

**THE WEST OF ENGLAND  
SHIP OWNERS  
MUTUAL INSURANCE  
ASSOCIATION (LUXEMBOURG)  
CONSTITUTION**



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## **NAME**

1. The name of the Association is “The West of England Ship Owners Mutual Insurance Association (Luxembourg)”.

## **INTERPRETATION**

2. In this Constitution unless the Context or subject matter otherwise requires:

- (a) “THE ASSOCIATION” means The West of England Ship Owners Mutual Insurance Association (Luxembourg).

“BOARD” means the board of Directors for the time being of the Association.

“CLASSES” means the classes of insurance afforded by the Association to the Members as set out in Article 9 and more particularly defined in the Rules and “Class 1”, “Class 2”, “Class 3” and “Class 4” have the meanings set out in Article 9.

“CLASS MEETING” means a separate meeting of the Members who have Vessels entered in any Class called under the provisions of Article 27(a).

“CO-ASSURED” means a person who is named in a Certificate of Entry as being a person capable of benefiting and/or accepting obligations from such Entry in addition to or in substitution for the named Member.

“THE CONSTITUTION” and “THIS CONSTITUTION” means this Constitution as originally framed or as altered from time to time in accordance with the provisions hereinafter contained.

“CONTRIBUTIONS” and “Calls” means any sum payable to the Association in respect of an Insured Vessel.

“DIRECTORS” means the Directors for the time being of the Association.

“GROSS TONNAGE” means the gross tonnage of a vessel calculated in accordance with the 1969 Tonnage Measurement Convention (or if no such tonnage has been fixed, then the gross registered tonnage) as certified in the Certificate of Registry of such vessel or if no such certificate exists, in any other official document relating to the registration of such vessel.

“INSURE” and its derivatives shall include reinsure.

“INSURED VESSEL” means a Vessel which has been entered in one or more Classes of the Association.

“IN WRITING” means written, printed or lithographed, or visibly expressed in all or any of those or any other modes of representing or reproducing words.

“JOINT MEMBERS” has the meaning attributed to it in Article 7(a).

“MANAGERS” means the Managers for the time being of the Association.

“MEMBER” means a Member for the time being of the Association and includes a Joint Member where the context so admits.

“OFFICE” means the principal office for the time being of the Association.

“ORDINARY RESOLUTION” means a resolution passed by a simple majority of such Members as being

entitled to do so vote in person or by proxy at a general meeting at which such resolution is proposed.

“OWNER” means owner, owner in partnership, owner holding separate shares in severalty, part owner, mortgagee, trustee, charterer, operator, manager or builder of any vessel and any other person whatsoever interested in or in possession of any vessel. The expression “Owner” shall also include any insurer (other than the Association) of risks which could be insured by the Association which has itself entered into a contract of insurance in respect of any vessel.

“PERIOD OF INSURANCE” means the period of time during which (according to the terms of any contract of insurance) the Association is at risk as regards the occurrence of events in relation to an Insured Vessel which may give rise to liability on the part of the Association to indemnify a Member or Co-Assured.

“REGISTER OF MEMBERS” means the register of Members of the Association.

“RULES” means the Rules of the Association and the Schedules thereto as originally framed or as from time to time altered, abrogated, or added to and for the time being in force.

“SPECIAL RESOLUTION” means a resolution passed by a majority of not less than three-fourths of such Members as being entitled to do so vote in person or by proxy at a general meeting at which such resolution is proposed.

“SUCCESSORS” means the heirs, executors, administrators, personal representatives, assigns (when permitted under the Rules), receiver, curator or other person authorised to act on behalf of one who becomes incapable by reason of mental disorder of managing his property or affairs, trustee in bankruptcy, liquidator and other successors whatsoever.

“VESSEL” (in the context of a vessel entered or proposed to be entered in the Association) shall have the meaning attributed to it by the Rules from time to time in force.

- (b) Words importing the singular include the plural and vice versa, words importing the masculine include the feminine and vice versa, and words importing persons may where the context so permits include corporations and vice versa.
- (c) References to Articles or to Clauses are to Articles or Clauses of this Constitution.
- (d) Headings are inserted for ease of reference only and are not to be taken into account in construing this Constitution.

## **GENERAL**

3. The Association is a mutual insurance association incorporated in Luxembourg and governed by this Constitution and by Luxembourg law.
4. The principal office and place of business of the Association shall be in the Grand Duchy of Luxembourg.

## **OBJECTS**

5. The objects for which the Association is established are:
- (a) to insure on a mutual basis Owners of vessels in respect of risks of a marine and transit nature and all other risks relating or incidental to maritime trade, commerce or business;
  - (b) to carry on marine and transit insurance business, to reinsure risks accepted by other insurers (provided such risks are of a nature such that they could have been directly insured by the Association), and to reinsure or retrocede any risk insured or reinsured;
  - (c) to manage and invest the funds of the Association in such manner, and in such investments, as the Board may from time to time think fit, and to vary such investments from time to time;
  - (d) generally and without limitation to engage in all operations which may be connected with these objects or which may facilitate their extension or development.

## **MEMBERSHIP**

6. The Association shall consist of an unlimited number of Members but not less than five.
7. (a) An Owner who enters a vessel in the Association for insurance shall (if not already a Member) be and become a Member of the Association as from the commencement of the Period of Insurance relating to such vessel and shall be entered as such in the Register of Members. Where more than one Owner of any vessel wishes to be insured, one of the following modes of entry may be expressly agreed between such Owners and the Association:

Either all such Owners shall be and become Joint Members;

Or one of such Owners shall be and become the Member and the remainder shall be and become Co-Assured(s);

Or more than one of such Owners shall be and become Joint Members and the remainder shall be and become Co-Assured(s),

Provided That both or all of the Owners of any one vessel who are to be and become Joint Members shall together constitute but a single Member and shall be entered as such in the Register of Members; and:

- (i) the contents of any notice or communication by or on behalf of the Association to any one of the Joint Members shall be deemed to have been validly notified or communicated to all of the Joint Members, and
  - (ii) the Joint Member whose name first appears in the Register of Members shall be entitled to exercise all voting and other rights of the Joint Members and the Association shall be entitled to disregard any communication from, or purported exercise of such rights by, any other Joint Member.
- (b) A Member shall cease to be a Member of the Association if for any reason (whether by virtue of the provisions of the Constitution or the Rules or otherwise howsoever) the Period of Insurance shall have terminated in respect of all Vessels entered by him for insurance in the Association
- (c) Membership shall not be transferable or transmissible.
8. (a) The Constitution shall bind the Association and the Members and their Successors to the same extent as if it had been signed by each Member and contained an undertaking by each Member to observe all

and each of the provisions hereof.

- (b) Every engagement or liability of a Member in respect of any insurance or otherwise shall for all purposes relating to enforcing such engagement or liability be deemed to be an engagement or liability by or on the part of such Member to the Association, and not to any other Member or other person and all moneys payable thereunder shall be paid to the Association.
- (c) All claims against the Association shall be made and enforced against the Association only.
- (d) The Association is a corporation and has a legal personality of its own which is entirely separate from that of its Members or any one of them. The Association, and not each Member, shall be the insurer of the Members. No Member insures any other Member. Accordingly, every engagement or liability of a Member in respect of any insurance or other obligation of the Association shall for all purposes, including without limitation the enforcement of such engagement or liability, be (and shall be deemed to be) an engagement or liability to the Association and not to any other Member. All monies payable in respect of any such engagement or liability shall be payable to the Association and not to any other Member. No partnership between Members shall be created by such engagement or liability. Any engagement and liability on the part of Members shall be several and not joint unless expressly otherwise provided. Any claim in respect of the insurance provided by the Association may only be made and enforced against the Association and shall not be made or enforced against any Member.

## **BUSINESS**

9. The insurance business of the Association shall consist of the following classes:

Class 1, being cover against Protection and Indemnity and other Risks

Class 2, being Freight, Demurrage and Defence cover

Class 3, being cover against Ship's Officers and/or Crew Strikes

Class 4, being cover against Port Area Strikes

together with such other or further classes as the Members may by Special Resolution from time to time determine, Provided That any proposed addition, deletion or alteration to the classes of insurance business of the Association shall be notified to the competent Luxembourg Authorities and any necessary consents are obtained.

10. (a) The business of the Association shall, subject to the provisions of the Constitution, be conducted in accordance with the Rules from time to time adopted by the Association by Special Resolution and the Rules at any time in force may at any time be altered, abrogated or added to by the Association by Special Resolution. Any alterations shall be notified to the competent Luxembourg Authorities in accordance with currently applicable legal requirements. The Rules if duly passed in accordance with the Constitution shall, subject to the provisions of the Constitution, bind the Members to the same extent as if they were set out and incorporated in the Constitution.
- (b) Notwithstanding anything contained in the Constitution the Board may, save in so far as expressly prohibited by the Rules, accept entries of Vessels upon such special terms as to Contributions and Calls and as to the nature and extent of the risks covered or otherwise as it may think fit. Without prejudice to the generality of the foregoing the Board may:
    - (i) Accept entries which insure against any of the risks described in Article 5 albeit that they arise otherwise than in respect of the Vessel to be insured; and/or
    - (ii) Accept entries from Owners of Vessels on terms that some other person or persons (including any body corporate) connected with the Owner's business or with any contract or venture undertaken by the Owner is to be or become a Co-Assured, albeit that such other person is not an Owner of a Vessel and notwithstanding that by the terms of entry such person is not to be or become a

Member.

- (c) A separate account shall be kept for each Class to which shall be debited and credited all payments necessarily or properly made or received by or on behalf of the Association in connection with that Class.
  - (d) The funds necessary to meet the amount debited to the separate account of each Class and funds thought proper to meet, provide for or reserve against outstanding, anticipated and future claims, expenses and outgoings shall be provided by Contributions to be made in accordance with the Rules, and it shall be lawful for the Board from time to time to direct that Contributions shall be paid to the Association accordingly.
  - (e) All risks underwritten on behalf of any Class shall be underwritten in the name of the Association, but subject to the provisions of Article 66 no person shall, in respect of insurance in any Class, be liable to pay or entitled to receive any money in respect of any insurance in any other Class.
  - (f) In the event of any Owner making default in payment of any Contribution due from him for insurance in any Class, the Board may in its absolute discretion determine that the same shall be paid by the Owners entered for insurance in that Class in the manner set out in the Rules and payment may be enforced in the name of the Association.
  - (g) Neither the Rules nor any of their provisions shall if duly passed in accordance with the Constitution be unconstitutional or ultra vires the Association unless the Rules or the provision in question are contrary to the express provisions of the Constitution.
11. (a) The Board shall at any and all times have power to create in the name of the Association a Reserve Deposit Fund or Initial Effective Capital Fund or other similar Fund. Such power shall without limitation include power by formal resolution to determine the maximum level of such fund from time to time, the level of paid in or unpaid capital thereto, and how allocations to such fund shall be made. In addition, the Board shall have power to impose such conditions as it may see fit on the disposition of such fund, including the power to impose such conditions as may be required by the Luxembourg authorities.
- (b) The Board shall at any and all times have power to adjust Contributions and Calls paid or payable by individual Members in respect of any Class to such extent and subject to such terms and conditions as it may think fit.

## **GENERAL MEETINGS**

12. The Association shall in each calendar year hold a General Meeting as its Annual General Meeting in addition to any other meetings in that year and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Association and that of the next. The Annual General Meeting shall be held in the Grand Duchy of Luxembourg at such time and place as the Board shall determine. All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
13. The Board may at any time call an Extraordinary General Meeting.
14. (a) The Board shall on the requisition of Members representing not less than one-tenth of the total voting rights of all the Members having at the date of the deposit of the requisition a right to vote at General Meetings of the Association forthwith proceed duly to convene an Extraordinary General Meeting of the Association.
- (b) The requisition shall be in writing and shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the Office and may consist of several documents in like form each signed by one or more requisitionists.
- (c) If the Board does not within twenty-one days from the date of deposit of the requisition proceed duly to convene a meeting the requisitionists or any of them representing more than one half of the total

voting rights of all of them may themselves convene a meeting but any meeting so convened shall not be held after the expiration of three months from the said date.

- (d) A meeting convened under this Article by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Board.
  - (e) Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board to duly convene a meeting shall be repaid to the requisitionists by the Association.
  - (f) For the purposes of this Article the Board shall in the case of a meeting at which a resolution is to be proposed as a Special Resolution, be deemed to have duly convened the meeting if it does not give less than twenty-one clear days' notice of such meeting.
15. In the case of all General Meetings of the Association twenty-one clear days' notice at the least specifying the place, the day and the hour of meeting, and the general nature of the business of the meeting (and in the case of an Annual General Meeting specifying the meeting as such), shall be given in writing in manner hereinafter mentioned to all the Members and to the Managers and the Auditors for the time being of the Association.
16. It shall be the duty of the Association, on the requisition in writing of such number of Members as is specified in Article 14 and (unless the Association otherwise resolves) at the expense of the requisitionists, to give to Members entitled to receive notice of the next Annual General Meeting notice of any resolution which may properly be moved and is intended to be moved at the meeting and to circulate to Members entitled to have notice of any General Meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

Provided That the Association shall not be bound to give notice of any resolution or circulate any statement unless:

- (a) a copy of the requisition signed by the requisitionists or two or more copies which between them contain all the signatures of the requisitionists is deposited at the Office not less than six weeks before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the Association's expenses in giving effect thereto; and
- (c) notice of the intention to move it has been given to the Association not less than forty days before the meeting at which it is proposed to be moved;

nor shall the Association be bound to circulate any such statement if in the opinion of the Association's legal advisers the circulation thereof is likely to render the Association legally liable for defamation.

17. The accidental omission to give notice to, or the non-receipt of notice by, any person entitled to receive notice shall not invalidate the proceedings at any General Meeting.

#### **PROCEEDINGS AT GENERAL MEETINGS**

18. No business shall be transacted at any General Meeting unless a quorum is present. Save as in this Constitution otherwise provided, five Members present in person shall be a quorum.
19. If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of or by Members, shall be dissolved. In any case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such time and place as the Board may determine, and if at such adjourned meeting a quorum is not present within one hour from the time appointed for holding the meeting, the Members present in person or by proxy shall be a quorum, but so that not less than two individuals qualified to attend and vote shall constitute the quorum.
20. The Chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place. Whenever a meeting is adjourned for fourteen days or more, seven clear days' notice at the least, specifying the place,

the day and the hour of the adjourned meeting shall be given as in the case of the original meeting, but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting. Save as aforesaid, no Member shall be entitled to any notice of an adjournment. No business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

21. The Chairman of the Association, or in his absence a Vice-Chairman, shall preside at every General Meeting, but if at any meeting neither the Chairman nor a Vice-Chairman be present within thirty minutes after the time appointed for holding the same, or if none of them be willing to act as Chairman, the Directors present shall choose some Director present to be Chairman, or if no Director be present or if all the Directors present decline to take the chair the Members present shall choose some Member present to be Chairman.
22. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless before or upon the declaration of the result of the show of hands a poll is demanded by the Chairman or by at least five Members having the right to vote at the meeting or by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting. Unless a poll is so demanded a declaration by the Chairman that a resolution has been carried, or carried unanimously or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book containing the minutes of proceedings of the Association, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
23. The instrument appointing a proxy to vote at a meeting shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the last preceding Article a demand by a person as proxy for a Member shall be the same as a demand by the Member.
24. If any vote shall be counted which ought not to have been counted, or might have been rejected, the error shall not vitiate the result of the voting unless it be pointed out at the meeting or adjourned meeting at which the vote is given, and not in that case unless it shall in the opinion of the Chairman of the meeting be of sufficient magnitude to vitiate the result of the voting.
25. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty days from the date of the meeting or adjourned meeting at which the poll was demanded) and place as the Chairman shall direct and no notice need be given of a poll not taken immediately. A poll shall be taken in such manner (including the use of ballot or voting papers) as the Chairman shall direct. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
26. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting shall be entitled to a further or casting vote.

## **CLASS MEETINGS**

27. (a) The Board may at any time call a separate meeting of the Members who have Vessels entered in any Class. A separate meeting of the Members having Vessels entered in any Class shall also be convened on the requisition in writing of not less than twenty-five such Members. To every such separate meeting all the provisions of this Constitution relating to General Meetings of the Association or to the proceedings thereat shall, mutatis mutandis, apply except that not more than twenty-one clear days' notice of any such meeting shall be required, and that if at any adjourned meeting a quorum is not present those Members having Vessels entered in that Class who are present in person or by proxy

(being not less than two) shall be a quorum.

- (b) Without prejudice to Article 10 (a), the Members having Vessels entered in any Class may by Special Resolution at any such separate meeting, and subject to the sanction of the Board and to prior notification of the competent Luxembourg Authorities, amend or restrict the categories of risk, liability or expense covered under the Rules relating to that Class.

## **VOTES OF MEMBERS**

28. (a) On a show of hands every Member who is present in person shall have one vote.
- (b) On a poll every Member present in person or by proxy shall have one vote in respect of every 100 tons of gross tonnage entered by him in the Association for insurance in Class 1 as appearing in the Register of Members, together with one vote in respect of every insured vessel entered by him in each other Class Provided That in the case of Class Meetings, Members shall have no votes in respect of Vessels entered in any other Class and Further Provided that in the case of Joint Members the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of other Joint Members, and for this purpose seniority shall be determined by the order in which the names stand as Joint Members in the Register of Members.
29. A corporation which is a Member of the Association may by resolution or other decision of its directors or other competent body authorise such person as it thinks fit to act as its representative at any General Meeting, or Class Meeting, of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member of the Association Provided That unless a certified copy of such resolution or other decision has been deposited at the Office not less than forty-eight hours before any meeting the Chairman of the meeting shall have an absolute discretion whether or not to recognise such representative and permit him to exercise any powers on behalf of such corporation.
30. No Member shall be entitled to vote at any General Meeting, or Class Meeting, either personally or by proxy, or to exercise any privilege as a Member, unless all Contributions and Calls presently due from him to the Association have been paid.
31. On a poll votes may be given either personally or by proxy. A proxy need not be a Member.
32. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting, whose decision shall be final and conclusive. Without prejudice to the generality of the foregoing a vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the death or insanity of the principal, or the revocation of the instrument of proxy or the authority under which the instrument of proxy was executed.

## **PROXIES**

33. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation either under its common seal or under the hand of an officer or attorney so authorised.
34. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy or office copy of such power or authority, shall be deposited at the Office, or at such other place as may be specified for the purpose in the notice convening the meeting or in any instrument of proxy issued by the Association, not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid. An instrument of proxy may be in any common form or in such other form as the Board shall approve. Instruments of

proxy need not be witnessed.

35. The Board may at the expense of the Association send by post or otherwise to the Members instruments of proxy (with or without stamped envelopes for their return), for use at any General Meeting or Class Meeting either in blank or nominating in the alternative any one or more persons. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the expense of the Association, such invitations shall be issued to all (and not to some only) of the Members entitled to be sent a notice of the meeting and to vote thereat by proxy.

#### **CHAIRMAN AND VICE-CHAIRMEN**

36. The Association shall have a Chairman and may have not more than four Vice-Chairmen all of whom shall be elected by the Board from among its number. Any person so appointed shall hold such office until he resigns or ceases to be a Director.

#### **DIRECTORS**

37. The number of Directors shall not be less than five.
38. (a) The remuneration of the Directors shall be such sum per annum as the Board shall from time to time determine or such larger sum as the Association shall from time to time by Ordinary Resolution determine. Such remuneration shall be divided among those Directors holding or who held office during the relevant financial year or any part thereof in such proportions as may be determined by the Directors holding office at the time of such determination and in default of such determination equally, provided that a Director holding or who held office for a part only of the relevant financial year shall in default of such determination aforesaid be entitled only to a proportionate part of what (on the basis of an equal division) he would have received had he held office for the whole of the year. The Association may by Ordinary Resolution vote additional remuneration to any one or more of the Directors to the exclusion of the others or other of them.
- (b) The Directors shall also be entitled to be paid all travelling, hotel and other expenses incurred by them respectively in or about the performance of their duties as Directors, including their expenses of travelling to and from meetings of the Board, Committees of the Board, General Meetings or Class Meetings.

#### **APPOINTMENT, ROTATION, DISQUALIFICATION AND REMOVAL OF DIRECTORS**

39. Directors shall be subject to annual retirement and re-appointment at each Annual General Meeting.
40. At each Annual General Meeting a retiring Director, if willing to act, shall be deemed to have been re-appointed unless at such meeting it is expressly resolved not to fill his vacated office or a resolution for the re-appointment of the Director shall have been put to the Meeting and lost.
41. At a General Meeting a motion for the appointment of two or more persons as Directors of the Association by a single resolution shall not be put unless a resolution that it shall be so put has been first agreed to by the meeting without any vote being given against it.
42. No person other than a Director retiring at the meeting shall, if not recommended by the Board for appointment, be eligible for appointment to the office of Director at any General Meeting unless, within the prescribed time before the day appointed for the meeting, there shall have been given to the Association notice in writing by some Member duly qualified to be present and vote at the meeting of his intention to propose such person for appointment and also notice in writing, signed by the person to be proposed, of his willingness to be appointed. The prescribed time above mentioned shall be such that, between the date when the notice is served or deemed to be served and the day appointed for the meeting, there shall be not less than seven nor more than forty clear days.
43. The Board may from time to time and at any time appoint any person to be a Director either to fill a

casual vacancy or as an additional Director. A Director so appointed shall hold office only until the Annual General Meeting following next after his appointment, when he shall retire, but shall then be eligible for re-appointment.

44. The office of a Director shall be vacated:

- (a) Upon his death or if a receiving order shall be made against him or if he shall become bankrupt or make any composition or arrangement with his creditors generally or if he shall become incapable by reason of mental disorder of managing and administering his property and affairs.
- (b) If he ceases to be a Director, or be prohibited from being a Director by an Order made by a court of competent jurisdiction.
- (c) If he resigns his office by notice in writing to the Association.
- (d) If the Board determines that he no longer meets its criteria for the appointment of a Director.

45. The Association may by Ordinary Resolution remove any Director before the expiration of his period of office, and may, if thought fit, by Ordinary Resolution appoint another person in his stead.

#### **POWERS OF DIRECTORS**

46. The business of the Association shall be managed by the Board which may exercise all such powers of the Association and do on behalf of the Association all such acts as may be exercised and done by the Association and as are not by the Constitution required to be exercised or done by the Association in General Meeting, subject nevertheless to any provisions of the Constitution or the provisions of any agreement with the Managers.

47. (a) The Board may make such arrangements as may be thought fit for the representation and management of the Association's affairs in the Grand Duchy of Luxembourg or abroad, and may for this purpose appoint any person and fix his remuneration and may delegate to him such powers as may be deemed requisite or expedient and may authorise such person to sub-delegate any of the powers, duties or discretions vested in him.

(b) The Board may from time to time either by means of an agreement with the Managers or otherwise delegate to the Managers such of the powers, duties or discretions hereby or by the Rules vested in the Board as it may think fit and the Managers may exercise any of the powers, duties or discretions so delegated either themselves or by any of their servants or agents.

(c) Notwithstanding anything hereinbefore contained the Board shall not be entitled to delegate any of the powers, duties or discretions vested in it to the extent that such powers, duties or discretions are required by law or the Constitution or the Rules to be exercised by the Board itself or in a manner inconsistent with any agreement with the Managers.

48. (a) A Director may hold any other office or place of profit under the Association (except that of Auditor) in conjunction with his office of Director, and may act in a professional capacity to the Association, on such terms as to remuneration and otherwise, as the Board shall arrange.

(b) No Director shall be disqualified by his office from contracting with the Association nor shall any such contract or any contract or arrangement entered into by or on behalf of the Association in which any Director be in any way interested be avoided nor shall any Director so contracting or being so interested be liable to account to the Association for any profit realised by any such contract or arrangement by reason of such Director holding office or of the fiduciary relationship thereby established Provided Always that any Director so contracting or being so interested, or proposing the same, shall declare the nature of his interest at the meeting of the Board at which the question of

entering into the contract or arrangement is first taken into consideration, or, if the interest arises after such meeting, or after the contract becomes effective, at the first meeting of the Board after it arises.

(c) A Director shall not be entitled to vote, or be counted towards a quorum, upon the consideration by the Board of::

(i) any contract with,

(ii) the level of premium payable by,

(iii) any claim made upon the Association by; or

(iv) any proceedings or action, whether actual or contemplated, between the Association and

the Director or any Member or Co-Assured of which he is a director, employee or shareholder or in which he is in any way interested Provided That the provisions of this clause may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the Association in General Meeting.

(d) Save as provided by Article 48(c) there shall be no restriction upon the power of a Director to vote, or be counted towards a quorum, upon the consideration by the Board of matters affecting that Director, or in which he may be interested either directly or indirectly.

49. All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments, and all receipts for moneys paid to the Association, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time direct.

## **PROCEEDINGS OF DIRECTORS**

50. The Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the Chairman of the meeting shall have a second or casting vote.

51. On the request of a Director the Secretary shall, at any time, summon a meeting of the Board.

52. The quorum necessary for the transaction of the business of the Board shall be three or such higher number as from time to time may be fixed by the Board.

53. In the event that the Directors shall at any time be reduced in number to less than the minimum number provided for in the Constitution the continuing Directors may act for the purpose of appointing an additional Director or Directors to make up such minimum, or of summoning a General Meeting of the Association, but for no other purpose.

54. The Chairman of the Association or in his absence a Vice-Chairman shall preside at all meetings of the Board but if at any meeting the Chairman or a Vice-Chairman is not present within fifteen minutes after the time appointed for holding the same, the Directors present shall choose one of their number to be Chairman of such meeting.

55. The Board may, subject to the provisions of the Constitution, delegate any of its powers to Committees consisting of such member or members of the Board as it thinks fit. Such Committees may include some person or persons (other than the Auditors of the Association) nominated by the Board who is not a Director, and any such person or persons shall be entitled to receive notice of, attend, be reckoned towards a quorum, speak or vote at any meeting of the Committee to which he is nominated Provided However that the majority, both of members of any such Committee and of persons present at any meeting of such Committee shall be Directors. Any Committee so formed shall in the exercise of any power so delegated to it conform to any regulations that may from time to time be imposed upon it by the

Board.

56. The meetings and proceedings of any such Committee consisting of two or more persons shall be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by any regulations made by the Board under the last preceding Article, Provided Always that, unless otherwise determined by the Board, the quorum necessary for the conduct of the business of any such Committee shall be two.
57. All acts done by any meeting of the Board or of a Committee to whom the Board has delegated powers pursuant to Article 55, or by any person acting as a Director, shall, even if it is afterwards discovered that there was some defect in the appointment of any such Director, Committee or person acting as aforesaid or that they or any of them had vacated office, be as valid as if every such person or Committee had been duly appointed and (in the case of Directors who have vacated office) had continued to be a Director.
58. The Directors shall cause minutes to be made of all proceedings of General Meetings of the Association and of all Class Meetings and of meetings of the Board and Committees and of the attendances thereat and of all appointments of officers made by the Board. Any such minute, if purporting to be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the next succeeding meeting, shall be evidence of the proceedings. No Member, not being a Director or nominated by the Board to any Committee shall have any right of inspecting Minutes of meetings of the Board or any Committee.
59. A resolution in writing signed by a majority of the Directors shall be as effective as if it had been passed at a meeting of the Directors duly convened and held either:
- (a) if it consists of an instrument executed by or on behalf of a majority of the Directors; or
  - (b) if it consists of several instruments in a like form each either:
    - (i) executed by or on behalf of one or more Directors together being signed by or on behalf of a majority of the Directors: or
    - (ii) sent by or on behalf of one or more Directors together being signed by or on behalf of a majority of the Directors by facsimile, courier, or electronic mail transmission and deposited or received at the registered or other authorised office of the Association.

Provided That the text of such resolution shall have first been sent in any manner whatsoever (including facsimile, courier, or electronic mail transmission) to all the Directors.

The authenticity of any such instrument expressed to be sent or executed by or on behalf of any Director shall not be questioned whether or not the same bears an original signature and it shall not be necessary to seek subsequent ratification from any Director where any such instrument does not bear an original signature.

## **GENERAL MANAGER**

60. The Board shall from time to time appoint a person to the office of General Manager and entrust to or confer upon such General Manager any of the powers exercisable by the Board for such period and on such terms as it thinks fit either collaterally with or to the exclusion of the Board's own powers and may from time to time revoke, withdraw, alter or vary any or all such powers, or revoke such appointment. Such appointment and any amendments thereto shall be subject to any consents required by the law or the competent Luxembourg Authorities.
61. A General Manager shall receive such remuneration as the Board shall determine.

62. A General Manager shall be eligible for appointment as Secretary or assistant Secretary of the Association.

## **MANAGERS**

63. The Managers of the Association are West of England Insurance Services (Luxembourg) SA. Subject to the consent in principle of the competent Luxembourg Authorities, the Association may by Special Resolution appoint additional Managers to manage individual Classes or areas of the Association's business.

64. The Management Agreement in force from time to time shall not form a part of the Constitution but shall be available for inspection at the registered office of the Association.

## **SECRETARY**

65. The Association shall have a Secretary, and may in addition have an Assistant Secretary, both of whom shall be appointed by the Board.

## **FUNDS NOT IMMEDIATELY REQUIRED**

66.(A) Any moneys for the time being in the hands of the Association and not immediately required to meet any claims, expenses and outgoings to which under this Constitution or the Rules the same are applicable may be carried to such account or accounts as the Board thinks proper, whether or not moneys representing Contributions made by Members having Vessels entered in any Class are kept separate from moneys representing contributions made by Members having Vessels entered in other Classes. In particular, but without prejudice to the generality of the foregoing, the Board shall be entitled to apply any moneys representing the assets of one Class in discharge of the liabilities of another Class, and shall further be entitled (but not obliged) to direct that the same shall not require reimbursement. Any moneys for the time being standing to the credit of any such accounts or accounts may be invested in such investments, and such investments may be varied, from time to time as the Board may think fit. Subject to the above proviso, such account or accounts shall be applied in such manner, for such purpose and at such time or times, as the Board may in its discretion think fit.

(B) Any moneys remaining as a surplus upon the closure of any Policy Year in respect of any Class or Classes, or appearing to be surplus before such closure in relation to the estimated liabilities of that Policy Year may be carried to such account or accounts as the Board may think proper. Such account or accounts may be invested in such investments, and shall be applied in such manner, for such purpose and at such time or times as the Board may at its discretion think fit.

## **ACCOUNTS**

67. The Board shall cause proper books of accounts and other appropriate accounting records to be kept in such manner as is necessary to give a true and fair view of the state of affairs of the Association and of each Class and to explain its transactions and to ensure compliance with the law.

68. The account books and accounting records will be kept available for examination by the Board. No member (not being a Director) shall have any right of inspecting any account or book or document relating thereto.

69. The Board shall from time to time cause to be prepared and to be laid before the Association in General Meeting such income and expenditure accounts, balance sheets and reports as are necessary to give a true and fair view of the transactions and the state of affairs of the Association and of each Class as at the end

of every financial year.

70. A copy of every Balance Sheet, account and report which is to be laid before the Association in General Meeting, together with a copy of the Auditor's Report, shall, not less than twenty-one clear days at the least before the date of the meeting, be delivered or sent by post to the registered address of every Member and to the Managers and Auditors.

#### **AUDITORS AND AUDIT**

71. The Association shall have an Auditor or Auditors who or each of whom shall be qualified under the laws of the Grand Duchy of Luxembourg to act as Auditor of the Association.

72. (a) The Association shall at each Annual General Meeting appoint an Auditor or Auditors to hold office until the conclusion of the next Annual General Meeting.

(b) At any Annual General Meeting a retiring Auditor however appointed shall be re-appointed without any resolution being passed unless:

- (i) he is not qualified for re-appointment, or
- (ii) an Ordinary Resolution had been passed at that meeting appointing somebody instead of him providing that he be not re-appointed, or
- (iii) he has given to the Association notice in writing of his unwillingness to be appointed.

(c) The Board may fill any casual vacancy in the office of Auditor.

(d) The remuneration of the Auditors shall be fixed by the Association in General Meeting or in such manner as the Association in General Meeting may determine.

(e) Any Auditor may at any time be removed from office by Ordinary Resolution of the Association and by the same or other Ordinary Resolution another person may be appointed to be Auditor.

73. (a) The Auditors shall make a report to the Members and the Managers on the accounts examined by them and on every income and expenditure account and balance sheet laid before the Association in General Meeting.

(b) The Auditors' report shall be read before the Association in General Meeting and shall be open to inspection by every Member.

(c) The Auditors shall have a right of access at all times to the books and accounts and vouchers of the Association and of the Managers and shall be entitled to require from the officers of the Association such information and explanations as they think necessary for the performance of the duties of the Auditors.

(d) The Auditors shall be entitled to attend any General Meeting of the Association and to receive all notices of and other communications relating to any General Meeting which any Member is entitled to receive and to be heard at any General Meeting which they attend on any part of the business of the meeting which concerns them as Auditors.

#### **REGISTER OF MEMBERS**

74. (a) The Association shall keep a Register of Members which shall contain the following particulars:

- (i) The name and address of each Member, including Joint Members;

- (ii) the Gross Tonnage of all Vessels entered for insurance within each Class by each Member.
- (iii) the date at which each Owner commenced to be a Member or Joint Member and the date at which a Member or Joint Member ceased to be a Member or Joint Member, by reference to each particular Class.

(b) The Register of Members shall, subject to reasonable notice, be open to inspection by every Member during business hours, provided always that the said Register may be closed for a reasonable period of time as and when required in connection with a meeting of the Association.

## **NOTICES**

75. (a) Any notice, demand, order, direction, recommendation, request or other document (hereinafter referred to collectively as "notice or other document") required by the Constitution to be served on a Member may be served in any one or more of the following modes:

- (i) personally, or
- (ii) by sending it through the post in a prepaid letter, facsimile, courier or electronic mail addressed to him at his address as appearing in the Register of Members; or at any other address of which he has given written notice to the Managers as his address for service; or
- (iii) if a vessel to which the notice or other document relates, or another vessel entered by the Member whose period of insurance has not come to an end, was last entered for insurance, or her insurance was last renewed (whichever is the later), through a broker or other agent, at any place of business of that broker or agent.

(b) Every notice or other document served as aforesaid shall, if posted, be deemed to be served on the day following the day of postage; if sent by facsimile, courier or electronic mail, on the day of despatch. In any case proof of posting, handing in or despatch shall be sufficient proof of service.

(c) The successors of any Member served as aforesaid with any notice or other document shall be bound by that notice or other document whether or not the Association has notice of that person's death, disability, lunacy, bankruptcy or liquidation.

## **WINDING-UP**

76. The Association may by Special Resolution resolve that one or more or all of the Classes be discontinued or wound up and the manner and terms of such discontinuance or winding-up.

77. Any winding-up or discontinuance of business shall be under the control of the Board unless the Association by Ordinary Resolution or the Association's regulator in Luxembourg appoints a Liquidator, upon which appointment the powers of the Board shall cease and the Liquidator shall be entitled for the purpose of the beneficial winding-up or discontinuance of business of the Association or any Class or Classes and the carrying on of its business meanwhile to exercise all or any of the powers of the Board.

78. Subject always to the applicable provisions of Luxembourg Law, the Liquidator may be removed from office by, and any vacancy in the office of Liquidator may be filled by, Ordinary Resolution.

79. If appointed by the Association, the remuneration of the Liquidator shall be determined by the Association by Ordinary Resolution.

80. During the course of any winding-up or discontinuance of business and not less often than once in every year the Board or the Liquidator (as the case may be) shall convene a General Meeting of the Association and shall lay before the meeting an account of their or his dealings and transactions during the period from the commencement of the winding-up or discontinuance or the date of their or his last account as the

case may be and a balance sheet showing the state of affairs of the Association (or such Class or Classes as are being wound up or discontinued) as at the date thereof. The said accounts and balance sheet shall be audited by the Auditors who shall report thereon to the Members and the Managers and the same provisions shall apply mutatis mutandis to the Auditors' report and to such meeting and to the business to be transacted thereat as apply to the Auditors' report on the annual accounts and to the Annual General Meeting of the Association.

81. In the event of any Class or Classes being wound up or discontinued and subject to the power of the Board to transfer all or part of such assets to the reserve or reserves of the Association the assets of that Class remaining after payment of all the debts and liabilities of that Class and all costs, charges and expenses of winding up the same shall be distributed amongst the Members having Vessels entered in that Class in proportion to the amounts of the Contributions actually paid by them in respect of insurance in that Class during the period of six years immediately preceding the commencement of the winding-up of that Class.
82. Upon completion of the winding-up of all the Classes the Association shall be dissolved.

#### **AMENDMENT OF THE CONSTITUTION**

83. The Association shall have unrestricted power to amend the Constitution by Special Resolution and any such amendment if duly passed shall become effective accordingly. Any proposed alterations or amendments to the Constitution shall be subject to any consents required by the law or by the competent Luxembourg Authorities.

#### **INDEMNITY**

84. Every Director, Manager, Liquidator and other officer of the Association shall be indemnified out of the assets of the Association against all liabilities, costs or expenses incurred by him in connection with proceedings whether actual or threatened which are in any way related to or connected with the business or affairs of the Association Provided (i) that such person has not been guilty of fraud or other wilful misconduct and (ii) that no such indemnity shall apply to the extent that recovery is made in respect of such liabilities and other matters under any other applicable indemnity arrangement or insurance policy.

#### **ARBITRATION**

85. (a) If any difference or dispute shall arise between a Member and the Association as to the rights or obligations of the Association or the Member or as to any other matter whatsoever, the resolution of such difference or dispute shall be governed by English law and procedure and referred to the Arbitration in London of a sole legal Arbitrator. Such Arbitrator shall be a practising Queen's Counsel practising at the Commercial Bar or if none is available, any other practising Queen's Counsel and the submission to Arbitration and all the proceedings therein shall be subject to the provisions of the Arbitration Act 1996 and any Statutory modification or re-enactment thereof. In any such Arbitration any matter decided or stated in any Judgement or Arbitration Award (or in any reasons given by an Arbitrator or Umpire for making any Award) relating to proceedings between the Member and any third party, shall be admissible in evidence.
- (b) No Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any difference or dispute unless he has first obtained an Arbitration Award in accordance with this Constitution.
- (c) For the purpose of this Article except paragraph (d) hereof the term "Member" shall also include a joint Member, a former Member, a Co-Assured, a trustee, an assignee, a successor to the Member and any other companies in the same or associated ownership or management as the Member or any of the foregoing or the shareholders, managers, agents or employees of any of them or any other person or entity claiming any insurance or re-insurance benefit from or other remedy against the Association,

whether under this Constitution or the Rules, or under a Bye-law, Certificate of Entry, insuring or re-insuring agreement of this Association by contract or otherwise and the term “the Association” shall include any subsidiary or associated company of the Association or their or its Directors, agents or employees.

- (d) The Member warrants its authority to bind to Arbitration the other entities and individuals included within the above definition. If any claim shall be made by any of them other than in Arbitration the Member shall procure that such claims be referred to Arbitration forthwith, pending which the Member shall not be entitled to proceed with any claim of its own against the Association connected with the same or any related subject matter; and the Association shall be entitled to recover from the Member any amounts agreed or adjudged to be due from the Association, and any costs incurred by it, in connection with any process other than Arbitration.
- (e) In any difference or dispute where the Member or Association as defined above includes more than one party they shall be deemed one party for the purposes of appointing an Arbitrator, receiving notices, and otherwise in connection with the conduct of the Arbitration proceedings.
- (f) Any dispute or difference over the interpretation, effect or application of this Arbitration clause shall be decided exclusively by the High Court of Justice of England and Wales in London, in accordance with English law.

#### **GOVERNING LAW AND PREVAILING TEXT**

- 86. In so far as it is not inconsistent with Luxembourg law, the Constitution shall be interpreted in accordance with English law, and, subject to the arbitration provisions set out in Article 85 hereof, shall constitute an irrevocable submission by the Association, its Members, former Members and Co-Assureds, to the jurisdiction of the English courts. No provision of English law shall in any way lessen or invalidate any of the powers which are validly conferred on the Association by the Constitution in accordance with Luxembourg law.
- 87. The French text and the English text of the Constitution are binding. Nevertheless the English text will prevail in proceedings conducted under English law and in particular in the event of Arbitration, or in the event of disputes between the Association and its Members, former Members or Co-Assureds and other parties that relate directly to the objects of the Association.