

# **The Association of Litigation Funders of England and Wales**

## **Rules of the Association**

**July 2016**

### **1. DEFINITIONS**

1.1. In these Rules, unless the context otherwise requires:

“Association” means The Association of Litigation Funders of England and Wales (a company limited by guarantee and registered in England and Wales with registered number 07858647;

“Associated Entity” and any derivative thereof has the meaning given in the Code of Conduct;

“Articles” means the articles of association of the Association;

“Associate Member” and any derivative thereof means an associate member of the Association as more fully defined in article 3 below;

“Board” means the board of directors of the Association from time to time;

“Capital” means the financial resources available to the Funder to meet financial commitments made, or which may be made, by that Funder under Litigation Funding Agreements;

“Code of Conduct” means the prevailing Code of Conduct for Litigation Funders as adopted by the Association and varied from time to time;

“Directors” means the directors of the Association;

“Funder” and any derivative thereof has the meaning given in the Code of Conduct;

“Funder’s Subsidiary” and any derivative thereof has the meaning given in the Code of Conduct;

“Litigation Funding” means the funding of the resolution of disputes in England and Wales within the meaning of the Code of Conduct;

“Litigation Funding Agreement” has the meaning given in the Code of Conduct;

“Member” and any derivative thereof has the meaning given in section 112 of the Companies Act 2006;

“Officer” has the meaning given in article 21 of the Articles;

“Rules” means the rules set out below which shall apply from 22nd July 2016.

### **2. THE ASSOCIATION**

2.1. The Association promotes best practice in Litigation Funding, including by seeking adherence to the Code of Conduct and by improving the understanding of the uses and applications of Litigation Funding.

### **3. MEMBERSHIP**

3.1. Membership of the Association is open to those persons or entities that satisfy the eligibility requirements set out in the Code and the Articles and comply with these Rules.

- 3.2. Associate Membership of the Association is open to any person or entity that has an interest in Litigation Funding in their capacity as any of the following:
  - 3.2.1. Litigation Funding Broker;
  - 3.2.2. Costs/Adverse Costs Insurer;
  - 3.2.3. Law Firm;
  - 3.2.4. Barrister;
  - 3.2.5. Overseas Funder;
  - 3.2.6. Academic;
  - 3.2.7. Overseas Academic.
- 3.3. All applications for Membership or Associate Membership shall be made in writing on the form provided by the Association for that purpose and accompanied by the relevant application fee. By completing such a form, each Member and Associate Member shall be deemed to have agreed to these Rules (as amended from time to time).
- 3.4. When a Funder ("the Applicant") applies for Membership or renewal thereof the Applicant shall:
  - 3.4.1. provide to the Association written confirmation that the Applicant accepts responsibility to the Association for compliance with the Code of Conduct by a Funder's Subsidiary or Associated Entity on whose behalf the Applicant acts in respect of Litigation Funding within England and Wales; and
  - 3.4.2. identify, from time to time, any such Funder's Subsidiary and/or Associated Entity.
- 3.5. No person or entity shall become a Member or Associate Member of the Association until their application has been approved by the Directors and they have paid the relevant Membership or Associate Membership fee ('the Membership fee').
- 3.6. Each Member and Associate Member shall pay annually a subscription to the Association. Such payment shall be made within 28 days of the subscription being requested by the Association.
- 3.7. The application fee, Membership fee and level of subscription shall be fixed, from time to time, by the directors, who may in their absolute discretion raise, lower or waive such fee or subscription.
- 3.8. Once paid, an application fee, a Membership fee and a subscription shall become the property of the Association.
- 3.9. Every Member and Associate Member shall notify timeously the Association of any change of address or other contact details and any changes in respect of Clause 3.4 above.
- 3.10. Each Member and Associate Member consents to the Association maintaining and processing personal information for Membership and marketing purposes and credit control.
- 3.11. The Directors may, in their complete discretion, invite persons to become honorary Members of the Association. Honorary Members shall not be required to pay a Membership fee or a subscription but such honorary Membership may, in the complete discretion of the Directors, be terminated at any time.
- 3.12. Members may terminate their Membership (or have their Membership terminated) in accordance with article 30 of the Articles.

- 3.13. Associate Members may resign at any time by giving written notice to the Association. The Directors, in their complete discretion, may terminate at any time a person's or entity's Associate Membership of the Association.
- 3.14. Any Member or Associate Member who ceases (for whatever reason) to be a Member or Associate Member of the Association shall not be entitled to the return of their Membership fee or subscription (or any part thereof).
- 3.15. A Funder, whether applying for Membership or renewal thereof and at all material times:
- 3.15.1. shall maintain a minimum of £5m of Capital or such other amount as stipulated by the Association;
- 3.15.2. accepts a continuous disclosure obligation in respect of its Capital adequacy, including a specific obligation to notify timeously the Association and all counterparties to its Litigation Funding Agreements if the Member reasonably believes that its representations in respect of Capital adequacy under article 2 or article 7 of the Code of Conduct or otherwise are no longer valid because of changed circumstances;
- 3.15.3. undertakes that it will be audited annually by a recognised national or international audit firm and shall provide the Association with:
- i. a copy of the audit opinion given by the audit firm on the Funder's most recent annual financial statements (but not the underlying financial statements), or in the case of an Associated Entity, the audit opinion given by the audit firm in respect of the Associated Entity advised by the member (but not the underlying financial statements), within one month of receipt of the opinion and in any case within six months of each fiscal year end. If the audit opinion provided is not unqualified (except as to any emphasis of matters relating to the uncertainty of valuing relevant Litigation Funding investments) or expresses any question as to the ability of the firm to continue as a going concern, the Board shall be entitled to inquire further into the qualification expressed and take any further action it deems appropriate; and
  - ii. reasonable evidence from a qualified third party (preferably from an auditor, but alternatively from a third party administrator or bank) that the Funder, or one or more of its Funder Subsidiaries or Associated Entities satisfies the minimum Capital requirement prevailing at the time of annual subscription, currently £5m.
- 3.15.4. accepts that, in the event of a failure by a Member to produce the external verifications by the relevant deadline prescribed and in a form that is reasonably satisfactory to the Board, the result will be:
- i. at the discretion of the Board, immediate suspension of the Member's membership of the Association; and
  - ii. in the event the default has not been cured within three months of the prescribed deadline, automatic expulsion of the Member from the Association.
- 3.15.5. accepts the following factors in assessing whether it has adequate financial resources within the meaning of these Rules and the Code of Conduct:
- i. the need for Members to be both conservative in assessing what is counted as Capital and pessimistic about the timing and level of any expected returns under existing Litigation Funding Agreements.
  - ii. the quality, source and certainty of a Member's Capital, as well as the timing and extent of the aggregate financial commitments made by a Member under

Litigation Funding Agreements and other commitments (actual or contingent);  
and

iii the uncertain nature of litigation – in particular with respect to the merits, realistic claim value, budgeted costs (including overruns), enforcement and collection risks and timing of a case, and the professional experience of the litigation team and the Member.

3.15.6. shall test its exposures whenever it makes a new commitment under a Litigation Funding Agreement and thereafter at least monthly with respect to on-going commitments,

and rule 3.4 is repeated expressly herein.

#### **4. OFFICERS AND DIRECTORS**

##### Retirement and removal of Directors

- 4.1. At least two Directors shall retire with effect from the Annual General Meeting in each year and shall be eligible for re-election. Those to retire shall be those who have been Directors longest since their last election.
- 4.2. A Director shall retire at the Annual General Meeting occurring three years after he took office as a Director of the Association and shall be eligible for re-election.
- 4.3. A person shall cease to be a Director of the Association if:
  - 4.3.1. He ceases to be employed by a Member;
  - 4.3.2. By notice in writing to the Administrator of the Association, he resigns his membership of the Board;
  - 4.3.3. He (i) absents himself from three consecutive meetings of the Board or absents himself in any year from one-half in number of the meetings of the Board and (ii) the Board resolves that he ceases to be a Director;
  - 4.3.4. He ceases to be a Director pursuant to the Articles;
  - 4.3.5. The Members so resolve at a general meeting of the Association, such resolution to be proposed by not less than 50% of the Members.
- 4.4. If a casual vacancy occurs, the Board shall by resolution appoint a person to fill such vacancy until the next Annual General Meeting when that Director shall retire and his place be offered up for election.

##### Election of Directors

- 4.5. Candidates for election as Directors at the next Annual General meeting may be proposed by any Member and/or by the Board by notice in writing to the Administrator of the Association not less than 21 days prior to the date of the Annual General Meeting.
- 4.6. Notice of the candidates duly proposed shall be circulated by the Administrator of the Association within 5 days from the last day for proposal of candidates.
- 4.7. If no more candidates are proposed than will be required to be elected as Directors at the next Annual General Meeting, such candidates as are proposed shall be deemed to be elected as Directors.
- 4.8. If more candidates are duly proposed than will be required to be elected as Directors at the Annual General Meeting, the Administrator of the Association shall ballot the Members by inviting votes by email to the Administrator of the Association by no later than 24 hours in advance of the Annual General Meeting.

- 4.9. The election shall be conducted by Single Transferable Vote until all vacancies have been filled. Any vote not cast by the time prescribed in the preceding paragraph shall be void.
- 4.10. The Administrator of the Association shall act as returning officer and shall determine all questions regarding the validity of any vote. No election of any Director shall be invalidated by reason of any defect in or invalidity of any vote used thereat or by reason of any error however occasioned in the tally of votes cast.
- 4.11. A return of the persons elected as Directors shall be made by the Administrator of the Association at the next Annual General Meeting.
- 4.12. The elected Directors shall take office with the effect from Annual General Meeting at which they are elected.
- 4.13. Any Director may appoint an alternate to act and vote in his place at any meeting of the Board. A person may not be appointed or thereafter act as such alternate unless, at the date on which he is appointed and on every occasion on which he so acts, he is employed by a Member.

#### Officers

- 4.14. The Association shall have three officers (a chairman, a secretary and a treasurer).
- 4.15. The officers of the Association shall be appointed from amongst the Directors by resolution of the Board at the first Board meeting following the Annual General Meeting to take place not later than 30 days after the Annual General Meeting and at the first Board meeting following the retirement of any officer in respect of that office.

### **5. MEETINGS**

- 5.1. The Association shall hold general meetings in accordance with its Articles.
- 5.2. Notice of such meetings shall also be given to Associate Members, in such fashion as the Directors consider expedient.
- 5.3. The chairman of a general meeting may allow Associate Members to attend and speak at such meetings.

### **6. CODE OF CONDUCT**

- 6.1. Every Member and Associate Member shall abide by the Code of Conduct.

### **7. AMENDMENT AND VARIATION**

- 7.1. The Association may, at the discretion of the Directors, amend or vary these Rules from time to time. Such amendments and/or variations shall be communicated to Members and Associate Members in such fashion as the Directors consider expedient.

### **8. COMPLAINTS PROCEDURE**

- 8.1. Every Member and Associate Member agrees to be bound by the complaints procedure as approved by the Association in general meeting from time to time.

### **9. LAW AND JURISDICTION**

- 9.1. These Rules shall be governed by, and construed in accordance with, English Law.
- 9.2. Any dispute arising out of or in connection with these Rules, including any question regarding their existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules and the LCIA Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be one.

The seat, or legal place, of arbitration shall be London.

The language to be used in the arbitral proceedings shall be English.

**22nd July 2016**