

## Chapter 5 Requirements made under the Enforcement Byelaw

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## 1. INQUIRIES

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Conduct of inquiries

- 1.1 Subject to any terms of reference or any direction or order made or given by the *Council*, any *person* appointed to conduct an *inquiry* may conduct the *inquiry* and determine its procedures as he thinks fit.
- 1.2 The *person* appointed to conduct the *inquiry* shall submit a written report to the *Council* on the matters inquired into and the report may include a recommendation as to any action that should be taken including the institution of *enforcement proceedings*.
- 1.3 Where any *person* subject to the *enforcement jurisdiction* of the *Society* makes available to a *person* conducting an *inquiry* or his agent any information, documents or other materials that is relevant or relates to the subject matter of that *inquiry*, then the information, documents or other materials provided shall not be disclosed other than in accordance with the Information and Confidentiality Byelaw (No. 21 of 1993).

## 2. ENFORCEMENT PROCEEDINGS

Requirements made under paragraph 12 of the Enforcement Byelaw

### 2.1 Establishment of Enforcement Committees

Enforcement Board

- 2.1.1 All *enforcement proceedings* shall be determined in accordance with these requirements either by the *Enforcement Board* or, where the proceedings have not been determined by the *Enforcement Board*, by an *Enforcement Tribunal*.

Composition

- 2.1.2 The *Enforcement Board* shall comprise not less than three individuals –

- (a) a *qualified lawyer* who is not a *member* of the *Society*, who shall be the Chairman of the *Enforcement Board*; and
- (b) two or more individuals one of whom shall be the Deputy Chairman of the *Enforcement Board*,

provided that in making any decision the quorum of the *Enforcement Board* shall include at least one individual who falls within Section 7, subsection 1A of Lloyd's Act 1982.”

- 2.1.3 Each member of the *Enforcement Board* shall be appointed for a term not exceeding three years and such appointment may be renewed by the *Council* from time to time.
- 2.1.4 Where a member of the *Enforcement Board* is engaged in the determination of *enforcement proceedings* that have not concluded at the date his appointment expires he may continue to be a member of the *Enforcement Board* for the purposes of determining those *enforcement proceedings*.

## Enforcement Tribunals

Requirements made under paragraph 14 of the Enforcement Byelaw

### Composition

- 2.1.5 Each *Enforcement Tribunal* shall comprise three individuals –
- (a) a *qualified lawyer* of at least 10 years standing or a person who holds or has held judicial office in the United Kingdom, who shall be the Chairman of the *Enforcement Tribunal*; and
  - (b) two other individuals at least one of whom shall be an individual who falls within Section 7, subsection 1A of Lloyd's Act 1982.
- 2.1.6 The *Enforcement Board* shall notify the parties to the *enforcement proceedings* of the composition of the *Enforcement Tribunal* as soon as reasonably practicable.

### Objections to appointment

- 2.1.7 The *defendant* may object to the appointment of any member of an *Enforcement Tribunal* on any reasonable ground including where the *defendant* has grounds to believe that the member has a conflict of interest.
- 2.1.8 Any objection to the appointment of any member of an *Enforcement Tribunal* by the *defendant* shall be made in writing setting out the reasons for the *defendant's* objection to the relevant appointment and shall be served by the *defendant* on the *Enforcement Board* as soon as reasonably practicable (and shall be copied to the *Representative of the Council*).
- 2.1.9 Where the *Enforcement Board* upholds the *defendant's* objection, it shall retire that member of the *Enforcement Tribunal* and appoint another *person* in his place.

### Role of the Chairman

- 2.1.10 Before the substantive hearing of the *enforcement proceedings*, the Chairman of the *Enforcement Tribunal* shall be responsible for the conduct of the *enforcement proceedings* and shall exercise all the powers of the *Enforcement Tribunal* except to the extent that the Chairman considers it appropriate for those powers to be exercised by the members of the *Enforcement Tribunal* together.

## Revocation and suspension of membership of an Enforcement Committee

- 2.1.11 The *Council* shall revoke or suspend the appointment of any member of the *Enforcement Board* and the *Enforcement Board* shall revoke or suspend the appointment of any member of an *Enforcement Tribunal* at any time where the member –
- (a) has been convicted of a crime which, in the opinion of the *Council* or the *Enforcement Board* as appropriate, involves discreditable conduct and such conviction has not to the knowledge of the *Council* or the *Enforcement Board* as appropriate, been set aside on appeal or otherwise;
  - (b) has been found liable or admitted liability in civil proceedings in circumstances where such a finding or admission involves gross negligence, dishonesty or fraud;
  - (c) has been declared insolvent or bankrupt or has entered into any arrangement with creditors;
  - (d) is subject to an adverse finding in any *enforcement proceedings* or proceedings brought by any regulatory or professional body or where any such proceedings are pending;
  - (e) was, at the time of his appointment, a *member* of the *Society* but who subsequently ceases to be a *member* of the *Society*.

## Conflicts of Interest

- 2.1.12 The *Council* shall revoke or suspend the appointment of any member of the *Enforcement Board* and the *Enforcement Board* shall revoke or suspend the appointment of any member of an *Enforcement Tribunal* where that member has a conflict of interest or is reasonably perceived to have a conflict of interest.

## Replacement of members

- 2.1.13 Where the appointment of an individual member of an *Enforcement Committee* is revoked or suspended during *enforcement proceedings* whether through resignation or by reason of paragraphs 2.1.11 or 2.1.12 above then –
- (a) where the individual is a member of the *Enforcement Board* and the *Enforcement Board* is left inquorate, the *Council* shall appoint one or more new members as soon as reasonably practicable and the *enforcement proceedings* shall be referred to the reconstituted *Enforcement Board*;
  - (b) where the individual is a member of an *Enforcement Tribunal*, the *Enforcement Board* shall appoint a new *Enforcement Tribunal* to hear and



determine those *enforcement proceedings* unless each of the parties consents to the appointment of a new member of the original *Enforcement Tribunal*.

## 2.2 Commencement of Enforcement Proceedings

Requirements made under paragraph 16 of the Enforcement Byelaw

Power to bring enforcement proceedings

- 2.2.1 Where the *Council* institutes *enforcement proceedings* against a *defendant* under paragraph 16 of the Enforcement Byelaw those *enforcement proceedings* shall be instituted and conducted in accordance with these requirements.
- 2.2.2 The *Council* may institute *enforcement proceedings* against two or more *defendants* as part of the same proceedings.
- 2.2.3 The *Council* shall appoint an individual to conduct *enforcement proceedings* on its behalf (the “*Representative of the Council*”) including the conduct of any settlement negotiations. The *Representative of the Council* shall notify the *defendant* and the *Enforcement Board* of his appointment, as soon as reasonably practicable and, if there is a change of appointment after that date, at the time of such change of appointment.
- 2.2.4 All *enforcement proceedings* shall be instituted in the name of the *Council* by means of service on the *defendant* and the *Enforcement Board* of a notice of *enforcement proceedings* (a “*Notice*”) which shall –
- (a) state by way of charge or charges the alleged *misconduct*;
  - (b) state the facts and matters relied on;
  - (c) state the nature or class of the *sanction* or *sanctions* the *Council* seeks against the *defendant*; and
  - (d) be accompanied by copies of any documents referred to in the *Notice* and a copy of the Enforcement Byelaw (No. 6 of 2005) and these requirements.
- 2.2.5 The *Representative of the Council* may at any time after the *Notice* has been served on the *defendant*, send a copy of the *Notice* to any firm or company of which the *defendant* is, or was at the time of the alleged *misconduct*, a partner, director or employee.

## Joinder and Severance

- 2.2.6 Where *enforcement proceedings* are brought separately against two or more *persons* in respect of matters which the *Council* considers to be related, the *Council* may require those proceedings to be determined by one *Enforcement Tribunal* either at a single hearing of the charges or otherwise save that the *Enforcement Tribunal* may order that *enforcement proceedings* against two or more *defendants* shall be heard separately.

## Discontinuance

- 2.2.7 The *Representative of the Council* may discontinue any *enforcement proceedings* before a decision giving effect to a settlement is issued or before any decision as to *misconduct* is issued by an *Enforcement Tribunal*. The *enforcement proceedings* shall be discontinued subject to any issue of costs.

## Appointment of legal representatives

- 2.2.8 The *Representative of the Council* and the *defendant* may each instruct a *qualified lawyer* to represent them in the *enforcement proceedings*. Where the *Representative of the Council* or the *defendant* instructs a *qualified lawyer* he shall notify the other party and (in the case of contested proceedings) the *Enforcement Tribunal* of the name of the lawyer concerned in writing as soon as reasonably practicable before the commencement of the substantive hearing before the *Enforcement Tribunal*.

## Settlement before the Enforcement Board

- 2.2.9 The *Representative of the Council* may serve on the *defendant* at the time of service of the *Notice* written proposals for the settlement of the *enforcement proceedings*. These proposals shall –
- (a) state the *sanction* or *sanctions* which the *Council* considers would be appropriate for the *defendant* to accept in order settle the *enforcement proceedings*; and
  - (b) state the amount of costs that the *Council* considers that it would be appropriate for the *defendant* to pay in order to settle the *enforcement proceedings*.

- 2.2.10 Any proposals for the settlement of the *enforcement proceedings* shall not be disclosed to the *Enforcement Board* (save in the case of an agreed proposal pursuant to paragraph 2.2.12 hereof) or to an *Enforcement Tribunal* except in relation to costs.
- 2.2.11 The *defendant* may enter into negotiations with the *Representative of the Council* regarding the settlement of the *enforcement proceedings* before the *Enforcement Board* within the time allowed for the service of the *Defence*.
- 2.2.12 Any agreement that the *Representative of the Council* and the *defendant* may reach regarding the proposed settlement of the *enforcement proceedings* shall be recorded in writing and shall –
- (a) state the charge or charges admitted by the *defendant*;
  - (b) state the facts agreed;
  - (c) state the *sanctions* which the parties agree that the *Enforcement Board* may impose on the *defendant* (including the terms of any notice of censure); and
  - (d) contain a draft order for costs which the parties agree that the *Enforcement Board* may make.
- 2.2.13 Where the terms of a proposed settlement of the *enforcement proceedings* have been agreed in accordance with paragraph 2.2.12 above, the *Representative of the Council* shall submit the terms of a proposed settlement to the *Enforcement Board*.
- 2.2.14 Where a proposed settlement is submitted to the *Enforcement Board* under paragraph 2.2.13 above, it may approve, reject or suggest modifications to the settlement proposals submitted. It may also require both parties to attend before it.
- 2.2.15 If the *Enforcement Board* decides to approve any proposed settlement submitted then it shall issue a decision as to *misconduct*, *sanctions* and costs which gives effect to the agreed settlement and it shall notify the parties accordingly. The decision of the *Enforcement Board* shall take effect immediately unless otherwise stated.
- 2.2.16 If the *Enforcement Board* rejects any proposed settlement submitted then it shall notify the parties accordingly and the proceedings shall continue as *enforcement proceedings* before an *Enforcement Tribunal* and all proceedings before the *Enforcement Board* shall, in such circumstances, remain confidential from the *Enforcement Tribunal* except in relation to costs

#### Service of a defence

- 2.2.17 Within 28 days of the service of the *Notice* or such further period as the *Enforcement Board* may permit, the *defendant* shall serve on the *Enforcement Board* and the *Representative of the Council* –

- (a) a written statement admitting each charge and the facts and matters alleged in the Notice; or
- (b) a written *defence* which shall –
  - (i) state which of the charges are admitted and which are denied;
  - (ii) state which of the facts and matters alleged in the *Notice* are disputed;
  - (iii) state any other facts and matters relied on; and
  - (iv) be accompanied by copies of any documents referred to in the *defence* except any documents previously served under paragraph 2.2.4 (d) above.

## 2.3 Enforcement Proceedings before Enforcement Tribunals

### Appointment of an Enforcement Tribunal

- 2.3.1 As soon as reasonably practicable after time for service of the *defence* has expired the *Enforcement Board* shall appoint the Chairman and the other members of the *Enforcement Tribunal*, to hear and determine the *enforcement proceedings* if proceedings have not been concluded before the *Enforcement Board* by agreement.

### Decision in default of a defence

- 2.3.2 Where a *defendant* fails to serve a *defence* within 28 days of service of the *Notice* or any further period as the *Enforcement Board* may permit, every charge and every fact and matter alleged in the *Notice* shall be deemed to have been admitted by the *defendant* and the *Enforcement Tribunal* shall issue a decision as to *misconduct* to the parties.
- 2.3.3 Within 7 days of the date of service on the *defendant* of the decision as to *misconduct* under paragraph 2.3.2 above, a *defendant* may apply to the *Enforcement Tribunal* –
  - (a) to set aside any decision as to *misconduct*; and
  - (b) for permission to serve a *defence*.
- 2.3.4 The *Enforcement Tribunal* may grant the *defendant's* application under paragraph 2.3.3 if it is satisfied that the interests of justice require it to do so.
- 2.3.5 Within 14 days of the service of the decision as to *misconduct* or the *Enforcement Tribunal's* notification of its refusal to set aside the decision, whichever is later, each

party may serve on the *Enforcement Tribunal* and the other party written submissions on *sanctions* and costs. Either party may serve written submissions in reply within 7 days.

- 2.3.6 Either party may in making their written submissions as to *sanctions* and costs request that the *Enforcement Tribunal* convene an oral hearing for the purpose of making additional submissions on *sanctions* and costs. The *Enforcement Tribunal* shall convene such a hearing as soon as reasonably practicable.
- 2.3.7 Either party may refer in its submissions on *sanctions* and costs to any previous *misconduct* that has been admitted by or otherwise proved against the *defendant*, and to any finding regarding the *defendant* made by any regulatory body or any Court of competent jurisdiction, whether in the United Kingdom or elsewhere, and the *Enforcement Tribunal* may take into account such matters as it considers appropriate in determining *sanctions* and costs.
- 2.3.8 Either party may refer in its submissions as to costs to any written settlement proposals but neither party may otherwise refer to any thing that was allegedly said or done during the course of settlement negotiations in its submissions as to *misconduct* or *sanctions*.
- 2.3.9 The *Enforcement Tribunal* shall notify the parties of its decision as to *sanctions* and costs as soon as reasonably practicable in accordance with paragraph 2.3.25.

#### Directions

- 2.3.10 The *Enforcement Tribunal* shall give directions for the conduct of the *enforcement proceedings* as soon as reasonably practicable and may hold a preliminary hearing for that purpose. The *Enforcement Tribunal* shall make an order for directions which may include directions that the parties –
- (a) disclose copies of all documents which are or have been in their control upon which they rely in support of their case and the documents which adversely affect their own case, adversely affect another's party's case or support another party's case;
  - (b) provide each other with the names of all witnesses whose evidence is to be relied on at the hearing;
  - (c) exchange copies of written witness statements setting out the substance of the evidence such witnesses will give which is signed and accompanied by a statement of truth;
  - (d) comply with any of the other matters set out in the standard order for directions attached at Schedule 3.

2.3.11 The *Enforcement Tribunal* may hold further preliminary hearings at its discretion for the purpose of monitoring and giving further directions regarding the conduct of the *enforcement proceedings* and also for the purpose of determining applications made to it by the *defendant* or the *Council*.

#### Change of plea

2.3.12 The *defendant* may admit a charge that he has denied in the *defence* at any time prior to the conclusion of the hearing of the charges. Where the *defendant* admits a charge on a different basis from that alleged in the *Notice* the *Representative of the Council* shall indicate whether he wishes the *Enforcement Tribunal* to determine the charge as alleged in the *Notice*.

2.3.13 Where the *defendant* admits a charge and that admission is accepted by the *Representative of the Council* and by the *Enforcement Tribunal* that charge shall be deemed to be proved and, unless there are other charges to be determined, the *Enforcement Tribunal* shall issue a decision as to *misconduct* against the *defendant* in respect of that charge in accordance with paragraph 2.3.21.

#### Settlement before the Enforcement Tribunal

2.3.14 The *Representative of the Council* and *defendant* may agree proposed terms for the settlement of the *enforcement proceedings* at any time after the appointment of the *Enforcement Tribunal* and before the commencement of the hearing of the charges.

2.3.15 Any agreement that the *Representative of the Council* and the *defendant* may reach regarding the proposed settlement of the *enforcement proceedings* shall be recorded in writing and shall –

- (a) state the charge or charges admitted by the *defendant*;
- (b) state the facts agreed;
- (c) state the *sanction* or *sanctions* which the parties agree that the *Enforcement Tribunal* may impose on the *defendant* (including the terms of any notice of censure); and
- (d) contain a draft order for costs which the parties agree that the *Enforcement Tribunal* may make.

2.3.16 Where the terms of a proposed settlement of the *enforcement proceedings* have been agreed in accordance with paragraph 2.3.15 above, the *Representative of the Council* shall submit the terms of a proposed settlement to the *Enforcement Tribunal* that has been appointed to determine the *enforcement proceedings*.

- 2.3.17 Where a proposed settlement is submitted to the *Enforcement Tribunal* under paragraph 2.3.16 above, it may approve, reject or suggest modifications to the settlement proposals submitted. It may also require both parties to attend before it.
- 2.3.18 If the *Enforcement Tribunal* decides to approve any proposed settlement submitted then it shall issue a decision as to *misconduct, sanctions* and costs which gives effect to the agreed settlement and it shall notify the parties accordingly. The decision of the *Enforcement Tribunal* shall take effect immediately unless otherwise stated.
- 2.3.19 If the *Enforcement Tribunal* rejects any proposed settlement submitted then it shall notify the parties and the *Enforcement Board* accordingly. The *Enforcement Board* shall appoint a new *Enforcement Tribunal* as soon as reasonably practicable for the purpose of determining the *enforcement proceedings* except that –
- (a) Any admission made by the *defendant* (other than an admission made in the course of a proposed settlement) which was accepted by the previous *Enforcement Tribunal* shall stand before the new *Enforcement Tribunal* unless the latter considers it to be unsound in law.
  - (b) Any concession made by the *Representative of the Council* or the *defendant* (other than a concession made in the course of a proposed settlement) which was accepted by the previous *Enforcement Tribunal* shall stand unless the new *Enforcement Tribunal* allows it to be withdrawn or varied.
  - (c) Each direction and ruling made by the previous *Enforcement Tribunal* shall stand unless and until it is revoked or varied by the new *Enforcement Tribunal* subject to the proviso that the hearing of the charges shall be adjourned pending further direction by the new *Enforcement Tribunal*.

#### Hearing of the charges

- 2.3.20 The charge or charges shall be determined following an oral hearing before the *Enforcement Tribunal*, unless the *Enforcement Tribunal* has directed that, on the request of all parties, that some or all of the charges may be determined on the basis of written submissions and documents. The hearing shall be in private unless the *defendant* requests a public hearing. In such a case the *Enforcement Tribunal* may in its discretion direct that any part of the hearing shall take place in private if in its opinion this is necessary in the interests of justice.

#### Decision of the Enforcement Tribunal as to misconduct

- 2.3.21 The *Enforcement Tribunal* shall serve on the *defendant* and the *Representative of the Council* its decision as to *misconduct* as soon as reasonably practicable and if

possible, no later than 1 month after the conclusion of the hearing. The decision of the *Enforcement Tribunal* as to *misconduct* shall include –

- (a) the decision in relation to each charge; and
- (b) its findings of fact and reasons.

#### Submissions as to sanctions and costs

2.3.22 Within 14 days of the service of the *Enforcement Tribunal's* decision as to *misconduct* the *Representative of the Council* and the *defendant* shall serve on the *Enforcement Tribunal* and each other –

- (a) written submissions as to the *sanction* or *sanctions* to be imposed in relation to each charge which has been admitted by or otherwise proved against the *defendant*;
- (b) written submissions as to the order of costs that the *Enforcement Tribunal* should make; and
- (c) written notification of any request to make supplementary oral submissions to the *Enforcement Tribunal* as to *sanctions* and costs.

2.3.23 Within 7 days of the date of service of any submissions under paragraph 2.3.22(a) and (b) the parties may serve written submissions in reply on the *Enforcement Tribunal* and each other.

2.3.24 Where the *defendant* or the *Representative of the Council* requests an opportunity to make oral submissions as to *sanctions* and costs the *Enforcement Tribunal* shall hold a hearing for this purpose.

#### Decision of the Enforcement Tribunal on sanctions and costs

2.3.25 The *Enforcement Tribunal* shall serve on the *defendant* and the *Representative of the Council* its decision on *sanctions* and costs as soon as reasonably practicable, if possible, within 1 month. The decision of the *Enforcement Tribunal* on *sanctions* and costs shall include –

- (a) any *sanction* including any terms and conditions in connection with the implementation of, or for the operation of, that *sanction*; and
- (b) any order as to costs; and
- (c) its reasons.



2.3.26 Unless it states otherwise and subject to paragraph 2.3.27, the decisions of the *Enforcement Tribunal* on *misconduct, sanctions* and costs shall take effect 14 days after the latest of –

- (a) the date of service of the *decisions* of the *Enforcement Tribunal*; and
- (b) the date of the service on the *defendant* of a decision of the *Appeal Tribunal* to refuse the *defendant* permission to appeal.

2.3.27 Where the *defendant* exercises any right of appeal or right to make a request to the *Council* under the Enforcement Byelaw the decision of the *Enforcement Tribunal* shall not take effect before the determination of the *defendant's* appeal or request to the *Council* as the case may be.

#### Conclusion of enforcement proceedings

2.3.28 *Enforcement proceedings* shall not be treated as concluded until the decision of the *Enforcement Board* or the *Enforcement Tribunal* takes effect.

## 2.4 Procedural and Evidential Matters

#### Power to determine procedure

2.4.1 Subject to these requirements, an *Enforcement Committee* shall have the power to determine the conduct of *enforcement proceedings* as it considers appropriate.

#### Decision making basis

2.4.2 The decisions of an *Enforcement Committee* shall be by a majority.

#### Stay of proceedings

2.4.3 An *Enforcement Tribunal* may order that its determination of one or more issues may be stayed until the determination of another issue and that the hearing of the charges against one *Defendant* may be stayed until the determination of the charges against another *Defendant*.

#### Failure to attend hearings

- 2.4.4 If a party to *enforcement proceedings* fails to attend any hearing or any part of a hearing before an *Enforcement Committee* it may proceed in his absence unless the *Enforcement Committee* is satisfied that that party has a reasonable excuse for his absence.

#### Time Limits

- 2.4.5 An *Enforcement Committee* may, if it considers it appropriate, extend any period within which a party is required by these requirements to do any act in connection with the *enforcement proceeding* before it. If any period specified in these requirements expires on a Saturday, Sunday, bank holiday, Christmas Day or Good Friday, then that period shall be extended to the next day which is not such a day. Any document that requires service must be served in accordance with Schedule 4 to these requirements.

#### Amendments

- 2.4.6 An *Enforcement Tribunal* may permit a party to amend any *Notice*, defence to the *enforcement proceedings* (“*defence*”) or other written submission that has been provided to or served on the *Enforcement Tribunal* on such terms as it thinks fit.

#### Provision of documents

- 2.4.7 An *Enforcement Tribunal* may require any party to the *enforcement proceedings* or any person subject to the *enforcement jurisdiction* of the *Society*, whom it considers may provide information or documents connection with any *enforcement proceedings*, to make such documents or information available to it and to the parties in such manner as it considers appropriate.

#### Non-compliance

- 2.4.8 Where a party fails to comply with the *Enforcement Byelaw* or these requirements or any direction or order of an *Enforcement Tribunal*, the *Enforcement Tribunal* may take such action as it considers appropriate, including awarding costs against that party.

## Evidence

### Burden and standard of proof

- 2.4.9 The burden of proof in all contested *enforcement proceedings* shall be on *the Council* unless otherwise provided for in these requirements or in any of the *requirements of the Council*.
- 2.4.10 The standard of proof applicable to *enforcement proceedings* is the standard applicable to civil proceedings in England and Wales.

### Admissions

- 2.4.11 Any fact or matter which is admitted by a *defendant* shall be treated as proven against him.

### Admissibility of evidence

- 2.4.12 An *Enforcement Committee* shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any Court of Law. Without prejudice to the generality of the foregoing an *Enforcement Committee* may admit in evidence –
- (a) the transcript of any evidence given by a *defendant* in any *inquiry*;
  - (b) the written evidence of any *person* who is not called to give oral evidence at the hearing of the charges provided that it is signed and accompanied by a statement of truth.

### Findings of other courts and other bodies

- 2.4.13 The findings of fact of any court of competent jurisdiction or of any committee or tribunal of any statutory or professional body exercising a regulatory or enforcement function, which have not been set aside on appeal or otherwise shall be *prima facie* evidence of the facts so found and may be used as evidence in the substantive hearing or in submissions as to *sanctions* and costs.
- 2.4.14 A criminal conviction of a defendant by any court of competent jurisdiction which has not been set aside on appeal or otherwise shall be conclusive evidence of the commission of the offence in question and may be used as evidence in the substantive hearing or in submissions as to *sanctions* and costs.

### 3. APPEALS

Requirements made under paragraph 24 of the Enforcement Byelaw

#### 3.1 Appeal Tribunal

3.1.1 All appeals shall be determined in accordance with these requirements by one member of the *Appeal Tribunal*.

Composition

3.1.2 The *Appeal Tribunal* shall comprise a President and any other member of the *Appeal Tribunal* as the *Council* may from time to time appoint.

3.1.3 Each member of the *Appeal Tribunal* shall be a *qualified lawyer* of at least ten years' standing or a *person* who holds or has held high judicial office except that no *person* shall be appointed to the *Appeal Tribunal* who is a –

- (a) *person* subject to the *enforcement jurisdiction* of the *Society*;
- (b) member of the *Council*;
- (c) member of the *Enforcement Board*; or
- (d) member of a *Enforcement Tribunal* that has been involved in the matter referred to the *Appeal Tribunal*.

3.1.4 Any *person* appointed to the *Appeal Tribunal* shall be appointed for a term of not less than 3 years and such appointment may be renewed by the *Council* from time to time. Where that *person* is engaged in the determination of an appeal which has not been concluded at the date that his appointment expires, he may continue to be a member of the *Appeal Tribunal* for purpose of determining that appeal.

Revocation and suspension of membership of an Appeal Tribunal

3.1.5 The *Council* shall revoke or suspend the appointment of any member of the *Appeal Tribunal* at any time where the member of the *Appeal Tribunal* –

- (a) has been convicted of a crime which, in the opinion of the *Council*, involves discreditable conduct and such conviction has not to the *Council's* knowledge been set aside on appeal or otherwise;
- (b) has been found liable in civil proceedings for gross negligence, dishonesty or fraud;
- (c) has been declared insolvent or bankrupt or has entered into any arrangement with creditors; or

- (d) is subject to an adverse finding in any proceedings brought by any regulatory or professional body or where any such proceedings are pending.

#### Conflicts of interest

- 3.1.6 The *Council* shall revoke or suspend the appointment of any member of an *Appeal Tribunal* where that member has a conflict of interest or is reasonably perceived to have a conflict of interest.

### 3.2 Conduct of an Appeal

#### Commencement of an appeal

- 3.2.1 Where an appeal is brought by any *person* having a right of appeal under paragraphs 25, 29 and 30 of the Enforcement Byelaw (the “*appellant*”), the appeal shall be instituted by the *appellant* serving on the Secretary to the *Appeal Tribunal* and the other party to the *appeal proceedings* (“the *respondent*”) a Notice of Appeal (a “*Notice of Appeal*”), which must be served –
  - (a) in the case of an appeal from an *Enforcement Tribunal* within 14 days of the latest of –
    - (i) the date of service on the appellant of the decision of the *Enforcement Tribunal* appealed from; or
    - (ii) if permission to appeal is required under paragraph 28 of the Enforcement Byelaw, the date on which permission to appeal was granted by the *Appeal Tribunal*;
  - (b) in the case of an appeal against an *intervention order* within 14 days of the date of service of the *intervention order*;
  - (c) in the case of an appeal under paragraph 23(c) of the Enforcement Byelaw within 14 days of the decision of the *Council* appealed from.

#### Appointment of Appeal Tribunal

- 3.2.2 The Secretary to the *Appeal Tribunal* shall notify the parties to the *appeal proceedings* of the member of the *Appeal Tribunal* who shall hear and determine the appeal as soon as reasonably practicable after receipt of the *Notice of Appeal*.

## Objections to appointment

- 3.2.3 The parties to the *appeal proceedings* may object to the appointment of any member of the *Appeal Tribunal* on any reasonable ground including where the party has grounds to believe that the member appointed has a conflict of interest.
- 3.2.4 An objection to the appointment of the member of the *Appeal Tribunal* shall be made in writing setting out the reasons for the objection to the relevant appointment and shall be served by the party on the Secretary to the *Appeal Tribunal* as soon as reasonably practicable (and shall be copied to the other party to the *appeal proceedings*).
- 3.2.5 Where the *Appeal Tribunal* upholds the party's objection, it shall retire that member of the *Appeal Tribunal* and appoint another person in its place, and the parties shall be notified accordingly.

## Applications for permission to appeal

- 3.2.6 An application to the *Appeal Tribunal* for permission to appeal under paragraph 28 of the Enforcement Byelaw shall be made within 14 days of the date of service on the *appellant* of the decision of the *Enforcement Tribunal*.
- 3.2.7 An application for permission to appeal shall be made in writing and shall set out the reasons why permission should be granted. The application shall be served on the *Representative of the Council* and the Secretary to the *Appeal Tribunal* and shall be accompanied by a copy of the decision of the *Enforcement Tribunal*, and if applicable, the *Enforcement Tribunal's* written reasons for its decision.
- 3.2.8 Within 14 days of the date of service of an application, the *Council* may serve written submissions in reply on the *appellant* and the *Appeal Tribunal*.
- 3.2.9 The *Appeal Tribunal* may decide an application on the basis of the *applicant's* written submissions or may hold a hearing for this purpose as it considers appropriate.
- 3.2.10 At any time after service of an application for permission to appeal, the *Appeal Tribunal* may, upon the application of any party, stay the implementation of the decision of the *Enforcement Tribunal*, either in whole or in part.

#### Statement of grounds of appeal

3.2.11 Within 14 days of service of a *Notice of Appeal* or such further period as the *Appeal Tribunal* may permit, the *appellant* shall serve on the *respondent* and the Secretary to the *Appeal Tribunal*, a written statement which shall –

- (a) state the grounds of appeal;
- (b) state any facts or matters relied on; and
- (c) be accompanied by copies of any documents referred to in the written statement.

3.2.12 Within 14 days of service by the *appellant* of the written statement referred to in paragraph 3.2.11 above, the *respondent* may serve on the *appellant* and the *Appeal Tribunal* a reply.

#### Stay of decision being appealed against

3.2.13 At any time after service of a *Notice of Appeal* against an *intervention order* or from a decision of the *Council*, the *Appeal Tribunal* may, upon the application of any party to such appeal, stay the implementation of the decision appealed against, either in whole or in part.

#### Oral hearings

3.2.14 There shall be an oral hearing before the *Appeal Tribunal* unless the *Appeal Tribunal* has directed that, on the request of all parties, the appeal may be determined on the basis of written submissions and documents.

3.2.15 The hearing shall be in private unless the *appellant* or the other party (other than where the *appellant* is the *Council* under paragraph 26(a) and (b) of the Enforcement Byelaw) requests a public hearing. In such a case the *Appeal Tribunal* may in its discretion direct that any part of the hearing shall take place in private if in its opinion this is necessary in the interests of justice.

#### Decision of the Appeal Tribunal

3.2.16 The *Appeal Tribunal* shall serve on the parties to the *appeal proceedings* its decision and reasons as soon as reasonably practicable. The decision shall take effect immediately.

- 3.2.17 If the *Appeal Tribunal* has exercised its power under paragraph 3.3.11 of these requirements to preserve the confidentiality of information, the written statement of its decision and reasons shall disclose the fact that it has done so but need give no further particulars.

### **3.3 Procedural and Evidential Matters**

#### Power to determine procedure

- 3.3.1 Subject to these requirements, the *Appeal Tribunal* shall have power to determine the conduct of appeals as it considers appropriate

#### Joinder and Severance

- 3.3.2 The *Appeal Tribunal* may direct that appeals by two or more *appellants* shall be heard separately, or at the same time, or that a hearing of a particular issue be stayed until the determination of another issue.

#### Default

- 3.3.3 If a party fails to attend any hearing before the *Appeal Tribunal* and the *Appeal Tribunal* is not satisfied that he has a reasonable excuse for his absence, it may proceed in his absence. The *Appeal Tribunal* may, in the event of the failure of the party to comply with any direction of the *Appeal Tribunal*, take any action it considers appropriate, including making an order as to costs against that party.

#### Time

- 3.3.4 An *Appeal Tribunal* may, if it considers it appropriate, extend any period within which an appellant is required by these requirements to do any act in connection with the appeal relating to the *enforcement proceedings*. If any period specified in these requirements expires on a Saturday, Sunday, bank holiday, Christmas Day or Good Friday, it will be extended to the next day which is not such a day. Any document that requires service must be served in accordance with Schedule 4 to these requirements.



## Amendments

- 3.3.5 The *Appeal Tribunal* may permit the amendment of any document served by the parties on such terms as it thinks fit.

## Provision of documents

- 3.3.6 The *Appeal Tribunal* may require any party to the appeal or any other *person* subject to the *enforcement jurisdiction* of the *Society* whom it considers should provide any information or documents in connection with the appeal, to make such information or documents available to it and to the parties in such manner as it considers appropriate.

## Appointment of legal representatives

- 3.3.7 The *Council* shall appoint a *Representative of the Council* to conduct the *appeal proceedings* on its behalf. The Secretary to the *Appeal Tribunal* (and the other party) shall be informed of the name of the *Representative of the Council* and of any subsequent change in that appointment
- 3.3.8 Each party to the *appeal proceedings* may instruct a *qualified lawyer* to represent them. Where a party instructs a *qualified lawyer* he shall notify the Secretary to the *Appeal Tribunal* (and the other party) of the name of the lawyer concerned in writing as soon as reasonably practicable and in any event not less than 14 days before the commencement of the substantive hearing before the *Appeal Tribunal*.

## Preliminary hearings

- 3.3.9 The *Appeal Tribunal* may hold preliminary hearings for the purpose of –
- (a) giving any directions which it considers appropriate for the conduct of the appeal; or
  - (b) determining applications made to it by the parties to the *appeal proceedings*.

## Admissibility of evidence

- 3.3.10 The *Appeal Tribunal* shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any Court of Law.

- 3.3.11 When hearing an appeal brought under paragraph 23(b) or (c) of the Enforcement Byelaw, the *Appeal Tribunal* shall be entitled to consider information or documents which were before the body being appealed against without revealing either the information or documents or their source.

Findings of other courts and other bodies

- 3.3.12 The findings of fact of any court of competent jurisdiction or of any committee or tribunal of any statutory or professional body exercising a regulatory or enforcement function, which have not been set aside on appeal or otherwise shall, be prima facie evidence of the facts so found and may be used as evidence in the appeal hearing relating to the *enforcement proceedings* or in submissions as to *sanctions* and costs.
- 3.3.13 A criminal conviction of a *defendant* by any court of competent jurisdiction which has not been set aside on appeal or otherwise shall be conclusive evidence of the commission of the offence in question and may be used as evidence in the appeal hearing relating to the *enforcement proceedings* or in submissions as to *sanctions* and costs.

#### 4. COUNCIL STAGE

Requirements made under paragraph 36 of the Enforcement Byelaw

- 4.1 All proceedings relating to *enforcement proceedings* before the *Council* shall be determined in accordance with these requirements.

Application to the Council

- 4.2 An application to the *Council* under the Enforcement Byelaw to consider a *sanction* imposed on a *person* (“applicant”) in *enforcement proceedings* shall be made to the Secretary of the *Council* by the latest of –

- (a) the expiry of the time permitted for serving a *Notice of Appeal* on the *Appeal Tribunal*; or
- (b) 14 days of the decision of the *Appeal Tribunal* on an appeal.

- 4.3 The application shall made be in writing and –

- (a) identify the *enforcement proceedings* and the *sanction* concerned;
- (b) be accompanied by a copy of the decision imposing the *sanction*, any written reasons given for that decision and, where applicable, any decision of the *Appeal Tribunal*; and
- (c) set out the *applicant’s* written representations regarding the *sanction*.

Special meeting

- 4.4 The Chairman or a Deputy Chairman of Lloyd’s shall convene a special meeting of the *Council* to consider the *sanction* and shall give the *applicant* at least 14 days’ written notice of the special meeting.
- 4.5 The *applicant* may appear at the special meeting either in person or by a *qualified lawyer* instructed by him and may make oral representations regarding the *sanction* imposed. If the *applicant* wishes to make oral representations, he shall inform the *Council* in writing of this and of the name of any representative at least 3 days before the hearing.
- 4.6 If the *applicant* appears at the special meeting, the *Council* may invite the *Representative of the Council* to attend either in person or by a *qualified lawyer* instructed by him and to take such part in the meeting as the *Council* considers appropriate.

Decision of the Council

- 4.7 The *Council* may, having considered the *sanction* imposed and any representations –
- (a) confirm, modify or grant dispensation in respect of the *sanction*;
  - (b) give any directions necessary for the enforcement of any *sanction* which has been confirmed or modified by the *Council*; and
  - (c) give such directions as it considers fit regarding publication of its decision.
- 4.8 The *Council* shall notify the *applicant* of its decision as soon as reasonably practicable in writing and the *Council's* decision shall take effect immediately.

## 4A ADMINISTRATIVE FINES

Requirements made under paragraph 36B of the Enforcement Byelaw

### 4A.1 Administrative fine for failure to comply with the requirements of paragraph 2.4F or paragraph 2.5C of the Membership & Underwriting Conditions and Requirements

Acts or omissions for which the Council may impose a fine pursuant to paragraph 36B

- 4A.1.1 These requirements apply to any failure by a *member* of the *Society* to comply with the requirements of paragraph 2.4F or paragraph 2.5C of the Membership & Underwriting Conditions and Requirements (“MU&Rs”).
- 4A.1.2 Other than where a *member* has ceased to underwrite prior to the year of account in question, an *administrative fine* may be imposed on a *member* that does not hold member’s assets in an amount equal to or higher than their Adjusted ECA at the Annual CIL Date (pursuant to paragraph 2.4F of the M&URs) or that (except in quarter 4) has failed to provide additional funds when required to do so pursuant to paragraph 2.5C of the M&URs (or in each case by such other date as may be prescribed by the *Council*).
- 4A.1.3 In considering whether to impose an *administrative fine* pursuant to paragraph 4A.1.2, the *Council* shall have regard to all relevant factors including as to the impact of any factors outside the *member’s* control, including any relevant delays on the part of the *Council*.

Calculation of administrative fine

- 4A.1.4 An *administrative fine* to be imposed pursuant to paragraph 4A.1.2 above shall be calculated in accordance with the following formula:

on a daily basis, an amount equal to the higher of:

- (i) X multiplied by 0.18/365, and
- (ii) £500

where:

X = the shortfall in the amount of member’s assets provided, plus amounts accrued to date

4A.1.5 The daily amount calculated in accordance with the formula in 4A.1.4 above shall accrue between the following dates:

- (a) commencing on the first date upon which the *member* fails to comply with relevant paragraph of the M&URs identified in 4A.1.1 in the relevant year of account; and
- (b) ceasing upon the date upon which the member fully complies with the relevant MU&Rs.

#### Procedure for imposition of administrative fine

4A.1.6 In order for an *administrative fine* to be imposed, a preliminary decision must first be taken by the *Administrative Sanctions Panel*.

4A.1.7 When the preliminary decision to impose an *administrative fine* is made, that decision must be notified to the *member* in writing as soon as reasonably practical with an explanation of the basis on which the *Council* intends to impose an *administrative fine* in accordance with these requirements.

4A.1.8 When a *member* is notified of the preliminary decision to impose an *administrative fine*, the *member* shall have 14 calendar days (or such longer time as the *Council* may allow) in which to make any written representations as to why the *administrative fine* should not be imposed and/or as to the amount of the *administrative fine*.

4A.1.9 If no written representations are made within the time period stipulated in 4A.1.8 above, then the preliminary decision to impose the *administrative fine* shall stand as the final decision of the *Council*.

4A.1.10 If written representations are made then those representations shall be considered by the *Administrative Sanctions Panel* which shall decide whether to uphold, overturn or amend the preliminary decision.

#### Composition of the Administrative Sanctions Panel

4A.1.11 All decisions of the *Administrative Sanctions Panel*, must be taken by no less than two members of the *Administrative Sanctions Panel*, which shall comprise:

- (a) the Chairman, the Chief Executive Officer, the Chief Financial Officer, the General Counsel and the Company Secretary (howsoever described from time to time); and

- (b) a person falling within section 7(1A) of the Lloyd's Act 1982 provided that in making any decision, the quorum of the *Administrative Sanctions Panel* shall include the person referred to at (b).

## 5. INTERVENTION ORDERS

Requirements made under paragraph 39 of the Enforcement Byelaw

Power to make an intervention order

- 5.1 The *Council* may by the Market Supervision and Review Committee make an order under paragraph 37 of the Enforcement Byelaw restricting or suspending the permission, consent, registration or right of any *person* subject to the *enforcement jurisdiction* of the *Society* to transact, or be concerned or interested in the transaction of insurance business at Lloyd's (an "*intervention order*").
- 5.2 The Market Supervision and Review Committee shall only make an *intervention order* where it considers that the making of such an order is required in order to prevent or reduce the risk of serious harm being caused to the interests of the *Society, members, underwriting agents* or Lloyd's policyholders.
- 5.3 The Market Supervision and Review Committee may make an *intervention order* under paragraph 5.1 above on such terms and conditions as it thinks fit.

Duration

- 5.4 An *intervention order* may be for a period not exceeding six months and the Market Supervision and Review Committee may make one or more further *intervention orders* to commence from the date of expiry of any previous *intervention order*.

Notice

- 5.5 Save as provided in paragraph 5.9 below, the Market Supervision and Review Committee shall serve on any *person* written notice where it is considering making an *intervention order*.
- 5.6 Where notice is given, the notice shall –
- (a) state the terms and conditions; and
  - (b) state the reasons why an *intervention order* is being considered.
- 5.7 Any *person* on whom that notice is served, may –
- (a) make written representations to the Market Supervision and Review Committee regarding the proposed *intervention order* within 14 days; and



- (b) request an opportunity to make oral representations within such period as the Market Supervision and Review Committee may determine.

5.8 The *intervention order* shall take effect at the end of the 14 day period unless written representations are made to the Market Supervision and Review Committee under paragraph 5.7 above.

#### Without notice

5.9 Where the Market Supervision and Review Committee considers it appropriate to do so, it may make an *intervention order* without the notice specified under paragraph 5.5 above and the *intervention order* shall take effect immediately.

#### Notification of an Intervention Order

5.10 Where the Market Supervision and Review Committee makes an *intervention order*, it shall notify the *person* on whom the *intervention order* is imposed as soon as reasonably practicable in writing of –

- (a) the terms and conditions of an *intervention order*; and
- (b) the reasons why the *intervention order* has been made.

5.11 Where notice has been given under paragraph 5.5 above and the Market Supervision and Review Committee decides not to make an *intervention order*, it shall notify the *person* concerned of its decision in writing as soon as reasonably practicable.

#### Application to Review

5.12 Any *person* on whom an *intervention order* has been imposed may at any time apply in writing to the Market Supervision and Review Committee to have the *intervention order* amended or set aside on the basis that there has been a material change in relevant circumstances. An application shall –

- (a) identify the material change in circumstances;
- (b) contain written representations in support of the application;
- (c) request an opportunity to make oral representations within such period as the Market Supervision and Review Committee may determine.

## Inquiries

- 5.13 Where an inquiry is ordered under part D of the Enforcement Byelaw to inquire into matters connected with the intervention order or the reasons for the intervention order, then at the conclusion of the inquiry the Market Supervision and Review Committee shall determine whether the intervention order is to be upheld, amended or set aside in accordance with these requirements.

## Enforcement Proceedings

- 5.14 Where *enforcement proceedings* are commenced under part F of the Enforcement Byelaw in respect of a *person* on whom an *intervention order* has been imposed, then the Market Supervision and Review Committee shall determine whether the *intervention order* shall expire on the conclusion of *enforcement proceedings* but without prejudice to any sanction or costs order imposed in the *enforcement proceedings*.

## 6. PUBLICATION

Requirements made under paragraph 43 of the Enforcement Byelaw

Confidentiality

6.1 The *Council* shall not disclose the decision of an *Enforcement Committee* before that decision takes effect other than –

- (a) to the Secretary of State where such disclosure is made in the public interest;
- (b) to a police officer for the purpose of facilitating or supporting the institution of criminal proceedings;
- (c) to any regulator or professional body for the purpose of assisting it to discharge its lawful functions, whether in facilitating or supporting the institution of proceedings or otherwise; or
- (d) where *enforcement proceedings* are held in public.

6.2 The *Council* shall publish the decision of the *Enforcement Board* or an *Enforcement Tribunal* if –

- (a) the decision incorporates a finding of *misconduct*;
- (b) the hearing of the charges was conducted in public; or
- (c) the defendant requests such publication,

on such terms as the *Council* sees fit unless in the opinion of the *Council* –

- (i) the interests of justice do not require publication;
- (ii) it is not in the interests of the *Society, members, underwriting agents* or Lloyd's policyholders for such action to be taken; or
- (iii) the *enforcement proceedings* concerned *misconduct* of an administrative nature.

6.3 The *Council* may direct a *defendant* to disclose to a third party or third parties information about a decision as to *misconduct* made against him by the *Enforcement Board* or an *Enforcement Tribunal* in such form and manner as the *Council* considers appropriate.

## Appeals

6.4 The *Council* shall publish a decision of the *Appeal Tribunal* if –

- (a) the hearing was held in public;
- (b) the appellant requests the *Council* to do so; or
- (c) the decision upholds the decision of the *Enforcement Tribunal*.

on such terms as the *Council* sees fit unless in the opinion of the *Council* –

- (i) the interests of justice do not require publication; or
- (ii) it is not in the interests of the *Society, members, underwriting agents* or Lloyd's policyholders for such action to be taken.

## Intervention Orders

6.5 Where an *intervention order* is made, amended or set aside the *Council* shall publish that matter on such terms as the *Council* sees fit.

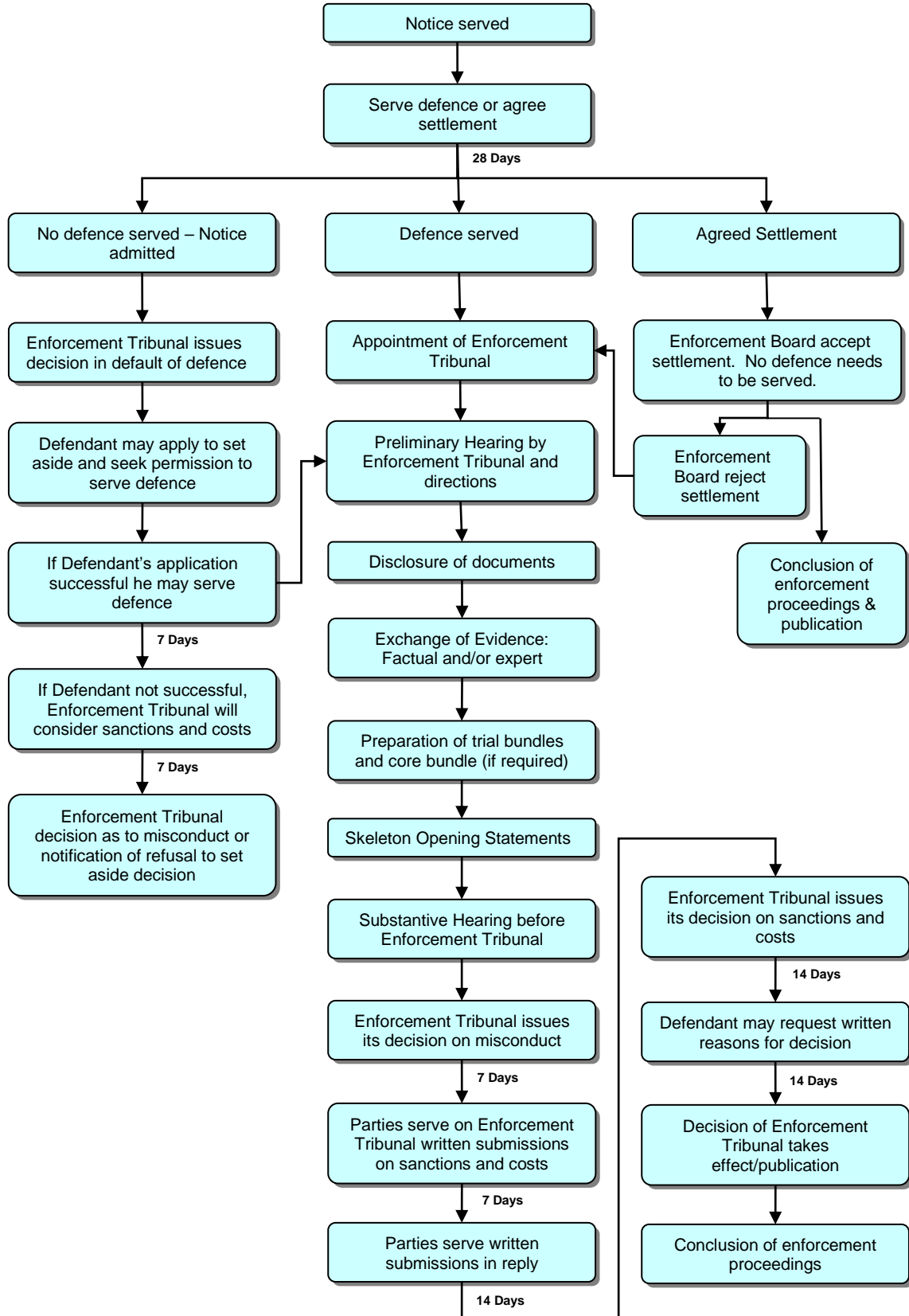
## 7. MISCELLANEOUS MATTERS

Human Rights Act 1998

- 7.1 The *Enforcement Board*, each *Enforcement Tribunal* and the *Appeal Tribunal* may adapt or waive any of these requirements to the extent necessary to give effect to the Human Rights Act 1998 in any *enforcement proceedings* where in the reasonable opinion of the *Enforcement Board*, each *Enforcement Tribunal* and the *Appeal Tribunal* that Act is considered to apply to it.

## Schedule 1 Enforcement Proceedings

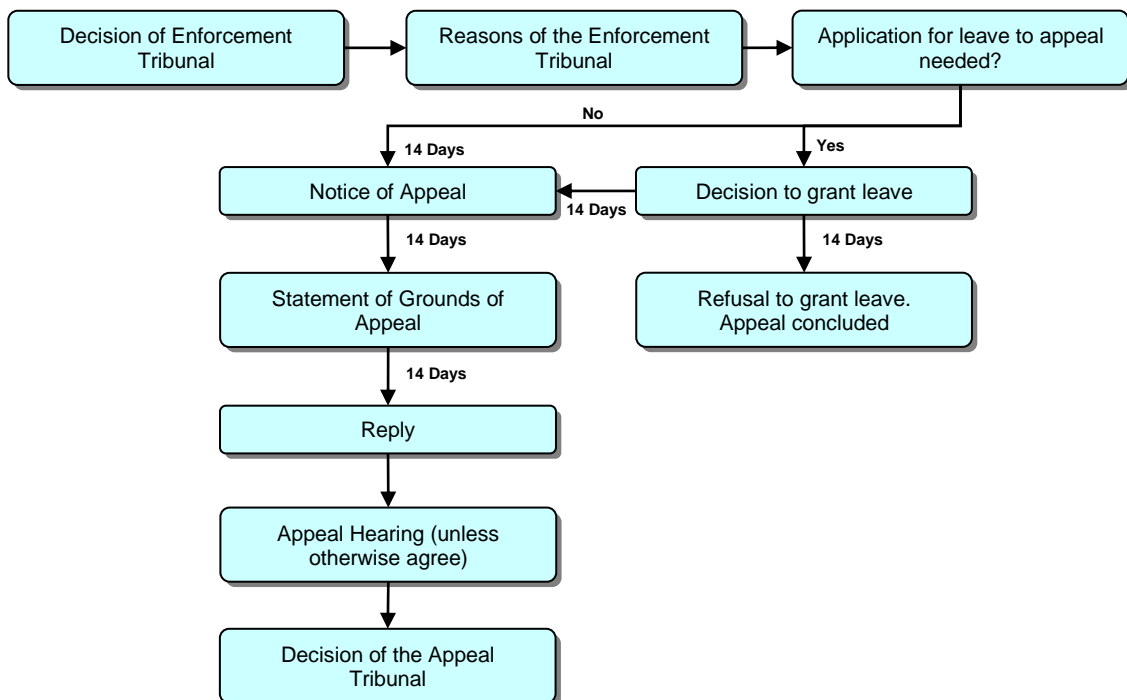
Flowchart of key stages and timetable, please refer to the Enforcement Byelaw and requirements for detailed information relating to each step. This flow chart is for information only and does not form part of these requirements.



## Schedule 2

### Appeals (against decision of an Enforcement Tribunal)

Flowchart of key stages and timetable, please refer to the Enforcement Byelaw and requirements for detailed information relating to each step. This flow chart is for information only and does not form part of these requirements



### Schedule 3

Note – The following draft order for directions may be varied, amended or adapted by the Enforcement Tribunal as it considers appropriate in the circumstances of the enforcement proceedings.

Before the Lloyd's Enforcement Tribunal

Case No. [LDB/ ]

In the matter of:

The Council of Lloyd's

-v-

[Defendant]

---

DRAFT ORDER FOR DIRECTIONS  
GIVEN BY THE ENFORCEMENT TRIBUNAL  
AT A PRELIMINARY HEARING  
ON [DATE] AT [TIME] A.M.

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#### Amended Notice

1. The Council shall serve the proposed amended Notice of Formal Enforcement Proceedings no later than [].

#### Reply

2. The Council may serve any reply to the Defence or Amended Defence no later than [ ].

#### Disclosure

3. The Council and the Defendant shall serve on each other no later than [ ] a list of the following documents –
  - a) Documents on which each party relies;
  - b) Documents of which either party is aware which –
    - i) Adversely affect each party's own case; or
    - ii) Support the other party's case.



The list must identify the documents in a convenient order and manner and as concisely as possible. It must indicate –

- a) those documents in respect of which the party claims a right or duty to withhold inspection; and
- b) those documents which are no longer in the party's control and what has happened to those documents.

The list must include a disclosure statement containing the information set out in Practice Direction 31, paragraph 4.1 to 4.6 of Part 31 of the Civil Procedure Rules.

The duty of disclosure continues until the enforcement proceedings are concluded. If documents to which that duty extends comes to a party's notice at any time during the proceedings, he must immediately notify every other party.

4. All documents listed as being disclosable must be made available for inspection and copying no later than [ ]. The reasonable costs of copying documents shall be incurred by the party requiring the documents to be copied.

#### Core Bundle

5. The Council shall serve on the Defendant and the Secretary of the Enforcement Tribunal a chronological paginated bundle of documents, agreed as far as possible with the Defendant comprising those documents to which the Council and the Defendant intend to refer when presenting their respective cases at the substantive hearing no later than [ ].

#### Factual and Expert Evidence

6. The Council and the Defendant shall provide each other with the names of all witnesses (including expert witnesses) they intend to call at the hearing and shall exchange copies of written witness statements (including expert reports) setting out the substance of the evidence such witnesses shall give, signed by the witness and verified by a statement of truth no later than [ ]. All witness statements referring to documents shall refer to the pagination of those documents in the chronologically paginated bundle served by the Council under direction 5 above. Copies of all such witness statements shall also be served on the Secretary to the Enforcement Tribunal at the same time.
7. All witness statements to stand as evidence in chief of the witness concerned unless otherwise ordered by the Enforcement Tribunal save where a witness touches on issues of good faith or honesty the witness shall give that part of his evidence in chief in full and not merely to attest to those matters.

8. The Council and the Defendant shall notify each other and the Secretary to the Enforcement Tribunal of the identity of those witnesses required to attend the hearing for the purposes of cross-examination no later than [ ].

#### Skeleton Opening Statements

9. The Council shall serve on the Defendant and the Secretary to the Enforcement Tribunal a written skeleton opening statement by [ ]. The Defendant shall serve on the Council and the Secretary to the Enforcement Tribunal a written skeleton opening statement by [ ].

#### Substantive Hearing

10. The hearing of the proceedings and any preliminary hearings will be held in [private or public, either totally or in part].
11. The hearing of the proceedings will be transcribed and will commence on [ ] at 10.30 a.m. at [location]. The hearing is presently estimated to last no more than [ ] days but if any party should consider this estimate to require revision it shall give notice in writing of this and of the reasons as soon as possible to the other party and to the Secretary of the Enforcement Tribunal. The Enforcement Tribunal will sit between 10.30 a.m. – 4.00 p.m. each day (or as may be required).
12. The Council and the Defendant shall have the right to apply to the Chairman of the Enforcement Tribunal for further directions or a variation of any of the above directions.

.....

[Name] QC  
Chairman

Further Directions referred above may include –

- (a) A direction that the enforcement proceedings or any part of them should be determined solely on the basis of written submissions and supporting documents.
- (b) A direction for the service of written submissions on a point of law and supporting documents.
- (c) A direction requiring the parties to exchange on the same day or different days copies of all documents to be referred to at the hearing of the charges.
- (d) A direction requiring the parties to exchange on the same day or different days copies of all documents in their possession, power or custody which to a material extent adversely affect their own case or support the other party's case as disclosed in their respective written statements.

## Schedule 4

### Service of documents

1. Any document that requires to be served in accordance with these requirements shall be served effectively by –
  - (a) post to the proper address;
  - (b) fax;
  - (c) any other electronic means where the receiving party has consented to service by that means;
  - (d) leaving the document at the proper address;
  - (e) personal service; or
  - (f) any alternative means permitted by any of the requirements of the Council for the service of legal process on a person.
  
2. The proper address is –
  - (a) in the case of an individual, his business address or his usual or last known home address;
  - (b) in the case of a partnership, its principal or its last known place of business;
  - (c) in the case of a body corporate, its registered office or principal office in the United Kingdom;
  - (d) in the case of the Council, the business address of the Representative of the Council;
  - (e) in the case of the Enforcement Board or the Enforcement Tribunal, the Secretary of the Enforcement Committees; and
  - (f) in the case of any party's qualified lawyer, the business address of that qualified lawyer.
  
3. The effective time of service of a document that is served in accordance with these requirements shall be deemed to be –
  - (a) in the case of a document that is posted, 48 hours after the time of posting;
  - (b) in the case of a document that is sent by fax before 1630 hours on a business day, the date of confirmation of transmission provided that a copy of the faxed document is posted or delivered to the person to be served at his proper address;
  - (c) in the case of a document that is sent by fax on a non-business day or after 1630 hours on a business day, the next day following the date of confirmation of transmission provided that a copy of the faxed document is posted or delivered to the person to be served at his proper address;
  - (d) in the case of a document that is sent by email or other electronic transmission before 1630 hours on a business day, on that day;
  - (e) in the case of a document that is sent by email or other electronic transmission on a non-business day or after 1630 hours on a business day, on the next business day after the day on which it was sent; and

- (f) in the case of a document that is left at the proper address of the person to be served, the date on which the document was left at such address.

## Schedule 5

### Principles of Enforcement Action

1. Enforcement proceedings may be brought in respect of conduct that may be regarded as: (i) discreditable; (ii) detrimental to the interests of the Society, members, underwriting agents or Lloyd's policyholders or others doing business at Lloyd's; (iii) a breach of: the Lloyd's Acts or Byelaws; (iv) a requirement of the Council; or (v) a direction or order of the Enforcement Board, an Enforcement Tribunal or the Appeal Tribunal.
2. Lloyd's enforcement jurisdiction includes members, managing agents, members' agents and their directors, partners and workers with the following sanctions being available: permanent or temporary ban from the Lloyd's market; public censure; and/or a fine. The FCA and the PRA also have enforcement powers in respect of those that operate in the Lloyd's market. The FCA and the PRA will use their enforcement powers in some cases according to the FCA's policy set out in their Decision Procedure and Penalties manual (<http://fshandbook.info/FS/html/FCA/DEPP>) and in the Enforcement Guide (<http://fshandbook.info/FS/html/FCA/EG>) and in the PRA's approach to enforcement: statutory statements of policy and procedure (<http://www.bankofengland.co.uk/pr/Pages/supervision/regulatoryaction/enforcement.aspx>).
3. Lloyd's has entered into co-operation arrangements with FCA (<http://www.fca.org.uk/static/documents/fca-lloyd-agreement.pdf>) in order to ensure that, where FCA and Lloyd's are responsible for regulation, an effective working relationship is maintained. These arrangements, *inter alia*, provide for: the sharing of information; the avoidance of unnecessary duplication; and the factors for deciding when Lloyd's or FCA would bring enforcement action.
4. The Market Supervision and Review Committee ("MSARC") is the committee responsible for the investigation and enforcement of disciplinary matters by Lloyd's in the Lloyd's market. In determining whether the facts and matters in any particular case should be the subject of proceedings, MSARC will have regard to all relevant matters including any previous guidance given by the Lloyd's Appeal or Disciplinary Tribunal, for example as to the meaning of misconduct.
5. The principles set out below, whilst not a comprehensive list of the circumstances in which Lloyd's might take enforcement action, describe types of conduct that are likely to result in such action. Previous Lloyd's disciplinary cases (cited by reference to their Lloyd's Case numbers) are also mentioned <sup>1</sup>, providing examples of each of these types of conduct. It should be noted that the cases are for illustrative purposes only and a decision to take enforcement action in any particular circumstances will take into account all the relevant facts.

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<sup>1</sup> The descriptions of cases below are not intended to be a substitute for the full facts and matters as provided in the relevant case bulletins or tribunal decisions.

**Principle 1 Any act of dishonesty.**

*It has been made clear in a number of previous Appeal Tribunal and Disciplinary Tribunal cases that dishonesty has no place in the Lloyd's market. For example, the President of the Appeal Tribunal has stated – "the message must go out again from the Lloyd's Appeal Tribunal that dishonesty will never be tolerated in the Lloyd's market" (Case no. LDB/9712/38).*

**Principle 2 The misappropriation, or causing or permitting the misappropriation, of money or other property (especially for direct or indirect personal gain).**

*This principle is demonstrated in the cases below:*

- *In Cases no. LDB/9702/2 MLP and LDB/9902/06, two underwriters who had misappropriated stolen cars recovered by their syndicates were banned from the Lloyd's market.*
- *Disciplinary cases of discreditable conduct against Brokers often involved the misappropriation of funds for indirect personal gain. For instance, in Case no. LDB/9708/18, premiums were retained for reinsurances that had not been placed with underwriters. The Broker was banned from Lloyd's.*
- *An example of direct gain in a Broker case is provided by Case no. LDB/9810/17. The Broker was found guilty of discreditable conduct and banned from Lloyd's for misappropriating funds in an Insurance Broking Account.*
- *In Case no. LEB/0909/1 allegations that a Lloyd's underwriter had misappropriated money belonging to the syndicate's capital provider and its service company (by describing payments as "director's loans" but which had not been authorised) and had diverted substantial sums due under a reinsurance recovery due to the syndicate from a third party, for personal gain, were grounds for charges of discreditable conduct. (The case was stayed due to the death of the defendant prior to the hearing).*
- *In Case no. LEB/0905 an underwriter and assistant underwriter took confidential underwriting documents from their previous to their new employers. Both admitted discreditable conduct and were suspended from transacting insurance business at Lloyd's for 6 and 3 months respectively.*

**Principle 3 The creation or use, or causing or permitting the creation or use, of false or misleading documents or other information.**

*This principle is demonstrated in the cases below:*

- *In Case no. LDB/9401/4, an active underwriter was found guilty of discreditable conduct, publicly censured and fined, for providing misleading documents to syndicate auditors and approving misleading syndicate accounts.*
- *The use of false or misleading cover notes/slips/debit or credit notes etc for indirect gain was a common theme in many discreditable conduct Broker cases. For example in Case no. LDB/9708/18, a Broker who issued false cover notes, was banned from the Lloyd's market.*

- In Case no. 6256 a former finance director of a Managing Agent with responsibility for the syndicate's year end process including signing the Data Accuracy Statement required for the purposes of the Statement of Actuarial Opinion failed to take reasonable steps to ensure that an adequate standard of documentation was maintained in respect of certain of the syndicate's reserving processes and as a result failed to put himself into a position to be able to ensure that accurate and complete information had been provided to the syndicate's external actuaries. He was publicly censured for misconduct and provided an undertaking not to apply for a position as a director of a Lloyd's firm for three years.

**Principle 4 Breach or causing or permitting a breach of a person's fiduciary or agency obligations related to the conduct of business in the Lloyd's market (for example, by making or permitting the making of a secret profit or failing to account for monies).**

*This principle is demonstrated in the cases below:*

- In Case no. LDB/0511/01, an active underwriter was found guilty of discreditable conduct in that he accepted personal inducements which he failed to disclose to his employer. He was banned from the Lloyd's market.
- In Case no. LDB/0105/03, a deputy active underwriter failed to disclose relevant interests, in this case in a coverholder, and to account for secret profits. As a result he was banned from the Lloyd's market.
- The making of a secret profit was commonly the basis for disciplinary action against Brokers. In Case no. LDB/9705/13, the Chairman of a Lloyd's Broker, admitted discreditable conduct, being his knowledge that a secret profit had been taken and he was banned from the Lloyd's market for 6 months.

**Principle 5 Failure or causing or permitting a failure to deal openly and honestly with, or provide clear and accurate information to, members, policyholders, counterparties or other relevant parties.**

*This principle is demonstrated in the cases below:*

- In Cases no LDB/0805A and LDB/0805B there was a failure by the directors of a Managing Agent to provide external parties i.e. capital providers with necessary information. They were banned from the Lloyd's market and subject to a fine and censure.
- In Case no. LDB/0112/09, a Managing Agent failed to disclose relevant information to members about imminent transactions of potential financial consequence and admitted discreditable conduct. A fine and censure were imposed.
- In Case no. LDB/9705/11, a Managing Agent admitted misconduct for failing to inform members of an increase in syndicate stamp. The Managing Agent was publicly censured.
- In Case no. LDB/9712/40, a Managing Agent failed to produce the required information in its syndicate accounts and was found guilty of breaches of the Syndicate Accounting Byelaw. It was banned from acting as a Managing Agent.



**Principle 6** Any act or omission, or the causing or permitting of any act or omission, capable of damaging Lloyd's brand, licences or the Central Fund or otherwise likely to bring Lloyd's or the Lloyd's market into disrepute.

*This principle is demonstrated by the following:*

- *In Case no. LDB/0310/05, the director of a Managing Agent was fined for agreeing to pay to a Lloyd's Broker a sum in excess of that which might otherwise have been paid by way of brokerage in order to secure the employment of one of the Broker's employees. The director's conduct was considered to present "a risk of harm to Lloyd's policyholders, the Society its members or others doing business at Lloyd's".*
- *The Co-operation Arrangements between FCA and Lloyd's dated June 2013 provide that the factors which would tend towards a disciplinary case being conducted by Lloyd's, rather than FCA, include cases where the conduct in question poses significant risks to Lloyd's reputation, licences and the Central Fund.*

**Principle 7** Failure or causing or permitting a failure to manage or safeguard properly, honestly or prudently monies or other assets held on behalf of policyholders or members in accordance with the terms of any applicable trust or agreement.

*This principle is demonstrated in the cases below:*

- *In Cases no LDB/0805A and LDB/0805B, although not the subject of the settled cases, the Lloyd's notices of censure explained that the proper safeguarding of PTF assets was of fundamental importance "and that the use of PTF assets for the purposes of funding capital raising is an improper use of such assets".*
- *The misuse of accounts was commonly the basis for disciplinary action against Brokers. For example in Case no. LDB 9711/37/B, the Managing Director of a Broker dishonestly misused funds held in an Insurance Broking Asset account as an incentive to obtain business and was banned from the Lloyd's market for one year.*

**Principle 8** Failure or causing or permitting a failure to deal with Lloyd's in an open, honest and transparent manner or to ensure that Lloyd's is promptly informed of any matter which it reasonably ought to know.

*This principle is demonstrated in the case below:*

- *In Case no. LDB/0112/09, a Managing Agent failed to disclose to Lloyd's important information about the prospective sale of the issued share capital of its parent company and was publicly censured and fined.*

**Principle 9 Failure or causing or permitting a failure to organise and control the business of an underwriting agent in a responsible manner or to maintain proper records and systems for the conduct of its business and the management of risk.**

*This principle is demonstrated in the cases below:*

- *In Case no. LDB/0205/08, a Managing Agent was publicly censured and fined. The Managing Agent admitted a number of failures to manage responsibly and control its business, including: lack of proper records and systems in relation to its US credit life business; inadequate controls over coverholders; inadequate systems for monitoring premium receipts; inadequate checks as to business written by reference to its business plan etc.*
- *In Case no. LDB/0103/02, misconduct was admitted by the Managing Agent, which was publicly censured and fined, for failing to prevent an unauthorised third party from conducting Lloyd's business as an unapproved coverholder.*
- *In Case no. 6256 a Managing Agent and three of its former directors admitted misconduct arising out of a failure to maintain sufficient systems and controls including the maintenance of an adequate standard of documentation in relation to certain of the syndicate's reserving processes. Each of the defendants was publicly censured with the CEO and active underwriter each also undertaking not to apply for a position as a director of a Lloyd's firm for two years and the finance director undertaking not to apply for such a position for three years.*

**Principle 10 Any act or omission or permitting any act or omission amounting to –**

- a) the harassment (whether sexual or otherwise) or bullying of another person or persons; or**
- b) discrimination against a person or persons on the grounds of race, gender or sexual orientation.**

**Principle 11 Conducting Lloyd's business or representing a Lloyd's business when –**

- a) under the influence of alcohol where it leads to unprofessional behaviour; or**
- b) under the influence or in possession of illegal drugs.**

## Schedule 6

### Standing Instruction for settlement proposals submitted to the Enforcement Board under paragraph 2.2.13 of the Enforcement Requirements

1. The terms of any proposed settlement submitted to the Enforcement Board will be in writing and be agreed by the Representative of the Council and the Defendant and shall include those matters stated at paragraph 2.2.12 of the Enforcement Requirements –
  - a. State the charge or charges admitted by the Defendant;
  - b. State the facts agreed between the parties which relate to the charges being admitted;
  - c. State the sanctions which the parties agree that the Enforcement Board may impose on the defendant (including the terms of any notice of censure); and
  - d. Contain a draft order for costs which the parties agree that the Enforcement Board may make.
  
2. In addition, other than -
  - (i) cases of an “administrative nature”; or
  - (ii) where the facts and circumstances make it inappropriate or irrelevant,

the Enforcement Board will expect the written settlement documentation to include sufficient information regarding –

- a. any background information as may be relevant in order to ensure the admitted misconduct is put into a proper and fair context;
- b. which, if any, of the MSARC’s principles of enforcement (see Schedule 5 of the Enforcement Requirements) apply;
- c. whether the defendant has financially benefitted from the admitted misconduct (and if so whether the defendant has, or has agreed to, repay or account for that benefit);
- d. whether any members, policyholders or third parties have been adversely affected by the misconduct (and if so whether any restitution has been made or offered);
- e. the defendant’s disciplinary history including in particular details of any similar offences;
- f. whether the defendant has co-operated during the inquiry and enforcement process;
- g. the approach that has been taken in assessing the costs figure and to what extent the defendant has been given credit for settling the case;
- h. any other mitigating factors;
- i. any other aggravating factors;
- j. information regarding as to any criminal and/or civil and or other regulatory or disciplinary proceedings arising out of the same facts;

and in the case of a defendant who is an individual -

- k. the defendant’s employment history in the Lloyd’s market;
- l. the impact of the settlement proposals on the defendant (taking into account where possible the defendant’s career prospects);

and in the case of a defendant which is a firm -

- m. whether the firm identified, reported and mitigated the admitted misconduct; and
  - n. the impact of the settlement proposals on the defendant's business.
3. In deciding whether to approve, reject or suggest modifications to the settlement proposals submitted to it, the Enforcement Board will ordinarily require the parties (including their legal representatives) to attend before it in order to seek from the parties additional information about or clarification of the proposed settlement. Where it does so it will, where possible, provide the parties advance notice of the matters to be covered at that hearing.

## Schedule 7

### MSARC framework for the imposition of sanctions

#### Introduction

1. The Market Supervision and Review Committee (“MSARC”) is the Lloyd’s committee responsible for bringing enforcement proceedings against those subject to Lloyd’s enforcement jurisdiction. In Lloyd’s Market Bulletin Y4202 MSARC set its “Principles of enforcement” which indicate the types of conduct that are likely to result in MSARC bringing enforcement proceedings against a firm or individual<sup>2</sup>.
2. Where MSARC decides to bring proceedings then, under the terms of the Enforcement Byelaw, the parties to enforcement proceedings may agree settlement terms in order to resolve the case without the need for a contested hearing before an Enforcement Tribunal. The terms (ie the sanctions) to be offered to a defendant for settlement are determined by MSARC and will then be negotiated by the Representative of the Council (on behalf of Lloyd’s) with the defendant.
3. Any settlement agreed between the Council of Lloyd’s and a defendant is then subject to the independent consideration of the Enforcement Board, which may confirm, reject or propose modifications to the terms of a settlement.
4. The purpose of this note is to set out MSARC’s approach in establishing the appropriate level of sanctions when prosecuting enforcement cases. This framework will be used to –
  - a. establish the proposed sanctions to be offered for settlement purposes.
  - b. in the event that settlement cannot be reached, to inform Lloyd’s when making submissions as to sanctions to the Enforcement Tribunal hearing the case.

This framework includes specific discounts for early settlement. The framework also refers to Lloyd’s approach to costs recovery.

It should be stressed that it is for guidance only and in individual cases MSARC may consider it appropriate to vary the application of this framework.

5. MSARC’s policy regarding the imposition of fines on managing agents for late or incorrect submission of prescribed returns is separately set out in Market Bulletin Y4527).

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<sup>2</sup> The current principles of enforcement are set out in Schedule 5, Chapter 5 of the Underwriting Requirements

## The available sanctions

6. Under the Enforcement Byelaw (at Part G), the sanctions that may be imposed on a defendant include the following (although not all these sanctions will be available in respect of all defendants) –
  - a. the exclusion or suspension from membership of the Society;
  - b. the revocation or suspension of a firm's permission to act as an Underwriting Agent, Approved Run Off Company or Lloyd's Broker;
  - c. the revocation or suspension of a person's right to transact or be concerned or interested in the transaction of insurance business at Lloyd's;
  - d. the revocation or suspension of an individual's permission to enter the Underwriting Room;
  - e. a fine;
  - f. a notice of censure;
  - g. a declaration of an individual's unfitness or unsuitability to act as a director, partner or compliance officer;
  - h. an order of restitution.
7. In practice, the sanctions that have in previous cases (and will therefore in future) be most normally considered as part of the settlement of enforcement proceedings are c, d, e, f, g and h above. Accordingly, this note primarily relates to the approach to be taken in deciding the level of the sanctions to be sought under those heads.
8. It is likely that the application of this framework will lead in many cases to higher levels of fines or other sanctions than has previously been the case given that penalties will be based upon the defendant's "relevant income". However, each case will need to be considered on its merits.
9. In addition, Lloyd's will continue to seek reimbursement of its internal and external costs from defendants in respect of investigating and prosecuting enforcement proceedings<sup>3</sup>. This will apply in both contested cases and in cases that are settled.
10. In preparing this framework regard has been had to the "step approach" adopted by both the Financial Conduct Authority as set out in its Handbook (at DEPP) and the Prudential Regulatory Authority (in the Prudential Regulatory Authority's *Approach to enforcement - statutory statement of policies and procedures*).

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<sup>3</sup> See part K of the Enforcement Byelaw

## Overriding principles

11. In assessing the sanctions, MSARC has agreed that the following overriding principles will apply in all cases –
  - a. sanctions should promote high standards of regulatory and/or market conduct;
  - b. sanctions should promote confidence with members (capital providers) and policyholders;
  - c. sanctions should have a suitable deterrent effect (both on the specific firm/individual and on others in the market generally);
  - d. sanctions should be fair, proportionate and should reflect the individual facts of a case;
  - e. sanctions should take into account the previous conduct of the defendant and, in the case of an individual, should take into account their seniority or experience;
  - f. sanctions should ensure that policyholders, members and those that work in the market, are protected from firms or individuals who may cause them loss or detriment. The market generally needs to be protected from those that may damage its reputation. Accordingly Lloyd's sees suspension in appropriate circumstances as a primary enforcement tool;
12. Whilst account will be taken of any relevant previous Enforcement Tribunal decisions these should not be regarded as constituting binding precedents and the application of this framework may result in higher sanctions being sought. Account may also be taken of developments in financial services regulatory practice generally and specifically in applying this framework Lloyd's may take account of the rules and guidance contained in DEPP/the PRA's statutory statements.
13. As is described in more detail below, MSARC's approach, when considering the applicable sanctions will be to seek a public censure and also to consider whether an order of restitution should be made. MSARC will then determine which (if any) further sanctions should apply and in particular whether suspensions or fines should be sought.

## Public Censure

14. MSARC will seek a public censure in all cases of misconduct<sup>4</sup>. This is critical to ensure that the market is made aware of conduct that Lloyd's believes to be unacceptable and as a deterrent against further similar misconduct. The censure notice will aim to set out a clear summary of the facts and matters relating to the wrongdoing, the standards breached, the charges admitted and the sanctions imposed. Lloyd's recognises that censures will have a serious effect upon a defendant especially given that censures in respect of the most serious misconduct may remain on Lloyd's website indefinitely (for instance where the sanctions include an indefinite ban from the market).

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<sup>4</sup> Other than in the very limited circumstances set out in the Enforcement Requirements

## Restitution (“Disgorgement”)

15. Where the misconduct has led to the defendant accruing a specific profit and/or having caused a loss to an innocent third party then MSARC will always consider whether an order for restitution is appropriate and can be properly made. The financial position of the defendant will not ordinarily of itself be a reason not to make an order for restitution that would otherwise be made.

## Suspension and fines

16. After public censure, suspension and/or fines are likely to be the most usual sanctions sought.
17. In the context of Lloyd’s enforcement proceedings, the sanction of revocation or suspension of a person’s right to transact business in the Lloyd’s market is considered to be the primary enforcement sanction for the more serious forms of misconduct<sup>5</sup>. This is because exclusion or suspension from the market helps protect the market from the activities of the defendant. In the case of a time-limited suspension, the period of suspension will allow the defendant an opportunity to consider their misconduct, undergo any necessary remedial training and take steps to demonstrate that they have adequately rehabilitated themselves.
18. In other cases a fine will be considered an appropriate sanction without a suspension also being imposed. In suitable cases both a suspension and a fine will be considered appropriate.
19. In determining the level of suspension or fines to be offered for settlement purposes MSARC will adopt the following 5 step approach –

### Step 1: Consider the seriousness of the breach to set the applicable range of sanctions

20. MSARC will first have regard to the seriousness of the alleged misconduct in assessing the range of the period of suspension (or whether a permanent suspension is appropriate) and also the starting level of a fine.

### Sanctions against firms

21. In assessing the level of fine for a firm, MSARC will establish a fine based on the seriousness of the alleged misconduct. Where appropriate, in proceedings against a Lloyd’s managing agent, MSARC may determine a fine as a percentage of the firm’s “relevant revenue.” Relevant revenue means the amount of premium income generated by the managing agent from a particular product line, class or business area for the relevant underwriting year(s) of account during which the misconduct occurred<sup>6</sup>. However, MSARC recognises that there may be cases where premium income is not an appropriate indicator of the harm or potential harm that a firm’s misconduct may cause, and in those cases MSARC may use an appropriate alternative (such as the loss caused by the misconduct).

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<sup>5</sup> The sanction referred to at paragraph 6(c) above. In such cases Lloyd’s would also seek a sanction to prevent the individual having access to Lloyd’s premises (ie the sanction referred to at paragraph 6(d) above)

<sup>6</sup> Regard may be had to the percentages of “relevant revenue” see DEPP6.5A.2



22. In the most serious cases MSARC would consider whether the firm’s approval as a managing or members’ agent should be suspended or revoked<sup>7</sup>.

Sanctions against Individuals

23. In assessing the length of suspension for an individual, MSARC will have regard to the seriousness of the alleged misconduct in accordance with the table below.
24. In assessing the level of fine for an individual MSARC will deal with the assessment of the fine in accordance with the table below. This calculates the fine based on a percentage of the individual’s “relevant income” depending on the seriousness of the alleged misconduct. (“Relevant income” is the gross amount of all benefits received by the individual from the employment or role in connection with which the misconduct occurred during the year or years in respect of which the misconduct occurred<sup>8</sup>. Relevant income shall include salary, bonus, pension contributions and any share options relating to such employment or role.)

<b>Level of misconduct (including indicators)</b>	<b>Period of suspension from transacting Lloyd’s business and from the Room</b>	<b>Starting level for benchmark of fine (% of “relevant income”)</b>	<b>Public Censure?</b>
1. Discreditable conduct (involving dishonesty or lack of good faith)	Total and permanent suspension	40%	Yes
2. Discreditable conduct (involving reckless misconduct)	Five years – permanent suspension	30%	Yes
3a. Discreditable conduct involving “gross” or very serious negligence  3b. Detrimental conduct (at the higher level of this charge)	3a. Two – five years suspension  3b. Zero – two years suspension  <u>and/or</u> a declaration of an individual’s unfitness or unsuitability to act as a director, partner or compliance officer of a Lloyd’s firm (either indefinitely or for a set period)	20 %	Yes

<sup>7</sup> Enforcement proceedings may also be brought against a Lloyd’s broker and the only sanction would be to revoke its registration as a Lloyd’s broker

<sup>8</sup> In the case of a “one-off” act of misconduct the relevant income shall be for a period of 12 months

4. Detrimental conduct or other breach of Lloyd's requirements (not at the higher level of this charge)	Zero – 1 year	10%	Yes
5. Detrimental conduct or other breach of Lloyd's requirements (where misconduct committed inadvertently and no actual harm caused)	No suspension	0%	Yes

25. In the past Lloyd's has been prepared to accept public "undertakings" from individuals in lieu of the formal suspension sanctions imposed under the Enforcement Byelaw. Lloyd's will not generally agree to such undertakings as part of a settlement other than in exception cases. Suitable undertakings may in appropriate cases form part of a settlement with a firm. Undertakings will not be accepted in lieu of a fine.

Step 2: Mitigating and aggravating factors

26. MSARC will then consider any relevant mitigating and aggravating factors that are relevant in order to establish whether to adjust the level of sanctions from step 1.
27. Factors to take into account at this step may include –
- a. whether there was any direct or indirect benefit to the defendant arising from the misconduct;
  - b. whether the defendant cooperated during the investigation by Lloyd's;
  - c. whether the defendant identified and reported the misconduct and took timely steps to mitigate its effect;
  - d. whether the misconduct took place over a prolonged period, involved repeated activities of misconduct or was a "one-off" isolated act;
  - e. whether the defendant was a director or held any other senior position or position of trust in the relevant firm;
  - f. whether the defendant's actions involved or implicated other individuals especially more junior individuals (whether knowingly or not) in the commission of the misconduct;
  - g. whether the defendant's actions harmed or risked harming policyholders, members or others doing business at Lloyd's;
  - h. whether the action involved a breach of, or having caused or permitted a breach of, any applicable fiduciary duty;

- i. whether the defendant has any previous regulatory or disciplinary convictions or relevant criminal convictions;
  - j. whether Lloyd's has previously issued guidance or previous cases regarding the conduct in question;
  - k. whether the defendant's actions harmed or risked harming the reputation, licences or brand of Lloyd's;
  - l. whether the misconduct harmed or risked harming the Lloyd's Central Fund;
  - m. the defendant's personal financial position (although this will not ordinarily be taken into account when considering an order of restitution).
28. MSARC will accordingly make any adjustments to the sanctions that were assessed under Step 1.

Step 3: Adjustment for deterrence

29. If MSARC considers the sanctions arrived at after Steps 1 and 2 are insufficient to act as a credible deterrent either against the defendant who committed the misconduct or others from committing other further or similar acts of misconduct, then MSARC may increase the length of suspension or the level of the fine.

Step 4: Consider whether both a suspension and a fine are appropriate

30. MSARC will in accordance with Steps 1 to 3 assess the applicable level of suspension and amount of any fine. MSARC will then consider whether it is appropriate to impose both a suspension and a fine. In doing so MSARC will decide whether the combined effect of both a suspension and a fine is likely to be disproportionate, in view of the nature of the misconduct.
31. In the event that MSARC considers that the overall impact of the sanctions would be disproportionate, it will decide whether the suspension and/or fine should be reduced or should not apply.

Step 5: Settlement discount

32. MSARC will consider what, if any, settlement discount should be offered to the defendant for settling at an early stage (in particular before any defence to the charges has been served).
33. In circumstances where the appropriate sanction includes a permanent suspension from the market, then no discount on that suspension will be offered (although any additional fine may be discounted).
34. In any other cases a reduction in the length of suspension or a reduction in the fine of up to 30 per cent may be agreed. In the event that a case settles after a defence has been served then the maximum discount available would be 10 per cent.

## **Costs**

35. In addition to the sanctions that will be sought in a settlement, Lloyd's will also seek an order for costs.
36. Under the Enforcement Byelaw, costs may be sought against any person who was the subject of an inquiry. Costs may also be sought in respect of the Council's costs incurred in the investigation, preparation and presentation of an enforcement case. (In the event that a case is contested an order for costs may also include the costs of the Tribunal).<sup>9</sup>
37. MSARC is of the view that it is inappropriate for the Society to bear the costs associated with investigating and bringing proceedings against a defendant. Accordingly, Lloyd's will always seek, as part of any settlement an order for costs to recover the full amount properly and reasonably attributable to the specific defendant. This will include in-house costs, external legal costs and other reasonable disbursements.
38. Clearly early settlement will reduce the level of costs sought. Lloyd's may take into account evidence of hardship in determining the level of costs sought but for the avoidance of doubt Lloyd's will not reduce the level of costs as a consequence of the of level of the fine.

## **Review of this policy**

39. MSARC will keep this policy under review and may amend or replace this policy from time to time.

May 2014

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<sup>9</sup> Enforcement Byelaw, paragraphs 40 and 41

## Schedule 8

### Consolidated fining policy for Lloyd's returns

This Consolidated Fining Policy applies to the Lloyd's Returns listed in the Appendix attached to this document. The list of Lloyd's Returns to which this Consolidated Fining Regime applies may be amended by MSARC from time to time.

It is a requirement of the Council of Lloyd's that Lloyd's Returns are correctly completed and submitted on time.

Failure to submit a Lloyd's Return on time is a breach of the relevant Lloyd's Byelaw and may therefore result in a fine being imposed.

MSARC wishes to set out its policy for imposing fines in such cases:

1. Where a Managing Agent has reason to believe that it may be unable to submit a Lloyd's Return on time it must contact the relevant Lloyd's individual at the earliest opportunity in advance of the deadline to discuss the matter. Failure to do so will be a factor Lloyd's will take into account in deciding whether a fine is appropriate.
2. MSARC may in its discretion impose a fine in respect of Lloyd's Returns which are submitted by the deadline but are either inaccurate or incomplete. In deciding whether to exercise that discretion MSARC will have regard to whether the Managing Agent itself identified the inaccuracy and brought the matter to Lloyd's attention at the earliest opportunity.
3. Where MSARC is satisfied that a fine is appropriate then the following fining regime will be implemented in respect of the late, inaccurate or incomplete submission of a Lloyd's Return other than where MSARC is satisfied that an alternative fine is appropriate:  
Per Lloyd's Return per syndicate – flat fine £20,000  
  
Per Lloyd's Return per syndicate – additional fine per working day late £1,000
4. Before imposing a fine, Lloyd's may first issue a Managing Agent with a warning letter and, in this regard, Lloyd's has issued guidance on the procedure it will follow in [Market Bulletin Y5265](#)

Persistent delays will lead to further disciplinary action.

These levels of fines will be reviewed by MSARC from time to time.

This Consolidated Fining Policy has been agreed by the Market Supervision and Review Committee.

## Appendix – Lloyd's returns

This Appendix lists the Lloyd's Returns to which the Consolidated Fining Policy for Lloyd's Returns applies:

Performance Management Data Return
Quarterly Monitoring Return - Part A
Quarterly Monitoring Return - Part B
Realistic Disaster scenario
Realistic Disaster scenario - light
Syndicate Reinsurance Structure
Syndicate Business Forecast
Syndicate Information Statement
UK Tax
Lloyd's Capital Return
Gross Quarterly Return
Technical Provisions Data
Quarterly Solvency Return (QSR)
Quarterly Asset Data Return (QAD)
Annual Solvency Return – Part A (ASR)
Annual Solvency Return – Part B (ASB)
Annual Asset Data Return – (AAD)

## Schedule 9

### Lloyd's overseas returns fining policy

This Policy applies to the regulatory returns and compliance reports listed in the Appendix attached to this document ("Returns"). The list of Returns to which this Policy applies may be amended by MSARC from time to time.

It is a requirement of the Council of Lloyd's under this Policy that Returns, whether required to be filed with Lloyd's or an overseas regulator, are correctly completed and submitted on time.

Whilst Returns may be submitted by Service Companies, Coverholders or other entities in respect of business in overseas countries or territories ("Intermediary"), this requirement of Council applies to the Managing Agent who is ultimately responsible in respect of the business to which the Return relates.

Failure to submit a Return on time is a breach of this Policy and may therefore result in a fine being imposed.

Lloyd's may also recoup any fine imposed on it by an overseas regulator as a result of the late submission of a Return.

#### *Restitution of fines imposed by an overseas regulator on Lloyd's*

Lloyd's will require a Managing Agent in accordance with paragraph 5 of the Overseas Underwriting Byelaw to pay to Lloyd's directly or reimburse Lloyd's in respect of fines which may be imposed upon Lloyd's by an overseas regulator as a result of a failure to meet the deadlines for submission of the Returns.

#### *Lloyd's own fines*

In addition to the recouping of any fine imposed by the overseas regulator, MSARC wishes to set out its policy for imposing Lloyd's own fines on a Managing Agent in such cases:

1. Where the Intermediary or Managing Agent has reason to believe that it may be unable to submit a Return on time it must contact the relevant Lloyd's individual at the earliest opportunity in advance of the deadline to discuss the matter. Failure to do so will be a factor Lloyd's will take into account in deciding whether a fine is appropriate.
2. MSARC may in its discretion impose a fine in respect of Returns which are submitted by the deadline but are either inaccurate or incomplete. In deciding whether to exercise that discretion MSARC will have regard to whether the Intermediary or Managing Agent itself identified the inaccuracy and brought the matter to Lloyd's attention at the earliest opportunity.
3. Where MSARC is satisfied that a fine is appropriate then the following fining regime will be implemented in respect of the late, inaccurate or incomplete submission of a Return other than where MSARC is satisfied that an alternative fine is appropriate:  
  
Per Return per syndicate – flat fine £20,000  
  
Per Return per syndicate – additional fine per working day late £1,000
4. Before imposing a fine, Lloyd's may first issue a Managing Agent with a warning letter and, in this regard, Lloyd's has issued guidance on the procedure it will follow in [Market Bulletin Y5265](#)

Persistent delays will lead to further disciplinary action.

These levels of fines will be reviewed by MSARC from time to time.

This Policy has been agreed by the Market Supervision and Review Committee.



## Appendix – Lloyd’s Overseas Returns fining policy

This Appendix lists the regulatory returns and compliance reports to which the Overseas Returns Fining Policy applies:

Singapore Regulatory Returns as prescribed under the Insurance (Lloyd’s Asia Scheme) Regulations
Hong Kong Risk Return
Hong Kong Claim Return
Australian Reinsurance Pool Corporation (ARPC) Quarterly Return
Australian Reinsurance Pool Corporation (ARPC) Annual Return
Annual and Quarterly Non-XIS Returns
US Trading Quarterly and Annual Regulatory Returns
Listing of Lloyd’s Syndicates as Eligible Surplus Lines Insurers in the United States Annual Return
US Terrorism Risk Insurance Act of 2002 (“TRIA”), as amended (“TRIPRA 2015”) - TRIA Reporting
NAIC’s International Insurers Department “IID” Annual Filing
Canadian Trading Quarterly and Annual Regulatory Returns
Canadian Provincial Returns
Annual Motor Insurers’ Bureau of Ireland Audit
Quarterly Danish Guarantee Fund
India - IRDAI - Annual Reinsurance Registration
China Reinsurance Registration - Quarterly Return
India Regulatory Returns as prescribed by IRDAI Regulations
Lloyd’s India Compliance Report