

Q&A: ANSWERING YOUR QUESTIONS ABOUT THE COVERHOLDER UNDERTAKING TO LLOYD'S

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How does the undertaking fit in with the binding authority we may have with a managing agent?

The undertaking does not replace the binding authority you have with your managing agent. Rather, it sits alongside it and establishes the general principles of your relationship as an approved coverholder with Lloyd's. It constitutes an agreement between you and Lloyd's.

Lloyd's does not intend to become involved in the contract of delegation you enter into with a managing agent. However, it wants to be able to step in as a last resort if the relationship between you and the managing agent completely breaks down. The reason for this is that Lloyd's has overall responsibility for the Lloyd's market, its reputation, its good name, compliance with the terms of its licences worldwide and for making sure that all valid claims are paid by underwriters at Lloyd's.

Who should sign the undertaking?

This undertaking must be signed by your principal or managing director, or chief executive or person of similar standing. That person must be authorised to sign this undertaking on your behalf.

Can we change the undertaking?

No. The undertaking is standard and sets out what Lloyd's expects of all its coverholders and so it cannot be changed.

In the past we may have provided local undertakings or addenda to the coverholder undertaking for the territory where we are domiciled, or those territories where we do business. Will those undertakings and addenda still be required?

No. The requirement for territorial addenda was removed in February 2008 when we introduced the new arrangements for regional extensions; see our bulletin ref Y4123 of 4 February 2008.

Will we need to sign a new undertaking if we change our name or address?

No, as long as you are legally recognised as the same company.

Will we need to sign a new undertaking if the person who signed this undertaking leaves the company?

No, the signatory signs the undertaking on behalf of the company.

How many undertakings do we need to sign if we have branch offices that are approved as coverholders?

Only one undertaking is required for the company irrespective of the number of branches.

What do we need to do once we have signed the undertaking?

We no longer require the signed original undertaking. You need to upload the signed undertaking to your application on Atlas under the 'Company information' tab.

You should retain the original for your own records.

If our coverholder approval lapses and we have to apply again for re-approval as a coverholder, will we need to sign a new undertaking?

Yes and the new undertaking will replace the old undertaking. Note that even after your coverholder approval ceases the undertaking continues to apply.

Who do we contact if we have a question concerning the undertaking?

Please contact your Lloyd's broker or us directly at Lloyd's by e-mail to coverholders@lloyds.com or telephone +44 (0) 20 7327 6275.

The undertaking makes reference to Lloyd's powers. When will these be used? And how do they fit with the binding authority we have with our managing agents?

By signing the undertaking, amongst other things, you agree that you will answer any questions and produce any information to Lloyd's, when asked, if that information relates to your binding authority or ongoing approval. You also agree to allow Lloyd's to visit your premises to inspect relevant documents.

In practice, Lloyd's would normally expect managing agents, rather than Lloyd's itself, to get such information from you as part of their routine monitoring of your binding authority. However, there may be times when Lloyd's may want to get information relating to your binding authority directly from you. This may be when your managing agent is unable, for whatever reason, to act or where Lloyd's has decided to review your approved status. If Lloyd's exercises these powers under the undertaking, it will act reasonably and will do its best to co-operate with you, your sponsor and your managing agent as far as possible.

Section 9.3 of the undertaking states "...we further agree to indemnify Lloyd's against all costs, claims, demands or losses (including without limitation consequential losses and all interest, penalties and legal and other professional costs and expenses) which Lloyd's may incur as a result of breach of this undertaking by us"

Does this mean that Lloyd's might be looking to litigate against us and if this is the case why doesn't Lloyd's give us an equivalent indemnity in the undertaking?

In many countries, Lloyd's itself may be held liable for the acts or omissions of approved coverholders. We have included the clause for transparency reasons to make it clear that if (and only if) action was taken against Lloyd's itself and as a result of which Lloyd's was held liable for any breach caused by a coverholder of the terms of the undertaking, then Lloyd's could ultimately recover the costs or damages from a coverholder. This reflects the position at law. The undertaking states this explicitly in the interests of clarity and transparency.

This clause does not give Lloyd's any general right to sue a coverholder unless Lloyd's has incurred costs or damages as a result of action being taken against Lloyd's itself.

Also, from a practical perspective if Lloyd's was sued we would always seek to discuss how best to resolve the litigation with you, the relevant Lloyd's managing agent and Lloyd's broker. Our objective would be to find a mutually acceptable resolution to the problem and only as a matter of last recourse would we seek to rely on the indemnity in the undertaking.

Finally, if Lloyd's did seek to rely on the indemnity we would always seek to take steps to mitigate our losses; only seek to recover losses which were reasonable and wherever possible provide you promptly with notice in writing of the claim against Lloyd's.

Section 10.2 of the undertaking states "we understand and agree that for the purposes described in Appendix 1, Lloyd's may transfer data to individuals and organisations located outside the EEA in countries which may not provide legal protection of information which is equivalent to the protection provided in the United Kingdom".

What personal data are you referring to in this section and where might Lloyd's transfer this data to?

"Personal information" refers to those areas of information that we ask for in the application form for coverholder approval and any other information we receive that is relevant to your ongoing Lloyd's approval. In practice, most of that information is provided to Lloyd's at the time of your initial application for approval as a coverholder. However, you do provide this information via your Lloyd's broker to managing agents who support your binding authority. We work on the basis that you will have obtained the permission of the relevant employees in your business to provide this information to us.

Lloyd's has no intention of making this personal information available outside of your jurisdiction or the European Economic Area. We have included in the clause reference to transferring data outside the EEA as this is a worldwide undertaking and you may be based outside the EEA. This clause is standard for coverholders around the world.

In practice, Lloyd's will only provide this personal information that you provide us to Lloyd's representatives or agents (who will be bound to acknowledge the confidentiality of the information), to your local regulators (most of whom will have that information already), to your Lloyd's broker or your Lloyd's managing agent or to another person when we have been ordered to do so by a Court of law.

Section 12 states that “we irrevocably agree that this undertaking and all matters relating to our on-going approval as an approved coverholder shall be subject to the laws of England and irrevocably agree that the Courts of England shall have exclusive jurisdiction to settle any dispute or controversy (of whatever nature) arising out of or relating to this undertaking or our on-going approval”

The governing law of my binding authority is not England. Why is the governing law of this undertaking in England?

Your binding authority is a contract with your managing agent and so they will have agreed with you the laws under which it is governed. This undertaking with Lloyd's relates to your ongoing approval by us and we wish any disputes under this undertaking to be conducted under English law.

Lloyd's has no intention of changing the jurisdiction which is used on the binding authority. The jurisdiction on binding authorities will not change by signing the undertaking.

However, Lloyd's decision to approve a coverholder is a decision made under English law because Lloyd's is based in England and subject to English law. The undertaking relates to your on-going approval by Lloyd's as an approved coverholder. It is for this reason that if there was any dispute as to the meaning or effect of the undertaking it would be dealt with under English law.