrators, and not to any court of law or other judicial authority, for an order under Rule 22(1), or for an order for security for costs under Rule 22(2).

22(4) The Arbitrators may also order any party to provide security for all or part of any amount in dispute in the arbitration or for any interest or costs.

22(5) If orders under Rules 22(1), 22(2) and 22(4) are not complied with, the Arbitrators may disregard claims or counterclaims or defences of the non-complying party, although they may proceed to determine upon claims or counterclaims or defences of complying parties.

Costs

23(1) The Arbitrators shall specify in the Award the total amount of their fees and expenses, including the charges of the Secretary (if any). Unless the parties shall agree otherwise after the dispute has arisen, the Arbitrators shall determine the proportions in which the parties shall pay such fees and expenses, provided that the parties will be jointly and severally liable to the Arbitrators for payment of all such fees and expenses until they have been paid in full. If the Arbitrators have determined that all or any of their fees and expenses shall be paid by any party other than a party which has already paid them to the Arbitrators, the latter party shall have the right to recover the appropriate amount from the former.

23(2) The Arbitrators have power to order in their Award that all or a part of the legal or other costs of one party shall be paid by any other party. The Arbitrators also have power to tax these costs and may do so if requested by the parties.

23(3) If the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made, the parties shall be jointly and severally liable to pay to the Arbitrators their fees and expenses as determined by them together with the charges of the Secretary (if any).

Interest

24 The Arbitrators have the discretion to award interest on any sum which is the subject of the reference but which is paid before the Award and on any sum they award at such rate and for such period as they think fit.

#### Delegation

25. The Administrator may delegate any of the Administrator's powers or duties under these Rules.

#### Vacancy

- 26(1) If an Arbitrator should die, resign, withdraw, be disqualified or otherwise be unable or unwilling to act, the Administrator shall immediately notify the party or parties concerned in the appointment of such Arbitrator which party or parties shall thereupon appoint a replacement Arbitrator with the qualifications required of the Arbitrator being replaced. If the relevant parties cannot agree upon such replacement within 10 working days of the receipt of the notification of the vacancy from the Administrator, they shall so inform the Administrator and the Administrator shall appoint an appropriately qualified arbitrator and notify the parties accordingly.

- 26(2) If an Arbitrator or any of the parties notifies the Administrator that, due to other commitments of the Arbitrator or otherwise, the Arbitrator is not able to proceed with the arbitration with reasonable expedition, the Administrator shall consult with the parties, if appropriate at a meeting convened for the purpose, and shall endeavour to agree with the parties what action, if any, should be taken. If the parties and the Administrator cannot agree as to what if any action should be taken, the Administrator shall decide what if any action is to be taken. The Administrator shall not at any time inform any Arbitrator that an application under this Rule has been made by a party. Rule 26(1) shall apply if it is decided that the Arbitrator should be replaced.

#### Governing Law

27. The arbitration shall be conducted and these Rules shall be governed by and construed in accordance with the laws of England, including the Arbitration Acts 1950 to 1979.

#### Limitation of actions

28. For the purposes of any limitation period the action shall be deemed to have been brought when the Request is sent to the Administrator pursuant to Rule 3.

## Schedule 1

### Terms of Appointment of Tier 2 Arbitrator

1. The Arbitrator understands that the purpose of the Tier 2 arbitration scheme is to determine disputes as quickly and economically as possible, and undertakes to conduct and conclude the arbitration in accordance with the Rules with this purpose in mind.
2. The Arbitrator undertakes to inform the Administrator and the parties if due to circumstances beyond his control or otherwise other commitments of the Arbitrator appear likely to cause substantial delay to the progress of the arbitration at any time, in which case Rule 26 may be applied.
3. The Arbitrator undertakes that if any papers or written submissions are submitted to him a reasonable time prior to any hearing, he will consider such documents prior to the hearing.
4. All parties to the arbitration will be jointly and severally liable to pay to the Arbitrator fees and expenses in accordance with the Tier 2 scale established by Lloyd's for the time being in force.