

# West of England Corporate Governance Charter

2009

## 1. Introduction

This charter sets out the principles of corporate governance of the Club designed to ensure that it provides long term value to its Members as a mutual marine insurer. The charter is reviewed regularly by the Club's Board and whenever changes are made to the way the Club is governed.

## 2. Definitions

- "CEO": the Chief Executive Officer and Managing Director of the Managers
- "The Club": The West of England Ship Owners Mutual Insurance Association (Luxembourg)
- "Managers": West of England Insurance Services (Luxembourg) S.A.
- "Currently insured member": A Member of the Club insured as such in respect of an insured vessel
- "Insured vessel": A vessel insured at the material time by the Club
- "Affiliate": A wholly owned subsidiary of the Club..

## 3. General Meeting

The General Meeting of Members is the Club's paramount governing body and its powers and responsibilities are set out in the Club's Constitution and are otherwise governed by law. Its principal powers are laid down in the Constitution, in the applicable law and in the Club's Rules. They are:

- a. to determine the nature of the Club's business
- b. to appoint and dismiss the Club's Directors and auditors,
- c. to approve the Club's annual report and accounts
- d. to wind the Club up or change its domicile.
- e. to amend the Club's Constitution or its Rules

The Members must meet once a year for an Annual General Meeting and may meet at other times as determined by the Board or a sufficient number of Members as specified in the Constitution. Only Members of the Club entered in the register of Members may participate in and exercise voting rights in the General Meeting

#### **4. The Board**

The Board is the board of Directors of the Club and, subject to the powers of the General Meeting, has the powers and responsibilities set out in the Constitution, the applicable law and the Rules. It may have up to 25 members. It may delegate a number of its powers to the Executive Committee or the Managers, with the exception of setting the Advance and Additional calls and Release percentage for each policy year, setting any Overspill call, closing any policy year, transferring funds to any reserve, determining the Club's overall investment strategy, allocating investment income and approving the submission of the annual accounts to the General Meeting for approval.

The Board may include independent Directors, and such other Directors as may be elected from time to time in accordance with the Constitution and this Charter. There are three kinds of Director: those appointed from among the Members' nominees, independent Directors and Directors whose abilities and knowledge may make a significant contribution to the work of the Board.

The Directors of the Club are either appointed, re-elected or their appointment terminated at the Annual General Meeting. Between Annual General Meetings, the Board may upon a recommendation by the Nomination and Remuneration Committee co-opt one or more Directors subject to their appointment being confirmed at the next Annual General Meeting. All appointments, co-options, re-elections and terminations of appointment are determined by a majority decision.

Where the Board co-opts a Director between Annual General Meetings, it shall give reasons for that decision to the next Annual General Meeting prior to the confirmation of the appointment of such Director at such Meeting. The Board need not give reasons where the person appointed is an owner, partner, director, employee or nominee of a currently insured Member.

No two or more Directors may be or become an owner, partner, director or employee of the same current Member. Should such a situation arise, only one of the Directors shall remain on the Board unless the Board otherwise decides, in which case the Board's decision shall be notified to Members at the next Annual General Meeting before the appointment or re-election of Directors is considered.

The Board shall elect a Chairman and Vice Chairmen from among its members.

A member of the Board may be a member of any of the Board's Committees or a member of the board of any Affiliate. The Chairman of the Board will usually be the Chairman of the Executive Committee but not of any other Committees of the Board or of any Affiliate.

The Board shall meet whenever the interests of the Club so require and normally four times a year.

#### **5. Committees of the Board**

The Board is assisted by the following Committees: the Executive Committee, the Audit Committee, the Nomination and Remuneration Committee, the Claims Committee and the Classes 2, 3 and 4 Committee. Their existence and activities do not reduce the responsibility of the Board as a whole. The Committees normally meet 4 times a year immediately before a Board meeting and report their decisions and recommendations at that Board meeting.

As a general principle, the Committees have an advisory role to the Board and are composed of Directors of the Club. They assist the Board in specific areas and make recommendations to it. However, a Committee has no powers to take decisions relating to the Club's business, except in cases where the Board has expressly delegated powers to that Committee. Notwithstanding such delegation, the Board remains responsible for the proper execution of such powers by and on behalf of the Club.

The duties and responsibilities of the Committees are laid down by the Board and reviewed regularly by the Committees themselves and by the Board. The appointment of the members of each Committee, their dismissal, their remuneration, the term of their appointment, their duties and the working procedures of each such Committee are determined by the Board upon recommendation of the Nomination and Remuneration Committee.

## **6. The Executive Committee**

The Executive Committee may have up to 15 members. Its quorum shall be 5.

The Executive Committee's powers and responsibilities are to conduct and oversee between the meetings of the Board the business of the Club and at any time to exercise all powers and responsibilities in that respect which have been delegated to it by the Board. The Executive Committee shall exercise such powers and responsibilities according to guidelines determined by the Board. It reports to the Board on all its activities.

Subject to the Board's responsibility for the conduct and management of the Club's business, the main powers delegated by the Board to the Executive Committee are currently:

- Supervising the implementation of the general and financial strategy of the Club
- control and protection of the Club's assets
- determining and supervising the Club's overall investment strategy
- determining the Club's reinsurance and insurance requirements
- ensuring regulatory compliance by the Club
- determining the Club's accounting policy
- determining and overseeing risk management policy
- determining the Club's annual operating budget.
- overseeing the day-to-day management of the Club.
- approving recommendations made by the Nomination and Remuneration Committee with respect to remuneration of the directors of the Managers

Because of the nature of the powers delegated to it by the Board, an Executive Committee member shall attend all the Committee's meetings unless prevented from doing so by exceptional circumstances. If a member of the Committee is unable to attend a meeting, he may before that meeting communicate his views on any Committee agenda item to the Chairman.

## **7. Audit Committee**

The Audit Committee may have up to 6 members and shall include all independent Directors. Its quorum shall be 3.

Its responsibilities shall include:

- examining the annual financial reports of the Club, before the submission to the Board;
- recommending the appointment and dismissal of the External Auditors and the level of audit fees;
- evaluating the performance of the External Auditors;
- reviewing the audit by the External Auditors;
- evaluating the conclusions of all internal audit reviews;
- monitoring the nature and extent of non-audit services rendered by the External Auditors;
- evaluating business, financial and operational risks;
- evaluating the performance of the Internal Auditor;
- assessing the adequacy of the Internal Control System;
- evaluating any matter as may be requested by the Board or the Executive Committee

The Audit Committee has the broadest investigative authority within its domain and is entitled to make use of outside expertise as well as that of its own members..

Both the External Auditor and the Internal Auditor can, whenever either deems it necessary, call an Audit Committee meeting.

The Board appoints the Internal Auditor upon the recommendation of the Audit Committee. On recommendation of the Audit Committee, the Board may outsource the Internal Audit function. The Audit Committee sets the Internal Auditor's terms of reference.

The Internal Audit is an independent appraisal function within the organisation, aimed at assisting all employees of the Club and the Managers in effectively carrying out their duties by research and evaluation of the adequate functioning, the efficiency and effectiveness of internal control systems. The Internal Auditor will provide the organisation with analysis, evaluations, recommendations, advice and information on relevant topics and encourage the organisation to establish effective controls that are economically justified. Through evaluation of internal control systems, the Internal Auditor shall assist the Board, its Committees and the Managers in the effective discharge of their duties.

## **8. Nomination and Remuneration Committee**

The Nomination and Remuneration Committee is a sub-committee of the Executive Committee and its members shall be chosen by that Committee from among their number. It may have up to 4 members, one of whom may be the Chairman of the Board, who shall not, however, chair the sub-committee. Its quorum shall be 2.

Its responsibilities include:

- in respect of appointments, making recommendations via the Executive Committee to the Board for the appointment or renewal of the appointment or removal of Directors;
- evaluating the independence of independent Directors;
- reviewing the Club's Corporate Governance Charter;
- making recommendations to the Board with respect to the appointment of Committee members;
- making recommendations via the Executive Committee to the Board with respect to the appointment of the CEO and Directors of the Managers;
- reviewing succession planning;
- reviewing and evaluating criteria for membership of the Board, and its Committees;
- providing an induction programme for Directors of the Club.

The Nomination and Remuneration Committee shall also make recommendations via the Executive Committee to the Board with respect to the remuneration (including all benefits) of Directors of the Board and to the Executive Committee with respect to remuneration of directors of the Managers. The Nomination and Remuneration Committee reviews and reports to the Board in respect of the objectives for the CEO and directors of the Managers and evaluates their performance. The Nomination and Remuneration Committee also reviews the application of corporate governance rules and disclosures in the annual report and accounts in respect of the remuneration of the Board and the CEO and of its own activities.

## **9. Class 1 Claims Committee**

The Class 1 Claims Committee shall have up to 20 members. Its quorum shall be 5.

Its powers and responsibilities include:

- recommending to the Board the passing of Class 1 claims of sizes and types as determined by the Board.
- reviewing and reporting to the Board on significant casualties.
- reporting to the Board on oversight of Class 1 claims trends, the Club's liability environment and claims in the International Group Pool and claims estimating.
- reporting to the Board on oversight of loss prevention initiatives derived from Class 1 claims experience.
- recommending levels of deductibles

## **10. Classes 2, 3 & 4 Committee**

The Committee may have up to 10 members. Its quorum shall be 3.

Its powers and responsibilities include:

- under specific delegated authority of the Board, passing Classes 2, 3 and 4 claims of sizes and types determined by the Board and recommending the passing of such claims by the Board where they are reinsured into Class 1.
- reporting to the Board on Classes 2, 3 and 4 claims trends, the Classes' costs and liability environment and claims estimating.

## **11. Affiliates**

The Club has three principal Affiliates: International Shipowners Reinsurance Company S.A., ("ISRe") West of England Reinsurance (Hamilton) Ltd, ("Hamilton") and West of England Insurance Services (Luxembourg) S.A. ("Services")

ISRe and Hamilton reinsure between them significant portions of the Club's liabilities and the Board of ISRe provides advisory services to the Club in connection with investment strategy. Services manages the Club's day to day business.

The Affiliates apply the same principles of corporate governance as those set out in this charter, but with appropriate modifications to reflect the fact that they are wholly owned companies limited by shares and, in the case of Hamilton, incorporated in a different jurisdiction from the parent.

## **12. Duties of Directors**

- The Directors must manage the Club's business in the best possible manner to achieve the Club's aims and objectives and serve the general interests of its Members. They must act as a body in which the will of the majority prevails. If there is disagreement, a dissenting Director may require his/her dissent to be recorded, but if he/she feels unable to be associated with important majority decisions he/she should resign. A serving Director remains jointly and severally liable for decisions of the Board even if he/she disagrees with them.
- The Directors must act conscientiously in delegating their powers. They must ensure that the exercise of any delegated power is properly reported to the Board and that, where necessary, the Board takes the initiatives that a prudent man of business would do in relation to his own affairs. Failure to do so may amount to negligence for which a Director could be personally liable to the Club for a wrongful act or omission committed during the performance of the mandate and may not be protected by the indemnity in Article 84 of the Constitution.
- In addition to personal liability for management errors, a Director may be held liable to the Club and to third parties in the event the Club or third party suffers a loss due to an infringement of the law or the Club's Constitution and Rules. The liability of the Directors in such case is joint and several.
- The Directors must act in good faith in what they reasonably believe to be the best interests of the Club – that is, the Members and future Members taken as a whole, and not any individual Member or group or class of Members. They must exercise their powers for the purpose for which they were given, and not for some collateral purpose; they must not secretly profit from their office or allow a conflicting interest or duty to affect the way in which they perform their duty to the Club, unless permitted by the Constitution, the Rules or the Members in General Meeting.
- Each Director shall ensure that he/she properly fulfils his/her duties as a Director and has sufficient time and knowledge to exercise those duties.
- The Board may further prescribe the duties of Directors but only to the extent such prescription is permissible by law and does not conflict with the provisions of this Charter, the Constitution, the applicable law or the Rules.
- Each Director shall keep confidential any information he/she receives about the Club and its business by reason of that office.

### **13. Review of the Board and its members**

At least every three years the Board will assess its size, composition, operation and interaction with the Managers. The Board shall ensure that it fulfils its tasks and responsibilities properly and efficiently. Following such evaluation, the Chairman may suggest appropriate measures to be taken by it.

### **14. Appointment procedure**

Proposals for the appointment or re-election of Directors shall be supported by a recommendation from the Nomination and Remuneration Committee, and such

recommendation shall be reported to the Board or Members' Meeting. The Board has the right to make its own recommendations to such Members' Meeting.

**15. Duration**

Each Director retires annually under the Club's Constitution and may offer him/herself for re-election at the Annual General Meeting. A Director shall not offer himself/herself for re-election at more than 7 Annual General Meetings or after his/her 70<sup>th</sup> birthday unless requested to do so by the Board upon the recommendation of the Nomination and Remuneration Committee. Where the Board so requests, it shall give reasons for such request at the Annual General Meeting immediately before the re-election of such Director is considered.

**16. Functional conflict of interests**

Except as may otherwise be required by law, a Director who is a director or manager of a competitor of the Club, or supplier or who is employed by a competitor or supplier shall report that fact to either the Board or any of its Committees prior to any deliberations concerning items on the agenda relating (whether directly or indirectly) to this competitor or supplier. This obligation also applies when a close family member of the Director concerned is in any of the above-mentioned positions. The Director shall, unless the Board or relevant Committee determines, leave the meeting while this item on the agenda is being addressed and shall not participate in the deliberations and decision-making.

**17. Independence Criteria for Independent Directors**

Each independent Director shall not be an executive or employee of the Club or an Affiliate and not have held such a position in the previous three years. He/she shall not receive or have received significant additional remuneration from the Club or an Affiliate other than the fee received as non-executive Director. He/she shall not have had within the previous three years a material business relationship with the Club or an Affiliate, either directly or as a partner, shareholder, director or senior executive of a company that has such a relationship and shall not be or have been a partner or an employee of the external auditor of the Club or an Affiliate during the previous three years. He/she shall not be a senior executive or managing director of another company in which a senior executive or CEO of the Club is a director, and shall not have other significant links with executive Directors of the Club through involvement in other companies or bodies. He/she shall not be a spouse, registered partner or other life companion, foster child or immediate family of a director, a senior executive, or managing director of the persons referred to above.

If an independent Director offers himself for re-election at more than 7 Annual General Meetings, the Board when requesting that he/she may offer him/herself for re-election in accordance with paragraph 14 of this Charter shall give reasons to the Annual General Meeting why it thinks such Director satisfies the independence criteria in the Charter.

**18. Remuneration of Directors**

The Nomination and Remuneration Committee shall recommend the levels of remuneration for all Directors, including the Chairman and Vice Chairmen. Such levels are to be approved by the Board and advised to the General Meeting which approves the next annual report and accounts of the Club.

The Nomination and Remuneration Committee shall benchmark Directors' compensation (other than that for Independent Directors and Directors appointed to provide specific abilities and knowledge) against peer companies and mutual associations to ensure that such compensation is competitive. Remuneration shall be linked to the time committed to the Board and Committees. Independent Directors and Directors appointed to provide specific abilities and knowledge shall be remunerated by reference to market remuneration levels for such directors.

No loans or advances will be granted to any Director of the Club.

**19. Powers and Responsibilities of Chairmen and Vice Chairmen of the Board and its Committees**

The Chairman of the Board and of each Committee is responsible for the proper functioning of the Board or relevant Committee.

Each Chairman determines the calendar for the Board or Committee meetings and the agenda for each meeting after consultation with the CEO. The relevant Chairman or (if he or she is unavailable) a Vice Chairman or (if there is no Chairman or Vice Chairman available) a member of the Board or the relevant Committee chairs the Board or Committee meeting.

Each Chairman shall ensure that the Board or relevant Committee is kept properly informed of the Club's affairs so as to enable each body to perform its functions. Minutes of all Committee meetings shall be provided to the Board.

Each Chairman shall ensure that the Board or relevant Committee receives all necessary information prior to each meeting and that there is sufficient time for consideration of all matters at the meeting.

The Chairman of the Board shall chair all General Meetings. The Chairman of the Board may chair the Executive Committee, but shall not be a member of the Audit Committee, nor may he/she chair any other Committee of the Board, but he/she may be a member of any Committee.

Each Chairman shall encourage and ensure free expression at all times by any Director of any opinion, advice or view held by such Director in connection with the Club's business.

**20. Criteria for the termination of a Director's appointment**

In addition to the grounds for terminating a Directors appointment namely:

- (i) Death, receiving order, bankruptcy, composition or arrangement with creditors, mental disorder
- (ii) Order of court of competent jurisdiction
- (iii) Written resignation

the Board has set the following criteria under Article 44(d) of the Constitution:

- Failure consistently to attend meetings of the Board unless otherwise agreed by the Board.
- Conduct likely to have prejudicial consequences upon the reputation of the Board, the Club and/or its associated and subsidiary companies.
- Failure to notify a conflict of interest in advance of a Board decision affecting him/her
- Ceasing to be a Member's nominee, where the Director does not meet the alternative criteria of either being an Independent Director or a Director whose abilities and knowledge may make a significant contribution to the work of the Board.
- Failure to disclose to the Club in advance of or during his/her period of appointment any fact or circumstance which if it had been disclosed would have resulted in the appointment not being made.
- Conflict of interest arising from appointment to the Board of another protection and indemnity association or of a competitor.

## **21. Executive Management**

Luxembourg law provides that the Club appoint in Luxembourg an individual person as authorised manager for day to day management in Luxembourg. This appointment is subject to prior authorisation by the Luxembourg authorities.

The executive management of the Club is performed by the Managers under delegated authority from the Executive Committee That delegated authority is set out in a management agreement between the Club and the Managers. As sole shareholder in the Managers, the Club through the Executive Committee appoints the directors of the Managers. The CEO of the Managers reports to the Board and its Committees as required by them.