

Chapter 3 Requirements made under the Overseas Underwriting Byelaw

Conditions of underwriting – Part B of the Overseas Underwriting Byelaw

Lloyd's Japan – Paragraphs 5 and 8 of the Overseas Underwriting Byelaw

1. (a) *Lloyd's Japan Inc* may charge, pursuant to any agency agreement or other agreement or arrangement between it and any *member* of the *Society* (whether or not an underwriting member) or any *managing agent* of any such *member*, any commission, profit commission, fee or other remuneration or any advance payment or reimbursement of expenses incurred by it in the performance of its functions in connection with the underwriting business of that *member*.
- (b) Any levy under this paragraph should be made by service on the *member* or on the *member's managing agent* of a notice specifying the amount payable and the date or dates on which it is payable.
2. A *member* of the *Society* (whether or not an underwriting member) shall not in the course of his underwriting business at Lloyd's accept *Japanese local insurance business* directly from any proposer or *non-Lloyd's broker* in Japan otherwise than through *Lloyd's Japan Inc* and unless he has appointed *Lloyd's Japan Inc* as General Agent (as defined in article 219 of the Insurance Business Law (Law No. 105 of 1995) of Japan).

Canada – Paragraphs 5 and 8 of the Overseas Underwriting Byelaw

3. It shall be a condition and requirement of permission to underwrite Canadian Business that where any *member* of the *Society* (whether or not an underwriting member) uses or purports to use the system known as Scheme Canada that *member* shall comply with the provisions of the Scheme Canada Rules (as amended from time to time) contained in the schedule 1 to these conditions and requirements and for these purposes –

“Act” means the Insurance Companies Act S.C. 1991 C.47 including any amendments or regulations made pursuant thereto.

“Canadian Business” means such part of a *member's* underwriting business at Lloyd's (being general business) as constitutes either

- (a) contracts or policies of insurance (other than contracts or policies of marine insurance) to the extent to which such contracts or policies insure risks

which are or will be ordinarily in Canada including all policies in Canada as defined in the Act;

- (b) contracts or policies of reinsurance underwritten by the *member* of any general business (other than contracts or policies of marine insurance) underwritten by a company (not being a member of Lloyd's) incorporated in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof;
- (c) contracts or policies of reinsurance underwritten by the *member* of general business (other than contracts or policies of marine insurance) underwritten in Canada by a company (not being a member of Lloyd's) incorporated elsewhere than in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof;
- (d) any contract of reinsurance to close of any year of account underwritten by the *member* to the extent only to which the *member* is liable under such contract in respect of.
 - (i) contracts or policies of insurance (other than contracts or policies of marine insurance) underwritten by other members to the extent to which such contracts or policies insure risks which are or will be ordinarily in Canada including all policies in Canada as defined in the Act; or
 - (ii) contracts or policies of reinsurance underwritten by other members of general business (other than marine insurance) underwritten by a company (not being a member of Lloyd's) incorporated in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof ;
 - (iii) contracts or policies of reinsurance underwritten by other members of general business (other than contracts or policies of marine insurance) underwritten in Canada by a company (not being a member of Lloyd's) incorporated elsewhere than in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof.

SCHEDULE 1

SCHEME CANADA RULES (THE “RULES”)

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PART A PRELIMINARY

1. Citation and interpretation

- (1) These rules may be cited as ‘Scheme Canada Rules’ (the “Rules”).
- (2) The provisions of the Schedule to these Rules (interpretation) shall have effect.

PART B INSURANCE SERVICES

2. Provision of services

- (1) Lloyd’s Canada Inc (“LCI”) may provide the services referred to in sub-paragraph (2) on the terms prescribed by these Rules.
- (2) The services referred to in sub-paragraph (1) are -
 - (a) a service for the accounting, netting and settlement of Canadian insurance transactions and the transfer of funds more particularly described in Part C;
 - (b) any ancillary service incidental or relating to the foregoing services; and
 - (c) any other service which LCI considers it is in the interests of any of the persons referred to in subparagraph (4) or any class of them to receive in conjunction with any of the foregoing services.
- (3) All or any of the services may be provided wholly or partly by electronic means and by the use of electronic documents.
- (4) The services may be provided to or on behalf of -
 - (a) the Society (in its capacity as principal payee or payor under insurance transactions or otherwise);
 - (b) LCI;
 - (c) any member or group of members of the Society;
 - (d) any underwriting agent (including any substitute agent);

- (e) any approved run-off company;
 - (f) any Lloyd's broker or any person permitted by the Council to broke insurance business at Lloyd's (other than as referred to in subparagraph (g));
 - (g) any Canadian coverholder or correspondent;
 - (h) any trustee of the LCTF and/or LCMTF and/or any premiums trust deed or any person acting pursuant to any power under a trust deed; and
 - (i) any other person to whom LCI agrees to provide a service.
- (5) LCI may provide any service to or on behalf of a participant whether that participant is acting, or appears to the LCI to be acting, as -
- (a) a principal;
 - (b) an agent for a person, whether or not that person is a participant; or
 - (c) a trustee or pursuant to powers under a trust deed, in either case whether or not the beneficiary of the trust concerned is, or where this is more than one, includes, another person referred to in subparagraph (4).

Provided that in each of cases (b) and (c) LCI may treat such a trustee or agent as if it were a transacting principal in respect of the provision of the services and shall have no obligation to provide the services to, or claim unpaid amounts owed by an agent or trustee hereunder from, underlying principals or beneficiaries. LCI shall have a right to claim against any agent or trustee.

- (6) LCI may delegate the provision of all or any of the services referred to in paragraph 2(2) to any person on such terms and conditions as it thinks fit and/or may agree with any person that such terms and conditions as it thinks fit and/or may agree with another person that such other person may provide all or any of such services on the terms and conditions set out or referred to in these Rules on such terms and conditions as may be agreed with LCI (including, without limitation, in relation to the provision of information and assistance to LCI) or otherwise as it thinks fit. If agreed with LCI, any such person may provide any such services in the name of LCI and may, with prior

written consent from LCI, sub-delegate or delegate (as the case may be) the provision of all or any of such services to another person on such terms as may be stipulated in LCI's consent.

PART C SCHEME CANADA

3. Scheme Canada

- (1) LCI may, as part of the services referred to in paragraph 2(2), maintain a system to be known as Scheme Canada ("Scheme") for the processing, advice, accounting, netting and settlement of Canadian insurance transactions, (including monetary obligations arising from insurance transactions) and other transfers of funds.
- (2) In providing the services, LCI is acting as the settlement agent of each of the participants and undertakes no liability as a principal to any participant in respect of any insurance transaction.

4. Demand and collection of moneys

- (1) LCI, as principal in respect of amounts due to it as principal payee under any Canadian insurance transaction, or as agent of any other participant, may demand and/or collect or procure the demand and/or collection from any participant any moneys which are, or which appear to LCI to be, due on any settlement date from that participant (whether as agent or principal) to any other participant or participants (whether as agent or principal) (each a "payee") under any Scheme transaction. Such demands and/or collections may be made through the Lloyd's central accounting system where necessary.
- (2) LCI, as principal in respect of amounts due from it as principal payor under any Canadian insurance transaction, or as agent of any other participant may pay or procure payment any of the amounts referred to under sub-paragraph (1) to the relevant payee.
- (3) LCI may, in making payments to and collecting payments from participants, or procuring the payment to or collection of payments from participants pursuant to sub-paragraphs (1) and (2) above, aggregate and net all such payments in accordance with paragraph 8.
- (4) Subject to paragraph 8, payments under Scheme transactions shall be made by

participants in full and without set-off, deduction or counterclaim.

5. Establishment of bank accounts

- (1) One or more bank accounts may be opened (including accounts in the name of the trustee of the LCTF and/or LCMTF) for the purpose of operating, or providing any service under Scheme.
- (2) Every participant shall open and maintain such accounts with such banks as LCI or the Council may prescribe.
- (3) LCI may as a condition of participation, or continued participation, in Scheme require participants to establish irrevocable direct debit arrangements and/or direct credit arrangements in favour of LCI or such other persons as LCI may specify.

6. Currencies

- (1) Scheme transactions shall be settled only in a Scheme currency.
- (2) Subject to sub-paragraph 6(3), participants shall agree such currency conversion arrangements between themselves as are necessary to effect settlement in respect of insurance transactions expressed in convertible currencies which are required to be settled under the Scheme.
- (3) LCI may, but shall not be obliged to, prescribe the exchange rate to be used, and the procedures and requirements to be followed, for the conversion of amounts payable in respect of underlying insurance transactions expressed in a convertible currency into a Scheme currency and for making adjustments to exchange rates.
- (4) LCI may, on written notice to participants, declare that a convertible currency is to become a Scheme currency or declare that a Scheme currency is no longer a Scheme currency.

7. Advice and accounting of Scheme transactions

- (1) In respect of any Scheme transaction, the participants concerned shall provide to LCI such information and documents relating to it as LCI may require in order to facilitate the advice and, if necessary, the accounting, netting and settlement of the Scheme transaction and shall comply with the provisions of any regulations, requirements, codes of practice and/or manuals made or

issued by LCI in accordance with paragraph 23 below.

- (2) Without prejudice to the generality of sub-paragraph (1), any requirement made under that sub-paragraph or pursuant to any regulations, requirements, codes of practise and/or manuals made or issued by LCI in accordance with paragraph 23 below may -
 - (a) impose conditions which are absolute or which are to vary from time to time by such factors as are specified in or are determined in accordance with such conditions and requirements;
 - (b) make different provision for different classes or categories of participants;
 - (c) make different provision for different classes or categories of insurance transaction;
 - (d) be made in respect of a specific insurance transaction or a specific class or category of insurance transaction or be of general application;
 - (e) contain incidental and supplementary provisions.
- (3) LCI shall be entitled to rely on information and documents provided under sub-paragraph (1) in effecting Scheme transactions.

8. Settlement of Scheme transactions

- (1) Subject to paragraphs 8(5) and 14, prior to each settlement date (the “relevant settlement date”) LCI shall calculate in respect of each participant and in respect of each Scheme currency:
 - (a) the aggregate amount due to be paid to that participant by the other participants under all Scheme transactions of which LCI has notice which are denominated in that Scheme currency and are due to be settled on the relevant settlement date (the “entitlements”);
 - (b) the aggregate amount due to be paid by that participant to other participants under all Scheme transactions of which LCI has notice which are denominated in that Scheme currency and which are due to be settled on the relevant settlement date (the “gross payments”).
- (2) If the entitlements exceed the gross payments the amount of such excess shall,

subject to sub-paragraph 11(4), be directly credited or otherwise paid by LCI to the participant on the relevant settlement date.

- (3) If the gross payments exceed the entitlements, the amount of such excess shall be directly debited, by LCI from such participant's account(s) or paid by the participant to LCI for value on the relevant settlement date.
- (4) LCI may settle a Scheme transaction otherwise than in accordance with sub-paragraphs (1) to (3) and shall consider representations from participants that a Scheme transaction that would otherwise be settled in accordance with sub-paragraphs (1) to (3) should not be so settled.
- (5) Any direction made under sub-paragraph (4) may be given in respect of a specific Scheme transaction or a specific class of Scheme transaction or be of general application

9. **Settlement dates**

Amounts due for settlement under the Scheme shall be settled or brought into settlement between participants on one of the applicable settlement dates as specified from time to time by LCI except where a Scheme transaction is to be settled otherwise than in accordance with paragraphs 8(1) to (3) above whereupon the settlement date shall be determined by LCI in its absolute discretion.

10. **Settlement information statements**

- (1) LCI may deliver or shall procure the delivery to every participant of settlement information statements in accordance with this paragraph.
- (2) A settlement information statement delivered to a participant may provide such information as to enable the participant to ascertain (from the settlement information statement alone or in conjunction with other information) those Scheme transactions to which the participant is a party and which have been, or which will be, accounted and, if such is the case, settled under the Scheme during the period covered by the settlement information statement.
- (3) Settlement information statements delivered under sub-paragraph (1) may -
 - (a) contain different information for different classes of participant and for different classes of Scheme transaction;
 - (b) be delivered at such intervals as LCI may determine; and

- (c) contain such additional information as LCI may determine.
- (4) A participant may appoint a person to whom LCI is able to send settlement information statements to and to receive settlement information statements on its behalf.
- (5) The members of a syndicate shall for the purposes of sub-paragraph (4) be deemed to have appointed the managing agent of the syndicate to receive all settlement information statements on their behalf.
- (6) Where a participant has appointed a person under sub-paragraph (4), the participant shall give written notification to LCI of the appointment together with such additional information as LCI may require.
- (7) Where a participant has appointed a person under sub-paragraph (4), the obligations of LCI to the participant under sub-paragraph (1) shall be discharged by delivery of settlement information statements to the person so appointed by the participant.

11. **Obligation to fund settlements**

- (1) Every participant shall, in accordance with any conditions and requirements of LCI, make available, or procure that there are made available, sufficient funds on the applicable settlement date for the settlement of any Scheme transaction in respect of which amounts are to be paid by or on behalf of that participant.
- (2) Where a participant is required to make funds available for the settlement of Scheme transactions and does not make the full amount of such funds available on or before the applicable settlement date LCI may -
 - (a) refuse to settle any or all Scheme transactions until sufficient funds have been made available; or
 - (b) apply any funds received from the participant in the *pro rata* settlement of outstanding Scheme transactions to which it is a party; or
 - (c) settle any or all Scheme transactions in respect of, on account of or on behalf of the participant.
- (3) Where LCI settles a Scheme transaction under sub-paragraph (2)(c), the participant shall on demand pay forthwith to LCI amounts equal to any sums so paid in settlement in respect of, on account of or for the benefit on behalf of

that participant, together with (if so demanded) interest thereon charged in accordance with sub-paragraph (5) and shall indemnify LCI in respect of any interest paid or payable or any charges, expenses or liabilities incurred by LCI or the Society by reason of LCI having settled the Scheme transaction, and LCI and/or the Society may bring proceedings to recover the same as a civil debt. All amounts payable pursuant to this sub-paragraph by any participant carrying on an underwriting business shall be treated for all purposes as an expense of that underwriting business.

- (4) Where LCI refuses to settle any Scheme transaction under sub-paragraph 2(a) LCI may either reduce the amount of the entitlements of any participant payable to it pursuant to paragraph 8 by the amount which such participant would have received in respect of such Scheme transaction had it been settled in full or may suspend the payment to the relevant participant until such Scheme transactions have been settled in full. Where LCI makes a pro rata partial settlement of a Scheme transaction under sub-paragraph 2(b) LCI shall reduce the amount of the entitlements of any participant payable to it pursuant to paragraph 8 by an amount equal to the amount which such participant would have received in respect of such Scheme transaction had it been settled in full less the amount of the pro rata partial settlement made by LCI.
- (5) LCI may charge interest on any amount paid under sub-paragraph (2)(c) from the applicable settlement date until the date of repayment of such amount to LCI or the Society. The rate of interest shall be five per cent. above the then current prime rate of the Royal Bank of Canada (or such other leading bank as LCI may select).
- (6) Without prejudice to any other powers of LCI, LCI may treat any sum payable under sub-paragraph (3) or (5) as a Scheme transaction which may be settled, or brought into settlement, under Scheme.
- (7) Without prejudice to the provisions of paragraph 18, the rights and liabilities conferred or created by this paragraph shall subsist notwithstanding that the participant in respect of, or on account of or for the benefit of whom a transaction has been settled under sub-paragraph 2(b) has, if a member of the Society, ceased to be such a member by reason of resignation, death or otherwise or, if not such a member, has ceased to be a participant.

12. **Wrongful and unpaid credits**

- (1) Where, in calculating the entitlements due to a participant under paragraph

8(1)(a), LCI has taken into account any amount which is due to be paid to that participant and which is not subsequently paid on the relevant settlement date or any amount which is not due to that participant on the relevant settlement date, LCI may directly debit the accounts of that participant in respect of that amount or make demand for the prompt repayment of that amount. Such participant shall repay LCI immediately on its making such demand and that participant shall indemnify LCI against any loss, liability, charge or expense arising from the crediting or other payment of such amount to its account.

- (2) Where, at any stage during the operation of a service a participant becomes aware of an inputting or similar or analogous error such participant shall immediately notify LCI of the error. LCI may, where it is practicable so to do, reverse any transaction notified to it as having been erroneously made or of which LCI has itself become aware. The participant shall settle in full any transaction notified to it pending the correction taking effect.

13. **Default declarations**

- (1) Where -
 - (a) a participant -
 - (i) is unable to fulfil its obligations in respect of any Scheme transaction; or
 - (ii) appears to LCI to be or likely to be so unable; or
 - (b) an insolvency event occurs in relation to the participant or any relevant principal or beneficiary on whose behalf it acts,

LCI may make a default declaration in respect of that participant, whereupon the following provisions of this Part shall apply.

- (2) Where LCI makes a default declaration, it shall as soon as is reasonably practicable thereafter give written notice of the default declaration to the defaulter and such other persons as LCI thinks fit.
- (3) The form of the default declaration and the manner in which notice thereof is given to the persons referred to in sub-paragraph (2) shall be as LCI thinks fit.
- (4) LCI may at any time it thinks fit revoke a default declaration.
- (5) Where LCI revokes a default declaration it shall give written notice thereof to

the defaulter and such other persons as it thinks fit.

14. System transactions involving defaulters

As soon as is reasonably practicable after a participant has been declared a defaulter, LCI may -

- (a) suspend the settlement of sums due to or from the defaulter which would otherwise be settled or brought into settlement on settlement dates after the date on which the participant has been declared a defaulter; and
- (b) take such steps and make such arrangements as LCI thinks fit to facilitate the settlement of amounts due to the defaulter from other participants and other persons and amounts due from the defaulter to other participants and other persons, provided that LCI shall not be obliged to take any action in respect of the settlement of sums for which instructions have already been given to any relevant clearing institutions.

15. General saving relating to default

Nothing in this Part shall prevent LCI, the Society, any other participant or any other person from exercising any lawful right or fulfilling any lawful obligation in respect of the defaulter whether or not the right or obligation concerned arises in respect of a Scheme transaction.

16. Termination of the Scheme

- (1) LCI may in its absolute discretion upon giving not less than six months' notice (or such lesser period as LCI may determine at any time, having regard to the prevailing circumstances) to participants terminate any or all of the services including the provision of the Scheme.
- (2) As soon as practicable after any notice to terminate the Scheme has taken effect LCI shall take such steps as it considers appropriate -
 - (a) to account to participants for any sums that may be due to them under the Scheme; and
 - (b) to facilitate the orderly winding up of the Scheme.
- (3) Termination of the Scheme or any service shall not release any participant from any liability which at the time of termination had already accrued to another participant or LCI nor affect in any way the provisions of

paragraphs 28 and 29.

17. Exclusion from participation in the Scheme

- (1) LCI may exclude a participant from participation in the Scheme where-
 - (a) in the opinion of LCI, the participant has used or is using or is proposing to use the Scheme in a way which has caused or is causing or will cause material harm or damage to the Scheme, other participants or information processed, held or transmitted on, under or through the Scheme;
 - (b) the participant has ceased to be a person referred to in paragraph 2(4)(b) to (i);
 - (c) LCI has made a default direction in respect of the participant under paragraph 13;
 - (d) an insolvency event has occurred in relation to the participant or any principal or beneficiary on whose behalf it acts;
 - (e) the participant has failed to comply with or any other provision of these Rules or any provision of any requirements, regulation, code of practice or manual made or published by LCI issued under paragraph 23;
 - (f) the participant has failed to pay a charge payable under paragraph 22 within the period for the time being prescribed; or
 - (g) having regard to the circumstances then pertaining LCI thinks fit that a participant is excluded from participation in the Scheme.
- (2) Before exercising the powers conferred on LCI by this paragraph in respect of a participant referred to in paragraph 2(4)(c) to (i), LCI shall -
 - (a) inform the participant concerned in writing of its intention and of the grounds for the intended exclusion; and
 - (b) allow the participant to make representations as to the intended exclusion within such a period and in such form as LCI may allow.
- (3) If in the opinion of LCI the power conferred by sub-paragraph (1) is required to be exercised immediately, LCI may exercise such powers without having

first taken the steps referred to in sub-paragraph (2).

- (4) In any case falling within sub-paragraph (3) LCI shall-
 - (a) as soon as possible inform the participant concerned of the reasons for the exclusion; and
 - (b) allow the participant to make representations within such period as LCI may require.
- (5) LCI shall as soon as practicable after the exclusion of a participant from participation in the Scheme notify in writing all the other participants thereof.

18. Saving of rights on termination or exclusion

The termination of the Scheme under paragraph 16 or the exclusion from participation of a participant under paragraph 17 shall not affect any right, obligation or liability of any person accrued, due or outstanding at the date of termination or exclusion and arising under the Scheme or from his participation in the Scheme or in respect of any Scheme transaction.

PART D INFORMATION

19. Provision of information

- (1) LCI may require any participant to supply LCI and/or any service provider with such information as LCI may specify in connection with the provision of any service.
- (2) Each participant shall immediately notify LCI and any service provider on becoming aware that an insolvency event has occurred or is likely to occur in relation to it or any principal or beneficiary on whose behalf it acts.

20. Storage and distribution of information

LCI and any service provider may as part of, or for the purposes of, or in connection with, providing a service hold information provided under paragraph 19 of any other provisions of these Rules or otherwise provided to, or obtained by, it in providing a service and, subject to paragraph 21 may distribute such information or any of it.

21. Confidentiality of information

- (1) Subject to paragraph (2) and paragraph 24 (2), information provided to, or

obtained by, LCI under these Rules or in providing any service shall be held subject to the provisions of the Information and Confidentiality Byelaw (No. 21 of 1993 and applicable Canadian law), provided that LCI may disclose such information to any service provider in so far as it thinks fit.

- (2) Information provided to, or obtained by, any service provider under these Rules or in providing any service shall be held subject to the provisions relating to disclosure and use as may be agreed between the service provider and LCI.

PART E MISCELLANEOUS AND GENERAL

22. Power of LCI to prescribe charges

- (1) Every applicant and every participant shall pay to LCI such charges as LCI shall notify to them from time to time .
- (2) For the purposes of this paragraph LCI may -
 - (a) determine the amount of any charges in accordance with a specified scale or other specified factors;
 - (b) determine the time or times of payment of charges;
 - (c) provide for the exemption from payment of, or the return or abatement of, any charges in specified circumstances;
 - (d) charge interest on such amounts of charges as are unpaid on the due date until the date of payment at a rate determined by LCI; and
 - (e) make different provision for different cases.

23. Regulations, codes of practice and manuals

- (1) LCI may make, amend and terminate requirements, regulations, and issue codes of practice and/or manuals in respect of the provision and operation of the services or any of them and the administrative and technical procedures to be observed by participants.
- (2) Where any provision in a regulation, requirement, code of practice or manual made or issued under sub-paragraph (1) conflicts with a provision of these Rules, the latter shall prevail.

24. Power to enter into agreements, etc.

- (1) LCI may enter into such contracts and arrangements as LCI considers are necessary or expedient for the purposes of or in connection with the provision of any service under this byelaw.
- (2) Where LCI has entered into a contract or arrangement as described in sub-paragraph (1), and, as a result thereof, LCI uses systems and equipment owned, maintained, operated or controlled by third parties, LCI may disclose to such third parties information about participants and Scheme transactions to the extent that such disclosure is necessary for the purpose of, or giving effect to, the contract or arrangement concerned.
- (3) Any service provider may, if LCI so agrees, disclose to third parties information about participants and their businesses to the extent that such disclosure is necessary for the purpose of or in connection with the provision of any service.

25. Variation of services

- (1) Subject to this paragraph, LCI may vary a service or any part of a service.
- (2) Subject to sub-paragraph (3), LCI shall not vary a service to any material extent without giving prior notice of the proposed variation to the affected participants. LCI shall consider the representations (if any) of the affected participants on any such variation before reaching any decision on the variation.
- (3) If in the opinion of LCI any material variation is required to be made as a matter of urgency in order to enhance a service or any part of a service or to preserve the integrity of the services or any part of a service or to preserve the interests of participants or any of them LCI may make that variation without first having taken the steps referred to in sub-paragraph (2).
- (4) In any case falling within sub-paragraph (3) LCI shall -
 - (a) as soon as practicable thereafter inform the affected participants in writing of the variation; and
 - (b) permit the affected participants to make representations to LCI on the action taken by LCI within such period as LCI may prescribe

and where such representations are received by LCI, it shall reconsider the action taken under sub-paragraph (3).

26. Service of notices

- (1) All notices and other communications by LCI or a service provider which are required to be given to a participant under these Rules shall for all purposes be treated as effectively given if left at or sent by post to the address from time to time notified to LCI or the service provider in question by that participant as the address to which notices and other communications are to be sent or, if give by facsimile transmission or email by submitting it to such number or email address from time to time notified to LCI or the service provider in question as appropriate by that participant.
- (2) Any notice or communication sent to a participant by ordinary post shall be treated as having been effectively given by properly addressing and posting a letter containing that notice or communication and shall be deemed to have been served 24 hours after the letter is posted. Any notice or communication sent by facsimile or email transmission shall be deemed to have been received when evidence of its receipt is transmitted to the person sending it and any notice or communication sent by electronic means shall be deemed to have been received when transmitted.

27. Liability

- (1) Neither LCI nor any delegate of LCI (each a “service provider”) shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any participant or any principal or beneficiary of any participant or any of their respective shareholders or any other person (each such person a “claimant”) for or in connection with the services except for direct losses suffered by the claimant to the extent that such losses are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and primarily from the negligence or wilful misconduct of that service provider and in no event shall LCI or that service provider be liable for any claimant’s loss of profits, business or anticipated savings or for any indirect or consequential loss whatsoever.
- (2) Without limiting any provision of sub-paragraph (1), LCI shall not be responsible for the negligence or wilful misconduct of, or any other loss or liability arising in connection with, the action or inaction of any service provider selected by LCI with reasonable care.

- (3) LCI will have no liability or responsibility, except as expressly provided in these Rules, for the good faith or acts or omissions, creditworthiness, performance or standing of any participant or any other person whomsoever or for admitting any participant to the Scheme, making or failing to make any default declaration in respect of a participant or taking or failing to take any action to terminate or suspend the provision of any service to any participant.
- (4) LCI assumes no liability or responsibility for the consequences arising out of delay or loss in transmission of any messages, letters, cheques or documents, or for delay, mutilation or other errors arising in transmission of any telecommunication or other electronic notification and will not be liable or responsible for any delays resulting from the need to obtain clarification of any instructions received.
- (5) Each participant shall indemnify and hold harmless LCI and any service provider from and against any and all claims, damages, losses, liabilities, costs and expenses (including, without limitation legal fees and disbursements) that may be incurred by or asserted or awarded against LCI or any service provider, in each case arising out of or in connection with any investigation, litigation or other proceeding commenced by any person against LCI or any service provider which arises out of or in connection with the provision by LCI or any service provider of any of the services to that participant or as a result of any breach by that participant of its obligations to LCI or any service provider, except to the extent such claim, damage, loss, liability, cost or expense has resulted directly and primarily from LCI's or any service provider negligence or wilful misconduct. All amounts payable pursuant to this subparagraph by any participant carrying on an underwriting business shall be treated for all purposes as an expense of that underwriting business.

28. Records/Determinations

- (1) In the absence of manifest error, the records of LCI relating to the settlement of Scheme transactions shall constitute conclusive evidence as to matter.
- (2) Any determination or notification by LCI concerning any rate or amount to be determined or calculated in connection with the services shall, in the absence of manifest error, be conclusive evidence as to the matter.

29. Compliance with laws

In carrying out the services LCI or any service provider may refrain from doing anything which might, in its opinion, constitute a breach of any law or regulation or

any duty of confidentiality or be otherwise actionable at the suit of any person and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation of any jurisdiction or to comply with the order of any court.

30. **Force Majeure**

LCI and any service provider shall have no responsibility or liability for or regarding any non-performance, improper performance, suspension of performance or delay in performance, of LCI's or any service provider's obligations under or in connection with the services by reason of any circumstances beyond LCI's or any service provider's reasonable control including, without limitation, by reason of any failure by a clearing agent to make a payment on a settlement date, any breakdown or failure of transmission, communication or computer facility or other mechanical breakdown or malfunction, work stoppage, postal or other strike or other labour disturbance or industrial action, earthquake, flood, fire, storm and other act of God, explosion, accident, sabotage, terrorism, insurrection, revolution, riot, rebellion or other unrest or disturbance or present or future law or act of any governmental or regulatory authority.

31. **Commencement and transitional provisions**

- (1) These Rules shall come into force on 1 March 2004.
- (2) The document entitled "Scheme Canada Manual" shall be deemed to be a manual issued under paragraph 23.

SCHEDULE

Interpretation

1. In these Rules, unless the context otherwise requires -

"approved run-off company" has the meaning given to it in the Underwriting Byelaw (No. 2 of 2003)

"arrangement" includes any agreement or arrangement whether or not intended to be enforceable by legal proceedings and whether or not evidenced in writing;

"Canadian coverholder" means any approved coverholder (as defined in the Delegated Underwriting Byelaw (No 1 of 2004)) who transacts Canadian insurance business pursuant to a recognised binding authority in Canada;

"Canadian correspondent" means a broker (not being a Lloyd's broker) or other intermediary in Canada introducing risks:

- (a) directly to a Lloyd's broker for placing with underwriters; or
- (b) if a non-Lloyd's intermediary, directly to underwriters otherwise than by a binding authority.

"Canadian insurance transaction" means any transaction effected, or intended to be effected, as part of, or arising from, the business of insurance or any activity whatsoever directly or indirectly related to, or arising from, the business of insurance in Canada;

"claimant" has the meaning given to it in paragraph 27(1);

"convertible currency" means a currency which is not a Scheme currency;

"default declaration" means a declaration made by LCI under paragraph 13(1);

"defaulter" means a participant in respect of which LCI has made a default declaration;

"direct credit arrangement" means any arrangement whereby a person is authorised to credit another person's account;

"direct debit arrangement" means any arrangement whereby a person other than the

account holder is authorised to debit, or take money from, that account;

“entitlements” has the meaning given to it in paragraph 8(1);

“gross payments” has the meaning given to it in paragraph 8(1);

“insolvency event” means:

- (a) in relation to any individual or partnership, the making of a receiving order in bankruptcy against such individuals or any partner in such partnership by the due process of law of any country, such individual or partner in such partnership making or proposing any composition with his creditors or otherwise acknowledging his insolvency, or being adjudicated bankruptcy or adjudicated or declared insolvent by the due process of law of any country; and
- (b) in relation to any body corporate its making or proposing any composition with its creditors or otherwise acknowledging its insolvency, a bankruptcy order being made against it by the due process of law of any country; its being adjudicated or declared insolvent by the due process of law of any country, an order being made or resolution being passed for its winding up or dissolution, a receiver, trustee or analogous officer being appointed in respect of the whole or any material of its property or assets, its directors presenting or filing in any court a petition in respect of its bankruptcy, winding up or other insolvency or which seeks any reorganisation, dissolution or similar relief or there occurring an event in any jurisdiction which is analogous to any of the foregoing events;

"insurance" includes assurance, reinsurance, reassurance and suretyship;

“LCI” means Lloyd’s Canada Inc (or its successors and assignees from time to time);

“LCMTF” means the trust fund constituted by the Lloyd’s Canadian Margin Fund Trust Deed dated 25 May 2001 as amended from time to time;

“LCTF” means the trust fund constituted by the Lloyd’s Canadian Trust Deed dated 25 May 2001 as amended from time to time;

"managing agent" means a person who is listed as a managing agent in the register of underwriting agents under the Underwriting Byelaw (No. 2 of 2003);

"participant" means a person set out in paragraph 2(4) acting in one of the capacities set out at paragraph 2(5) to whom or on behalf of whom a service is for the time being provided under this byelaw;

“payee” has the meaning given to it in paragraph 4(1);

"premiums trust deed" means a trust deed in the form for the time being required by the Council constituting a premium trust fund (including all such trust deeds relating to long term business and any Overseas Direction or Special Trust Direction as therein defined);

"prescribed form" means, in relation to any application, notice or other document, such forms and contents as may from time to time be prescribed by LCI;

"Scheme currency" means any currency in which LCI or any service provider settles Scheme transactions;

"Scheme" means Scheme Canada as referred to in paragraph 3;

"Scheme transaction" means an insurance transaction which, in accordance with these Rules is, or should be, processed under the Scheme or in respect of which monetary obligations are, or should be, settled under the Scheme;

"services" means the services referred to in paragraph 2(2) for the time being provided under this byelaw;

“services provider” means (other than in paragraph 27) a person, other than LCI, who is referred to in paragraph 2(6) and who provides any service referred to in paragraph 2(2);

“settlement information statement” means a statement as described in paragraph 10;

“settlement date” means a date specified by LCI under paragraph 9 for the settlement of Scheme transactions.

“Society” means the Society incorporated by Lloyd’s Act 1871 by the name of Lloyd’s;

"substitute agent" means a person appointed to act as agent for an underwriting member under the Substitute Agents Byelaw (No 20 of 1983) or in accordance with part K of the Underwriting Byelaw (No 2 of 2003)

“syndicate” means a group of underwriting members underwriting insurance business at Lloyd's through the agency of a managing agent;

“underwriting agent” has the meaning given to it in the Underwriting Byelaw (No. 2 of 2003), and includes any substitute agent.

2. The references in paragraphs 2(3), 26(1) and 26(2) to "electronic means" and in paragraph 2(3) to "electronic documents" include references to computers, networks and any means whereby information is processed, held or transmitted in a machine-readable form and to documents which are in a machine-readable form. The references in this byelaw to any other Lloyd's byelaw shall be deemed to be a reference to that Lloyd's byelaw as the same may be amended from time to time;