

# NEW CENTRAL FUND BYELAW

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## Commencement

This byelaw will come into force immediately after the Council declares that all Equitas reinsurance contracts have become wholly unconditional in accordance with their terms.

## Amendments

This byelaw was amended by

New Central Fund (Amendment) Byelaw (No. 27 of 1996)  
New Central Fund (Amendment No. 2) Byelaw (No. 35 of 1996)  
New Central Fund (Amendment No. 3) Byelaw (No. 22 of 1997)  
New Central Fund (Amendment No. 4) Byelaw (No. 32 of 1997)  
Amendment Byelaw (No. 9 of 2001)  
New Central Fund (Amendment No. 5) Byelaw (No. 5 of 2004)  
New Central Fund And Funds And Property of The Society (Miscellaneous Provisions) Byelaw (No. 2 of 2014)

## Explanatory Note

(This note is not part of the byelaw)

This byelaw provides for the establishment of a New Central Fund in succession to the Central Fund held under the Central Fund Byelaw (No. 4 of 1986).

Save in respect of liabilities of the Society existing at the time when the byelaw comes into force, or with the prior sanction of a resolution passed at a general meeting of members of the Society, the New Central Fund may not be used directly for the purpose of extinguishing or reducing liabilities which have been reinsured by Equitas Reinsurance Limited.

Underwriting members will be required to pay annual contributions to the fund and may be required to pay "callable contributions" (not exceeding £200 million in aggregate in any one year) and also, if the Council thinks it requisite or expedient, special contributions. In accordance with undertakings already given to members under the Membership Central Fund and Subscriptions (Miscellaneous Provisions) Byelaw (No. 16 of 1993), as modified by this byelaw, the Council will announce the maximum level of all such contributions for a particular year no later than 30 September in the preceding year and such level

may not be exceeded except with the prior sanction of a resolution passed at a separate meeting of the members liable to pay the contribution.

The byelaw provides for the recovery by the Society from a member of moneys applied out of the New Central Fund to discharge his underwriting liabilities or of moneys or assets "earmarked" to enable him to pass the annual solvency test under the Insurance Companies Act 1982.

The Council of Lloyd's in exercise of its powers under section 6(2) of, and paragraphs (1) and (4) of Schedule 2 to, Lloyd's Act 1982 and sections 7 and 9 of Lloyd's Act 1911 by special resolution hereby makes the following byelaw.

## Part A - Interpretation

### 1. Interpretation

Schedule 1 to this byelaw (interpretation) shall have effect.

## Part B - Constitution Of New Central Fund

### 2. Establishment of New Central Fund

The Society shall establish, hold, manage and apply in accordance with the provisions of this byelaw a fund to be known as the New Central Fund (in this byelaw “the Fund”).

### 3. Assets of Fund

The Fund shall consist of:

- (a) contributions to the Fund for the time being paid or payable under paragraph 4;
- (b) moneys borrowed by the Society under paragraph 6;
- (c) recoveries for the time being paid or payable to the Society under paragraph 11;
- (d) recoveries made under paragraph 12(1) and transferred to the Fund under paragraph 12(5);
- (e) any other moneys or assets which may from time to time be paid or added to or accrue to the Fund;
- (f) the investments or other property for the time being representing such contributions, moneys or assets;
- (g) income arising from investments or other moneys or assets from time to time constituting the Fund.

### 4. Contributions to Fund

- (1) Every underwriting member of the Society shall in each calendar year, in accordance with the provisions of this paragraph –
  - (a) pay to the Society a contribution to the Fund (an “annual contribution”); and
  - (b) be liable to pay to the Society, if called upon to do so from time to time, a contribution or contributions not exceeding in the aggregate a specified amount (that amount being in this paragraph referred to as a “callable contribution”).
- (2) If it appears requisite or expedient to do so the Council may from time to time levy from members of the Society in addition to annual contributions and callable contributions under sub-paragraph (1) such further contributions (each a “special contribution”) as the Council may by special resolution prescribe.

- (3) The amounts of annual contributions and of any special contributions the manner of calculating such amounts and the date or dates on which such contributions shall be payable shall be such as the Council shall by special resolution prescribe.
- (4) The amounts of the callable contribution of each underwriting member for each year shall be such that the aggregate amount of the callable contributions of all members for that year is as nearly as may be equal to £200,000,000, or such other sum as the Council may by special resolution determine. The Council may also by special resolution determine the manner in which callable contributions are to be calculated, demanded and paid.
- (5) The Council may from time to time by special resolution exempt a member or any class or classes of member from liability to make contributions under this paragraph.
- (6) Any exemption granted under sub-paragraph (5):
  - (a) may apply indefinitely or for such period as the Council may specify; and
  - (b) may be general or limited to a particular levy or levies, whether in respect of annual contributions, callable contributions or special contributions.
- (7) The Council shall not levy any annual contribution, callable contribution or special contribution on a member in a manner inconsistent with an undertaking given to that member under the Membership, Central Fund and Subscriptions (Miscellaneous Provisions) Byelaw (No. 16 of 1993) which is for the time being in force; and for the purposes of this paragraph and of that byelaw any undertaking given to a member before this byelaw comes into force and relating to the exercise of powers of the Council under the Central Fund Byelaw shall be construed as if:
  - (a) any reference in that undertaking to the exercise of powers of the Council under the Central Fund Byelaw included a reference to the exercise of powers of the Council under this byelaw;
  - (b) subject to (c) below, any reference to contributions to the Central Fund included a reference to contributions to the Fund under any provision of this paragraph 4;
  - (c) any reference to an undertaking by the Council to announce in advance the level of any such contribution for a year, in so far as it relates to callable contributions, were a reference to an undertaking to announce the sum applicable in respect of that year for the purposes of sub-paragraph (4) of this paragraph (being £200,000,000 or such other sum as the Council may determine in accordance with that sub-paragraph) and not the level of any individual callable contribution;
  - (d) any reference to an undertaking by the Council that the level of any contribution will not exceed a level so announced, in so far as it relates to callable contributions, were a reference to an undertaking that the aggregate amount of the

callable contributions of all members will not exceed the sum so announced.

- (8) Any contribution shall be levied on a member by service on him or on any one or more of his underwriting agents of a notice specifying the amount payable and, except in the case of a callable contribution, the date or dates on which it is payable.
- (9) Payment of contributions in accordance with this paragraph shall be a condition relating to permission to underwrite insurance business at Lloyd's and the provisions of Part E of the Membership Byelaw (No. 17 of 1993) shall apply accordingly where any member fails to comply with such condition.
- (10) No member or former member of the Society –
  - (a) shall have any right to the repayment of any contribution made by him under this paragraph otherwise than in a winding-up of the Society;
  - (b) shall have any right to petition for the winding-up of the Society on the ground that any contribution made by him under this paragraph has not been repaid.
- (11) While a determination made by the Council under paragraph 8(1A) is in force, no contribution made under this paragraph shall be repaid to any member or former member of the Society (whether in the course of a winding-up of the Society or otherwise) if or to the extent that such repayment would contravene or be inconsistent with any Regulatory Capital Requirement specified in the determination.

5. Power to require undertakings etc.

- (1) The Council may as a condition of permission to underwrite insurance business at Lloyd's require a member to execute a written undertaking to the Society duly to pay any contribution levied on him under paragraph 4 (whether under sub-paragraph (1) or sub-paragraph (2) of that paragraph).
- (2) Subject to any undertaking given by the Council under the Membership, Central Fund and Subscriptions (Miscellaneous Provisions) Byelaw (No. 16 of 1993) for the time being in force, the Council may require that any undertaking under sub-paragraph (1) of this paragraph be in such form and contain such provisions as the Council may specify, including, in particular, an agreement that any contribution levied on the member shall be paid free and clear from any set-off, counterclaim or deduction on any account whatsoever.

6. Borrowing for Fund

The Society may from time to time borrow moneys to be held, managed or applied as assets of the Fund, and may secure such borrowing in any manner on the whole or any part of the Fund or on any other property of the Society.

7. Management and investment of Fund

- (1) Moneys for the time being forming part of the Fund shall be invested or lent or deposited (with or without security and with or without interest or premium on repayment) in such manner as the Council may from time to time provide or permit.
- (2) Moneys or other assets of the Fund may be vested in a trustee or nominee on behalf of the Society on such terms as the Council may from time to time provide or permit.
- (3) The Council may cause the whole or any part of the Fund to be vested in such person or persons as trustees on such trusts for the benefit of such person or persons and subject to such provisions as may appear to the Council to be expedient for, or incidental or conducive to, any of the purposes set out in paragraph 8.
- (4) Any moneys and other assets vested in trustees under sub-paragraph (3) shall remain part of the Fund for the purposes of this byelaw, but so that –
  - (a) the powers of the Council under this byelaw apply, as regards any moneys and other assets so vested, subject to the terms of the trust deed or trust instrument concerned;
  - (b) the Council may exercise any power conferred on it by that trust deed or trust instrument, subject to any obligations or restrictions imposed by law or by the terms of that trust deed or trust instrument, in such manner as may appear to it to be expedient for or incidental or conducive to any of the purposes set out in paragraph 8.
- (5) Subject to sub-paragraphs (3) and (4) of this paragraph and to any trust or charge created under paragraph 9, no policyholder or other person shall have any right to payment from the Fund or to any account of the management, investment or application of the assets compromised in the Fund.

7A. Derivative transactions

- (1) The Council may from time to time –
  - (a) provide for or permit the entering into by the Society, in the course of or in connection with the management and investment of the Fund under paragraph 7, of transactions of any of the kinds referred to in sub-paragraph (2);
  - (b) cause any moneys or other assets for the time being forming part of the Fund, or any other property of the Society, to be applied in or towards the discharge of any obligations incurred by the Society under or in connection with any transaction so entered into.
- (2) The transactions to which sub-paragraph (1) relates are options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.
- (3) The Council shall adopt such statements of investment principles, risk limits and other controls as appear to it to be expedient for the purpose of ensuring that transactions are entered into by the Society under paragraph (1) only for one or more of the purposes specified in sub-paragraph (5).
- (4) Any breach of or failure to observe any statements of investment principles, risk limits or other controls adopted under sub-paragraph (3) shall not cause any transaction to be regarded as falling outside sub-paragraph (1) or to be otherwise void, invalid or unenforceable; but this is without prejudice to any liability of any person for breach of any duty owed to the Society.
- (5) The purposes referred to in sub-paragraph (3) are –
  - (a) reducing risk;
  - (b) reducing cost;
  - (c) generating additional capital or income for the Fund without significantly increasing risk;
  - (d) facilitating efficiency in the acquisition, holding or disposal of assets forming part of the Fund;
  - (e) otherwise facilitating efficiency in the management of the Fund.



## Part C - Application Of Fund

### 8. Availability and application of Fund

- (1) Subject to and in accordance with the following provisions of this paragraph, the Fund is available, and moneys or assets may be applied out of the Fund (including application by way of loan or on any other terms as to repayment) –
  - (a) for the purpose of complying with, and for any purpose required or permitted by, a Regulatory Capital Requirement (including, to the extent required or permitted by any relevant Regulatory Capital Requirement, for the purposes specified in sub-paragraph (2)(a) or (b), or both); and
  - (b) subject to (a), for any of the purposes specified in sub-paragraph (2).
- (1A) The Council at any time may, and shall if so directed by the Prudential Regulation Authority, make a determination that the Fund, or a part of the Fund of an amount or value fixed by the Council and specified in the determination, be made available for the purpose of complying with a Regulatory Capital Requirement (and such a determination may specify different parts of the Fund as available for the purpose of complying with different Regulatory Capital Requirements).
- (1B) The Council may from time to time –
  - (a) vary any such determination by increasing the amount of any part of the Fund specified in the determination;
  - (b) with the prior consent of the Prudential Regulation Authority where the Council has been directed by the Prudential Regulation Authority under paragraph 1A above, vary any such determination by reducing the amount of any part of the Fund specified in the determination, or revoke any such determination.
- (1C) Where any part of the Fund is specified as available for the purpose of complying with a Regulatory Capital Requirement in a determination made under sub-paragraph (1A) and for the time being in force –
  - (a) money or assets corresponding to that part of the Fund may be applied out of the Fund for any purpose required or permitted by the relevant Regulatory Capital Requirement (including, if applicable, the purposes specified in sub-paragraph (2)(a) or (b), or both), and for no other purpose;
  - (b) if the part or parts of the Fund so specified comprise less than the whole of the Fund, moneys or assets corresponding to the excess may be applied out of the Fund for any of the purposes specified in sub-paragraph (2).

- (2) The purposes referred to in sub-paragraph (1) are:
- (a) directly or indirectly extinguishing or reducing any liability of a member to any person arising out of or in connection with insurance business carried on by that member at Lloyd's;
  - (b) repaying moneys previously borrowed for the purposes of this byelaw and paying interest, premium or other charges on such moneys;
  - (c) repaying contributions made to the Central Fund under paragraph 4(5) of the Central Fund Byelaw in accordance with paragraph 10 of this byelaw;
  - (d) any other purpose (whether or not similar to any purpose mentioned in (a) to (c) above) which may appear to the Council to further any of the objects of the Society.
- (3) Subject to sub-paragraph (4), no moneys or other assets shall be applied out of the Fund:
- (a) by way of payment (other than a payment on arm's length terms in respect of property, assets, services or other benefits) to any member of the Equitas group; or
  - (b) directly for the purpose of extinguishing or reducing any liability of a member in respect of which Equitas Reinsurance Limited has, under an Equitas reinsurance contract, undertaken to reinsure and indemnify that member.
- (4) Sub-paragraph (3) shall not preclude the Council from applying moneys or assets out of the Fund for any of the purposes mentioned in sub-paragraph (2):
- (a) in discharge of any legally binding obligation of the Society arising under a contract entered into or other instrument executed at or before the time at which this byelaw comes into force; or
  - (b) in any other case, with the prior sanction of a resolution of the members of the Society in general meeting.
- (5) In this paragraph, except sub-paragraph (4)(b), references to a "member" shall be taken to refer also to former members and to the estates of deceased members of the Society.
- (6) In this paragraph "Regulatory Capital Requirement" means any requirement imposed by the Prudential Regulation Authority under the Financial Services and Markets Act 2000 relating to the maintenance of financial resources by the Society and includes a requirement expressed by reference to the financial resources of the Society and those of any members of the Society taken together.

[9. *Interim application of Fund*  
*deleted by New Central Fund and Funds and Property of the Society (Miscellaneous Provisions) Byelaw*  
*(No.2 of 2014).]*

10. Refunds of special Central Fund contributions

Any special contribution paid by a member to the Central Fund under paragraph 4(5) of the Central Fund Byelaw in respect of or by reference to his underwriting insurance business at Lloyd's for any of the years of account 1993, 1994 and 1995 may at the Council's discretion be refunded out of the Fund in accordance with Schedule 2 to this byelaw

11. Liability of members in respect of payments made out of the Fund

- (1) Where moneys or other assets have been applied out of the Fund (including any part of the Fund vested in trustees under paragraph 7) for the purpose mentioned in paragraph 8(2)(a), any member in relation to whom such moneys or assets have been so applied shall within 28 days after demand pay to the Society an amount not exceeding the aggregate of any sums so applied in relation to that member.
- (2) The Council may at any time agree to reduce or waive any amount demanded by the Society or owed by a member to the Society under this paragraph.
- (3) 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 the date when this byelaw comes into force, notwithstanding that that person is no longer a member at the time of any application referred to in or demand made under this paragraph.

[12. *Liability of members in respect of appropriation of assets for solvency test*  
*deleted by New Central Fund and Funds and Property of the Society (Miscellaneous Provisions)*  
*Byelaw (No.2 of 2014).]*

## Part D - Miscellaneous And Supplementary

13. Enforcement of contributions etc.; publicity in respect of non-payment
  - (1) Any sum payable to the Society under any of the provisions of this byelaw which is not paid on the due date for payment shall bear interest from the due date until the date of payment (as well after as before judgment) at the rate prescribed from time to time as applicable to judgment debts or such other rate as the Council may from time to time prescribe.
  - (2) Any sum payable to the Society under any of the provisions of this byelaw (including any interest payable under sub-paragraph (1)) –
    - (a) shall be paid free and clear from any set-off, counterclaim or deduction on any account whatsoever; and
    - (b) shall be recoverable in any court of competent jurisdiction as a civil debt.
  - (3) The Council may cause to be posted in the Room a notice containing such particulars as the Council may determine of any failure by a member duly to pay any amount payable by that member under any of the provisions of this byelaw.
14. Information
  - (1) Every member shall furnish to the Society such information as the Council may from time to time require in writing for the purposes of this byelaw.
  - (2) Any information required under sub-paragraph (1) shall be furnished in such manner and at such time or times as the Council may specify in writing.
  - (3) A member 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.
15. Powers of the Council to give undertakings
  - (1) The Membership, Central Fund and Subscriptions (Miscellaneous Provisions) Byelaw (No. 16 of 1993) is amended as follows:

- (2) The Council may in any manner referred to in paragraph 13 of the Reconstruction and Renewal Byelaw (No. 22 of 1995), or in any other case where it appears to the Council to be expedient to do so for the furtherance of the objects of the Society, give undertakings to any person (whether or not a member of the Society) with respect to the exercise of any of the powers of the Council under this byelaw to raise money for the Fund and to apply money out of the Fund.

16. Consequential amendments

The provisions of Schedule 3 (consequential amendments) shall have effect.

17. Commencement

This byelaw shall come into force immediately after the Council declares that all Equitas reinsurance contracts have become wholly unconditional in accordance with their terms.

## Schedule 1 – Interpretation

In this byelaw, unless the context otherwise requires:

“annual contribution” has the meaning given in paragraph 4(1) of the byelaw;

“callable contribution” has the meaning given in paragraph 4(1) of the byelaw;

“Central Fund” means the Central Fund constituted under the Central Fund Byelaw;

“Central Fund Byelaw” means the Central Fund Byelaw (No. 4 of 1986);

“Equitas group” means Equitas Holdings Limited and its subsidiaries;

“Equitas reinsurance contract” means a reinsurance contract entered into pursuant to paragraph 4(1) of the Reconstruction and Renewal Byelaw (No. 22 of 1995);

“member” means a member of the Society, as defined in Schedule 1 to the Membership Byelaw (No. 17 of 1993);

“special contribution” has the meaning given in paragraph 4(2) of the byelaw;

“underwriting agent” includes a substitute agent appointed under the byelaw entitled “Substitute Agents” (No. 20 of 1983) to exercise the functions of an underwriting agent.

## Schedule 2 - Refund Of Special Central Fund Contributions

1. In this Schedule “eligible member” means a member (or former member, or the estate of a deceased member) who:
  - (a) either has entered into a settlement, compromise or arrangement proposed by the Society under paragraph 8(1) of the Reconstruction and Renewal Byelaw (No. 22 of 1995) which is designated by the Council for the purposes of this paragraph or is a member to whom no settlement, compromise or arrangement so designated was proposed; and
  - (b) in relation to his membership of any syndicate for any of the years of account 1993, 1994 or 1995, has paid a contribution to the Central Fund pursuant to a levy under paragraph 4(5) of the Central Fund Byelaw;

and “prior special contribution” means such a contribution.

2. Moneys may be applied out of the Fund in repayment, in accordance with the following provisions of this Schedule, of any prior special contributions paid by an eligible member save to the extent that:
  - (a) moneys or assets forming part of the Fund have been put in trust, charged, appropriated or set aside under paragraph 9 of this byelaw for any other purpose;
  - (b) the Council considers it necessary or expedient to make prior provision for payment out of the Fund for all or any of the purposes set out in paragraph 8(2)(a) to (d) of this byelaw; or
  - (c) the Council has entered into undertakings in favour of any person (whether or not a member) in relation to the Fund and the repayment of prior special contributions would contravene such undertakings,

in any of which events the amount of prior special contributions remaining to be repaid shall be repaid in such amounts (whether or not reduced), in such proportions, in such manner and at such times as the Council considers expedient.

3. In the case of any eligible member who continues for the time being to underwrite insurance business, repayment of prior special contributions shall be made in such proportions, in such manner and at such times as the Council considers expedient.
4. Where an eligible member enters into an approved arrangement, as defined in the Conversion and Related Arrangements Byelaw (No. 22 of 1996), under which a successor member, as defined in that byelaw, is to carry on insurance business at Lloyd’s in succession to that eligible member as to the whole or any part of his

underwriting business, the Council may give effect in such manner as it may think fit to any request by the eligible member for the whole or any part of any repayments of prior special contributions which would otherwise have been made to the eligible member to be made instead to the successor member, and the Council may accordingly give effect to the provisions of this Schedule with such modifications as it may consider appropriate having regard to the terms of the relevant approved arrangement.

5. *This paragraph was deleted by the New Central Fund (Amendment No. 5) Byelaw (No. 5 of 2004).*
6.
  - (1) Subject to paragraph 4 of this Schedule, the following provisions of this paragraph shall apply to the refund of prior special contributions to a member who has died or has given notice of resignation from membership of the Society.
  - (2) Where the death occurred or notice of resignation was given in 1996 or an earlier year, the refund of the prior special contributions shall be effected by repayment in equal annual instalments payable on such date as the Council may determine in each of the years 1997 to 2003.
  - (3) Where the death occurs or notice of resignation is given in any year from 1997 to 2002, the refund of such prior annual contributions as have not previously been refunded under paragraphs 3 to 5 of this Schedule shall be effected by repayment in equal annual instalments payable on such date as the Council may determine in each year beginning with the following year and ending with the year 2003.
  - (4) Where the death occurs or notice of resignation is given in 2002 or any later year, the refund of such prior special contributions as have not previously been refunded under paragraphs 3 to 5 of this Schedule shall be effected by a single repayment made on such date in the following year as the Council may determine.
  - (5) Where a member gives notice of resignation after 31 August in any year and continues to underwrite for the year of account which corresponds to the following year the notice of resignation shall for the purposes of this paragraph be treated as given in the following year.
  - (6) The Council may offer to the personal representatives of a deceased member or former member, instead of refunds of prior special contributions in annual instalments in accordance with sub-paragraphs (2), (3) or (4), a refund by single repayment of such amount of the special contributions as has not previously been refunded, on such terms and discounted for early repayment in accordance with



such formula and at such date in the relevant year as the Council may from time to time determine.

- 6A. (1) Subject to sub-paragraph (2), where for the time being an eligible member has ceased to underwrite insurance business otherwise than in circumstances mentioned in paragraph 4 of this Schedule (“approved arrangements”) but has not given notice of resignation from membership of the Society, the refund of such prior special contributions as have not previously been refunded under paragraphs 3 to 5 of this Schedule shall be effected by repayment in equal annual instalments payable on such date as the Council may determine in each year beginning in 1997 or, if later, the calendar year corresponding to the first year of account for which the eligible member is not underwriting insurance business, and ending with the year 2003.
- (2) Where such an eligible member as is mentioned in sub-paragraph (1) recommences underwriting insurance business before 2003, sub-paragraph (1) shall no longer have effect in relation to him and the refund of such prior special contributions as have not previously been refunded under paragraphs 3 to 5 or 6A1 of this Schedule shall be effected in accordance with paragraphs 3 to 5 beginning with the calendar year corresponding to the first year of account for which the eligible member has recommenced underwriting.
7. Subject to paragraph 8 of this Schedule, any refund of prior special contributions under this Schedule shall be effected by making payment to the Society in its capacity as members’ agent’s trustee (or, as the case may require, regulating trustee) of such one or more of the premiums trust funds of the member relating to insurance business allocated to 1987 or a later year of account as the Council may determine.
8. Where moneys are for the time being payable by an eligible member to the Society under paragraph 11, 12 or 13 of this byelaw, any repayment of prior special contributions of that eligible member may be effected by setting off the amount of the repayment against the amount so payable by that eligible member to the Society.

### Schedule 3 - Consequential Amendments

*These amendments have all been made on the original bylaws.*