

COMPANY NUMBER 06964651

THE COMPANIES ACT 2006

**COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL**

ARTICLES OF ASSOCIATION

FOR THE

EMPLOYERS' LIABILITY TRACING OFFICE

Incorporated 02 September 2016

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COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION FOR THE EMPLOYER'S LIABILITY TRACING OFFICE

(As amended by special resolution passed on 02 September 2016)

1. Interpretation

- 1.1 In these Articles (except where the context otherwise requires) the following words shall have the following meanings

Accredited Agent	A person appointed by a Member pursuant to Article 11,
Annual Return	The return provided to the Financial Services Authority or Society of Lloyd's each Year or for an EEA insurer such firms home state equivalent,
the Act	The Companies Acts (as defined in section 2 of the Companies Act 2006) and as amended from time to time,
Articles	These articles of association of ELTO,
Board	The board of directors of ELTO including Special Directors,
Business Plan	The business plan submitted by a new Member relating to the expected amount of Employers Liability Insurance Business such Member intends to undertake during the following Year,
Ceased to carry on Employers' Liability Insurance Business	has the meaning set out in Article 17 1 of these Articles,
Chairman	The Chairman of the Board of directors and as appointed by the Board in accordance with Article 54,

clear days	That period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect,
DRP	Dispute Resolution Panel of ELTO,
DRP Admin	DRP Administrator, a service provided by the Manager,
DRP Pack	A set of instructions to enable the claimant or the claimant's representative to understand how to initiate the DRP process,
EEA Insurer	An EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 of FSMA which qualifies for authorisation under paragraph 15 of that Schedule or a Treaty firm which qualifies for authorisation under Schedule 4 of FSMA,
EL insurer	Any person who has obtained an authorisation under Section 31 of FSMA with permission to effect or carry out Employers' Liability Insurance Business or, for an EEA insurer, such person's home state equivalent provided that such person shall obtain in writing all necessary authorisations and approvals for the carrying on of such business and shall produce the same for approval in writing to ELTO prior to its entry on the Register,
Electronic communications	Has the same meaning as in the Electronic Communications Act 2000,
ELD	The Employer's Liability Database as maintained by ELTO,
ELTO	Employers' Liability Tracing Office,
Employers' Liability Insurance Business	The business of effecting and carrying out contracts of commercial lines employers' liability insurance capable of having effect in the United Kingdom providing cover against the risks of the persons insured incurring liabilities to their employees for injury, illness or death arising out of their employment during the course of business including, for the avoidance of doubt, any policies falling under the remit of the Employer's Liability (Compulsory Insurance) Act 1969 (or corresponding Northern Ireland legislation) as well as those that are non-compulsory policies,

Employers' Liability Register Update	The requirement from time to time for an EL insurer or Syndicate of Lloyd's to make public certain details on potential liabilities held relating to Employers' Liability Insurance Business,
FCA	Financial Conduct Authority,
FCA Rules	(in accordance with section 417(1) of FSMA (Definitions)) a rule made by the FCA under FSMA, including (a) a principle, and (b) an evidential provision,
FSMA	Financial Services and Markets Act 2000,
General Meeting	A general meeting of ELTO,
GWP	A Member's total gross written premiums receivable (less rebates and refunds) on the basis of gross premiums for or attributable to Employers' Liability Insurance Business for the Year or, in the case of Members exercising passporting or treaty rights as an EEA insurer, using such equivalent format and/or applying a formula as agreed by the Members in General Meeting or in a resolution in writing of the Members,
Levy	The amount of the Qualifying Member's Levy payable by all of the Qualifying Members in aggregate for a Year and determined by ELTO pursuant to Article 21 2,
Manager	Tracing Services Limited or such other person appointed as Manager in accordance with Article 66,
Member	A member of ELTO,
Month	A calendar month,
Nominating Member	Has the meaning set out in Article 10 4 of these Articles,
Nominee	Has the meaning set out in Article 10 4 of these

	Articles,
PCD	The premium calculation day, which occurs every 6 months on 1 July and 1 January,
Qualifying Member	Any Member with GWP which is greater than £5,000,000,
Qualifying Member's Levy or Qualifying Member's Levies	The levy or levies charged to a Qualifying Member pursuant to Article 21 1,
Register	The register of Members of ELTO,
Special Director	Has the meaning set out in Article 45,
Statement of Facts	The statement outlining the facts produced by either the claimant or the pursuer, as relevant
Syndicate of Lloyd's	The duly appointed lead member representative or active underwriter acting on their own behalf and for and on behalf of one or more persons, to whom a particular syndicate number has been assigned by or under the authority of the Council of the Society of Lloyd's constituted by section 3 of the Lloyd's Act 1982,
Total GWP	The total GWP of all Qualifying Members,
Trade Union	An organisation of workers whose principal purposes include the regulation of relations between workers and their employers and to facilitate the collective bargaining between workers and their employers,
Year	12 Months ended 31 December

- 1.2 References to the singular number only shall include the plural number and vice versa, references to one gender only shall include all genders, and references to persons shall include corporations and Syndicates of Lloyd's
- 1.3 Headings are inserted for convenience only and shall not affect the construction of these Articles
- 1.4 References to being 'written' or 'in writing' refer to any method of representing or reproducing words in a visible form provided that such method is legible and (if not itself in paper form) capable of being reproduced in paper form

- 1.5 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) or by way of security or in connection with the taking of security, or (b) its nominee
- 1.6 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or reenactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it
- 1.7 Unless the context otherwise requires words or expressions defined in the Act shall bear the same meaning in these Articles
- 1.8 The Companies (Model Articles) Regulations 2008 shall not apply to these Articles
- 1.9 References to a Member's "authorisation" under FSMA in respect of Syndicates of Lloyd's should be read as a reference to authorisation for managing the underwriting capacity of a Syndicate of Lloyd's of the relevant managing agent

OBJECTS

2. The objects for which ELTO is established shall be limited to the following
- 2.1
- 2.1.1 To develop, operate, audit and manage systems and processes capable of recording, capturing and making available on a database such details of employers' liability insurance policies written and/or capable of having effect in the United Kingdom as the membership may determine necessary from time to time and ultimately which are likely to contribute to and assist with the successful tracing of employers liability policies for the mutual benefit of
- 2.1.1.1 claimants that have suffered injury during the course of employment and unable to identify an employer's insurer for the purposes of pursuing a claim,
- 2.1.1.2 insurers seeking to identify other insurers holding commercial lines employers' liability insurance policies in respect of any claim or potential claim for the purposes of establishing whether any grounds for joint and

several liability exist under employers' liability insurance policies or in instances where there may be a common interest between the insurers, and

2.1.1.3 such other individuals, partnerships, associations, bodies or corporations as ELTO may determine from time to time on giving consideration to the objects

2.1.2 To take such action as may be required to assist in identifying employers operating without such employers' liability insurance as may be necessary or required by law in the United Kingdom from time to time

2.2 To enter into any agreements or arrangements with any governments or authorities, municipal, local or otherwise, or any corporations or persons (including the Members of ELTO) that may seem conducive to ELTO's objects, and to obtain from any such government, authority, corporation or person any rights, privileges and concessions which ELTO may think it desirable to obtain, and to carry out, exercise and comply with any such agreements, arrangements, rights, privileges and concessions

2.3 To acquire by assignment any judgements or choses in action or any rights or privileges which ELTO may think necessary or convenient for the promotion of its objects, and to enforce the same

2.4 To act as arbitrators or mediators or to nominate arbitrators or mediators for the settlement of disputes

2.5 To pay, satisfy or compromise any claims made against ELTO (whether or not enforceable) which it may seem expedient to pay, satisfy or compromise

2.6 To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property

2.7 To undertake and execute any trusts and to act as the agents of any other person

2.8 To sell, let, mortgage, dispose of or turn to account all or any of the property or assets of ELTO as may be thought expedient with a view to the promotion of its objects

2.9 To enter into agreements with or make calls or levies on the Members and/or their Accredited Agents or any of them to keep ELTO supplied with all funds necessary to enable it to discharge its obligations or further its objects and for such other purposes as may be conducive to the efficient, economical or expeditious discharge of its obligations and the furtherance of its objects

- 2.10 To borrow and raise money and secure any debt or obligation of or binding on ELTO in such manner as may be thought fit, and in particular by mortgages or charges upon the undertaking and all or any of the real and personal property and assets (present or future) for the time being of ELTO, and whether with or without ELTO receiving any consideration to guarantee or secure (with or without a mortgage or charge on all or any part of the undertaking and assets, present and future for the time being of ELTO) the performance of the obligations of any person, firm or company, including (without prejudice to the generality of the foregoing) any company which is for the time being a subsidiary of ELTO or the holding company or another subsidiary of ELTO's holding company or otherwise associated with ELTO in business and (without prejudice to the generality of the foregoing) to procure bankers or others to guarantee all or any of the obligations of ELTO
- 2.11 To invest the moneys of ELTO not immediately required for its purposes in or upon such investments, securities or property as may be thought fit
- 2.12 To do any of its objects by itself or through subsidiary, associated or related companies or through any agent or nominee
- 2.13 To establish and support or aid in the establishment and support of any charitable or benevolent associations or institutions and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes of ELTO or calculated to further its objects
- 2.14 To develop added value services, including but not limited to, charging for the facilitating of authorised access to data contained on the ELD maintained by ELTO and the provision of training services to any person, company or government body or authority to defray any costs, losses or expenses of ELTO in connection with the operation of ELTO
- 2.15 To extend any of its objects to any country or territory
- 2.16 To do all such other things as are incidental or conducive to the attainment of the above objects or any of them
3. ELTO shall not support with its funds any object, or endeavour to impose on or procure to be observed by its Members and/or their Accredited Agents or others, any restrictions or conditions which if an object of ELTO would make it a Trade Union

4. The objects of ELTO as specified in Article 2 (except only if and so far as otherwise expressly provided in any paragraphs) shall be separate and distinct objects of ELTO and shall not in any way be limited by reference to any other paragraph or the name ELTO

INCOME AND PROPERTY

5.
 - 5.1 The income and property of ELTO shall be applied solely towards the promotion of the objects as set out in these Articles, and no portion shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit, to the Members and/or Accredited Agents of ELTO
 - 5.2 Nothing in this Article 5 shall prevent the refund to any Qualifying Member of any amount of overpaid Levy or the payment, in good faith, of reasonable and proper remuneration to any officer or servant of ELTO, or to any Member and/or Accredited Agent, in return for any services actually rendered to ELTO, nor prevent the payment of interest at a rate agreed by the Board on money lent or reasonable and proper rent for premises demised or let by any Member and/or Accredited Agent to ELTO, but no member of the Board shall be appointed to any salaried office of ELTO or to any office of ELTO paid by fees, and no remuneration or other benefit or money's worth shall be given by ELTO to any member of such Board except interest as agreed by the Board on money lent or reasonable and proper rent for premises demised or let to ELTO or repayment of out-of-pocket expenses

LIMITATION OF LIABILITY

6. The liability of the Members is limited
7. Every Member undertakes to contribute to the assets of ELTO, in the event of ELTO being wound up while he is a Member, or within one year after he ceases to be a Member, for payment of the debts and liabilities of ELTO contracted before he ceases to be a Member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding £5 00

DISSOLUTION

8. If upon the winding up or dissolution of ELTO there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members of ELTO and/or their Accredited Agents, but shall be given or transferred

to some other institution or institutions having objects similar to the objects of ELTO, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on ELTO under or by virtue of Article 5, such institution or institutions to be determined by the Members of ELTO at or before the time of dissolution

MEMBERS

9. The number of Members of ELTO shall be unlimited
10. Subject to these Articles, the following persons shall be Members and have agreed to have their names entered in the Register
 - 10.1 Any person whose name appears on the Register at the date of adoption of these Articles,
 - 10.2 Any person who is an EL insurer,
 - 10.3 Subject to Article 10 4, a Syndicate of Lloyd's carrying on Employer's Liability Insurance Business,
 - 10.4 Any person (the 'Nominee') who is an authorised managing agent and who either prior to the adoption of these Articles or after has been nominated by a Syndicate of Lloyd's which is either a Member entered on the Register or otherwise duly entitled to be entered on the Register as a Member (the 'Nominating Member') provided that
 - 10.4.1 where the Nominating Member is a Member already entered on the Register then upon the name of such Nominee being entered upon the Register the Nominating Member shall cease to be a Member but shall retain the right to revoke nomination of the Nominee either in favour of itself or another Nominee whereupon it or the new Nominee (as the case may be) shall become a Member and be entered on the Register in place of the original Nominee,
 - 10.4.2 where the Nominating Member is a Syndicate of Lloyd's who is or is intending to carry on Employers' Liability Insurance Business and has nominated a Nominee without having first been entered on the Register as a Member then such Nominee shall still be treated as a Member and entered on the Register accordingly but the Nominating Member shall retain the right to revoke nomination of the Nominee either in favour of itself or another Nominee whereupon it or the new Nominee (as the case may be) shall become a Member and be entered on the Register in place of the original Nominee,

- 10.4.3 any notice or revocation sent pursuant to this Article 10 4 shall be in writing and sent to the directors at the registered office of ELTO,
- 10.4.4 where a Nominee's nomination is revoked pursuant to any of the circumstances listed in Article 17 then the Nominating Member shall be required to make a nomination in respect of a new Nominee within 10 days or otherwise shall be automatically entered itself upon the Register until a new nomination is made,
- 10.4.5 where a Nominating Member would have had its membership revoked under Article 17 were it a Member and not a Nominating Member then the Nominating Member's Nominee shall cease to be a Member and be removed from the Register and the Nominating Member shall not have any right to appoint any new Nominee on its behalf until such time as the Board at their sole discretion permit,
- 10.4.6 nothing in this Article 10 shall prejudice obligations in Article 19 and such shall apply both to a Nominating Member and Nominee as the case may be,
- 10.4.7 a Nominating Member will remain ultimately liable for any Levy due under Article 21 notwithstanding any payments made on its behalf by a Nominee,
- 10.4.8 references in these Articles to the GWP of any Member nominated pursuant to Article 10 4 shall be construed as references to the GWP of such Member's Nominating Member, and
- 10.5 Any EL Insurer or Syndicate of Lloyd's acting by an administrator, provisional liquidator or liquidator or other duly appointed insolvency professional or practitioner or representative
11. A Member not established in the United Kingdom shall appoint a person established within the United Kingdom to be its Accredited Agent An Accredited Agent shall represent its appointing Member's interests and ELTO shall be entitled to act (but shall not be obliged to do so) on the Accredited Agent's instructions An Accredited Agent may, but need not, itself be a Member and nothing in this Article 11 shall make an Accredited Agent a Member or the proxy of a Member
12. There shall be only one class of Member, providing always however that Members who fall within Article 17 1 shall not have the voting rights provided for in these Articles
- 13.
- 13.1 When a change in control of any Member occurs at any time, notice in writing of that fact shall forthwith be given by the Member concerned to ELTO

- 13.2 In order to be valid, any notice to be given under Article 13 1 shall be sent to the directors at the registered office of ELTO and shall contain sufficient particulars to indicate the nature of the change in control
- 13.3 For the purposes of this Article
- 13.3.1 control of any Member means control of one-third or more of the votes capable of being cast at a general meeting of the members of that Member or in a resolution in writing of the members of that Member,
- 13.3.2 there shall be deemed to be a change in control if control is acquired by any person or any readily identifiable group or association of persons not, at the time when the change occurred, being a Member of ELTO,
- 13.3.3 where one Member controls another, any change in control of the controlling Member shall be deemed to be a change in control of the Member which is so controlled, and
- 13.3.4 for the avoidance of doubt, in respect of a mutual society where voting rights are linked to premium income paid by its members, then fluctuations in existing members' voting rights from time to time shall not constitute a change in control
14. The rights and obligations of a Member shall not be transferable
15. Every Member shall
- 15.1 further to the best of his ability the objects and interests of ELTO,
- 15.2 observe all the regulations of ELTO, the terms of any policy document issued or adopted by ELTO and the terms of any agreement which may be entered into between it and ELTO, including ELTO's tracing policy approved and adopted by the Board from time to time,
- 15.3 enter into and perform fully any agreement between it and any person which the Board may determine to be necessary for or incidental or conducive to the attainment of the objects of ELTO, and
- 15.4 procure that subject to their fiduciary duties, any member of the Board nominated by it will support and implement all reasonable proposals put forward at Board and other meetings of ELTO for the proper development and conduct of the business of ELTO
16. Every Member acknowledges that ELTO may share any audit reports it issues, including tracing audit reports, with the FCA or any government or authorities, municipal, local or otherwise as conducive to ELTO's objects

17.

17.1 Where a Member ceases to carry on Employers' Liability Insurance Business, the date of which shall be determined as follows,

17.1.1 the date such Member gives notice in writing (such notice to be signed by a director, or the company secretary, or a designated contact of that Member approved previously by ELTO) to ELTO that it has ceased or intends to cease to carry on Employers' Liability Insurance Business, or, if earlier,

17.1.2 the date such Member ceases to have authorisation to effect and carry out Employers' Liability Insurance Business under the FSMA or for EEA insurers such persons home state equivalent,

then such Member shall remain a Member of ELTO providing that, where the Member is a Qualifying Member that such Qualifying Member continues to pay the Levy and, in respect of all Members, continues to comply with such requirements under these Articles as determined by the Board from time to time

17.2 A Member who has ceased to carry on Employers' Liability Insurance Business and any Qualifying Member who has failed to pay any Levy due to or requested by ELTO shall remain as a non-voting Member of ELTO and shall comply with such requirements under these Articles as determined by the Board from time to time Notwithstanding any of the provisions of this Article 17, ELTO reserves the right to immediately terminate the membership of any Qualifying Member who has not paid the Levy due to or requested by ELTO or ceased to carry on Employers' Liability Insurance Business and to remove them from the Register

18. A Member shall forthwith cease to be a Member if the Board at any time resolves that

18.1 in its opinion the continuance of the membership of such Member will be prejudicial to the interests of ELTO, or

18.2 the Member has submitted written notice to the Board requesting that its Membership be terminated and the Board consents that such Member's membership should be terminated accordingly (such consent not to be delayed or unreasonably withheld), or

18.3 such Member has failed to comply with a decision made by the DRP Any appeal against any decision of the DRP shall be dealt with pursuant to Article 90 save in respect of any decision to have a Member's membership of ELTO cease in which case such Member shall be entitled to

appeal any decision of ELTO in the English Court under any remedy such Member may have at law,

provided that such resolution shall not be effective unless the Member concerned shall have been given not less than fourteen clear days' notice in writing of, and the right to attend and be heard at, the meeting of the Board In exercising its functions under this Article, the Board may take account of any matter it considers to be relevant including, but without limiting the generality of the foregoing, any breach of any provision of these Articles which, in the opinion of the Board, it appears that such Member has committed

19. Where any Member ceases to be a Member it shall remain fully liable in respect of all obligations incurred by it by virtue of its membership of ELTO before its cessation and, for the avoidance of doubt, where an incident arises prior to cessation of membership and that incident would give rise to an obligation on that Member by virtue of its membership then that Member shall remain fully liable in respect of that obligation notwithstanding its being unaware of such incident or obligation prior to the cessation of its membership
20. Subject to the provisions of the Articles, no Member shall be disqualified by his membership from contracting with ELTO

FINANCES

21. Levy
 - 21.1 ELTO shall be funded by, inter alia, a Qualifying Member's Levy charged on each of the Qualifying Members based on the GWP of each Qualifying Member, and such Qualifying Member's Levy shall be made from time to time in accordance with these Articles as and when necessary and any changes to the basis upon which the Qualifying Member's Levy is calculated (but not its amount from time to time) shall be agreed by the Members in General Meeting or in a resolution in writing of the Members
 - 21.2 The Board shall determine by each PCD the amount of the Levy taking into account any surplus or deficit from the Levy collected on the previous PCD and shall notify the Qualifying Members of the amount of the Levy and the amount of the respective Qualifying Member's Levy for each of the Qualifying Members as soon as is reasonably practicable following determination of the Levy and the total sum of the Levy will come from Qualifying Members' Levies calculated by reference to and attributable to Qualifying Members' Total GWP

- 21.3 The Levy and any variations to the Levy shall be apportioned between the Qualifying Members and each Qualifying Member's Levy shall be a proportion of the Levy calculated by reference to the percentage of the GWP of that Qualifying Member from the Total GWP
- 21.4 When the PCD for a Levy is 1st July, the proportion to be applied pursuant to Article 21 3 will be that prevailing in the preceding Year to when the Board approves the Levy and not when the Qualifying Member's Levy is called
- 21.5 When the PCD for a Levy is 1st January the proportion to be applied pursuant to Article 21 3 will be that prevailing in the Year prior to the preceding Year to when the Board approves the Levy
- 21.6 Each Qualifying Member shall pay its due proportion of the Levy every 6 months in the amount notified to each Qualifying Member pursuant to Article 21 2
- 21.7 The Members Levy shall be determined
- 21.7.1 by the GWP for the Year (converted into pounds sterling at the exchange rate applicable on 30th June or 31st December of the Year to which the Annual Return relates), or
- 21.7.2 in the case of Members exercising passporting or treaty rights as an EEA insurer, the contribution to the Levy will be on an equivalent format and formula to Article 21 7 2 above or as may be agreed by the Members in General Meeting or in a resolution in writing of the Members
- 21.8 If after a Qualifying Member's Levy has been called, a Member notifies ELTO, or it appears to ELTO, that a Member's Annual Return upon which the apportionment of that Qualifying Member's Levy was based is incorrect or if, following a provisional apportionment of the Qualifying Member's Levy made pursuant to Article 21 10, ELTO receives that Member's Annual Return then
- 21.8.1 ELTO shall in the case of an overpayment by a Qualifying Member, refund the overpayment,
- 21.8.2 in the case of no payment by a Member or an underpayment by a Qualifying Member, then such Member or Qualifying Member (as the case may be) shall pay to ELTO the amount so required or underpaid on demand, together with (other than in the case of an underpayment occasioned by reason solely of an overpayment made by another Qualifying Member or Qualifying Members) interest on the required or underpaid

amount from the date that the Qualifying Member's Levy which was so required or underpaid became due until the date on which the amount required or of the underpayment is paid in full to ELTO by the Member or Qualifying Member The rate of interest shall be 4 per cent per annum above the base rate from time to time of such UK clearing bank as ELTO may from time to time nominate, and

21.8.3 such additional payment or refund due from or to any Qualifying Member pursuant to this Article 21 8 shall be made in one payment the following October, or as soon as reasonably practicable, following the receipt by ELTO of the corrected or late Annual Return occasioning the additional payment or refund

21.9 Each Member shall

21.9.1 supply ELTO with a copy of each of its Annual Returns on or before 1 May in the Year following that to which the return relates,

21.9.2 supply such information, on request by ELTO, which facilitates calculation of the Qualifying Member's Levy, and

21.9.3 upon receipt of a written Qualifying Member's Levy demand from ELTO, promptly meet the same

21.10 To reflect the administrative inconvenience and budgeting difficulties that may be faced by ELTO and its Members as a result of the late delivery to ELTO of a Member's Annual Return

21.10.1 each Member shall pay to ELTO on demand compensation for each day for which that Member's Annual Return is overdue (and unless determined otherwise by the Members in General Meeting or in a resolution in writing of the Members the amount of such compensation shall be L1,000 per day), and

21.10.2 where a Member's GWP referred to in Article 21 3 is not available as a result of the Member's Annual Return being overdue by 20 days or more, 120% (one hundred and twenty per cent) of that Member's relevant GWP for the previous Year may be used at the discretion of ELTO for purposes of provisionally apportioning the Levy amongst the Qualifying Members (but without prejudice to ELTO's rights under the foregoing provisions of this Article 21 or otherwise)

21.11 Where ELTO determines at any time in its discretion that the Levy is greater than that required by ELTO for any current or subsequent Year then each Qualifying Member shall receive a refund of their proportion of the Qualifying Member's Levy that is greater than that required

by ELTO as soon as is reasonably practicable following such determination that such Levy is greater than that required by ELTO

22. Commencement and Cessation Levy Provisions

22.1 In the first Year of membership where the Member did not carry on Employers' Liability Insurance Business during the preceding Year a Qualifying Member will be required to pay a provisional Levy upon the Business Plan forecast of expected first Year GWP submitted on application for membership of ELTO. After the first twelve Months of membership this will be adjusted such that the first levy is based upon the relevant GWP in the Year of commencement of membership

22.2 A Qualifying Member's Levy will continue to be assessable on and payable by a Qualifying Member for twelve Months from the date of termination of membership pursuant to Article 17 or Article 18 and such Qualifying Member's Levy shall be assessed on that Qualifying Member's GWP for either the last full Year in which it carried on such Employers' Liability Insurance Business or the last 12 Months of carrying on such business, whichever is the greater

23. Late Payments

23.1 If any Member fails to pay on the due date any amount payable by it under these Articles

23.1.1 it shall forthwith on demand by ELTO pay interest on the overdue amount from the due date up to the date of actual payment at the rate of 4 per cent per annum above the base rate from time to time of such UK clearing bank as ELTO may from time to time nominate, and

23.1.2 it shall indemnify ELTO against all costs, charges and expenses (including legal fees) incurred by ELTO in collecting the overdue amount (including any interest thereon)

24. Deductions and Set Off

24.1 All sums payable by a Member to ELTO shall be paid without deduction, each Member bearing all transmissions, tax, exchange or other costs and in the currency as the Board shall determine from time to time

24.2 ELTO retains the right to set off any monies due to it from any Member against any monies due and payable by ELTO to that Member

GENERAL MEETINGS

25. The Board may whenever it thinks fit convene a General Meeting and in accordance with the notice requirements provided in Articles 27, 28 and 29
26. The Members may call a General Meeting in accordance with the provisions of the Act
27. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting
28. General Meetings shall be called by at least fourteen clear days' notice but a General Meeting may be called by shorter notice if it is so agreed by a majority in number of the Members having a right to attend and vote being a majority together holding not less than ninety (90) per cent of the total voting rights at meetings of the Members
29. The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and shall be given to all the Members and to all of the members of the Board and the Auditors
30. Subject to the provisions of the Act, a resolution in writing signed by the required percentage (as set out in the Act with reference to the subject matter of such resolution in writing) of the Members for the time being entitled to attend and vote at General Meetings shall be as valid and effective as if the same had been passed at a General Meeting of ELTO duly convened and held

BUSINESS AT GENERAL MEETINGS

31. The Chairman of the Board or in his absence some other person as the Board may appoint shall preside as Chairman at every General Meeting
32. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business save as herein otherwise provided, ten persons entitled to vote upon the business to be transacted, each being a Member or a proxy for a Member or a duly authorised representative of a corporation, shall be a quorum
33. If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or at such other time and place as the Chairman shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting the Members present shall be a quorum

34. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. If a meeting is adjourned for 20 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of any adjournment or of the business to be transacted at an adjourned meeting.
35. At all General Meetings 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 in writing by the Chairman or by at least three persons having the right to vote at the meeting, and unless a poll is so demanded a declaration by the Chairman of the meeting that a resolution has been carried, or has been carried unanimously or by a particular majority, or lost, or not carried by a particular majority, shall be conclusive, and an entry to that effect in the minute book of ELTO shall be conclusive evidence thereof, without proof of the number or proportion of the votes recorded in favour of or against that resolution.
36. If a poll is demanded as provided above, it shall be taken at such time and place, and in such manner, as the Chairman of the meeting shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
37. No poll shall be demanded on the election of a Chairman of a meeting or on any question of adjournment.
38. 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 casting vote, but otherwise shall not be entitled to vote.
39. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

VOTES OF MEMBERS

40. Votes of Members

Where a Member has not ceased to carry on Employers' Liability Insurance Business pursuant to Article 17

Show of hands

40.1 every Member who (being an individual) is present in person or (being a corporation) is present by a duly authorised representative at a General Meeting shall have one vote on a show of hands A Member, although duly authorised to represent another Member, shall only be entitled to one vote on a show of hands, but shall be entitled to vote both in his personal and representative capacity on a poll

Poll

40.2 on a poll every Member present in person or by his duly authorised representative at a General Meeting shall have votes calculated by reference to his GWP with one vote attributable for every £500,000 of GWP, or part thereof, subject to the provisions of Articles 41, 42, 43 and 44

41. Calculation of votes

41.1 From 1 January to 30 June in any Year the votes of any Member on a poll shall be calculated in accordance with that Member's GWP on the PCD in the previous Year, subject to the provisions of Article 43

41.2 From PCD to 31 December, the votes of any Member on a poll shall be calculated in accordance with that Member's GWP on the PCD

41.3 If the Annual Returns or equivalent of any Member are not received in writing by ELTO before 31 May in any Year, that Member shall only have 1 vote on a poll until the next PCD

42. Subsidiaries

The votes of a Member on a poll shall be based upon the GWP of that Member alone excluding that of any holding company or subsidiary company of that Member

43. Commencement provisions

Upon commencement of membership of ELTO a Member shall be immediately credited with 1 vote on a poll and subsequent changes in the number of that Member's votes shall be calculated in accordance with Article 41

44. Proxy Votes

44.1 Any Member entitled to attend and vote may appoint another person (whether a Member or not) as his proxy to attend and vote instead of him A proxy appointed to attend and vote instead of a Member has the same right as the Member to speak at the meeting

44.2 A Member is not entitled to appoint more than one proxy to attend on the same occasion and a proxy is not entitled to vote except on a poll

- 44.3 In the case of an instrument in writing, the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy must be received by ELTO at its registered office no less than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective
- 44.4 In the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications
- 44.4.1 in the notice convening the meeting, or
- 44.4.2 in any instrument of proxy sent out by ELTO in relation to the meeting, or
- 44.4.3 in any invitation contained in an electronic communication to appoint a proxy issued by ELTO in relation to the meeting
- such appointment must be received at such address not less than 48 hours before the time for the holding of the meeting or adjourned meeting at which the person named in the appointment proposes to vote
- 44.5 A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by ELTO at the office or such other place at which the instrument of proxy was duly deposited or, where the appointment of the proxy was contained in an electronic communication, at the address at which such appointment was duly received before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll

THE BOARD

45. There shall be a maximum of 15 members of the Board and up to 8 members of the Board shall be nominated by and selected from representatives of the Members There may be up to an additional 7 members of the Board who shall be Special Directors (a "Special Director" being a member of the Board who is not a Member, an officer or employee of any Member nor an elected official of a Member) and shall be nominated, appointed and removed by resolution of the Members or by such other body as determined by the Members from time to time

46. No person shall be eligible for appointment to the Board unless he or she holds a similar position elsewhere In case of dispute in this connection the decision of the Chairman shall be final and binding
47. Period of Service
- 47.1 Subject to the following paragraphs of this Article 47 and to Articles 51 and 52, each member of the Board shall serve for a maximum period of 3 years from the date of the appointment to the Board. At the end of this period that member of the Board shall immediately resign but shall be eligible for re-appointment for a second period of up to 3 years. At the end of this second period that member of the Board shall immediately resign but shall be eligible for re-appointment for a third period of up to 3 years (and so that such member of the Board may be re-appointed to the Board twice only)
- 47.2 The provisions of Article 47. 1 shall not apply to the Chairman from the date of his appointment as such The Chairman shall serve on the board for the period of his office determined pursuant to Article 54. At the end of that period he shall immediately resign but shall be eligible for re-appointment either as Chairman or simply to the Board. At the end of this second period he shall immediately resign but shall be eligible for re-appointment either as Chairman or simply to the Board (and so that he may be re-appointed under this article 47.2 twice only) and provided that the maximum period of appointment as Chairman and/or to the Board may be for a maximum continuous period of 9 years.
48. No member of the Board shall be permitted to appoint an alternate
49. No person shall be appointed or reappointed a member of the Board at any General Meeting or in a resolution in writing of the Members unless
- 49.1 He is recommended by the Board, or
- 49.2 Not less than 3 nor more than 28 clear days before the date appointed for the General Meeting or attached to the resolution in writing of the Members, a notice signed by a Member qualified to vote at the General Meeting or in a resolution in writing of the Members has been given to ELTO of the intention to propose that person for appointment or reappointment together with notice signed by that person of his willingness to be appointed or reappointed
50. Subject to these Articles, the Members of ELTO may by ordinary resolution appoint a person who is willing to act to be a member of the Board either to fill a vacancy or as an additional member of the Board

51. The Board may appoint a person who is willing to act to be a member of the Board, either to fill a vacancy or as an additional member of the Board, provided that the appointment does not cause the number of members of the Board to exceed 13. A member of the Board so appointed shall hold office only until the General Meeting or resolution in writing of the Members in the next financial year of ELTO in respect of which such appointments are considered. If not reappointed at such General Meeting or pursuant to such resolution in writing of the Members, he shall vacate office at the conclusion thereof or the date such resolution in writing is passed.
52. The Members in General Meeting or in a resolution in writing of the Members may by ordinary resolution remove any member of the Board before the expiration of his period of office and may by ordinary resolution appoint another person to the Board in his stead, but any person so appointed shall serve so long only as the member of the Board in whose place he is appointed would have served if he had not been removed.

POWERS OF THE BOARD

53. Subject to the provisions of the Act, these Articles and to such directions as may be prescribed by the Members in General Meeting or resolution in writing of the Members, the business of ELTO shall be managed by the Board or as delegated by the Board to the Manager, who may pay all such expenses of, and preliminary and incidental to, the promotion of ELTO as they think fit, and may exercise all such powers of ELTO and perform on behalf of ELTO all such acts as may be required and necessary including without limitation the power to appoint and at the Board's discretion
 - 53.1 remove or suspend any services of the Manager, employees and agents as they from time to time think fit,
 - 53.2 to determine the powers and duties and fix any salaries or emoluments of any manager, employee and agents, and
 - 53.3 to require security in such instances and to such amount as they think fit for any manager, employee and agents

No direction given by the Members in General Meeting or resolution in writing of the Members shall invalidate any prior act of the Board which would have been valid if such direction had not been given.

CHAIRMAN

54. The Board shall from time to time appoint one of its number (not being a Special Director, nor a member of the Board who has previously been appointed as Chairman) to be a Chairman for such period not exceeding four years and upon such terms as may be agreed. The Chairman shall preside at meetings of the Board and perform such other duties as the members of the Board may agree from time to time.

DISQUALIFICATION OF MEMBERS OF THE BOARD

55. The office of a member of the Board shall be vacated
- 55.1 if a winding up, provisional liquidation or administration order is made against the Member he represents or if he or the Member he represents becomes bankrupt or insolvent or if a receiving order is made against him or the Member he represents or if he or the Member he represents makes any arrangement or composition with his or its creditors,
- 55.2 if by notice in writing to ELTO he resigns his office,
- 55.3 if the Member he represents ceases to be a Member of ELTO,
- 55.4 if he ceases to be in the employment of the Member he represents,
- 55.5 if he ceases to hold office by virtue of any provision of these Articles or the Act or he becomes prohibited by law from being a member of the Board,
- 55.6 if he is, or may be, suffering from a mental disorder and either
- 55.6.1 he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960, or
- 55.6.2 an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs,
- 55.7 if he is convicted of a criminal offence (other than a minor motor offence) and the Board resolves that his office should be vacated,
- 55.8 if he breaches the provisions of Article 60 and the Board resolves that his office should be vacated, or

- 55.9 if he shall for more than 3 consecutive meetings of the Board have been absent without permission of the Board and the Board resolves that his office be vacated

PROCEEDINGS OF THE BOARD

56. The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit Unless otherwise determined, five members of the Board shall be a quorum Questions arising at any meeting shall be decided by a majority of votes In case of an equality of votes the Chairman of the meeting shall have a casting vote, but otherwise shall not be entitled to vote
57. Two members of the Board may, and on the request of two members the Chairman shall, at any time summon a meeting of the Board by notice in writing served upon the several members of the Board A member of the Board who is absent abroad shall be entitled to notice of a meeting at his business address as notified to ELTO in writing
58. If there is no Chairman or such Chairman is not present within fifteen minutes after the time appointed for holding the same and willing to preside, the members of the Board present shall choose one of their number to be Chairman of the meeting
59. A meeting of the Board at which a quorum is present shall be competent to exercise all the authorities, powers and discretions of ELTO for the time being vested in the Board generally Any director may participate in a meeting of the Board by means of telephone or other means of communication whereby all persons participating in the meeting can speak to each other and hear each other speak Participation in a meeting in this manner shall constitute presence in person at such meeting and be counted in the quorum accordingly
60. A member of the Board who, in relation to any matter in which he, or any member company that he represents, has, directly or indirectly, an interest or duty which conflicts (or may conflict) with the interests of ELTO, has a duty to declare the nature of his interest at that meeting of the Board, and additionally such member of the Board may not vote at that meeting of the Board, nor form part of the quorum present at that meeting
61. The Board may delegate any of its powers to committees consisting of such member or members of the Board and/or of ELTO's executive staff as it thinks fit, and any committee so formed shall, in the execution of the powers so delegated, conform to any regulations imposed on it by the Board The meetings and proceedings of any such committee shall be governed by the provisions of these Articles for regulating the meetings and proceedings of

the Board Such committee or committees shall have the power to co-opt any person to act in an advisory but non-voting capacity

62. All acts performed in good faith by any meeting of the Board or of any committee of the Board, or by any person acting as a member of the Board, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any member of the Board or that they or any of them were disqualified from holding office or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a member of the Board
63. The continuing members of the Board may act notwithstanding any vacancy in their body, provided always that if the members of the Board shall at any time be reduced in number to less than the minimum number prescribed by or in accordance with these Articles, it shall be lawful for them to act for the purpose of filling up vacancies in their body or for accepting applications for membership or for summoning a General Meeting but not for any other purpose
64. The Board shall cause proper minutes to be made of all appointments of officers made by the Board and of the proceedings of all meetings of ELTO and of the Board and of committees of the Board and all business transacted at such meetings. Any such minutes of any meeting, if purported to be signed by the chairman of such meeting, or by the Chairman of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated
65. A resolution in writing signed by all the members for the time being of the Board or of any committee of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board or such committee of the Board duly convened and constituted
66. The Board may appoint independent managers to manage any or all aspects of the business of ELTO on such terms, including the payment of remuneration to the Manager, as will be specified in the management agreement between ELTO and the Manager approved by the Board

ACCOUNTS

67. The Board shall cause proper books of account to be kept with respect to
- 67.1 all sums of money received and expended by ELTO and the matters in respect of which such receipts and expenditure take place,

- 67.2 all sales and purchases of goods by ELTO, and
- 67.3 the assets and liabilities of ELTO
68. The books of account shall always be open to the inspection of the members of the Board at the registered office of ELTO
69. The Members in General Meeting or in a resolution in writing of the Members may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of ELTO, or any of them, and subject to such conditions and regulations the accounts and books of ELTO shall be open to the inspection of Members at all reasonable times during business hours
70. The Board shall lay before the Members in General Meeting an income and expenditure account for the period since the last preceding account, together with a balance sheet made up as at the same date Every such balance sheet shall be accompanied by a report of the Board and a report of the Auditors, and a copy of such account, balance sheet and reports shall not less than twenty-one days before the date of the meeting be sent to all persons entitled to receive notices of General Meetings Should the Board resolve not to lay such documents before the Members in General Meeting but to send copies of the same to all persons entitled to receive notice of General Meeting instead, the Board shall comply with the time limits set out in this regard pursuant to the provisions of the Act

AUDIT

71. Once at least in every Year the accounts of ELTO shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by a properly qualified auditor
72. An auditor shall be appointed and his duties regulated in accordance with the Act

DISPUTE RESOLUTION PANEL (DRP)

73. The DRP shall be composed of an Independent non-voting chair (a person who is not an employee of a Member or an EL Insurer and who is nominated by the Chairman) and such other persons as may be appointed pursuant to Article 77, who need not be members of the Board but who shall be claims managers or persons with similar experience in the employment of Members
74. So far as possible, the composition of the DRP shall be representative of the membership of ELTO

75. The number of members of the DRP shall not be less than 5 or more than 50
76. A Member may at any time nominate one representative to serve on the DRP at any time. The nomination must be delivered in writing to the DRP Admin
77. Inaugural nominations and approval of DRP members will be via the Board. Thereafter a nomination shall be accepted if it is approved by not less than 75% of the members of the DRP on a show of hands of those present and voting at a meeting of the DRP
78. Subject to Articles 77 and 79, decisions of the DRP shall be determined on a majority basis of those present and voting
79. A member of the DRP may not vote on any case where any Member that he represents has a financial interest in the outcome of that case
80. Powers of the DRP
81. The DRP shall meet on '14 clear days' notice, in writing, issued by the chair of the DRP or the Manager
82. The DRP will consider cases involving claims arising from occupational mesothelioma where there is
 - 82.1 a dispute about policy coverage between a Member and a claimant, or
 - 82.2 a coverage dispute between two or more Members arising out of the claimant's occupational exposure giving rise to his claim
83. The DRP will not consider any cases involving
 - 83.1 any disease other than mesothelioma,
 - 83.2 disputes between solvent policy holders and a Member,
 - 83.3 liability or causation issues,
 - 83.4 quantum disputes or
 - 83.5 a dispute between Members over time on risk
84. Decisions made by the DRP are binding on Members subject to the appeal process described in Article 90 and any failure by any Member to comply with this Article 84 will be dealt with in accordance with Article 18
85. A decision made against a Member under Article 88 or 89 also binds any co-insurer (who is also a Member) who is sharing the risk for the same policy

86. For the purposes of Articles 88 and 89, notices shall have the same meaning as described in Articles 91 – 95

87. The objectives of the DRP are

87.1 to assist the victims of mesothelioma and their families,

87.2 to further the interests of Members with a view to reducing cost, avoiding litigation and speeding up the claims process, and

87.3 to fulfil the objectives in Article 87 1 and Article 87 2 in an efficient, economical and expeditious manner, having regard to the interests of Members as a whole

Disputes with claimants

88. All cases where the claimant requests the DRP to determine a coverage dispute involving a Member, shall be dealt with under the following rules of procedure

88.1 it is recognised that external legal representation might interfere with the objectives and principles set out in Article 87 and accordingly external legal representation shall not be permitted at the DRP meeting,

88.2 a Member refusing to accept cover will include with a repudiating letter to the claimant

88.2.1 a "DRP Pack" setting out the option to pursue the coverage dispute via the DRP process, and

88.2.2 a statement to the effect that the DRP process cannot be commenced unless an ELTO simple and extended search has been conducted and the outcome notified to the claimant,

88.3 at the same time as writing its repudiation letter to the claimant, the Member will send a copy to DRP Admin,

88.4 the DRP Pack will include

88.4.1 an instruction, that letters to the DRP Admin and the Member are required to initiate the process,

88.4.2 a requirement that the claimant submits a copy of the ELTO "No reply to Extended Search" email together with a request for the matter to be reviewed by the DRP,

88.4.3 an instruction that the claimant must produce a Statement of Facts and submissions (based upon their evidence) as to why they believe the Member has issued cover, the

Statement of Facts must be supported by a statement of truth signed by the claimant or their representative , and

88.4.4 a requirement that the claimant must submit any evidence available to substantiate their submissions for the DRP to consider,

88.5 DRP Admin will write to the Member, including the Statement of Facts and submissions received from the claimant,

88.6 unless otherwise agreed, then within 21 days of receipt of the claimant's Statement of Facts and submissions, the Member shall respond to the DRP Admin and the claimant

88.6.1 to signify its agreement with the Statement of Facts and provide its own submissions and any evidence to substantiate, or

88.6.2 to submit comments on the Statement of Facts, provide its own submissions and any evidence to substantiate,

88.7 following receipt by the DRP Admin of any response from the Member the DRP Admin will send such responses to the claimant and notify them that they then have a further 14 days from receipt to make any further submissions

88.8 if the claimant makes additional submissions then the DRP Admin will send any additional submissions received from the claimant to the Member and the Member will have 14 days from receipt to make any additional submissions, but only with regard to these subsequent submissions,

88.9 if the Member fails to respond to the Statement of Facts and submissions or subsequent submissions, then the case will proceed to the DRP without their comments, submissions or evidence,

88.10 subject to Article 90 (Right of Appeal), the DRP shall determine the Member's involvement or otherwise on the basis of the Statement of Facts, submissions and evidence, whether or not agreed by the Member, and no further evidence may be admitted The DRP will apply a civil law standard of proof and will also use the industry knowledge of the members of the DRP to reach a decision in each case

Disputes between members

89. All cases where there is a coverage dispute between a Member ("the pursuer") and another Member ("the responder"), shall be dealt with under the following rules of procedure

- 89.1 it is recognised that external legal representation might interfere with the objectives and principles set out in Article 87 and accordingly external legal representation shall not be permitted at the DRP meeting
- 89.2 the pursuer will contact the responder (via an ELTO DRP contact as notified by a Member from time to time), at the earliest practicable opportunity and give formal notice of its possible involvement This notice should include an explanation of why the pursuer believes the responder is involved and copies of any supporting documents,
- 89.3 within 2 months of receiving the notice, the responder shall complete any investigations and advise the pursuer in writing whether it agrees with the pursuer's assertion or not If the responder does not agree it is involved its reply will include the basis upon which the claim will be resisted, together with any documentation upon which it intends to rely,
- 89.4 if, after reviewing the responder's reply and documentation, the pursuer does not accept the responder's position it will, within 2 months of receipt of the responder's reply, prepare a Statement of Facts and submit it to the responder with any evidence and submissions as to why the responder should accept some liability At the same time the pursuer will send a copy of the Statement of Facts, submissions and any evidence to the DRP Admin If the pursuer does not submit the statement of facts, submissions and any evidence within the 2 month period it will not thereafter be able to continue with that particular coverage dispute with the responder under this Article 89,
- 89.5 unless otherwise agreed, then within 21 days of receipt of the Statement of Facts, submissions and any evidence, the Responder should write to the pursuer and DRP Admin
- 89.5.1 to signify its agreement with the Statement of Facts and provide its own submissions and any evidence to substantiate, or
- 89.5.2 to submit comments on the Statement of Facts and provide its own submissions and any evidence to substantiate,
- 89.6 if the responder fails to reply to the initial letter or subsequent, Statement of Facts, submissions and any evidence, then the case will proceed to the DRP without its comments, submissions or evidence
- 89.7 subject to Article 90 of these Articles (Right of Appeal), the DRP shall determine the responder's involvement or otherwise on the basis of the Statement of Facts, submissions and evidence, whether or not agreed by the responder and no further evidence may be admitted

The DRP will apply a civil law standard of proof and will also use the industry knowledge of the DRP members to reach a decision in each case

Right of Appeal

90. A Member affected by a decision of the DRP under these Articles shall have a right of appeal against such decision in accordance with the following procedure
- 90.1 the Member wishing to appeal shall give to the DRP Admin and claimant or other Member (where appropriate) written notice within 14 days of the Member being notified of the decision of the DRP via the issue of the minutes from the DRP Admin,
- 90.2 the notice of appeal shall be signed by or on behalf of the Member and shall set out the grounds for the appeal Written arguments and evidence upon which the appeal is based shall accompany the notice of appeal,
- 90.3 on receipt of an appeal as described in (b) above, the DRP Admin shall propose to the Member a list of three possible arbitrators, who shall each be Queen's Counsel (or, if such appointment shall cease to exist, a barrister of at least 15 years call) The DRP Admin and the Members involved in the dispute shall use their best endeavours to agree upon the identity of one arbitrator but, in default of agreement within 10 days of the DRP Admin nominating the list of three possible arbitrators, the matter shall be referred to the President of the Bar Council for him to appoint an arbitrator of equivalent standing to that described above,
- 90.4 upon the appointment of the arbitrator, the DRP Admin shall send to the arbitrator, the Statement of Facts, all the written submissions, the relevant extract from the minutes of the DRP meeting and the appeal documentation,
- 90.5 DRP Admin will notify the claimant (if appropriate) and the Members at the same time as instructing the arbitrator,
- 90.6 the arbitrator shall decide the appeal on the written submissions and evidence alone but he may at any time request further written submissions (but not further evidence) from the Members or the claimant,
- 90.7 the arbitrator may decide that the decision of the DRP was, having regard to these Articles and in particular the principles and objectives set out in Article 87, reasonable or that it was not reasonable The arbitrator may make no other finding in relation to the decision of the DRP If the arbitrator shall decide that the decision was reasonable, the decision shall stand If the

- arbitrator shall decide that the decision was not reasonable, he shall determine the matter and his determination shall replace the decision of the DRP in relation to that matter,
- 90.8 the arbitrator's fees shall be paid within 14 days of receipt of the decision by
- 90.8.1 the Member in the event of a dispute with a claimant, or
- 90.8.2 the losing party in the event of a dispute between two or more Members,
- 90.9 the decision of the arbitrator shall be final and binding upon the Members)involved in the dispute and there shall be no further right of appeal from a decision of the arbitrator,
- 90.10 for the avoidance of doubt, each Member involved in the dispute which is the subject of an appeal shall be responsible for its own costs in preparing the appeal and submissions

NOTICES

91. Any notice to be given to or by any person pursuant to these Articles (other than a notice calling a meeting of the directors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice In this Article 91, Article 44 4, Article 92 and Article 93, 'address', in relation to electronic communications, includes any number or address used for the purposes of such communications
92. ELTO and Members may give any notice to a Member or other Members by either personally or by sending it by post in a prepaid envelope addressed to the Member or by giving it using electronic communications, in each case
- 92.1 to his principal address within the United Kingdom, or
- 92.2 in the case of a Member having an Accredited Agent, to the principal address of the Accredited Agent or to the Member's principal foreign address at the discretion of the Board from time to time, or
- 92.3 in the case of a notice given by electronic communication, to an address for the time being notified to ELTO by the Member
93. A Member present either in person or by proxy at any meeting of ELTO shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called

94. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent
95. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting

SUPPLEMENTAL PROVISIONS

96. The Board may, at its sole discretion and following receipt of any such request from the relevant Member(s), waive or disapply or modify accordingly any amount of a Qualifying Member's Levy as and when the Board deems appropriate having regard to the circumstances such as (without limitation) where such Member(s) may be subject to a winding-up, dissolution, or an insolvent administration, or insolvent scheme of arrangement