

MEMBERS' AGENTS (AUSTRALIA) BYELAW

Commencement

This byelaw commenced on 8 October 1992.

Amendments

This byelaw was amended by

Corporate Members (Consequential Amendments) Byelaw (No. 20 of 1993)
Members' Agents (Australia) (Amendment) Byelaw (No. 12 of 1999)
Underwriting Agents (Amendment No. 16) Byelaw (No. 15 of 1999).

Explanatory Note

(This note is not part of the byelaw.)

This byelaw imposes new requirements on members' agents' conduct in relation to the recruitment and retention of members of the Society who are residents of Australia.

Unsolicited calls

Paragraph 2 of the byelaw provides that no members' agent may issue an invitation to subscribe for membership of Lloyd's to any person in Australia, whether such person is resident there or not, in consequence of an unsolicited call. This prohibition on unsolicited calls applies equally to calls made in person or over the telephone.

Syndicate lists - signing on behalf of Names

A members' agent must not sign a syndicate list on behalf of an Australian Name, unless he has first sent it to that Name and has received a written acknowledgement that it has been received by that Name.

Members' agents - reports

On 2nd October 1992 the Australian Securities Commission ("the ASC") sealed an instrument granting the Society, members' agents and managing agents unconditional exemption from the fundraising provisions of the Australian Corporations Law. The terms of that instrument required the Society to enter into an undertaking under which the Society agreed to file a certificate with the ASC annually stating that, having made diligent enquiries, no members' agent (save any such agent named in the certificate) had contravened:

- (a) the prohibition on unsolicited calls;
- (b) the prohibition on signature of a syndicate list prior to acknowledgement of receipt of such a list by the relevant Name; or
- (c) the requirement for the endorsement on a syndicate list of a statement referring to the non-applicability of the Australian Corporations Law to, inter alia, participation in syndicates.

Paragraph 4 of the byelaw requires members' agents, whether or not they act for or recruit, Australian resident Names, to provide the Society with a certificate in relation to each calendar year stating, in effect, whether they have contravened the prohibition on unsolicited calls, the prohibition on signature of syndicate lists on behalf of their Australian Names prior to acknowledgement of receipt, or the requirement for the endorsement on syndicate lists of a law and forum clause. Paragraph 5 of the byelaw empowers the Council to seek further information from a members' agent which has filed a report under the byelaw.

Paragraph 6 of the byelaw empowers the Council to prescribe the form and content of the reports and any further information to be supplied by members' agents. Paragraph 6 also gives the Council power to specify the date by, and the Corporation department with, which the report and any further information should be filed.

The information provided by members' agents to the Society may be provided to the ASC. 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 provisions of the Schedule to this byelaw (interpretation) shall have effect.

2. Unsolicited calls

No members' agent shall in the course of, or in consequence of, an unsolicited call received within Australia issue, or cause to be issued, an invitation to any person to apply for membership of the Society.

2A. Invitation documents

Without prejudice to the requirements of paragraph 2, no members' agent shall issue or cause to be issued an invitation to any person ordinarily resident in Australia to apply for membership of the Society unless in connection with such invitation the members' agent has complied with the requirements of the Corporations Law of Australia as modified by the Australian Securities and Investments Commission class order 99/0629.

3. Syndicate lists - signing on behalf of Names

(1) No members' agent shall sign a syndicate list on behalf of an Australian Name under a power of attorney or otherwise unless the following conditions have been met:

- (a) the members' agent has sent a copy of the syndicate list to the Australian Name;
and
- (b) the members' agent has received either:
 - (i) a copy of the syndicate list signed by the Australian Name; or
 - (ii) a letter, telex, telefax or similar written communication from the Australian Name acknowledging receipt of a copy of the syndicate list.

(2) For the purposes of this byelaw, a power of attorney includes any such power whether contained in a standard members' agent's agreement or in any other instrument.

4. Members' agents - reports

- (1) Every members' agent shall in each year prepare a report to enable the Society to provide a certificate in the terms attached to an undertaking given to the Australian Securities and Investments Commission by the Society and dated 24 May 1999.
- (2) The provisions of paragraph 6 shall apply in relation to every report prepared under sub-paragraph (1).
- (3) Without prejudice to the generality of paragraph 6, the report referred to in sub-paragraph (1) shall state:
 - (a) whether the members' agent has issued, or caused to be issued, an invitation to any person to apply for membership of the Society in the course of, or in consequence of, an unsolicited call received within Australia;
 - (aa) whether the members' agent has issued or caused to be issued an invitation to any person ordinarily resident in Australia to apply for membership of the Society other than in compliance with the Australian Corporations Law as modified by the Australian Securities and Investments Commission class order 99/0629;
 - (b) whether the members' agent has signed a syndicate list on behalf of an Australian Name in circumstances where any of the conditions set out in paragraph 3(1)(a) and (b) have not been met; and
 - (c) whether any syndicate list sent to an Australian Name by or on behalf of the members' agent did not include a law and forum notice in a prominent position on the front page of such list.

5. Members' agents - supply of information

- (1) A members' agent shall supply the Council with such information as the Council may direct in respect of any report prepared by that members' agent under paragraph 4.
- (2) The provisions of paragraph 6 shall apply in relation to information supplied to the Council under sub-paragraph (1).

6. Requirements - reports and information

- (1) The report referred to in paragraph 4(1) and the information referred to in paragraph 5(1):

- (a) shall include such matters and be provided in such form as the Council may from time to time prescribe;
 - (b) shall be signed on behalf of the directors of, or partners in, the members' agent by at least one director or partner; and
 - (c) shall be filed with the Society by such date as the Council may from time to time prescribe.
- (2) The contents of any report supplied to the Society under paragraph 4(1) or any information supplied to the Society under paragraph 5(1) may be disclosed to the Australian Securities and Investments Commission.

7. Time Limits

The Council may extend for such period and upon such conditions as it thinks fit any of the time limits specified in any conditions and requirements made pursuant to any provision of this byelaw.

8. Commencement

This byelaw shall come into force on 8th October 1992.

Schedule – Interpretation

In this byelaw, unless the context otherwise requires:

“Australian Name” means either

- (a) an Australian resident candidate; or
- (b) an Australian resident member, as the case may be;

“Australian resident candidate” means a candidate ordinarily resident in Australia;

“Australian resident member” means a member of the Society who is ordinarily resident in Australia;

“Australian Securities and Investments Commission” means the body established by the Australian Securities and Investments Commission Act of 1989 of the Commonwealth of Australia;

“candidate” has the meaning given in the Schedule to the Membership Byelaw (No. 17 of 1993);

“corporate adviser” has the meaning given in the Underwriting Agents Byelaw (No. 4 of 1984);

“law and forum notice” has the meaning given in paragraph 1 of the Agency Agreements Byelaw (No. 8 of 1988);

“members’ agent” means an underwriting agent, other than a corporate adviser, which is listed as a members’ agent on the register of Underwriting Agents Byelaw (No. 4 of 1984);

“standard members’ agent’s agreement” has the meaning given in paragraph 1 of the Agency Agreements Byelaw (No. 8 of 1988);

“syndicate list” has the meaning given in paragraph 1 of the Agency Agreements Byelaw (No. 8 of 1988); and

“unsolicited call” means a personal visit or oral communication over the telephone made by a members’ agent without express invitation.