

## LLOYD'S ASIA (OFFSHORE POLICIES) INSTRUMENT 2002

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**THE SOCIETY INCORPORATED BY LLOYD'S ACT 1871 BY THE  
NAME OF LLOYD'S**

**LLOYD'S ASIA (OFFSHORE POLICIES) INSTRUMENT 2002**

**(GENERAL BUSINESS OF ALL UNDERWRITING MEMBERS)**

**THIS SPECIAL TRUST DIRECTION** ("this Trust Instrument") is made the [date] **BY THE COUNCIL OF LLOYD'S**

**AND IS SUPPLEMENTAL** as regards each underwriting member of Lloyd's who has conducted or will hereafter conduct general business for the 1999 or any subsequent year or years of account ("the Member") to –

- (1) the Member's Lloyd's Premiums Trust Deed for general business applicable for the year or years of account in question ("the Member's PTD") and
- (2) Lloyd's American Instrument

**WHEREAS –**

(A) By clause 5 of every underwriting member's Lloyd's Premiums Trust Deed for general business (including the Member's PTD) the Council of Lloyd's has without prejudice to the power of amendment contained in clause 4(a) thereof power (inter alia) from time to time (during the perpetuity period therein referred to which period has not yet expired) after providing to the United Kingdom Financial Services Authority full details of the proposed directions to give any directions (any such direction being a Special Trust Direction) concerning –

- (1) all or any assets whatsoever that would otherwise be or become comprised in the Trust Fund subject to such Premiums Trust Deed and
- (2) any (or any class of) Permitted Trust Outgoings (as therein defined) that could otherwise (or can also) be paid or discharged out of such Trust Fund

and also power to revoke or amend any subsisting Special Trust Direction

(B) As a condition of underwriting members of Lloyd's being permitted by the Monetary Authority of Singapore to underwrite insurance business in Singapore as Lloyd's Asia business pursuant to the Insurance (Lloyd's Asia Scheme) Regulations 2002 of the Republic of Singapore through the agency of service companies established in Singapore there shall be established and maintained in Singapore for each such member who is carrying on Lloyd's Asia business a separate premiums trust fund in respect of Offshore Policies underwritten by him and all receipts of that member attributable to Offshore Policies underwritten as Lloyd's Asia business shall be paid into that separate premiums trust fund and during the calendar year in which those policies are underwritten the assets comprised in that premiums trust fund shall be applicable only to meet such part of the underwriting member's Permitted Trust Outgoings (as defined in his Lloyd's Premiums Trust Deed for general business) as is properly attributable to the Offshore Policies underwritten by him during that calendar

year or to any Offshore Policies underwritten by that member as a member of the same syndicate during an earlier calendar year

- (C) In exercise of the powers mentioned in recital (A) hereto the Council of Lloyd's has by a Deed of Amendment and Direction made on 28<sup>th</sup> December 2000 amended the Lloyd's American Instrument (a subsisting Special Trust Direction) as regards each underwriting member affected thereby so as inter alia (with effect on and after the Commencement Date) to exclude from its operation that part of the underwriting member's general business which consists of or relates to policies of insurance that are Offshore Policies notwithstanding that the liability of the underwriting member in respect thereof may be expressed in US dollars and that the premium payable to or for the account of that member has been paid or is payable in US dollars (but nevertheless without prejudice to any payments received or outgoings paid under such Lloyd's American Instrument prior to the Commencement Date)
- (D) The principal purpose of this Trust Instrument is to declare the trusts powers and provisions upon and with and subject to which receipts attributable to the Offshore Policies underwritten by each underwriting member (including those which due to the amendment mentioned in recital (C) have been excluded from the Lloyd's American Instrument) are to be held
- (E) A draft of this Trust Instrument has been provided to the UK Financial Services Authority which has not objected to the execution hereof (or to the trusts powers and provisions herein contained) or to the exercise by the Council of its said powers in the manner herein appearing
- (F) It is intended that this Trust Instrument shall be construed and have effect and be governed in all respects by the law of England

**NOW THIS DEED WITNESSES** as follows –

### **Commencement and Interpretation**

- 1(a) The trusts powers and provisions declared and contained in this Trust Instrument shall have effect on and after the Commencement Date (or in relation to any underwriting member of Lloyd's whose Lloyd's Premiums Trust Deed for general business may be executed after the Commencement Date on and after the later date of execution of that Premiums Trust Deed)
- (b) The provisions of Schedule 1 shall have effect (as regards the Member and the Member's PTD) for the purpose of construing this Trust Instrument (including its Recitals)

### **Direction by the Council**

- 2(a) **THE COUNCIL OF LLOYD'S** in exercise of the powers respectively conferred on it by clause 5 of each underwriting member's Lloyd's Premiums Trust Deed for general business and of all other powers it enabling **HEREBY DIRECTS AND DECLARES** in respect of each such underwriting member and each such Premiums Trust Deed that (subject as is mentioned in clause 5 hereof) on and after the

Commencement Date (or as regards any such Premiums Trust Deed which may be executed after the Commencement Date on and after the later date of execution of that Premiums Trust Deed) the Member's Offshore Policies Trust Fund and the income thereof shall thenceforth be held (as a separate and distinct Special Trust Fund) upon and with and subject to the trusts powers and provisions hereinafter declared and contained in respect of the same (and accordingly shall not form part of the PTD Trust Fund held on the trusts of the Member's PTD)

- (b) It is hereby recorded that this Trust Instrument is a Special Trust Direction for the purposes of the Member's PTD and that the Offshore Policies Trust Fund is for such purposes a Special Trust Fund (but not a Restricting Special Trust Fund)

### **Constitution of the Member's Offshore Policies Trust Fund**

- 3 The Member's Offshore Policies Trust Fund shall consist of the assets specified as comprised therein in Schedule 2 (all being assets which but for this Trust Instrument and the Special Trust Direction herein contained would otherwise be assets of the PTD Trust Fund)

### **Declaration of Trust and Application of the Member's Offshore Policies Trust Fund**

- 4 The Member's Offshore Policies Trust Fund and its income shall be held (by whomsoever including the Member and in whatever names the trust assets are respectively held or stand at the Commencement Date or shall thereafter at any time be held or stand) upon the following trusts subject as provided in this Trust Instrument –

- (a) in trust during the Trust Period for the payment or discharge as provided in clause 10 of the respective outgoings (hereinafter collectively referred to as "Permitted Offshore Policies Trust Outgoings") specified in paragraph 1 of Schedule 3 out of the applicable Managing Agent's Offshore Policies Sub-Fund and its income and
- (b) subject to the foregoing trust the Member's Offshore Policies Trust Fund and its income shall be held in trust to transfer the same as an addition to the PTD Trust Fund to be held upon and with and subject to the trusts powers and provisions declared and contained in the Member's PTD

### **Powers of the Council (including power to revoke or vary)**

- 5(a) The Council may from time to time during the Perpetuity Period (provided that it has given to the United Kingdom Financial Services Authority full details of the proposed revocation or amendments) revoke or amend all or any of the provisions of this Trust Instrument (and the directions herein contained) in respect of the Member's Offshore Policies Trust Fund and its income
- (b) Any and every discretion power or authority conferred by this Trust Instrument on the Member or any of the Member's Underwriting Agents or any of the Singapore Policies Trustees shall (notwithstanding the terms in which such discretion power or

authority is expressed) only be exercised consistently with any requirements of the Council (whether made under clause 4(c) of the Member's PTD or otherwise)

- (c) For the avoidance of doubt (but without limitation) it is hereby declared that requirements of the Council may from time to time be made (whether under clause 4(c) of the Member's PTD or otherwise) in order to give effect to the provisions of the Insurance (Lloyd's Asia Scheme) Regulations 2002 of the Republic of Singapore or other requirements of the Monetary Authority of Singapore

### **Appointment and removal of Offshore Policies Trustees**

- 6(a) In respect of each Managing Agent there shall be trustees of this Trust Instrument hereby designated as Managing Agent's Offshore Policies Trustees and the number of Managing Agent's Offshore Policies Trustees of each Managing Agent shall not be more than three nor less than two (or one if that one is a body corporate whether or not a trust corporation)
- (b)
  - (i) The initial Managing Agent's Offshore Policies Trustees of each Managing Agent shall be the same persons as are at the date when this Trust Instrument first has effect in respect of the Member's PTD and the Managing Agent in question the Managing Agent's Trustees for that Managing Agent for the purposes of the Member's PTD and
  - (ii) Each Managing Agent shall as far as is practicable (unless the Managing Agent in question sees good reason not to do so) so exercise the powers conferred on the Managing Agent by this clause 6 as to cause the Managing Agent's Offshore Policies Trustees of that Managing Agent to be from time to time the same persons as shall for the time being be the Managing Agent's Trustees of that Managing Agent for the purposes of the Member's PTD
- (c) Subject as aforesaid each Managing Agent shall (except where the Council exercises its discretion under clause 6(d) have power in writing at any time –
  - (i) to appoint (in any case where clause 6(b)(i) has no application) the initial Managing Agent's Offshore Policies Trustees of that Managing Agent and
  - (ii) to appoint any new or additional Managing Agent's Offshore Policies Trustees of that Managing Agent and
  - (iii) to remove all or any of the Managing Agent's Offshore Policies Trustees of that Managing Agentbut in doing so shall in every such case first obtain the prior written consent of the Council to the appointment or removal concerned
- (d) Where a Managing Agent has become such by virtue of being appointed by the Council as a substitute agent after the date when this Trust Instrument first has effect in respect of the Member's PTD the original Managing Agent's Offshore Policies Trustees or Trustee of that Managing Agent may be appointed in writing by the Council forthwith upon appointment of the substitute agent

- (e) If the Council permits and subject to any requirements of the Council any Managing Agent's Offshore Policies Trustee which is a body corporate shall be entitled to be paid such remuneration for acting as Managing Agent's Offshore Policies Trustee as the Relevant Managing Agent may determine and agree with the Offshore Policies Trustee in question and the Relevant Managing Agent may arrange for payment of such remuneration out of the Member's Offshore Policies Trust Fund or its income
- (f) A Managing Agent's Offshore Policies Trustee who is an individual shall not be entitled to be paid any remuneration for acting as Managing Agent's Offshore Policies Trustee
- (g) On any change in the Managing Agent's Offshore Policies Trustees of any Managing Agent all trust assets vested (either solely or jointly with others) in or under the control of any of the Managing Agent's Offshore Policies Trustees ceasing on the change to act as such a trustee shall forthwith be paid or transferred to or otherwise vested in or under the control of a permitted number of the new or continuing Managing Agent's Offshore Policies Trustees of such Managing Agent
- (h) A Managing Agent shall forthwith notify Lloyd's of the death of any of the Managing Agent's Offshore Policies Trustees of that Managing Agent or of the occurrence in relation to any of them of a notifiable event
- (i) Lloyd's may be a Managing Agent's Offshore Policies Trustee (whether or not it is at the same time the Regulating Trustee under the Member's PTD) but (except to the extent that any trust assets are held for the time being by any other person including the Member) there shall be no trustee of this Trust Instrument who is not a Managing Agent's Offshore Policies Trustee nor shall any Members' Agent or Managing Agent be appointed or act as a trustee hereof

### **Vesting of the Member's Offshore Policies Trust Fund**

- 7(a) All assets whatsoever being or becoming trust assets in connection directly or indirectly with so much of the Member's Offshore Policies Business as is or has been conducted or is being wound up by any Managing Agent and received by the Member or received on behalf of the Member by that Managing Agent or any other person shall (subject as otherwise provided in this clause and clause 8) forthwith after receipt (if not already vested as hereinafter provided) be paid or transferred to or otherwise vested in or under the control of a permitted number of the Managing Agent's Offshore Policies Trustees of that Managing Agent as part of the Managing Agent's Offshore Policies Sub-Fund of that Managing Agent
- (b) Nothing in clause 7(a) shall require the vesting for any purpose in or under the control of any Managing Agent's Offshore Policies Trustees of any Offshore Policies Rights of Recovery

### **Central Accounting system**

- 8 Subject to clause 5 but otherwise notwithstanding the other provisions of this Trust Instrument any trust assets (whether or not then yet vested in or under the control of

any of the Offshore Policies Trustees) may be dealt with in any manner required or authorised by the Central Accounting system of Lloyd's

### **Offshore Policies Rights of Recovery**

- 9(a) For the avoidance of doubt any Managing Agent may on behalf of the Member under the applicable Underwriting Agent's Appointment collect all premiums monies and other assets settle or compromise claims rights or entitlements take legal or other proceedings assign rights or entitlements (whether by way of security or outright for valuable consideration) and exercise any other discretion power or authority conferred by any such appointment notwithstanding that such discretion power or authority may be exercisable in relation to Offshore Policies Rights of Recovery which are comprised in the Member's Offshore Policies Trust Fund and in exercising any such discretion power or authority in relation to Offshore Policies Rights of Recovery so comprised the Managing Agent shall (subject always to clause 9(b)) be entitled to have regard solely to the provisions of that appointment Provided always that in any such case any proceeds attributable to the Member of any such collection settlement compromise proceedings assignment or exercise of such other discretion power or authority shall be held as trust assets and shall be duly vested and applied only in accordance with the trusts powers and provisions of this Trust Instrument
- (b) Any Managing Agent shall in exercising any of the discretions powers authorities rights referred to in clause 9(a) at all times act bona fide and for the benefit of the trust constituted by this Trust Instrument
- (c) Without prejudice to the foregoing it is hereby directed that all monies or other assets received by the Member or any other person under or in respect of any Offshore Policies Rights of Recovery comprised in the Member's Offshore Policies Trust Fund shall be held as trust assets and shall be duly vested in accordance with clauses 7 and 8

### **Manner and order of application out of each Managing Agent's Offshore Policies Sub-Fund**

- 10 As regards each Managing Agent's Offshore Policies Sub-Fund and its income (or assets which on receipt by or on behalf of the Member would be required to be added to that Sub-Fund) the payment or discharge thereof of different Permitted Offshore Policies Trust Outgoings under clause 4(a) and its income –
- (a) shall (subject as provided in clause 8) be made (as between each other) in such order and manner and at such respective times (or on the occurrence of such respective events) during the Trust Period and to such extent respectively and out of such assets respectively as is or are from time to time directed by the Relevant Managing Agent and
- (b) shall be confined to Permitted Offshore Policies Trust Outgoings then or thereafter becoming payable or incurred or otherwise liable to be discharged in connection with that part of the Member's Offshore Policies Business which is or has been conducted or is being wound up by that Managing Agent

## **Transfers**

- 11(a) During the Trust Period if and whenever the Relevant Managing Agent or the Council so directs the Managing Agent's Offshore Policies Trustees of any Managing Agent (or such of them as are affected by the direction in question) shall to the extent specified in the direction (whether specified as an amount or value or by identifying specific assets or otherwise) pay or transfer trust assets to or otherwise vest them in or under the control of
- (i) a permitted number of the Managing Agent's Offshore Policies Trustees of another Managing Agent so as to be held thereafter as part of the Managing Agent's Offshore Policies Sub-Fund of that other Managing Agent or (as the case may be)
  - (ii) such trustees or trustee of any other Special Trust Fund or of the PTD Trust Fund as may be specified in the direction so as to be held thereafter as part of such other Special Trust Fund or (as the case may be) the PTD Trust Fund or (in either case) any part thereof or sub-fund thereunder as may be specified in the direction
- (b) No person making or directing any transfer of assets under this clause 11 shall have any obligation to see to the future application of any assets so transferred

## **Application of income of the Member's Offshore Policies Trust Fund**

- 12 All interest dividends and other income from time to time earned in respect of trust assets shall be added to and held as capital of the Member's Offshore Policies Trust Fund in accordance with paragraph 1(ii) of Schedule 2 (and shall be held as part of the Managing Agent's Offshore Policies Sub-Fund from which such income arose) except that in any case where the Member is an individual any such interest dividends and other income accruing after the death of the Member (so far as not used during the Trust Period in the calendar year in which the same are received in paying or discharging Permitted Offshore Policies Trust Outgoings or other amounts becoming payable or reimbursable under this Trust Instrument or otherwise liable to be discharged in that calendar year or in any earlier year or period) shall be held in trust for the Member absolutely

## **Termination of the Trust**

- 13(a) Notwithstanding anything herein contained no assets shall in any circumstances be added to or otherwise become comprised in the Member's Offshore Policies Trust Fund after the expiry of the Trust Period
- (b) (i) On the expiry of the Trust Period the whole of the Member's Offshore Policies Trust Fund then remaining undistributed and the future income thereof shall thenceforth be held in trust to transfer the same as an addition to the PTD Trust Fund to be held upon and with and subject to the trusts powers and provisions declared and contained in the Member's PTD freed and discharged from all the other trusts powers and provisions of this Trust Instrument

- (ii) In making the transfer directed by clause 13(b)(i) trust assets comprised in the Managing Agent's Offshore Policies Sub-Fund of any Managing Agent shall (save only to the extent if any that the Regulating Trustee under the Member's PTD may during the Trust Period have otherwise directed) be made part of the Managing Agent's Sub-Fund under the Member's PTD of the same Managing Agent (or in any case where that is in the circumstances not practicable shall instead be made part of the Personal Reserve Sub-Fund thereunder)

### **Nominees and custodians**

14(a) The Relevant Managing Agent may at any time or times –

- (i) appoint any authorised person (including such Agent itself where it is an authorised person) to act as a nominee of or as a custodian for a permitted number of the Managing Agent's Offshore Policies Trustees of the Relevant Managing Agent for the purposes of acquiring holding realising or dealing in any other manner whatsoever with any assets that are or will be comprised in the Member's Offshore Policies Trust Fund
- (ii) arrange for (and enter into agreements in respect of) the participation of a permitted number of the Managing Agent's Offshore Policies Trustees of the Relevant Managing Agent or any such nominee or custodian in any dematerialised system
- (iii) for the purposes of any such appointment or arrangement authorise the holding of trust assets in a fungible form
- (iv) in making any such appointment or arrangement agree to such terms as it in its absolute discretion thinks fit (including the giving of any requisite warranties indemnities or undertakings)
- (v) for the purposes of any such appointment or arrangement involving a nominee or custodian permit the nominee or custodian to act through any sub-appointee and authorise any further such sub-appointments whether limited in degree or extending indefinitely to any number of degrees and so that any participation in any dematerialised system may be through any such sub-appointee and references in clause 14(a)(vi) to a nominee or custodian and in clauses 14(b) and (d) to a sub-appointee shall be taken to include references to any such person
- (vi) arrange for (and enter into agreements in respect of) the payment out of the Member's Offshore Policies Trust Fund or its income of all normal charges and other costs involved in any such appointment or participation including the payment of the remuneration and expenses of any such nominee or custodian and the giving of any requisite security interest lien or right of retention and
- (vii) terminate or modify any such appointment arrangement authority permission or agreement

- (b) Any custodian or a nominee appointed directly by a Managing Agent must be an authorised person but it shall not be necessary for any sub-appointee of any custodian or nominee to be an authorised person
- (c) Where any person holds or will or may hold assets as a nominee of or custodian for any one or more of the Managing Agent's Offshore Policies Trustees of any Managing Agent a permitted number of the Managing Agent's Offshore Policies Trustees of that Managing Agent or the Managing Agent itself may in regard to those assets or assets representing or derived from them give directions to such person without obtaining the concurrence of or consulting any or any other Offshore Policies Trustees and such person shall be entitled to act upon any directions purporting to be so given
- (d) The provisions of clause 15(d) and (e) relating to responsibility for delegates and sub-delegates shall also apply as regards responsibility for nominees and their sub-appointees and custodians and their sub-appointees (as if directly appointed nominees and custodians were delegates and sub-appointees were sub-delegates)

### **Delegation**

- 15(a) Such one or more of the Offshore Policies Trustees as at any time has or have any trust assets vested in itself or themselves or under its or their control may itself or themselves apply that part in executing the trusts and provisions of this Trust Instrument relating thereto (or give any receipt in respect thereof)
- (b) Such one or more of the Managing Agent's Offshore Policies Trustees of any Managing Agent as at any time has or have any trust assets vested in itself or themselves or under its or their control may in its or their absolute discretion pay or transfer or cause to be paid or transferred any trust assets falling to be so applied to the Relevant Managing Agent or (at its direction) to any delegate of it (in any case whether or not an authorised person and other than the Member himself) to be so applied by that person
- (c) Any Managing Agent may from time to time (subject to any terms or conditions that it may think fit) delegate to any person whatsoever (whether or not an authorised person but not the Member himself) all or any of its powers authorities and discretions whatsoever whether conferred by this Trust Instrument or under the general law (so far as such powers authorities and discretions are not already vested in some other person by any provision of this Trust Instrument) or delegated to the Managing Agent by its Managing Agent's Offshore Policies Trustees under clause 15(b) and any delegation under this clause 15(c) shall (unless that delegation otherwise states) confer on any such delegate power to sub-delegate to any person other than the Member himself all or any of the powers authorities and discretions so delegated and (unless that delegation otherwise states) authorise any further such sub-delegation other than to the Member to any number of degrees
- (d) Lloyd's (whether or not for the time being a trustee of this Trust Instrument) shall be responsible for the acts or omissions of any subsidiary of Lloyd's to which any of the Offshore Policies Trustees or any Managing Agent has delegated or sub-delegated at the express request of Lloyd's

- (e) Save in any such case as is mentioned in clause 15(d) any person who makes a delegation shall be liable for the acts or defaults of any persons to whom he may have delegated and for the acts or defaults of any sub-delegates of such persons as if they were the acts or defaults of the person making such delegation
- (f) Any delegation made under this clause 15 shall be on such terms and subject to such conditions and with such remuneration (and provision for the remuneration of sub-delegates) if any payable out of the Member's Offshore Policies Trust Fund or its income as the person making such delegation may determine and agree with the person to whom the delegation is to be made and the person making such delegation may at any time revoke or vary any such determination
- (g) For the avoidance of doubt it is hereby declared that none of the powers conferred by Part IV of the United Kingdom Trustee Act 2000 shall apply to the trusts of this Trust Instrument (all such statutory powers being hereby excluded for all purposes whatsoever)

### **Bank accounts and blending**

- 16(a) Trust assets may be held in any number of bank accounts denominated in any currency whatsoever and whether situated in Singapore or in the United Kingdom
- (b) Any trust assets may be placed in the same bank account or pool of assets (in either case denominated in any currency whatsoever and whether situated in Singapore or in the United Kingdom) as or may otherwise be blended with –
  - (i) any other trust assets (even if belonging to a different Managing Agent's Offshore Policies Sub-Fund) or
  - (ii) any assets that are comprised in any of the member's offshore policies trust funds under this Trust Instrument of any of the other members (in the application of the terms hereof to the Lloyd's Premiums Trust Deeds for general business of such of the other members) or
  - (iii) any assets which consist of or represent income held in trust for the Member absolutely under the exception to clause 12 (or distributed in execution of that trust) or which consist of or represent income held in trust for any other member absolutely (or distributed in execution of that trust) under the like provision under this Trust Instrument (in such application of the terms hereof as is mentioned in clause 16(b)(ii))

and may accordingly be held and may be deposited lent or invested or reinvested together with the same without any need for segregation

- (c) There shall be full power to sever and apportion any blended funds or assets and their income in any manner that complies with the practices adopted at Lloyd's or is otherwise fair and reasonable (without being responsible for any loss occasioned thereby)

- (d) Any trust assets held by any of the Offshore Policies Trustees or by any custodian or nominee or sub-appointee as is referred to in clause 14 in a bank account in the name of an authorised person or in any dematerialised system may be blended with any other assets held by such Offshore Policies Trustees or by that custodian or nominee or sub-appointee or authorised person or in that system without any need for segregation
- (e) Subject to clause 8 all trust monies shall at all times stand to the credit of an account with an approved bank
- (f) Subject to clause 8 any person or persons in whose name any bank account containing trust monies is held must be a Offshore Policies Trustee or an authorised person
- (g) Where any bank account is held in the name of one or more of the Managing Agent's Offshore Policies Trustees of any Managing Agent a permitted number of the Managing Agent's Offshore Policies Trustees of that Managing Agent or the Managing Agent itself may in regard to that account give directions to the approved bank concerned without obtaining the concurrence of or consulting any or any other Offshore Policies Trustees and such bank shall be entitled to act upon any directions purporting to be so given

#### **Investment and laying out of the Member's Offshore Policies Trust Fund**

- 17(a) Subject to the requirements of the Council any part of the Member's Offshore Policies Trust Fund may as the Relevant Managing Agent may think fit be –
  - (i) deposited with or lent to any person in any part of the world (other than the Member or any of the Member's Underwriting Agents) or
  - (iii) invested or otherwise laid out in the acquisition of any Applicable Investments or any currency or any other choses in action or other assets of any nature whatsoever (other than Excepted Investments) that could be acquired by an absolute beneficial owner wherever the same are situate (in any part of the world) and although not within any range authorised by law in the absence of an express power including (without limitation) any shares or other securities or choses in action in any part of the world which are recorded held or transferred by any dematerialised system

but (for the avoidance of doubt) neither the general power of investment conferred by Part II of the United Kingdom Trustee Act 2000 nor the power to acquire freehold and leasehold land conferred by Part III of that Act is to apply to the trusts of this Trust Instrument (such statutory powers being hereby excluded for all purposes whatsoever)
- (b) In determining the investment or other application of any part of the Member's Offshore Policies Trust Fund account may properly be taken (inter alia) of the likely nature of anticipated future Permitted Offshore Policies Trust Outgoings (including the currencies in which the same will fall due to be paid or discharged and the likely date or dates for payment of the same) and the desirability of the Member's Offshore Policies Trust Fund having available at the appropriate time liquid funds out of which the same may be met

- (c) Without prejudice to the generality of the foregoing (but subject to the requirements of the Council) the keeping of any trust monies in an interest-bearing account shall be regarded as a proper investment of the same
- (d) Any Managing Agent may at any time or times during the Trust Period direct that any assets for the time being held as part of the Managing Agent's Offshore Policies Sub-Fund of that Managing Agent shall be released altogether from the Member's Offshore Policies Trust Fund (discharged from all the trusts powers and provisions of this Trust Instrument and of the Member's PTD) in any case where the same are forthwith replaced by substitute assets of equivalent value (being assets authorised by this clause 17 or by clauses 18 to 19 or cash)
- (e) For the avoidance of doubt nothing in this Trust Instrument shall authorise any part of the Member's Offshore Policies Trust Fund or its income to be used for the purpose of underwriting securities issues

**Deposits and loans free of interest or on special terms guarantees and letters of credit**

- 18(a) Subject to the requirements of the Council the Relevant Managing Agent may for any purpose of or in connection with the Member's Offshore Policies Business cause any part of the Member's Offshore Policies Trust Fund to be deposited with or lent to –
  - (1) any of the other members or
  - (2) Lloyd's or any company which is a subsidiary of Lloyd's or in which Lloyd's otherwise has an interest (although Lloyd's may currently be the Regulating Trustee or any other trustee under the Member's PTD or an Offshore Policies Trustee) or
  - (3) Additional Securities Limited or any other company nominated for the purposes of this power by the Council or
  - (4) all or any of the trustees for the time being of any Special Trust Fund or of any Premiums Trust Deed (whether relating to general business or long term business) of the Member or of any of the other members (including this Trust Instrument in its application to any of the other members)
- (b) Subject to the requirements of the Council any part of the Member's Offshore Policies Trust Fund may be used at the direction of the Relevant Managing Agent to acquire or provide or give security for (either individually or jointly with any members of any syndicate or syndicates at Lloyd's whether or not the Member is a member of any or all of such syndicates) any letters of credit or guarantees (in favour of any person including without limitation Lloyd's itself) required for or otherwise in any way whatsoever relating to or connected with the Member's Offshore Policies Business (and any such security may also be given over any assets liable in the future to become comprised in the Member's Offshore Policies Trust Fund or any part thereof including all or any Offshore Policies Rights of Recovery)

- (c) Without prejudice to the generality of the foregoing it is hereby declared that in any case where any part of the Member's Offshore Policies Trust Fund is used at the direction of the Relevant Managing Agent to pay more than the Member's proper share of or contribution to –
- (1) any deposit loan letter of credit or guarantee referred to in clauses 18(a) or 18(b) or
  - (2) the funding or provision of any Overseas Business Regulatory Deposit in Singapore or
  - (3) the payment of any outgoings whatsoever of any syndicate or syndicates of or with which the Member is or was a member or is or was otherwise connected for the purposes of any part of the Member's Offshore Policies Business

(any which such direction or action the Relevant Managing Agent is hereby expressly authorised to make or take if it acting in good faith thinks fit) the excess over the Member's proper share thereof or contribution thereto shall be treated for all the purposes of this Trust Instrument as a loan validly made under clause 18(a) in favour of those of the other members whose own proper share of or contribution to the same has thereby been discharged or otherwise met

#### **Power to borrow and give security for Member's borrowings**

- 19(a) Subject to the requirements of the Council any deposit may be taken or loan may be raised in order to augment the Member's Offshore Policies Trust Fund or any part thereof or to replace wholly or partly any other indebtedness owing by the Offshore Policies Trustees or any of them or for any of the purposes of this Trust Instrument whatsoever and any such deposit or loan may be secured in any manner on the whole or any part of the Member's Offshore Policies Trust Fund
- (b) Any security given for any deposit taken or loan raised under clause 19(a) may be given over assets liable in the future to become comprised in the Member's Offshore Policies Trust Fund including all or any Offshore Policies Rights of Recovery and with sole liability on the part of the Managing Agent's Offshore Policies Trustees concerned or joint liability with the Member as to repayment
- (c) Any deposit or loan which may be taken or raised by a Managing Agent on behalf of the Member to enable the Member to pay or discharge any Permitted Offshore Policies Trust Outgoings may be secured in any manner permitted under sub-clauses (a) or (b) of this clause

#### **Provisions supplementary to clauses 17 to 19**

- 20(a) The Managing Agent's Offshore Policies Trustees of any Managing Agent or any one or more of them shall give effect to any direction given by that Managing Agent under clauses 18(b) or 19(b) to give any security over Offshore Policies Rights of Recovery notwithstanding that the relevant part or parts of the Member's Offshore Policies Trust Fund are not vested in or under the control of the Managing Agent's Offshore Policies Trustees in question or any of the Offshore Policies Trustees

- (b) No person providing a letter of credit or guarantee for and no depositor or lender paying or advancing monies to or to the order of all or any of the Offshore Policies Trustees or for or to the order of any Managing Agent purporting to be acting pursuant to the powers given by clauses 18 or 19 shall be concerned to inquire whether such letter of credit or guarantee or all or any of such monies is wanted or ought to be so provided or paid or advanced or otherwise as to the use made of any such letter of credit or guarantee or as to the application of any such payment or advance or as to the propriety or regularity of any exercise of such powers
- (c) Any deposit or loan may be made under clause 17(a) or clause 18(a) or taken or raised under clause 19(a) by way of an isolated sum or series of sums or by overdraft or by monies or remittances being made available to the credit of any running account or by monies being left as owing to the lender or by lending shares or other securities by way of stocklending or by any other means whatsoever
- (d) Any deposit or loan may be made under clause 17(a) or clause 18(a) or taken or raised under clause 19(a) either with or without security given by the recipient of the deposit or loan and on any such terms as to interest and charges and premium on repayment (if any) and generally upon such terms as to repayment and otherwise in all respects as the person initiating the making of the deposit or loan may think fit and agree with the recipient of the deposit or loan or where that first person is also acting as agent for the recipient of the deposit or loan as it may determine

### **Netting agreements**

- 21 In effecting any acquisition or sale of or other dealing with trust assets or in directing the same any of the Offshore Policies Trustees or any Managing Agent may enter into or direct the entering into of a netting or other similar agreement with any counterparty or other person involved in the transaction in question and where such transaction involves trust assets that have been or will be blended under the powers conferred by clause 16(b) any such netting or other agreement may be entered into without distinguishing between such trust assets and any other assets that are or may become held in the relevant blended fund

### **Termination of the agency of a Managing Agent**

- 22(a) If a Managing Agent becomes neither an agent nor a sub-agent of the Member for the purpose of conducting or winding up all or any part of the Member's Offshore Policies Business previously conducted or being wound up by that Managing Agent the whole or (where the Managing Agent is continuing to act in respect of some other part of the Member's Offshore Policies Business) an appropriate part or parts (ascertained in accordance with clause 22(b)) of the Managing Agent's Offshore Policies Sub-Fund of that Managing Agent shall (unless the Council otherwise directs) forthwith be paid or transferred to or otherwise vested in or under the control of the Managing Agent's Offshore Policies Trustees of the Managing Agent who is (to the extent in question) appointed as a substitute agent in place of the outgoing Managing Agent or (as the case may be) appointed in the latter's place by the Member or the Members' Agent or Managing Agent that appointed the outgoing Managing Agent (so as instead to become part or parts of the Managing Agent's Offshore

Policies Sub-Fund of such succeeding Managing Agent) and the Managing Agent's Offshore Policies Trustees of the outgoing Managing Agent shall thereupon cease to be trustees of this Trust Instrument in respect of the whole or part or parts in question and references in this Instrument to the outgoing Managing Agent shall thenceforth be read as regards that whole or part or parts as referring to the succeeding Managing Agent

- (b) The “appropriate part or parts” of the Managing Agent’s Offshore Policies Sub-Fund of the outgoing Managing Agent referred to in clause 22(a) shall be such part or parts thereof as may be agreed between the outgoing Managing Agent and the succeeding Managing Agent or as shall otherwise be determined by the Council

### **Persons in whom discretions are vested**

23(a) Subject to clause 5(b) and to any other express provision of this Trust Instrument all discretions powers and authorities –

- (i) conferred in this Trust Instrument by a provision which does not itself state who is to exercise the same or
- (ii) conferred by the general law on trustees (whether by virtue of the United Kingdom Trustee Act 1925 or any other statute or otherwise howsoever)

shall as regards the Managing Agent’s Offshore Policies Sub-Fund of any Managing Agent (or assets which will when received belong thereto) be vested in and exercisable by or at the direction of the Managing Agent concerned (save only to the extent if any as that Managing Agent otherwise directs)

- (b) For the avoidance of any doubt it is hereby expressly declared that the discretions powers and authorities conferred by this Trust Instrument on a Managing Agent shall only be exercisable by it in respect of the Managing Agent’s Offshore Policies Sub-Fund of that Managing Agent (or assets which will when received belong thereto)
- (c) Any of the Managing Agent's Offshore Policies Trustees of any Managing Agent who for the time being has or have any part of the Member’s Offshore Policies Trust Fund vested in them or under their control shall if and so far as the Managing Agent in question so directs effect with that part or so much thereof as may be requisite any deposit loan letter of credit guarantee or investment (or the giving of any security) authorised by clauses 17 to 20 or any other transaction authorised by this Trust Instrument and directed to be effected by that Managing Agent
- (d) Notwithstanding anything hereinbefore contained but subject to the requirements of the Council a permitted number of the Managing Agent’s Offshore Policies Trustees of any Managing Agent may withdraw call in or realise any deposit loan letter of credit guarantee or investment or require the withdrawal calling in or realisation of any deposit loan letter of credit guarantee or investment comprised in a part of the Member’s Offshore Policies Trust Fund under its control so far as may in the opinion of the trustees or trustee so acting be requisite in order to enable them or it to make any payment falling to be made by them or it and necessary for carrying out the trusts and provisions of this Trust Instrument

## Exercise of discretions

- 24(a) Any Managing Agent's Offshore Policies Trustee which is a body corporate any Managing Agent and Lloyd's may in executing the trusts of this Trust Instrument and exercising any discretions powers or authorities conferred upon them by or under this Trust Instrument or by law act by any of their respective officers or employees or in the case of any Managing Agent any partner therein but (in each such case) shall be responsible and liable for anything done or omitted by the officer employee or partner in the like manner and to the like extent as if it had been done or omitted by the Managing Agent's Offshore Policies Trustee or the Managing Agent or Lloyd's (as the case may be)
- (b) In exercising any discretions powers or authorities conferred upon them by or under this Trust Instrument any Managing Agent (or any delegate or sub-delegate acting for them or in their place) shall so exercise each power authority or discretion so as to comply with clause 5(b) and (subject thereto) so as not to infringe or be inconsistent with any applicable Underwriting Agent's Appointment
- (c) In exercising any discretion power or authority which is conferred by this Trust Instrument on any person or persons (including without limitation the Council or any of the Offshore Policies Trustees or any Managing Agent) such person or persons may if thought fit exercise the same in a way which will or may (whether revocably or irrevocably) fetter the exercise of such discretion power or authority in the future (including without limitation by way of standing order or direction or by reference to future dates or times or to the occurrence or otherwise of future events or contingencies)
- (d) Any direction or other exercise of a discretion power or authority that is capable of being made under this Trust Instrument or any notice to be given or calculation or certification to be made hereunder may (unless there is an express requirement that it should be made in writing or in some other specified form) be made electronically or in writing or in any other communicable form capable of creating a permanent record and without any need to refer to the provision of this Trust Instrument under which the same is being made and (if thought fit) in giving any such direction or notice or making any such calculation or certification (or in giving effect to the same) use may be made of and reliance may be placed on any computerised accounting or payment systems
- (e) Any such direction or other exercise of a discretion power or authority or notice or calculation or certification may if thought fit be made or given in conjunction with (and by means of the same communication as) any similar direction or exercise of discretion power or authority or notice or calculation or certification (whether relating to the Member or to any of the other members) under this Trust Instrument or any one or more other Special Trust Directions or Premiums Trust Deeds or any other trust instrument whatsoever at Lloyd's of the Member or of any of the other members

## **Self-dealing**

- 25(a) It is hereby declared that Lloyd's (acting in any capacity whatsoever) or any of the Managing Agents or any of the Offshore Policies Trustees may (save only where expressly prohibited by any provision of this Trust Instrument) exercise any discretion power or authority conferred on it or him by or under this Trust Instrument in favour of itself or himself or any person in whom it or he has an interest or with whom it or he is connected in any way whatsoever (including in the case of any discretion power or authority expressed to be conferred on the Council Lloyd's acting in that or any other capacity whatsoever and any company in which Lloyd's has a controlling or other interest) without (in any such case) the exercise in question being invalid or becoming liable to be set aside or reopened (and without the incurring of any personal liability) by reason of any self dealing disability or conflict of interest so occasioned
- (b) It is hereby further declared that –
- (i) Any Managing Agent or any of the Offshore Policies Trustees may effect any transaction with itself or himself either as principal or as an agent of any of the other members or as a trustee of any Special Trust Fund or of any Premiums Trust Deed or other trust instrument whatsoever at Lloyd's of the Member or of any of the other members and
- (ii) Lloyd's acting in any capacity may effect any transaction with itself in any other capacity whatsoever

without (in any such case) the transaction in question being invalid or becoming liable to be set aside or reopened (and without the incurring of any personal liability) by reason of any self dealing disability or conflict of interest so occasioned provided that the transaction is shown to have been at the time of the transaction fair and reasonable in regard to the Member and those entitled to Permitted Offshore Policies Trust Outgoings

## **Rights of policyholders to claim on the Member's Offshore Policies Trust Fund**

- 26 No policyholder or other person having or alleging any claim or demand against the Member shall be entitled to have any account rendered to him of the Member's Offshore Policies Trust Fund or its income or of the administration or execution of the trusts of this Trust Instrument or any aspect thereof or to see any of the books papers accounts vouchers or records of the Offshore Policies Trustees or any of them or of the Member's Offshore Policies Business the Member or the Member's Underwriting Agents or any of them unless and until all of the following four conditions have been fulfilled –
- (a) A judgment has been obtained by the policyholder or such other person as aforesaid against the Member in respect of the Member's liability under the relevant policy or contract of insurance (being an Offshore Policy) in a court of competent jurisdiction in Singapore (or any other country where the judgment is enforceable in Singapore after registration or extension without obtaining a judgment of a court in Singapore other than an order for enforcement of the judgment)

- (b) Such judgment has become final in the sense that the particular litigation has been concluded either through failure to appeal within the time permitted for an appeal or through the final disposition of any appeal or appeals that may be taken
- (c) There has been delivered to the Managing Agent concerned an office or official copy of the judgment obtained as aforesaid together with such proof as to its finality and subsistence through satisfaction of the condition specified in clause 26(b) as such Managing Agent requires and
- (d) A period of forty-two days has expired from and after the date of delivery of the office or official copy of the said judgment and all such proof as aforesaid to the Managing Agent concerned without the judgment having been satisfied

**No partnership**

- 27 Nothing contained in this Trust Instrument shall constitute a partnership between the Member and any person or persons (both the Member's Offshore Policies Business and the Underwriting as a whole being carried on for the Member's own sole and separate account)

**Evidence on which the Offshore Policies Trustees may act**

- 28(a) Any of the Offshore Policies Trustees may accept as sufficient and act upon and give effect to any statement of (or which purports to be a statement of) Lloyd's or any Managing Agent as to what sums or other assets are from time to time required to be paid or transferred out of the Member's Offshore Policies Trust Fund or its income and to whom these are to be paid or transferred and what investments or other property are or is to be acquired or realised or exchanged and in what manner in all respects such payment transfer acquisition realisation or exchange is to be made
- (b) None of the Offshore Policies Trustees shall under any circumstances be under any liability for acting upon or giving effect to any such statement without requiring any verification thereof or for paying or transferring any sums or assets or acquiring or realising or exchanging any investments or property on the basis of any such statement without requiring any such verification
  - (c) Any of the Offshore Policies Trustees may however if such trustee thinks fit require any such statement to be verified in such manner as he or it thinks fit but such trustee shall not under any circumstances be under any obligation to do so
  - (d) Clause 28(a) shall apply even where there is (unknown to the Offshore Policies Trustee in question) a fault or invalidity in the appointment of the person appearing to be a Managing Agent or in the appointment or authorisation of the officer partner or employee delegate or sub-delegate by which it appears to be acting

### **Protecting provision**

- 29 If any difference at any time arises between any of the Offshore Policies Trustees and the Member or any present or past Managing Agent or Offshore Policies Trustee hereof relating to the trusts hereby constituted or the administration thereof or anything connected therewith or if any of the Offshore Policies Trustees at any time feel any doubt or difficulty in administering these trusts it shall be an absolute protection to all persons concerned (including Lloyd's) against all claims and demands whatsoever that in the case of any act or thing already done or omitted the Council approved or approves of such act or thing having been done or omitted and that in the case of any act or thing intended to be done or omitted the Council approves of such intended act or omission

### **Inconsistencies with other agreements**

- 30(a) If and so far as any of the trusts powers or provisions of this Trust Instrument are at any time inconsistent with any existing agreement between the Member and any Managing Agent with reference to the conduct or winding-up of the Member's Offshore Policies Business or with reference to the Member's Offshore Policies Trust Fund and its income or where the Managing Agent in question is a substitute agent the terms of its appointment (including but not limited to any applicable Underwriting Agent's Appointment) then and in every such case every such other agreement or terms of appointment shall so far as it or they may be inconsistent with any of the terms of this Trust Instrument be deemed cancelled and suspended by this Trust Instrument so that in every such case of inconsistency (if any) the provisions of this Trust Instrument shall prevail and have full effect
- (b) Save as aforesaid nothing herein contained shall prejudice alter or affect any such agreement or appointment relating to the Member's Offshore Policies Business to the intent that except so far as is necessary to give full effect to this Trust Instrument any such agreement or appointment as last mentioned shall continue in full force

### **Electronic communications**

- 31 A notice sent by electronic means is deemed to have been received at the time when any such notice enters the information system controlled by the recipient in such a way that it can be retrieved by the recipient between 9am and 5pm (Singapore time) on a business day or if not between those hours at 10am (Singapore time) on the next business day

### **English law**

- 32 This Trust Instrument shall be construed and have effect and be governed in all respects by English law (which shall be the proper law of this Trust Instrument)

**Singapore jurisdiction**

33 The courts in Singapore shall have non-exclusive jurisdiction for all purposes of and in connection with this Trust Instrument

**IN WITNESS** whereof the Common Seal of Lloyd's has been hereto affixed the year first above written

## **SCHEDULE 1**

### **Interpretation**

1 In this Trust Instrument (in relation to the Member and the Member's PTD) unless the context otherwise requires –

“Applicable Investments” has the meaning given in the Member's PTD

“approved bank” means any natural or artificial person in any part of the world except only for the Member himself and any of the Member's Underwriting Agents (and so including without limitation Lloyd's or any Offshore Policies Trustee or Lloyd's of London (Asia) Private Limited or any other company whether or not incorporated in Singapore or in the United Kingdom which is a subsidiary of Lloyd's or in which Lloyd's otherwise has an interest) that either –

- (i) has and is acting through a permanent place of business in Singapore and is permitted by the law of the Republic of Singapore to carry on the business of banking in Singapore and is regulated in carrying on that business or
- (ii) has been authorised by the Council as a person in an account with whom trust monies can be held for the purposes of this Trust Instrument (or of all or a class of Premiums Trust Deeds and Special Trust Directions including this Trust Instrument)

“assets” include an interest or interests in other assets

“authorised person” means any natural or artificial person in any part of the world except only for the Member himself (and so including without limitation Lloyd's or any Offshore Policies Trustee or any of the Member's Underwriting Agents or Lloyd's of London (Asia) Private Limited or any other company whether or not incorporated in Singapore or in the United Kingdom which is a subsidiary of Lloyd's or in which Lloyd's otherwise has an interest) that either –

- (i) has and is acting through a permanent place of business in Singapore and is permitted by the law of the Republic of Singapore to provide custody services in Singapore and is regulated in the provision of those services or
- (ii) has been authorised by the Council to act as a nominee or custodian for the purposes of this Trust Instrument (or of all or a class of Premiums Trust Deeds and Special Trust Directions including this Trust Instrument)

“business day” means a day on which banks generally are open for a full range of business in Singapore (excluding Saturdays and Sundays)

“Central Fund” means the Central Fund referred in Lloyd's Central Fund Byelaw (No 4 of 1986) and any assets expressed to be held as part of such Central Fund

“the Commencement Date” means [13<sup>th</sup>] February 2002

“the Council” means the Council of Lloyd's constituted by the United Kingdom Lloyd’s Act 1982 (and also in regard to any discretion authority or power hereby conferred on the Council except only for the purposes of clause 5(a) of this Trust Instrument such persons as are for the time being authorised by it to exercise that discretion authority or power)

“dematerialised system” means any system in any part of the world for the recording holding or transferring of shares or other securities or any choses in action whatsoever that is based wholly or partly on computer records and being a system either –

- (i) in which any person falling within (i) of the definition of authorised person is permitted under the regulatory regime applying to it to participate (directly or indirectly) or
- (ii) which is approved by the Council

“Excepted Investments” has the meaning given in the Member’s PTD

“general business” means insurance business other than long term business

“individual” means a single individual (as opposed to an individual in his capacity as a member of a partnership)

“land” includes (without prejudice to the generality of that expression) anything falling within the definition of land in the United Kingdom Trustee Act 1925

“Lloyd's” means the Society incorporated by Lloyd’s Act 1871 by the name of Lloyd’s (that Act being a statute of the United Kingdom)

“Lloyd’s American Instrument” means Lloyd’s American Instrument 1995 (General Business of Individual Members or as the case may be Corporate Members) as for the time being modified which Instrument has an English proper law and governs the Dollar Trust Fund (as therein defined) but if or to the extent that such Instrument is replaced then the replacing instrument for the time being in force (as for the time being modified)

“Lloyd’s Asia business” means general business carried on by the Member in Singapore pursuant to the Insurance (Lloyd’s Asia Scheme) Regulations 2002 of the Republic of Singapore

“long term business” means the business of effecting or carrying out “contracts of long term insurance” as defined in the United Kingdom Financial Services and Markets Act (Regulated Activities) Order 2001

“Managing Agent” means an underwriting agent at Lloyd's appointed by the Member (either directly or by any other underwriting agent at Lloyd’s acting in exercise of any authority given by the Member or by any means derived from any such authority including any contract of Reinsurance to Close) to act as an agent or sub-agent of the Member for the purpose of conducting all or any part of the Underwriting (and any

successor in whole or in part of such underwriting agent including any substitute agent)

“Managing Agent's Offshore Policies Sub-Fund” means in regard to any Managing Agent that part of the Member’s Offshore Policies Trust Fund which is for the time being vested in or under the control of all or any one or more of the Managing Agent's Offshore Policies Trustees appointed by or for that Managing Agent

“Managing Agent’s Sub-Fund” has the meaning given in the Member’s PTD

“Managing Agent's Offshore Policies Trustees” means in regard to any Managing Agent the trustees for the time being of this Trust Instrument designated under clause 6(a) as the Managing Agent's Offshore Policies Trustees in respect of that Managing Agent

“Managing Agent’s Trustees” has the meaning given in the Member’s PTD

“the Member” has the meaning given above including where the context so admits or requires –

- (i) in the case of an individual his administrators executors or assigns
- (ii) in the case of a corporate body its assigns and
- (iii) in the case of a Scottish limited partnership (having until dissolution its own separate legal personality) that partnership as constituted from time to time and the persons or person who will succeed or have succeeded to its assets and/or its liabilities after dissolution

“Members' Agent” means any members' agent of the Member at Lloyd's appointed by the Member (and any successor in whole or in part of such agent including any substitute agent)

"the Member's PTD" has the meaning given above

“the Member’s Offshore Policies Business” means such part of the Underwriting as consists of or relates directly or indirectly to the underwriting of Offshore Policies

“the Member’s Offshore Policies Trust Fund” means the trust fund constituted as provided in clause 3 and Schedule 2

“the Member’s Underwriting Agents” means any and every Members' Agent and Managing Agent

“New Central Fund” means the New Central Fund referred to in Lloyd’s New Central Fund Byelaw (No. 23 of 1996)

“notifiable event” means –

- (i) in relation to an Offshore Policies Trustee who is an individual
  - (a) the making of a receiving order in bankruptcy against such individual by the due process of law of any country or such individual making or proposing any composition with his creditors or otherwise acknowledging his insolvency or
  - (b) that individual becoming through mental or other infirmity incapable of managing his affairs and
- (ii) in relation to an Offshore Policies Trustee which is not an individual the making or proposing of any composition with its creditors or otherwise acknowledging its insolvency or a proposal being made in respect of it under section 2 of the United Kingdom Insolvency Act 1986 or a bankruptcy order being made against it by the due process of law of any country or its being adjudicated or declared insolvent by the due process of law of any country or an order being made or resolution being passed for its winding up or dissolution or an administration order being made in respect of it under section 9 of the United Kingdom Insolvency Act 1986 or a receiver trustee or analogous officer being appointed in respect of the whole or any material part of its property or assets or its directors presenting or filing in any court a petition in respect of its bankruptcy winding up or other insolvency or which seeks any reorganisation dissolution or similar relief or there occurring an event in any jurisdiction which is analogous to any of the foregoing events and
- (iii) any other matter prescribed by the Council for the purposes of this definition

"Offshore Policies" means offshore policies (as defined in the First Schedule to the Singapore Insurance Act (cap 142)) which are underwritten by the Member either as Lloyd's Asia business or as a member of Lloyd's syndicate 457, 1003, 1400 or 2003 through a service company in Singapore pursuant to approval granted by the Monetary Authority of Singapore

“Offshore Policies Rights of Recovery” means all rights and potential rights of the Member whether current contingent or future to have any assets paid or transferred at any time during the Trust Period to the Member or to any Managing Agent or other person on behalf of the Member (and any and every interest of the Member in the rights and potential rights of any Managing Agent or other person whether current contingent or future to have any assets paid or transferred at any time during the Trust Period to that Managing Agent or other person on behalf of the Member) where the assets in question –

- (i) have not for the time being been so paid or transferred and
- (ii) will (when or if so paid or transferred) themselves be trust assets

the “Offshore Policies Trustees” means the trustees for the time being of this Trust Instrument appointed under clause 6 (being Managing Agent’s Offshore Policies Trustees of any Managing Agent) but excluding any other person (including the Member) who may hold or in whose name may be held any trust assets at any time

“the other members” means (other than and excepting the Member himself) the underwriting members of Lloyd's and such former underwriting members of Lloyd's as continue to have general business or long term business not fully wound up (whether or not subject to a Reinsurance to Close) and the personal representatives or trustee in bankruptcy assigns or other successors of any such underwriting member or former underwriting member (including in the case of a Scottish limited partnership that partnership as constituted from time to time and the persons or person who will succeed or have succeeded to its assets and/or liabilities after dissolution)

“Overseas Business Regulatory Deposit” means any Lloyd's US Surplus Lines Trust Deed or Lloyd’s US Reinsurance Trust Deed or any other deposit trust deed (including any joint asset trust deed) or any bank account covenant letter of credit guarantee company or other entity or arrangement whatsoever (wheresoever situate in any part of the world) of which full particulars have been provided to the UK Financial Services Authority and which (or any fund subject or relating to which) the Member is for the time being required to keep in funds to provide or to provide security for (whether on an individual or syndicate or group or other basis) as a regulatory or other condition or requirement (whether imposed by the Council or by any governmental or regulatory authority having jurisdiction in Singapore or in any part of any other territory outside the United Kingdom) in order to enable the Member (or any relevant syndicate or group or Managing Agent) to conduct (or more efficiently to conduct) any business which constitutes or which if conducted would constitute part of the Underwriting relating to (or conducted in the currency of) a particular territory outside the United Kingdom (including without limitation Singapore)

“permitted number” means in regard to the Managing Agent’s Offshore Policies Trustees of any Managing Agent at least two of those trustees or one if that one is a body corporate (whether or not a trust corporation)

“Permitted Offshore Policies Trust Outgoings” has the meaning given in Schedule 3

“Permitted Trust Outgoings” has the meaning given in the Member’s PTD

“the Perpetuity Period” means the period commencing with the date of the Member’s PTD and terminating –

- (i) in a case where the Member is an individual on the twenty-first anniversary of the Member’s death and
- (ii) in any other case on the expiry of eighty years from 1<sup>st</sup> January 1993

(such period being the perpetuity period in respect of the Member’s Offshore Policies Trust Fund and its income for the purposes of this Trust Instrument)

“the Personal Reserve Sub-Fund” has the meaning given in the Member’s PTD

"Premiums Trust Deed" has the meaning given in the Member's PTD

“the PTD Trust Fund” means the Trust Fund subject to the Member’s PTD

“Regulating Trustee” has the meaning given in the Member’s PTD

“Reinsurance to Close” has the meaning given in the Lloyd’s Syndicate Accounting Byelaw (No. 18 of 1994)

“Relevant Managing Agent” means in regard to the Managing Agent's Offshore Policies Trustees of any Managing Agent or assets which are vested or which are or will be required to be vested in or under the control of all or any of the Managing Agent's Offshore Policies Trustees of any Managing Agent (including any Offshore Policies Rights of Recovery which if they were to be received by that Managing Agent would be required to be so vested) the Managing Agent in question

“requirements of the Council” means any requirement imposed by any byelaw or regulation made under the United Kingdom Lloyd’s Acts 1871 to 1982 or under the authority given by the Member's PTD any condition or requirement imposed or direction given under any such byelaw or regulation or authority any direction given under section 6 of the United Kingdom Lloyd’s Act 1982 any requirement imposed by or under any agreement deed or other instrument between Lloyd’s or the Council and the Member any Member’s Underwriting Agent or any Offshore Policies Trustee or trustee of the Member’s PTD or by or under any undertaking in favour of Lloyd’s or the Council given by the Member any Member’s Underwriting Agent or any Offshore Policies Trustee or trustee of the Member’s PTD and any other direction or requirement given or made by the Council under the United Kingdom Lloyd’s Acts 1871 to 1982

“Restricting Special Trust Fund” has the meaning given in the Member’s PTD

“Special Trust Direction” has the meaning given in the Member’s PTD

“Special Trust Fund” has the meaning given in the Member’s PTD

“subsidiary” has the meaning given in section 736 of the United Kingdom Companies Act 1985 (as applied with any necessary modifications in the case of a company incorporated outside Great Britain)

“substitute agent” has the meaning given in Lloyd’s Substitute Agents Byelaw (No. 20 of 1983)

“syndicate” means an underwriting member or group of underwriting members of Lloyd’s underwriting insurance business at Lloyd’s through the agency of a Lloyd’s underwriting agent to which member or group a particular syndicate number is assigned by or under the authority of the Council (and the underwriting member or several groups of underwriting members to which in different years a particular syndicate number is assigned by or under the authority of the Council shall be treated

as the same syndicate for the purpose of this Trust Instrument notwithstanding that they may not comprise the same underwriting members with the same individual participations)

“trust assets” means assets for the time being comprised in the Member’s Offshore Policies Trust Fund or its income (including income falling within the exception to clause 12 during the calendar year in which the same is received)

"this Trust Instrument" has the meaning given above

“the Trust Period” means the period commencing on the Commencement Date (or where the Member’s PTD is executed after that date on the later date of execution of the Member’s PTD) and expiring twenty days before the termination of the Perpetuity Period

“the Underwriting” has the meaning given in the Member's PTD

“Underwriting Agent’s Appointment” means any agreement between a Members’ Agent and the Member or between a Managing Agent and the Member or between the Managing Agent and any Members’ Agent or in any case where the Member’s Underwriting Agent in question is a substitute agent the terms of its appointment

“the UK Financial Services Authority” means the United Kingdom’s Financial Services Authority

2 In this Trust Instrument unless the context otherwise requires –

- (i) A reference to any clause number or numbered Schedule is to the appropriate numbered clause or Schedule of this Trust Instrument
- (ii) A reference to any document (including this Trust Instrument itself) or legislation (whether primary or subordinate) or to any provision of it shall after the coming into force of any modification or replacement of the same be read as referring to the same as so modified or replaced
- (iii) Expressions appearing in the singular shall be read as if appearing alternatively in the plural and vice versa and those appearing in the masculine (including without limitation references to the Member) shall be read as if appearing alternatively in the feminine and neuter and vice versa
- (iv) Save as otherwise defined in this Trust Instrument expressions defined in the Member's PTD have the same meanings in this Trust Instrument

3 The cross-headings contained in this Trust Instrument are for reference purposes only and shall not in any way affect its meaning or effect

## SCHEDULE 2

### The Member's Offshore Policies Trust Fund

- 1 Subject to paragraphs 2 and 3 of this Schedule the Member's Offshore Policies Trust Fund shall consist of –
- (i) all of the following assets at the Commencement Date (or if the Member's PTD is executed after the Commencement Date the later date of execution of the Member's PTD) or at any time thereafter during the Trust Period belonging (apart from this Trust Instrument and the Member's PTD) to or being or becoming payable or transferable to the Member or to any person on behalf of the Member (and all interests of the Member therein) namely –
    - (A) all premiums in connection with the Member's Offshore Policies Business
    - (B) all reinsurance recoveries in connection with the Member's Offshore Policies Business
    - (C) all rights of salvage and subrogation rights in connection with the Member's Offshore Policies Business
    - (D) (subject to clause 9) all Offshore Policies Rights of Recovery and (without prejudice to any other provision of this paragraph 1 making the same trust assets) all proceeds monies and other assets directed by clause 9 to be held as trust assets
    - (E) all other assets connected with the Member's Offshore Policies Business
  - (ii) such income of the Member's Offshore Policies Trust Fund as is referred to in clause 12 of this Deed other than any falling within the exception to that clause
  - (iii) all further property at any time added to the Member's Offshore Policies Trust Fund during the Trust Period whether by or on behalf of the Member or otherwise howsoever (and so that in accepting any such property an indemnity from the Member's Offshore Policies Trust Fund may be given in respect of any liabilities relating thereto) and
  - (iv) all assets now or for the time being representing the foregoing respectively
- 2 Notwithstanding paragraph 1 but subject to paragraph 3 of this Schedule assets (and the property representing the same) shall not be treated as comprised in the Member's Offshore Policies Trust Fund –

- (i) if they are not assets which but for this Trust Instrument would be or become comprised in the PTD Trust Fund or
  - (ii) if they are assets falling within any of paragraphs 1(i)(D) to (F) of Schedule 2 to the Member's PTD
- 3 In any case where during the Trust Period an unascertainable or unascertained part or proportion of any assets falls within paragraph 1 of this Schedule as belonging to the Member's Offshore Policies Trust Fund (and is not excluded by paragraph 2 hereof) and another unascertainable or unascertained part or proportion is excluded from the Member's Offshore Policies Trust Fund by paragraph 2 hereof the Relevant Managing Agent shall in its absolute discretion determine what proportion or part thereof is to be treated as falling within paragraph 1 (and as not excluded by paragraph 2) and what proportion or part is to be treated as excluded therefrom by paragraph 2 and only the proportion or part thereof so determined as falling within paragraph 1 (and all interest of the Member in that proportion or part) shall be treated as constituting or becoming part of the Member's Offshore Policies Trust Fund
- 4 Assets not falling within the above definition of the Member's Offshore Policies Trust Fund shall not be treated as comprised in the Member's Offshore Policies Trust Fund by reason only that they have been blended with assets of the Member's Offshore Policies Trust Fund (or are income of any assets so blended) and no blending under this Trust Instrument shall have the effect of removing from the Member's Offshore Policies Trust Fund any assets which would otherwise be comprised in it

## SCHEDULE 3

### Permitted Offshore Policies Trust Outgoings

- 1 The following outgoings (all of which are Permitted Trust Outgoings as defined in the Member's PTD that can also be paid or discharged out of the PTD Trust Fund) are Permitted Offshore Policies Trust Outgoings capable of being paid or discharged during the Trust Period (subject to paragraphs 3 to 5 of this Schedule) under the trust contained in clause 4(a) namely –
- (i) any losses claims returns of premiums reinsurance premiums monies payable to (or to the order of) reinsurers to close and other outgoings from time to time being or becoming payable in connection with the Member's Offshore Policies Business
  - (ii) any syndicate operating expenses and syndicate investment expenses and charges from time to time being or becoming payable in connection with the Member's Offshore Policies Business and any other expenses in connection with the Member's Offshore Policies Business whose payment or discharge is authorised by paragraph 2 of this Schedule
  - (iii) the Member's obligations to keep fully funded or provide or pay any costs in respect of any and every Overseas Business Regulatory Deposit relating to the Member's Offshore Policies Business
  - (iv) the Member's obligations under requirements of the Council or this Trust Instrument to pay any contributions fees or subscriptions or expenses or make any other payments or any repayments due to Lloyd's (or to the Central Fund or to the New Central Fund) in connection with Member's Offshore Policies Business
  - (v) the repayment of any outstanding loan borrowed on behalf of the Member by any Managing Agent to the extent (if any) that the borrowed monies (or any monies which they have been used to refinance) either have been paid into the Member's Offshore Policies Trust Fund or have been used for the payment or discharge of any Permitted Offshore Policies Trust Outgoings (together with any outstanding interest thereon referable to the monies so paid or used)
  - (vi) the Member's obligations to reimburse any person who has paid or discharged on the Member's behalf any outgoings which otherwise would fall within any of sub-paragraphs (i) to (v) above
- 2 Subject to paragraphs 3 and 4 of this Schedule expenses falling within any of the following categories can be paid or discharged under paragraph 1(ii) hereof to the extent that they are connected with or relate to the Member's Offshore Policies Business:-
- (i) the amounts from time to time payable by the Member to any of the Member's Underwriting Agents by way of salary or fee

- (ii) the amounts of profit commission from time to time payable by the Member to any of the Member's Underwriting Agents
- (iii) the amounts of expenses (not being syndicate operating expenses or syndicate investment expenses and charges) from time to time payable by the Member to the Member's Underwriting Agents under any applicable Underwriting Agent's Appointment
- (iv) the final or estimated amount of any Singapore taxation payable by the Member in respect of the Member's Offshore Policies Business

3 The following are not Permitted Offshore Policies Trust Outgoings unless they are syndicate operating expenses or syndicate investment expenses and charges payable in connection with the Member's Offshore Policies Business –

- (i) any fee or other remuneration payable by or on behalf of the Member to or for the benefit of any adviser or sponsor of the Member (except in a case where such Lloyd's adviser or sponsor is also one of the Member's Underwriting Agents and the fee or other remuneration in question is paid to him or it solely in that latter capacity and in connection with the Member's Offshore Policies Business)
- (ii) any fee or other remuneration payable by or on behalf of the Member to or for the benefit of any director or other officer of the Member or of any other body corporate (except in a case where such other body corporate is one of the Member's Underwriting Agents and the fee or other remuneration in question is paid to a director or other officer of it acting in that capacity and in connection with the Member's Offshore Policies Business)
- (iii) any fee or other remuneration payable to or for the benefit of any lawyer accountant stockbroker or financial adviser or other adviser whatsoever except in relation to (a) any reinsurance effected by or on behalf of the Member or (b) the payment or settlement of any claims made in connection with the Member's Offshore Policies Business (including the processing compromise payment repudiation and litigation of any such claims and all matters ancillary thereto)
- (iv) any salary wages fee or other remuneration payable by or on behalf of the Member to or for the benefit of any officer or employee of the Member or to or for the benefit of any other person (except Lloyd's itself or one of the Member's Underwriting Agents acting in that capacity in connection with the Member's Offshore Business) for the provision of the services of that other person's officers or employees
- (v) any outgoings whatsoever payable by or on behalf of the Member in connection with its incorporation or with the setting up of the underwriting business of the Member at Lloyd's

- (vi) any outgoings whatsoever arising out of the acquisition or disposal or occupation of any premises by or on behalf of the Member or the acquisition or disposal or use of any equipment by or on behalf of the Member and
  - (vii) any other outgoings of an overhead nature payable by or on behalf of the Member
- 4 (i) Any outgoings or expenses which would but for this paragraph fall within paragraphs 1 or 2 are not Permitted Offshore Policies Trust Outgoings if they relate wholly and exclusively to long term business and are capable of being separately identified as so relating
- (ii) For the avoidance of doubt it is hereby declared that the payment out of the Member's Offshore Policies Trust Fund under the trust contained in clause 4(a) of any Permitted Offshore Policies Trust Outgoings which relate in part (but not wholly and exclusively) to long term business shall not prevent the reimbursement (if thought fit) of the same to the Member's Offshore Policies Trust Fund to the extent that they relate or are assessed as relating to long term business from any Premiums Trust Deed or Special Trust Direction of the Member relating to long term business in execution of any trust or discretion therein contained
- 5 If at any time during the Trust Period only a proportion or part of any outgoing may be paid or discharged out of the Member's Offshore Policies Trust Fund as a Permitted Offshore Policies Trust Outgoing because only a proportion or part of such outgoing is connected with or related to the Member's Offshore Policies Business the Relevant Managing Agent shall have power in its absolute discretion to determine what is the proportion or part in question

The **COMMON SEAL** of **LLOYD'S**            )  
 was hereunto affixed in the presence of        )

.....  
 Chairman of Lloyd's  
 Authorised Signatory