

MEMBERS' COMPENSATION SCHEME BYELAW

Purpose

The purpose of this Byelaw is to establish the Members' Compensation Scheme, to provide the criteria and procedure for claims under the Members' Compensation Scheme and to establish the Members' Compensation Panel.

The Byelaw also revokes the Members' Compensation Scheme Byelaw (No. 15 of 1989)

Notes

These notes, the note setting out the purpose of this Byelaw and the part and paragraph headings are for guidance only and do not form part of the Byelaw.

Words and terms shown in italics have the meaning set out in the Definitions Byelaw save where specified in Schedule 1.

This Byelaw was made by the Council on 24 September 2008 in exercise of its powers under section 6(2) of, and paragraph (4) of Schedule 2 to, Lloyd's Act 1982 and may be referred to as the Members' Compensation Scheme Byelaw (No 3 of 2008)

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Part A - Establishment of the Members' Compensation Scheme

Interpretation

1. Subject to the provisions of Schedule 1 of this Byelaw (interpretation) the words and terms shown in italics have the meaning set out in the Definitions Byelaw (No. 7 of 2005)

Establishment of the Members' Compensation Scheme

2. The *Council* shall, in accordance with the provisions of this Byelaw, maintain and administer a scheme, to be known as the "Members' Compensation Scheme" ("*the scheme*"), for compensating *individual members* of the *Society* in respect of losses that satisfy the criteria as provided at paragraph 5 of this Byelaw.

The Members' Compensation Scheme Panel

3. The *Council* shall establish a Members' Compensation Scheme Panel (the "*Panel*") to administer and determine on its behalf any application for compensation made under the *scheme* and to exercise and perform such of the *Council's* powers and duties under the *scheme* and by such means as the *Council* may by special resolution determine
4. The *Panel* shall comprise not less than three individuals. The Chairman of the *Panel* shall be a *qualified lawyer* who is not a *member* of the *Society* or a member of *Council*. The other members of the *Panel* shall be nominated members of *Council*.

Part B - Eligibility for compensation

Eligibility for compensation

5. An *individual member* who makes an application under the scheme, (an “*applicant*”) shall be entitled to compensation if the *applicant* makes an application which establishes to the *Panel’s* satisfaction that –
 - (a) an *underwriting agent* is liable to the *applicant* in respect of:
 - (i). loss suffered by the *applicant* as a result of any fraud, dishonesty or want of probity on the part of the *underwriting agent* or any director or employee thereof in connection with the business carried on by that *underwriting agent*; or
 - (ii). failure to account for or render to the *applicant* moneys or other property received by the *underwriting agent* in the course of such business; and
 - (b) the *underwriting agent* is unable or unlikely to be able fully to meet that liability.
6. In order to make an application for compensation under this scheme, the *applicant* must provide the *Panel* with a judgment which establishes to the *Panel’s* satisfaction the matters set out in paragraphs 5(a)(i) or (ii) above unless in exceptional circumstances the *Panel* agrees in its discretion that it is appropriate for an application to be made without a *judgment*.
7. For the purposes of the *scheme* a failure by a trustee or trustees of a *premiums trust fund* appointed by an *underwriting agent* to account for or render to a *member* moneys or other property received by them which would give rise to a liability of the *underwriting agent* to the *member* shall be treated as a failure by that *underwriting agent* to account for or render to that *member* moneys or other property received by that *underwriting agent*.

Disqualification from eligibility

8. No *member* shall be entitled to compensation under the *scheme* to the extent that he has, in the opinion of the *Panel*, by his own negligent or wilful act or omission–

- (a) caused or materially contributed to any loss suffered by any *member* (including himself);or
- (b) caused or contributed to any breach of fiduciary duty owed by the *underwriting agent* to any *member* (including himself),

where that loss or breach of fiduciary duty is related to that *member's* application for compensation under the *scheme*.

Guidance

9. The *Council* may from time to time make and publish guidance, which the *Panel* shall take into account in operating this *scheme*, as to:
 - (a) the nature of a *judgment* that may be treated as satisfying the *Panel* as to the matters set out in paragraphs 5(a)(i) or (ii) above;
 - (b) the nature of exceptional circumstances that may cause the *Panel* to agree that it is appropriate for an application to be made without a *judgment*; and
 - (c) any other matters.

Part C – Procedure for making an application

Duty to inform Council of circumstances that may give rise to an application

10. *An individual member shall inform the Council as soon as he becomes aware of circumstances which may entitle him to claim compensation under the scheme.*

The application

11. An application for compensation under the *scheme* shall be made in writing to the *Council* and shall include such information or documents as may be relevant to the determination of the application including –
 - (a) a statement as to the amount of the liability of the *underwriting agent* to the *applicant*;
 - (b) information as to whether the *underwriting agent* is unable, or unlikely to be able, fully to meet that liability; and
 - (c) subject to paragraph 12 below, a copy of the *judgment* as required by paragraph 6 of this byelaw.
12. Where no relevant *judgment* has been obtained, the *applicant* shall state whether he intends to seek a *judgment* in support of his application. If the *applicant* wishes to request that the *Panel* considers whether to agree that it is appropriate for an application to be made without a *judgment* as required by paragraph 6 above he shall provide written representations to the *Panel* as to why exceptional circumstances exist that may cause the *Panel* to agree that it is appropriate for an application to be made without a *judgment* (a “*request for application without judgment*”).

Notification to other members

13. The *Panel* shall, as soon as reasonably practical after an application is made for compensation under the *scheme* which is based upon facts and matters which have not formed the basis of a previous or similar application, notify the *individual members* of the *Society* of that application. Notification may be given in such terms as the *Panel* thinks fit and may be given to *members* via their *members’ agents* or on the Lloyd’s website.

14. Any other application based upon substantially the same facts and matters shall be made within 6 months after the date of such notification under paragraph 13 of this byelaw or within such other time as the *Panel* may permit

Powers of the Panel

15. At any time the *Panel* may hold a preliminary hearing for such purposes as the *Panel* think fits including for the purpose of –
 - (a) giving directions or other orders; and
 - (b) where appropriate, either –
 - (i) considering whether there exist exceptional circumstances such that the *Panel* is satisfied that it is appropriate for an application to be made without a judgment pursuant to paragraph 6; or
 - (ii) ordering that the application is stayed pending the *applicant* obtaining a *judgment* or for any other reason.
16. The *Panel* may at any time require an *applicant* to provide such other information, documents or other materials or answer any questions as the *Panel* thinks fit.
17. The *Panel* may determine to consider the application or a *request for application without judgment* at the same time as any other applications or *requests for application without judgment*.

Part D – Determination of the application

Determination of the application by the Panel

18. Subject to any directions or other orders made by the *Panel*, the *Panel* shall determine the application and decide the entitlement of the *applicant* to compensation under the *scheme* and for that purpose determine, where necessary, in accordance with paragraph 20 of this Byelaw, the net liability of the *underwriting agent* in respect of which the *applicant* is entitled to compensation (the “*net liability*”).
19. A decision of the *Panel* that an *applicant* should be paid compensation is subject always to a decision of *Council*, made by special resolution, that the payment is in the interests of the *Society*.

Net liability

20. In determining the *net liability* the *Panel* shall take into account –
 - (a) either –
 - (i) the principal sum and interest awarded in the *judgment*; or
 - (ii) where a *request for application without judgment* is made and the *Panel* is satisfied that exceptional circumstances exist that cause it to agree that it is appropriate for an application to be made without a *judgment* as required by paragraph 6 above, the principal sum and any interest that the *Panel* is satisfied that a court or tribunal would have awarded if a *judgment* had been obtained;
 - (b) the *applicant's* rights in respect of the *underwriting agent's* liabilities to him;
 - (c) any compromise of those liabilities;
 - (d) any security available to the *applicant* in respect of those liabilities;
 - (e) any right of set-off available to the *applicant* or the *underwriting agent* in relation to those liabilities;
 - (f) the *applicant's* ability, if any, to recover in respect of the same loss or the same moneys or other property from any third party; and
 - (g) any other means whereby the *applicant* has, or has had, or might have, an opportunity of recovering in respect of the loss or the moneys or other property including any means of so recovering from the *underwriting agent*.

Amount of compensation payment

21. Subject to paragraphs 22 and 24 below, where the *Panel* decides that the *applicant* is entitled to compensation under the *scheme* the *net liability* of the *underwriting agent* in respect of which the *applicant* is entitled to compensation shall not exceed £75,000.
22. Notwithstanding paragraph 21 above, where an *applicant* has successfully obtained a *judgment* in accordance with paragraph 6 of this Byelaw the *Panel* shall permit that *applicant* to claim under the *scheme* any legal costs awarded by the Court or tribunal in favour of the *applicant* but which are unrecovered (“*unrecovered legal costs*”).
23. The *net liability* of the *underwriting agent* in respect of which the *applicant* is entitled to compensation, plus the *unrecovered legal costs* which may be awarded by the *Panel* pursuant to paragraph 22 above, together constitute the “*compensation payment*”. The *applicant* may not recover any sums under the *scheme*, including by way of costs or interest, other than the *compensation payment*.

Annual aggregate limit

24. The amount paid by way of *compensation payments* shall not exceed £50,000,000 in aggregate in relation to all applications for compensation under the *scheme* determined in a calendar year.
25. Where , but for paragraph 24 above, the *compensation payments* to which *members* would be entitled in respect of applications determined in a calendar year exceed £50,000,000 in aggregate the *compensation payment* payable to each such *member* shall be of an amount decided by the *Panel* to be fair and appropriate.

Payment of compensation

26. Where the *Panel* decides that the *applicant* is entitled to compensation under the *scheme* the *compensation payment* shall be paid by applying moneys or assets from the *New Central Fund* in accordance with paragraph 8(2)(d) of the *New Central Fund Byelaw* (No. 23 of 1996).
27. Where the *Panel* decides that the *applicant* is entitled to compensation under the *scheme* the *compensation payment* shall be paid within 28 days of the *Council* decision by special resolution, pursuant to paragraph 19 above, that the payment is in the interests of the *Society*.

Part E – Compensation Scheme levy

Ability to levy

28. The *Council* may, where it considers it appropriate or necessary, levy contributions from some or all *underwriting agents* and *underwriting members* of the *Society*, and in such proportions as it considers appropriate, to reimburse some or all of any payments made from the *New Central Fund* in accordance with paragraph 26 of this Byelaw.
29. Any levy imposed under paragraph 28 may only be imposed on
- (a) *managing agents* accepting risks on behalf of a *syndicate* for the year of account corresponding to the year that any payment is made from the *New Central Fund* under paragraph 26 of this Byelaw,
 - (b) *underwriting members* accepting risks for the year of account corresponding to the year that any payment is made from the *New Central Fund* under paragraph 26 of this Byelaw, and
 - (c) *members' agents* acting on behalf of *underwriting members* referred to in (b),

and may (as *Council* shall determine, but without prejudice to the full width of its discretion under paragraph 28) have reference to *managing agents'* respective aggregate *syndicate allocated capacities*, *members' agents'* respective aggregate allocated *overall premium limits* and *underwriting members'* allocated *overall premium limit*, for that year.

Collection of levy

30. The *Council* shall as soon as is practicable by written notice to every *underwriting agent* or *member* eligible to be levied pursuant to paragraph 29 above specify the sum required from that *underwriting agent* or *member* pursuant to paragraph 28 by way of contribution for the *compensation payment* and the notice shall state the date by which that amount is payable.

Part F - Miscellaneous

Rights of subrogation

31. Where compensation is paid to a *member* under the *scheme* the *Society* shall be subrogated, to the extent of the amount of the *compensation payment* paid to the *member*, to any rights and remedies of that *member* in relation to the loss or failure to account in respect of which it is paid, and shall be entitled, upon giving him a sufficient indemnity against costs, to require him to sue in his own name but on behalf of the *Society* for the purpose of giving effect to the *Society's* rights and to permit the *Society* to have the conduct of the proceedings.
32. The *Council* may require a *member* to whom compensation is paid under the *scheme* to sign an undertaking to prove or rank, if required, in the liquidation or bankruptcy (as the case may be) of the *underwriting agent* concerned, together with a further undertaking to comply with all proper requirements of the *Council* in exercise of subrogated rights under paragraph 31.
33. Sums recovered by the *Society* under paragraph 31 shall be applied to the *New Central Fund*.

Annual report

34. The *Council* shall report on the *scheme* each year in the Annual Report and Accounts of the *Society*.

Claims Relating to 1992 and Earlier Years of Account

35. No *member* shall be eligible for compensation under the *scheme* in respect of any liability to the extent that such liability relates to the 1992 year of account or any earlier year of account.

Revocation

36. The Members' Compensation Scheme Byelaw (No. 15 of 1989) is hereby revoked. save in respect of any application for compensation made under that byelaw prior to the date this Byelaw comes into force.

Commencement

37. This byelaw shall come into force on 25 September 2008.
38. Nothing in this Byelaw shall affect the validity of any decision taken or appointment made under the Members' Compensation Scheme Byelaw (No. 15 of 1989).

Schedule 1 - Interpretation

1. In this byelaw

“judgment” means a judgment from a court of law or an arbitral award which is not subject to appeal

2. In this byelaw

“*individual member*” means, -

- (a) a *member* of the *Society* who is an individual;
- (b) an individual who was at any time after 30 November 2001 but is no longer a *member* of the *Society*;
- (c) a *quasi-individual member*;
- (d) a *person* or a *Scottish limited partnership* which was at any time after 30 November 2001 but no longer is a *quasi-individual member*.