

AUCTION BYELAW

Commencement

This byelaw came into force on 7 May 1997.

Amendments

This byelaw was amended by Assignment of Syndicate Participations (Second Nomination) Byelaw (No. 6 of 2000).

Explanatory Note

(This note is not part of the byelaw)

This byelaw, which came into force on 17 April 1997, replaces the Syndicate Capacity Allocation (1996) Byelaw (No. 8 of 1996). It empowers the Council to establish arrangements for the holding of auctions in respect of rights to capacity on syndicates for 1997 and following years of account. The arrangements are from time to time prescribed in rules made under the byelaw. The byelaw also makes provision for the appointment of an official with the title of Auction Official to have responsibility for the management and supervision of auctions.

The Council of Lloyd's in exercise of its powers under section 6(2) of Lloyd's Act 1982 by special resolution hereby makes the following byelaw.

1. Interpretation

The Schedule to this byelaw (interpretation) shall have effect.

2. Power to establish Capacity Allocation Scheme

(1) The Council may establish and maintain a scheme (in this byelaw called a “capacity allocation scheme”) for allocating the opportunity to participate in syndicates for the next following year of account through a process or processes (each such process being in this byelaw called an “auction”) under which, in respect of each syndicate to which the scheme applies:

- (a) persons who wish to participate in the syndicate for the next following year of account (“subscribers”) submit offers (“subscription orders”) for rights (as defined in sub-paragraph (2)), each such subscription order being made on terms that the subscriber will, if allocated such a right, become liable to make a payment of an amount to be determined in accordance with the terms of the subscription order and the auction rules;
- (b) persons who are willing to surrender rights (“tenderers”) submit offers (“tender orders”) to surrender those rights, each such tender order being made on terms that the tenderer will become entitled to receive in respect of any rights which may be surrendered a payment of an amount to be determined in accordance with the terms of the tender order and the auction rules;
- (c) subscription orders and tender orders are matched; and
- (d) in consequence of such matching:
 - (i) some or all subscribers are allocated rights;
 - (ii) some or all tenderers surrender their rights wholly or to such an extent as will ensure that the aggregate amount of the rights so surrendered is equal to the aggregate amount of the rights allocated under (i) above;
 - (iii) money becomes payable by the subscribers who are allocated rights under (i) above and distributable among the tenderers whose rights are surrendered under (ii) above.

(2) In sub-paragraph (1):

- (a) “right” when used in relation to a subscriber means the right to participate in the syndicate for the next following year of account with a member’s syndicate premium limit of an amount specified in the subscription order (or, if he is otherwise entitled to participate in that syndicate for the next following year of

- account, the right to increase his member's syndicate premium limit by that amount);
- (b) references to a person "surrendering a right" shall be construed as references to that person agreeing to reduce, by an amount specified in the tender order submitted by him, the member's syndicate premium limit with which he would otherwise be entitled to participate in the syndicate;
 - (c) a person ("a deceased person") who until the time of his death was a member of a syndicate for the current year of account shall be deemed to be a person who is entitled to participate in that syndicate; and
 - (d) references to the submission of a tender order or subscription order by a person shall be taken to include the submission by any intermediary of a tender order or subscription order on his behalf.
- (3) Any capacity allocation scheme may, but need not, involve the making by any person participating in that scheme of a second nomination or a nomination under clause 11 A.2 of any agreement in the terms of the standard managing agent's agreement (general) or standard managing agent's agreement (corporate member).
- (4) Any capacity allocation scheme shall be and is hereby approved pursuant to paragraph 14(2)(a) of the Agency Agreements Byelaw (No. 8 of 1988) for the purposes of paragraph 14(1)(a) of that byelaw as an arrangement for facilitating agreements for such nominations or for second nominations to the extent that it involves the making of such nominations or second nominations.
- (5) For the purposes of establishing a capacity allocation scheme, the Council may make rules prescribing or regulating:
- (a) the arrangements to be established for the purpose of holding auctions;
 - (b) the procedures to be followed by persons wishing to participate in auctions;
 - (c) the basis upon which a members' agent operating a MAPA may participate in an auction;
 - (d) the manner, time and place in which any auction is to be held;
 - (e) the eligibility of any person to participate in any auction, whether as a subscriber or tenderer or an intermediary, and so that any rules made for such purposes may impose or provide for conditions and requirements to be satisfied or complied with by those persons, which conditions and requirements may:
 - (i) include requirements to complete notices and other documents or to make electronic submissions (including forms of subscription order and tender order) in the prescribed form;
 - (ii) include the requirement to execute and deliver or otherwise become a party to any prescribed form of deed, trust deed, contract, assignment,

- undertaking, mandate, authority, power of attorney, negotiable instrument or other document or instrument whatsoever;
 - (iii) include requirements relating to the provision of confirmations, declarations or information relating to a person who is to participate in an auction in the prescribed form;
 - (iv) include requirements relating to the compliance of a person who is to participate in an auction with requirements of the Council and obligations arising under any agreements in the terms of the standard managing agent's agreement (general) or standard managing agent's agreement (corporate member) to which he is a party, or under any other provision to the like effect contained in any agreement with an underwriting agent to which he is a party;
 - (v) make different provision for different classes of member of the Society; and
 - (vi) make different provision for corporate members and individual members;
- (f) the ranking of subscription orders and tender orders;
 - (g) the basis on which and manner in which subscription orders and tender orders are to be matched;
 - (h) the basis on which rights are to be allocated to subscribers and money distributed among tenderers under paragraph 2(1)(d), and in particular the circumstances and manner in which subscription orders and tender orders may be scaled down;
 - (i) the fees or other sums to be paid by persons participating in any auction;
 - (j) the information which is to be supplied by underwriting agents or any director or partner of an underwriting agent or any person who works for an underwriting agent in such capacity as may be specified in those rules;
 - (k) the manner in which information relating to the submission of tender orders and subscription orders is to be made available;
 - (l) the powers and functions of the Auction Official;
 - (m) the manner in which financial obligations incurred by persons participating in those arrangements are to be settled; and
 - (n) such other matters relating to or connected with any auctions as may be thought fit.
- (6) The Council may from time to time vary any rules prescribed under sub-paragraph (5).

3. Appointment of Auction Official

- (1) The Council may appoint an officer or employee of the Society to supervise and manage arrangements made pursuant to a capacity allocation scheme and to fulfil the functions specified in the auction rules.

- (2) The person appointed pursuant to sub-paragraph (1) shall have the title of Auction Official.
- (3) The Auction Official shall have power:
 - (a) to delegate all, or any, of his powers or duties to one or more other persons;
 - (b) to prescribe the form and contents of any notice or other document or any electronic submission referred to in paragraph 2(5) and to require a person who is to participate in an auction to execute and deliver or otherwise become a party to any prescribed form of deed, trust deed, contract, assignment, undertaking, mandate, authority, power of attorney, negotiable instrument or other document or instrument whatsoever;
 - (c) to prescribe procedures to be followed by persons wishing to participate in any capacity allocation scheme which are additional to or which vary those prescribed in the auction rules;
 - (d) to exercise the powers expressed to be conferred on the Auction Official pursuant to the auction rules.

4. Furtherance of Scheme

- (1) Every underwriting agent shall do all such acts and things and shall execute all such documents as shall be necessary or expedient on its part to give effect to any capacity allocation scheme.
- (2) Without limiting the generality of sub-paragraph (1), a managing agent shall enter into an agreement in the terms of the standard managing agent's agreement (general) or standard managing agent's agreement (corporate member) with any subscriber to whom any rights (within the meaning of paragraph 2(2)) are allocated in respect of a syndicate in respect of which it is the managing agent.
- (3) Subject to sub-paragraph (4) and without limiting the generality of sub-paragraph (1), a managing agent shall enter into an agreement in the terms of the standard agent's agreement with the members' agent of any subscriber to whom any rights (within the meaning of paragraph (2(2)), are allocated in respect of a syndicate in respect of which it is the managing agent if there is no such agreement current between the managing agent and that members' agent.
- (4) The Council may, on an application by any managing agent, waive the requirements of sub-paragraph (3) in any particular case.

5. General

It shall be a condition relating to membership of the Society and of permission to underwrite that a member of the Society discharge any financial obligations incurred pursuant to a capacity allocation scheme and the provisions of the Membership Byelaw (No. 17 of 1993) shall apply accordingly where any member of the Society fails to do so.

6. Commencement

This byelaw shall come into force on 17 April 1997.

Schedule - Interpretation

In this byelaw:

“Agency Agreements Byelaw” means the Agency Agreements Byelaw (No. 8 of 1988);

“Auction Rules” means the rules prescribed by the Council under paragraph 2(5) of this byelaw;

“member’s syndicate premium limit” has the meaning given in the Membership Byelaw (No. 17 of 1993);

“second nomination” has the meaning given in the Schedule to the Assignment of Syndicate Participations (Second Nomination) Byelaw (No. 6 of 2000);

“standard agents’ agreement”, “standard managing agent’s agreement (general)” and “standard managing agent’s agreement (corporate member)” have the meanings respectively given in the Agency Agreements Byelaw.