

GUIDANCE NOTES APPLYING TO MODEL SERVICE COMPANY UNDERWRITING AGREEMENT  
LMA3078

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Introduction

- This model Service Company Underwriting Agreement (SCUA) has been produced by a working party of Underwriters and is intended to provide managing agents with a comprehensive model binding authority for a Service Company Coverholder that are 100% aligned to its associated managing agent.
- Service Company Coverholders are Lloyd's approved coverholders that have been classified as "Service Company Coverholders" by Lloyd's by reason of their close connection with a single managing agent. (For the avoidance of doubt as they are coverholders they cannot be appointed as the lead underwriter under a line-slip as only a managing agent or an insurance company are capable of being so named).
- While issued as a model agreement, it should be recognised that this document, as with all LMA documents, is purely illustrative and is established and distributed for the guidance of members. Members are therefore free to use their own separate agreements.
- The exact format and substantive content of any individual Service Company Underwriting Agreement will depend on the purpose for which that agreement is established and is a matter for negotiation between the parties concerned, subject to the requirements of the Intermediaries Byelaw.
- Definitions of "Service Company Coverholder" and "Service Company Underwriting Agreement" are contained in Lloyd's Definitions Byelaw.

These **Guidance Notes** are intended to assist Underwriters when using this model agreement, by providing an overview of relevant requirements and guidance.

For the purposes of this guidance note any reference to "territory(ies)" shall include country(ies) or province(s) or state(s).

The model Service Company Underwriting Agreement has been designed so that all 'variables' are dealt with in the Schedule, thus maintaining the integrity of the model Service Company Underwriting Agreement. This is intended to improve the structure and content of Service Company Underwriting Agreements (SCUA) and help achieve contract certainty prior to inception which is for the benefit of all parties to the Agreement.

## General Drafting Guidance

### Relevant requirements and guidance

All practitioners with service company arrangements should familiarise themselves with the following key documents which set out the prudent requirements necessary in order to ensure that the risks associated with Service Company Underwriting Agreements are properly managed.

Intermediaries Byelaw (as amended by the Intermediaries (Service Company) Byelaw and the requirements made under that Byelaw. The Byelaw and requirements are available on [www.lloyds.com](http://www.lloyds.com) under "Acts and Byelaws".

Other guidance that may be issued by Lloyd's and which is available on the coverholders page of the Lloyd's website under "Lloyd's Market/market participants".

In addition, since Service Company Coverholders are treated by Lloyd's as in effect extensions of the managing agent itself, it follows that the applicable Lloyd's underwriting standards which apply to managing agents will also apply to the Service Company Coverholders.

<u>Agreement Number</u>	The Agreement Number is the number by which the SCUA can be identified.
<u>Unique Market Reference Number</u>	The Unique Market Reference Number must be included even if the core part of the number is identical to the Agreement Number shown above. When the SCUA renews, a new UMR must be given.
<u>Section 1 Effective Date</u>	<p>Notwithstanding the <i>Inception Date</i> before a Service Company Coverholder is authorised to act on behalf of the Underwriters of a Lloyd's syndicate (or syndicates), whether on new service agreements or renewed ones, the Underwriter must have received written acceptance from the Service Company Coverholder of the terms and conditions of the SCUA. The SCUA cannot be registered at Lloyd's until this confirmation has been received.</p> <p>The acceptance of the terms and conditions of the SCUA from the Service Company Coverholder can be achieved by requesting that one or more of the persons named in Section 3 signs and dates the Schedule (inclusive of any attachments identified in the Schedule).</p> <p>Regardless of the provisions contained in sub-section 1.3, which reinforces the fact that a SCUA is not an open ended agreement, it is best practice to issue the Service Company Coverholder with a new SCUA wording for each agreement year.</p> <p>The effective date of the SCUA is the date on which the SCUA can actually be used by the Service Company Coverholder. This should not be confused with the inception date of the SCUA contract (which could be the same or an earlier date).</p>
<u>Section 2 Period</u>	The period of the SCUA should be for no more than 12 months from inception. However, it is possible for the Underwriters to extend the period of the SCUA, but in no event should it exceed 18 months from inception.

	<p>When defining the SCUA period, the <b>default</b> is:</p> <ul style="list-style-type: none"> <li>• “period from [insert date] to [insert date], both days inclusive, any time zone.”</li> </ul> <p>However, this is not mandatory, and there are alternative ways to specify both the date and/or time zone (which do not have to be amended via sub-section 14.2), namely:</p> <ul style="list-style-type: none"> <li>• <b>stating a specific date and time:</b> - “the period is from [insert date and time] to [insert date and time], any time zone.”;</li> <li>• <b>stating a specific time zone:</b> - “the period is from [insert date] to [insert date], both days inclusive, [insert specific time zone] time zone.” ;</li> <li>• <b>stating a specific date, time and time zone:</b> - “the period is from [insert date and time] to [insert date and time], [insert time zone] time zone”.</li> </ul>
<p><u><b>Section 3</b></u> <u><b>Persons Responsible for Operation and Control</b></u></p>	<p>The allocation of responsibility for exercising the authority granted by the SCUA is key in controlling and managing Underwriters’ exposure.</p> <p>The Schedule must identify the person(s) for the overall operation and control of the SCUA.</p> <p>Unlike other model binding authority wordings the SCUA only expressly refers to the person(s) with overall operation and control (and not others with underwriting and claims authority). This reflects the normal risk profile of a service company arrangement.</p> <p>However, where the Service Company Coverholder is granted authority to handle, agree and/or settle claims, it should be noted that Section 20 of the Schedule will need to set out the precise procedure for claims.</p> <p>Should Underwriters also wish to name other specific individuals (e.g. those others who have underwriting authority then Section 14 could be used for this purpose).</p>
<p><u><b>Section 4</b></u> <u><b>Grant of Authority</b></u></p>	<p>The Service Company Coverholder and the Underwriters must both be certain about the terms of the contract of delegation under which authority is delegated to the Service Company Coverholder.</p>
<p><u><b>Section 5</b></u> <u><b>Delegation of Authority</b></u></p>	<p>The Intermediaries Byelaw outlines under what circumstances Underwriters may permit their Service Company Coverholders to sub-delegate authority to a “sub-coverholder”. The Service Company Coverholder may only sub-delegate their authority to a sub-coverholder which is itself a Lloyd’s Approved Coverholder (or a <i>restricted coverholder</i>). It can only sub-delegate when Underwriters have given their express written content to their Service Company Coverholder that they can sub-delegate.</p> <p>In entering into the contract of sub-delegation the Service Company Coverholder will be acting as agent for and on behalf of Underwriters when it enters into the binding authority with the sub-coverholder(see 5.2.2.3). <b>It is important that the Service Company Coverholder provides to the sub-coverholder a</b></p>

	<p>warranty to this effect as by doing that the sub-delegate will know that it must comply with directions and conditions set by the Service Company Coverholder.</p> <p>It is of course important that the contract of sub-delegation does not purport to delegate to the sub-coverholder greater powers (or other classes of business) than that previously delegated to the Service Company Coverholder itself.</p> <p>It is also important that notice of termination must be capable of being given the contract with the sub-coverholder in the event that the Service Company Underwriting Agreement should be terminated or cancelled.</p> <p>The form of the contract of sub-delegation is that a Service Company Coverholder can only sub-delegate to an approved coverholder using a registered binding authority. (If it is permitted to sub-delegate to a restricted coverholder it should do so using a restricted binding authority.)</p> <p>The method by which the Service Company Coverholder can effect the sub-delegation will need to be as follows:</p> <ul style="list-style-type: none"> <li>• EITHER: - the sub-coverholder must be named on its own Market Reform Contract (for binders) and separate binding authority contract;</li> <li>• OR: - if the sub-coverholder IS NOT A SEPARATE LEGAL ENTITY from the existing Service Company Coverholder(s), as in the case of a branch office, then the sub-coverholder may be added to the existing SCUA contract by endorsement, which sets out the terms and conditions applicable and which is signed by the existing coverholder. The endorsement should address every applicable Market Reform Contract (for binders) schedule section.</li> </ul> <p>In either case, the sub-coverholder cannot bind any business nor issue any documents evidencing insurances bound until they have accepted the terms and conditions of their binding authority with the Service Company Coverholder. Furthermore, as with any other binding authority the contract of sub-delegation must be registered by the managing agent or if applicable by the placing Lloyd's broker at Lloyd's on the Lloyd's binding authority registration site (BAR).</p> <p>Finally Underwriters should also note that the binding authority that the Service Company Coverholder issues to its sub-coverholder should clearly prohibit the sub-coverholder from issuing joint certificates. (ie if the agreement with the sub-coverholder is based upon a model wording e.g. LMA 3005, LMA 3018, LMA3019 or LMA 3020) then the relevant schedule entry for the joint certificate clause needs to be make clear that joint certificates are <b>not permitted</b>.</p>
<p><u>Section 6</u> <u>Authorised Class(es) of Business and Coverage(s)</u></p>	<p>The SCUA should contain a precise description of the nature or classification of the contracts of insurance that the Service Company Coverholder will be authorised to bind under the SCUA.</p> <p>The SCUA should be clear whether it is accepting insurance business or reinsurance business or both (important for territory licences).</p> <p>The phrase 'All Risks' should not be used without proper qualification e.g. 'All Risks of Physical Loss or Damage'.</p>

<p><b><u>Section 7</u></b> <b><u>Period of Insurances Bound</u></b></p>	<p>Sub-section 7.1 of the Schedule allows for 12 months as the standard period and the maximum period allowed by Underwriters for the relevant classes of business.</p> <p>Sub-section 7.3 of the Schedule must contain the maximum number of days an insurance is allowed to be bound in advance of its inception date (which should not exceed the number of days notice required for cancellation).</p>
<p><b><u>Section 8</u></b> <b><u>Maximum Limits of Liability/Sums Insured</u></b></p>	<p>The maximum limits of liability or sums insured in respect of insurances bound by the Service Company Coverholder must be shown in this section of the Schedule.</p>
<p><b><u>Section 9</u></b> <b><u>Gross Premium Income Limit</u></b></p>	<p>The SCUA must contain a gross premium income limit as per sub-section 9.1 of the Schedule and the Coverholder is required to notify the Underwriters if the premium income reaches a pre-determined percentage of the overall limit which is to be shown in sub-section 9.2 of the Schedule.</p>
<p><b><u>Section 10</u></b> <b><u>Territorial Limitations</u></b></p>	<p>Underwriters should take care to ensure that a Service Company Coverholder is knowledgeable of and able to comply with all regulations in the territory(ies) in which they are permitted to accept business.</p> <p>Sub-section 10.1 of the Schedule is used to identify the territories in which risks are located. The location of risks should be determined in accordance with legal definitions of country or territory of risk applicable for local regulatory or fiscal reasons.</p> <p>Sub-section 10.2 of the Schedule is used to identify where insureds are domiciled. The territory of an insured's domicile is the territory in which the insured lives, if the insured is a private individual, or, if the insured is a company or other corporate body, in which it is established.</p> <p>Lloyd's has issued detailed guidance on these points in market bulletins and further guidance may be issued from time-to-time.</p> <p>Sub-section 10.3 of the Schedule defines the maximum territorial limits for every insurance bound under the SCUA.</p>
<p><b><u>Section 11</u></b> <b><u>Aggregates</u></b></p>	<p>For classes of business with the potential for aggregation of losses, the Schedule should identify the following:</p> <p>the basis of monitoring aggregate exposures; and the total aggregate limits the Coverholder is permitted to bind.</p> <p>However, for some classes of business aggregate reporting would not apply and this should be reflected in the Schedule by the insertion of "Not Applicable".</p>
<p><b><u>Section 12</u></b> <b><u>Premiums, Deductibles and Excesses for Insurances Bound</u></b></p>	<p>The SCUA must contain the manner or basis for the calculation of gross premiums, discounts, fees, charges and expenses. Section 12 of the Schedule allows for gross premiums and applicable discounts, fees, charges and expenses off gross premiums to be identified. Service Company Coverholder's Commission and if</p>

	<p>applicable Contingent or Profit Commission must not be shown in this sub-section, because Section 23 of the SCUA refers to these types of commission.</p> <p>If any deductibles and/or excesses apply, these must be shown under Section 12 of the Schedule.</p> <p>In the event that the rating and/or any applicable deductibles and/or excesses are contained within a separate guide or manual or other document (including any electronic data), reference to such should be made within Section 12 of the Schedule.</p>
<p><b><u>Section 14</u></b> <b><u>Other Conditions and/or Requirements relating to the operation of the Agreement</u></b></p>	<p>This Section relates to the SCUA contract of delegation <b>ONLY</b>.</p> <p>Sub-section 14.1 of the Schedule SHOULD ONLY be used to identify any <b>additional terms, conditions and/or requirements</b> that are additional or supplementary to the SCUA and that are not otherwise addressed elsewhere within the SCUA.</p> <p>Sub-section 14.2 of the Schedule SHOULD ONLY be used to identify any <b>amendments to the SCUA</b> (i.e. changes or amendments to the model service company underwriting agreement text). The section or sub-section numbers of the SCUA which are the subject of amendment(s) must be shown together with the replacement text.</p> <p>For the avoidance of doubt, Section 14 of the Schedule SHOULD NOT be used to identify, add, or amend terms and conditions of the individual insurances to be bound by the Service Company Coverholder. Instead, these should be dealt with in Section 18.</p>
<p><b><u>Section 15</u></b> <b><u>Cancellation and Termination</u></b></p>	<p>This Section identifies those circumstances under which the SCUA may be cancelled or terminated. This includes where the "Service Company Coverholder" ceases to be qualify as such under Lloyd's rules.</p> <p>A notice period for cancellation must be identified at the time of placement and such period inserted in sub-section 15.1.1 of the Schedule.</p> <p>This Section SHOULD NOT be used for the cancellation terms of the individual insurances as those should be shown under Section 18.</p>
<p><b><u>Section 16</u></b> <b><u>Effect of Expiry, Cancellation or Termination</u></b></p>	<p>Sub-section 16.1 limits the Coverholder's authority during the period of notice of cancellation or termination. However, this does not preclude a Coverholder from handling run-off business under the terms of the SCUA. In fact, where a SCUA expires and no additional provisions are made sub-section 16.3 requires the Service Company Coverholder to continue to manage their obligations under the SCUA.</p>
<p><b><u>Section 17</u></b> <b><u>Documents Issued</u></b></p>	<p>Sub-section 17.3 can be amended under 14.2 by either listing the names of the personnel at inception with updates being made at agreed periodic dates leaving the authorisation, addition or deletion of personnel to the discretion of the Service Company Coverholder, or agreeing a level of automatic responsibility within the Service Company Coverholder meaning that any personnel who attain a particular level of seniority may sign and issue the certificates.</p> <p>The Coverholder must retain a copy of all documents issued under the SCUA for a minimum of 7 years or such longer period as</p>

	required by the law.
<p><b><u>Section 18</u></b>  <b><u>Wordings Conditions, Clauses etc Applicable to Insurances Bound</u></b></p>	<p>Section 18 of the Schedule SHOULD ONLY be used to identify Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions applicable to insurances bound and SHOULD NOT be used to identify, add, or amend terms and conditions of the SCUA itself, as these should be specified under Section 14.</p> <p>The Intermediaries Byelaw prescribe certain minimum requirements applicable to all documents evidencing insurances bound by the Service Company Coverholder. (these are the requirements that apply to any certificate issued under a binding authority).</p> <p>Each Certificate issued by the Service Company Coverholder must contain these minimum requirements which includes a Several Liability Notice identified in sub-section 18.4 of the Schedule, even if a 100% Lloyd's placement. If both insurance and reinsurance are to be bound then both versions of the Several Liability Notice should be shown.</p> <p>Sub-sections 18.6.1.1 to 18.6.1.4 as appear in the SCUA only apply where the binding or administration of the insurances is regulated by the FSA.</p>
<p><b><u>Section 20</u></b>  <b><u>Procedure for the handling and settlement of Claims</u></b></p>	<p>In view of the differences in the Underwriters' business practices this is a free format field.</p> <p>Procedures for handling and advising claims to the Underwriters and/or where applicable for agreeing and/or settling claims must be set out fully in Section 20 of the Schedule. This should include the settlement authority broken down by class or category of loss and amount.</p> <p>Section 20 of the Schedule should be used to identify the responsibilities of the Service Company Coverholder in the handling, advising, agreement and/or settlement of claims including any claims-related responsibilities the Service Company Coverholder may have to a Third Party Administrator ("TPA") acting on behalf of the Underwriters. Where a TPA is involved the Intermediaries Byelaw requires that a separate TPA agreement be agreed by all parties prior to inception of the binding authority.</p> <p>TPA details may be shown in Section 20 of the Schedule, including reference to the TPA agreement, but it is not expected that the whole TPA agreement be set out in full in the Schedule.</p> <p>If Underwriters require the TPA agreement to be attached to the SCUA for information, it should be mentioned in this Section. This Section can also be used to name the individuals with authority to exercise claims authority.</p>
<p><b><u>Section 21</u></b>  <b><u>Record Keeping</u></b></p>	<p>A Service Company Coverholder should maintain complete records relating to all insurances bound. The SCUA also provide that Underwriters shall own all such records and shall have the right to access, inspect, audit and copy all such records.</p>
<p><b><u>Section 22</u></b>  <b><u>Reporting</u></b></p>	<p>Other model binding authority agreement contains a number of prescribed reporting requirements. Given the risk profile of Service Company Coverholders those have generally been removed and replaced with this Section that provides Underwriters with a generic ability to require it Service Company Coverholder with written reports in such form and containing such information as</p>

	<p>Underwriters require.</p> <p>Therefore Underwriters need to consider exactly what type of reports they want their Service Company Coverholder to provide and make sure that they inform the Service Company Coverholder of those requirements.</p> <p>(Lloyd’s guidance provides that the Service Company Coverholder should report by class or category in respect of all premiums, paid claims, outstanding claims and expenses in respect of all insurances bound.)</p>
<p><u>Section 23</u> <u>Commission(s)</u></p>	<p>The Service Company Coverholder’s Commission should be specified in Section 23 of the Schedule.</p> <p>In the event of the SCUA not being subject to Contingent or Profit Commission then “Not Applicable” should be shown.</p> <p>If the binding authority is subject to Contingent or Profit Commission then the Schedule should fully specify the amount(s) of and the formula or criteria used in the calculation of such Contingent or Profit Commission. If a separate Contingent or Profit Commission Clause is required then “as attached” should be stated in the Schedule and the full clause should be attached to the SCUA.</p>
<p><u>Section 28</u> <u>Separate Bank Accounts</u></p>	<p>Where the Service Company Coverholder handles 'monies in transmission' only (i.e. does not hold or retain monies, for example, in order to establish or maintain a claims fund) such monies must be held in a separate bank account set apart for insurance monies (i.e. premiums, return premiums and claims monies). For the sake of clarity, this means that it must be held separately from the general and operating accounts of the Service Company Coverholder, but may be co-mingled with insurance monies from other insurers.</p> <p>In contrast, where the Service Company Coverholder <b>holds or retains monies</b> (for example to establish or maintain a claims fund), such monies must be held in accordance with the Lloyd’s Premium Trust Deed. Details can be obtained from Lloyd’s.</p>
<p><u>Section 29</u> <u>Power to issue directions and requirements</u></p>	<p>This Section contains generic powers for Underwriters to issue directions, conditions or requirements regarding the operation of the agreement. Underwriters should ensure that the Service Company Coverholder operates in accordance with and subject to similar requirements as any underwriter employed by the managing agent.</p>