

# SYNDICATE PRE-EMPTION BYELAW

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## Commencement

This byelaw came into force on 23 May 1997.

## Amendments

This byelaw was amended by

- Syndicate Pre-emption (Amendment) Byelaw (No. 26 of 1997)
- Syndicate Pre-emption (Amendment No. 2) Byelaw (No. 9 of 1998)
- Run-Off Years of Account (Revocation) Byelaw (No. 1 of 2000)
- Syndicate Pre-emption Byelaw (No. 4 of 2000)
- Assignment of Syndicate Participations (Second Nomination) Byelaw (No. 6 of 2000)
- Syndicate Pre-emption (Amendment No. 4) Byelaw (No. 3 of 2006)

## Explanatory Note

(This note is not part of the byelaw)

This byelaw revokes and replaces the Syndicate Pre-emption Byelaw (No. 15 of 1997) which had itself replaced the Syndicate Pre-emption (1996) Byelaw. This byelaw applies to increases or decreases in syndicate allocated capacity for 1998 or subsequent years of account.

This byelaw requires that any increase in the capacity of any syndicate be offered to the members of that syndicate pro rata to their current member's syndicate premium limits. Pre-emption offers must be made to all such members who fall within the definition of "qualifying members" in paragraph 2(2). The estates of members who have died before a pre-emption offer is made are entitled to receive pre-emption offers (paragraph 2(4)).

Paragraph 3 prescribes the procedure for pre-emption offers and their acceptance. The Council may prescribe dates throughout the year on which members' agents are required to report levels of acceptances by their members to the Society. Pre-emption offers to members participating through MAPAs are to be made to and accepted by the MAPA operator rather than MAPA participants individually (paragraph 4).

General reductions in syndicate capacity are dealt with in paragraph 5. Reductions made by the managing agent must be pro rata and must be notified to the Society by a date prescribed by the Council. Reductions in excess of 15 per cent require the consent of the Council. Increases of syndicate capacity over 7<sup>1</sup>/<sub>2</sub> per cent require the consent of three quarters (by capacity) of the members of the syndicate and, in addition to consent of members, increases over 25 per cent require the consent of the Council.

A managing agent may allocate up to 2 per cent in aggregate of the capacity of a syndicate to its agency staff every year provided that three quarters (by capacity) of the members of the relevant syndicate consent (paragraph 7).

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. Obligation to make pre-emption offer

- (1) Subject to the following provisions of this byelaw, if a managing agent proposes to increase the syndicate allocated capacity of a syndicate managed by it for the succeeding year of account it shall offer to each qualifying member (as defined in sub-paragraph (2)) the opportunity to increase his member's syndicate premium limit for that year of account by an amount equal to  $A \times \frac{X}{Y}$ , where

A = the amount of the proposed increase in the syndicate allocated capacity  
X = his member's syndicate premium limit for the current year of account  
Y = the syndicate allocated capacity for the current year of account

rounded to the nearest integral multiple of £1 (such amount being referred to as his "pre-emptive entitlement").

- (2) For the purposes of this paragraph a "qualifying member" is:

- (a) a person who is a member of the syndicate for the current year of account, other than:
- (i) a person who has ceased, other than by reason of death, to be a member before the date on which any offer is made under this paragraph;
  - (ii) subject to sub-paragraph (3), a person who participates in the syndicate through a MAPA, unless before the date on which any offer is made under this paragraph that person has given notice under clause 3.6 of the agreement between him and the operator of the MAPA in the terms of the standard members' agent's agreement electing to terminate his participation in the MAPA with effect from the end of the current year of account and to continue to participate in the relevant syndicate for the succeeding year of account otherwise than through the MAPA;
- (b) a person in whose favour a nomination has been made in respect of the relevant syndicate; and
- (c) a person who by auction has become entitled to participate in the syndicate for the succeeding year of account.

- (3) Where a person participates in a syndicate both through a MAPA and otherwise, this paragraph applies to him only in respect of his participation otherwise than through the MAPA.
- (4) Where a person has ceased to be a member of the syndicate for the current year of account before the date on which any offer is made under this paragraph by reason of his death, the rights conferred by this byelaw may be exercised by or on behalf of the member's estate by his personal representative or such other person as may be duly authorised by law to act on behalf of the member's estate.
- (5) Subject to sub-paragraph (6), no managing agent shall increase the syndicate allocated capacity of a syndicate managed by it for the succeeding year of account without complying with the requirements of this byelaw.
- (6) The Council may permit a managing agent to increase the syndicate allocated capacity of a syndicate without complying with any or all of the requirements of this byelaw, subject to such conditions as the Council may impose.
- (7) A managing agent which does not propose to increase the syndicate allocated capacity of a syndicate managed by it for the succeeding year of account shall not later than the prescribed date give notice of that fact to every members' agent under arrangements made by or through the agency of which any underwriting member participates in the syndicate for the current year of account, to every member in relation to which no members' agent acts as such in relation to that syndicate for that year of account and to the Society.
- (8) Where there are two syndicates being operated concurrently and one of the syndicates includes individual members (referred to for the purposes of this paragraph and paragraph 5(6) as an "ongoing natural syndicate") and the other syndicate consists of a single corporate member (referred to for the purposes of this paragraph and paragraph 5(6) as a "parallel syndicate") then in the case of the ongoing natural syndicate the amount of the pre-emptive entitlement shall be calculated on the footing that:
  - (a) item Y in the formula set out in sub-paragraph (1) is equal to the aggregate of the syndicate allocated capacity of the ongoing natural syndicate and the parallel syndicate for the current year of account; and
  - (b) item A in that formula is the amount by which the aggregate of the proposed syndicate allocated capacity of the ongoing natural syndicate and the parallel syndicate for the succeeding year of account exceeds item Y.

3. Making and acceptance of pre-emption offers
  - (1) The following provisions of this paragraph shall apply to any offer made under paragraph 2.
  - (2) The offer shall be made in writing:
    - (a) in the case of a member who participates in the syndicate under arrangements made by or through a members' agent, to that members' agent on his behalf;
    - (b) in the case of a person in whose favour a nomination has been made who acts by a members' agent, to that members' agent on his behalf;
    - (c) in the case of a person who by auction has become entitled to participate in the syndicate for the succeeding year of account and who acts by a member's agent to that member's agent on his behalf;
    - (d) in any other case, direct to the member or person concerned.
  - (3) Every managing agent shall, on making any offer under paragraph 2, give notice to the Society of the offer in such form and in such manner as the Council may from time to time prescribe at the same time as the offer is sent to the member's agent, member, person in whose favour a nomination has been made and person who by auction has become entitled to participate in the syndicate for the succeeding year of account as the case may be.
  - (4) Where two or more members participate in the syndicate under arrangements made by or through the same members' agent, the offers to all of them may be made by a single communication to the members' agent provided that sufficient information is given to enable the members' agent to identify the pre-emptive entitlement of each of the members concerned.
  - (5) The offer shall be made and despatched not later than the prescribed date.
  - (6) Any acceptance of the offer:
    - (a) shall be in writing;
    - (b) may be in respect of the whole of the pre-emptive entitlement or such part of it as may be specified in the acceptance; and
    - (c) shall be sent so as to be received by the managing agent or such other person as may be duly authorised by the managing agent for the purpose of receiving any such acceptance not later than the prescribed date.
  - (7) A members' agent which receives a pre-emption offer in its capacity as a members' agent of a qualifying member shall not later than the prescribed date inform the

member concerned of its terms and shall seek and give effect to the member's instructions.

- (8) Every members' agent shall send to the Society in such form and in such manner and at such intervals or on such dates as the Council may from time to time prescribe, information relating to:
  - (a) the level of acceptances by the members for whom the members' agent acts as such of offers made under paragraph 2; and
  - (b) the identity of the members for whom the members' agent acts as such who have declined any offer made pursuant to paragraph 2.
- (9) Subject to sub-paragraph (10), an offer which is not accepted in accordance with its terms and in accordance with the preceding provisions of this paragraph shall lapse.
- (10) An offer shall not lapse to the extent that a person to whom the offer is made surrenders his right in respect of the pre-emptive entitlement in an auction held under a capacity allocation scheme established by the Council pursuant to the Auction Byelaw (No. 14 of 1997) or pursuant to any conditions and requirements prescribed from time to time pursuant to the Conversion and Related Arrangements Byelaw (No. 22 of 1996).
- (11) Subject to:
  - (a) the provisions of this byelaw;
  - (b) any other applicable requirements of the Council;
  - (c) any pre-emption offer made under this byelaw and any agreement arising on the acceptance of any such offer;
  - (d) any subsisting agreement in the form of the standard managing agent's agreement (general) or the standard managing agent's agreement (corporate member) to which the managing agent is a party;
  - (e) any other agreement permitted by the Agency Agreements Byelaw (No. 8 of 1988) by which the managing agent is bound;

the managing agent shall be entitled to admit such underwriting members (whether or not members of the syndicate for the current year of account) to membership of the syndicate for the succeeding year of account with such member's syndicate premium limits as it sees fit.

4A. Increase in syndicate allocated capacity

No managing agent which manages a syndicate having a run-off account shall increase syndicate allocated capacity in any future year of account of that syndicate, or other syndicate managed by it, unless the Council gives permission.

4. MAPAs: syndicate pre-emption offers

- (1) This paragraph applies in respect of members who participate in a syndicate for the current year of account through a MAPA, where the managing agent of the syndicate proposes to increase the syndicate allocated capacity for the succeeding year of account.
- (2) Instead of making individual pre-emption offers to such members, the managing agent of the syndicate shall make to the operator of the MAPA an offer to allocate to such members of the MAPA as intend to participate in the syndicate through the MAPA for the succeeding year of account, taken together, an amount of capacity (“the MAPA pre-emptive entitlement”) equal to  $A \times \frac{X}{Y}$ , where:
  - A = the amount of the proposed increase in the syndicate allocated capacity
  - X = the syndicate allocated capacity for the current year of account
  - Y = the aggregate of the member’s syndicate premium limits of the members who participate through the MAPA for the current year of account (disregarding any part of such limits allocated otherwise than through the MAPA)
- (3) The operator of the MAPA may accept the offer made under sub-paragraph (2) (or may accept it in respect of such part of the MAPA pre-emptive entitlement as the operator may determine) without being obliged to consult or comply with the instructions of any member of the MAPA.
- (4) Any acceptance of an offer made under sub-paragraph (2):
  - (a) shall be in writing; and
  - (b) shall be sent so as to be received by the managing agent or such other person as may be duly authorised by the managing agent for the purpose of receiving any such acceptance not later than the prescribed date.
- (5) Every members’ agent which is also the operator of a MAPA shall provide to the Society in such form and in such manner and at such intervals or on such dates as the

Council may from time to time prescribe, information in respect of each MAPA operated by any such members' agent relating to:

- (a) the extent to which the MAPA pre-emptive entitlement offered pursuant to sub-paragraph (2) has been accepted; and
    - (b) the offers made pursuant to sub-paragraph (2) that have been declined.
  - (6) Subject to sub-paragraph (7), an offer which is not accepted in accordance with its terms and in accordance with sub-paragraph (4) shall lapse.
  - (7) An offer shall not lapse to the extent that the operator of a MAPA to whom the offer is made surrenders his right in respect of the pre-emptive entitlement in an auction held under a capacity allocation scheme established by the Council pursuant to the Auction Byelaw (No. 14 of 1997).
  - (8) Subject to sub-paragraph (9), where the operator of a MAPA accepts an offer made under sub-paragraph (2), the relevant capacity shall be allocated among the members of the MAPA for the succeeding year of account in proportion to their respective participations in the MAPA for the current year of account.
  - (9) Where, subsequent to the date on which an offer is made under sub-paragraph (2), a member of the MAPA for the current year of account gives notice under clause 3.6 of the agreement between him and the operator of the MAPA in the terms of the standard members' agent's agreement (referred to for the purposes of this paragraph as "the agreement") electing to terminate his participation in the MAPA with effect from the end of the current year of account and to continue to participate in the relevant syndicate for the succeeding year of account otherwise than through the MAPA, the operator of the MAPA may allocate to that member such share of the relevant capacity as that member would have been entitled to under sub-paragraph (8) had that member not given such notice under clause 3.6 of the agreement.
5. Reductions in syndicate capacity made by the managing agent
- (1) Subject to sub-paragraph (7), no managing agent shall reduce the syndicate allocated capacity of a syndicate managed by it for the succeeding year of account without complying with the requirements of this byelaw.
  - (2) Where a managing agent proposes to reduce the syndicate allocated capacity of a syndicate for the succeeding year of account it shall ensure that the member's syndicate premium limits of all the members of the syndicate for the current year of account (other than any who cease to be members of the syndicate for the succeeding year of

account or request a greater reduction) are reduced by the same proportion, except to the extent of any rounding required to ensure that each member's syndicate premium limit is an integral multiple of £1.

- (3) For the purposes of this paragraph a MAPA shall be treated as if it were a single member and a different person from any individual who is a member of the MAPA and is also a member of the syndicate otherwise than through the MAPA.
- (4) Any proposed reduction in the syndicate allocated capacity of a syndicate for the succeeding year of account shall be notified in writing no later than the prescribed date:
  - (a) in the case of a member who participates in the syndicate under arrangements made by or through a members' agent, to that members' agent on his behalf;
  - (b) in any other case, direct to the member.
- (4A) Any proposed reduction in the syndicate allocated capacity of a syndicate for the succeeding year of account shall be notified to the Society in such form and in such manner as the Council may from time to time prescribe no later than the prescribed date.
- (5) Where a managing agent proposes to reduce the syndicate allocated capacity of a syndicate for the succeeding year of account by an amount greater than 15 per cent no such reduction may take place without the prior written consent of the Council.
- (6) In the case of any proposed reduction in the syndicate allocated capacity of an ongoing natural syndicate for the succeeding year of account, the amount by which each member's member's syndicate premium limit shall be reduced shall be an amount equal to:  
  
$$A \times \frac{X}{Y}$$
, where:  
  

A	=	the amount by which item Y exceeds the aggregate of the proposed syndicate allocated capacity of the ongoing natural syndicate and the parallel syndicate for the succeeding year of account;
X	=	the member's syndicate premium limit for the current year of account;
Y	=	the aggregate of the syndicate allocated capacity of the ongoing natural syndicate and the parallel syndicate for the current year of account.
- (7) The Council may permit a managing agent to reduce the syndicate allocated capacity of a syndicate without complying with any or all of the requirements of this byelaw, subject to such conditions as the Council may impose.

6. Approval for proposed increases in syndicate allocated capacity
  - (1) A managing agent shall not increase the syndicate allocated capacity of a syndicate for a succeeding year of account by more than  $7\frac{1}{2}$  per cent of the syndicate allocated capacity for the current year of account unless the managing agent has given notice in accordance with sub-paragraph (2) of its intention to make such an increase and obtained the requisite level of approval of the members of the syndicate for the current year of account within 14 days after the date on which the managing agent gives such notice.
  - (2) Any notice given by the managing agent in accordance with sub-paragraph (1) shall be given in writing:
    - (a) in the case of a member (other than a member who participates in the syndicate through a MAPA) who participates in the syndicate under arrangements made by or through a members' agent, to that members' agent on his behalf;
    - (b) in the case of a member who participates in the syndicate through a MAPA, to that MAPA operator; and
    - (c) in any other case, direct to the member.
  - (3) For the purposes of this paragraph the "requisite level of approval" means the approval of members (excluding those who by auction or by nomination of a successor under clause 11A.2 of a managing agent's agreement have wholly surrendered their right to participate in the syndicate for the subsequent year of account) whose member's syndicate premium limits in aggregate are not less than three quarters of the member's syndicate premium limits in aggregate of those members whose approval or disapproval is notified to the managing agent.
  - (4) A member's agent which receives a notice under sub-paragraph (2)(a) shall, forthwith after receipt of that notice, inform the member concerned of that notice and shall seek and give effect to the member's instructions.
  - (5) A member's agent which receives a notice under sub-paragraph (2)(b) may in its absolute discretion either approve or disapprove of the proposed increase notified to it without being obliged to consult or comply with the instructions of any member of the MAPA.
  - (6) For the purposes of this paragraph an approval or disapproval may be given:
    - (a) in the case of a member who participates in the syndicate otherwise than under arrangements made by or through a members' agent, by that member; or

- (b) in the case of any member (other than a member who participates in the syndicate through a MAPA), through his members' agent acting on his instructions on his behalf; or
  - (c) in the case of any member who participates in the syndicate through a MAPA, by the operator of the MAPA.
- (7) The managing agent shall keep copies of all replies received by it in response to a notice given under sub-paragraph (2) and furnish them to the Council on request.
- (8) A managing agent may not increase the syndicate allocated capacity of a syndicate for the succeeding year of account without the prior written consent of the Council if:
  - (a) the proposed increase is an amount greater than 25 per cent of the syndicate allocated capacity of that syndicate for the current year of account; or
  - (b) due to a regulatory concern, the Council has informed the managing agent in writing that any such increase requires the consent of the Council, and any application for the consent of the Council shall be made in writing no later than such date as the Council may specify.

7. Participation of agency staff

- (1) In this paragraph "agency staff" means, in relation to a syndicate, the active underwriter and any partner in or director, employee or officer of the managing agent of the syndicate and "member of the agency staff" has a corresponding meaning.
- (2) Without prejudice to any other right of the managing agent to allocate syndicate allocated capacity a managing agent may allocate to a member or members of the agency staff, or to one or more corporate members for the benefit of the member or members of the agency staff, an amount of syndicate allocated capacity for the succeeding year of account not exceeding in aggregate 2 per cent of the syndicate allocated capacity of the relevant syndicate for the current year of account if the managing agent has given notice of its intention to make such an increase in accordance with sub-paragraph (3) and obtains the requisite level of approval of the members of the syndicate for the current year of account within 14 days after the date on which the managing agent gives such notice.
- (3) Any notice given by the managing agent in accordance with sub-paragraph (2) shall be given in writing:

- (a) in the case of a member (other than a member who participates in the syndicate through a MAPA) who participates in the syndicate under arrangements made by or through a members' agent, to that members' agent on his behalf;
  - (b) in the case of a member who participates in the syndicate through a MAPA, to that MAPA operator; and
  - (c) in any other case, direct to the member.
- (4) For the purposes of this paragraph "requisite level of approval" has the meaning given in paragraph 6(3).
- (5) A member's agent which receives a notice under sub-paragraph (3)(a) shall, forthwith after receipt of that notice, inform the member concerned of that notice and shall seek and give effect to the member's instructions.
- (6) A member's agent which receives a notice under sub-paragraph (3)(b) may in its absolute discretion either approve or disapprove of the proposed increase without being obliged to consult or comply with the instructions of any member of the MAPA.
- (7) For the purposes of this paragraph an approval or disapproval may be given:
- (a) in the case of a member who participates in the syndicate otherwise than under arrangements made by or through a members' agent, by that member;
  - (b) in the case of any other member (other than a member who participates in the syndicate through a MAPA), by his members' agent acting on his instructions on his behalf; or
  - (c) in the case of any member who participates in the syndicate through a MAPA, by the operator of the MAPA.
- (8) The managing agent shall keep copies of all replies received by it in response to a notice issued under this paragraph and furnish them to the Council on request.

8. Power to dispense with offers in overseas jurisdictions

The Council may determine, either generally or in a particular case, that any offer required to be made by any provision of this byelaw need not be made or shall not be made in, or to members resident or domiciled in, a jurisdiction outside the United Kingdom if it appears to the Council that the making of that offer would be unlawful or would require compliance with unduly burdensome requirements.

9. Power to prescribe

The Council shall have power to prescribe:

- (a) the dates specified in paragraphs 2, 3, 4, 5 and 6;
- (b) the intervals specified in paragraphs 3 and 4;
- (c) the form and manner of the notice specified in paragraphs 3, 4 and 5;
- (d) the form and manner in which the information referred to in paragraph 3(8) is to be sent.
- (e) any conditions of consent which the Council thinks fit.

10. Time Limits

The Council may upon application extend as it thinks fit any time limit specified under this byelaw.

11. Underwriting agency agreements

Nothing in this byelaw constitutes an alteration of any underwriting agency agreement but it shall be the duty of every underwriting agent to exercise its powers under any such agreement so as to comply with this byelaw.

12. Revocations

The Syndicate Pre-emption Byelaw (No. 15 of 1997) is revoked.

13. Commencement

This byelaw shall come into force on 23 May 1997.

## Schedule 1 - Interpretation

In this byelaw:

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

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

“auction” means an auction held under a capacity allocation scheme established under the Auction Byelaw (No. 14 of 1997);

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

“controller” and “control” have the meanings given in the Schedule to the Membership Byelaw (No. 17 of 1993);

“current year of account” means the year of account corresponding to the year in which any pre-emption offer is made under this byelaw;

“MAPA pre-emptive entitlement” has the meaning given in paragraph 4(2);

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

“nomination” means a nomination under clause 11A.2 of the standard managing agent’s agreement (general) or standard managing agent’s agreement (corporate member) or a second nomination under the Assignment of Syndicate Participations (Second Nomination) Byelaw (No. 6 of 2000);

“prescribed date” means such date in each year as the Council may from time to time prescribe for the purpose of the provision in which the reference occurs;

“run-off account” has the meaning given in the Syndicate Accounting Byelaw (No. 18 of 1994);

“requirements of the Council” means any requirement imposed by any byelaw or regulation made under Lloyd’s Acts 1871 to 1982, any condition or requirement imposed or direction given under any such byelaw or regulation, any direction given

under section 6 of Lloyd's Act 1982, any requirement imposed by or under any undertaking given by a member of the Society to Lloyd's or to the Council and any other requirement imposed or direction given by the Council under Lloyd's Acts 1871 to 1982; and the phrase "required by the Council" and similar phrases shall be construed accordingly;

"standard members' agent's 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 (No. 8 of 1988);

"succeeding year of account" means in relation to a calendar year and the year of account corresponding to that calendar year, the year of account corresponding to the next following calendar year;

"syndicate allocated capacity" means, in relation to a syndicate, the aggregate of the member's syndicate premium limits of all the members for the time being of the syndicate together with the member's syndicate premium limit of any person who was a member of the syndicate on 1 January but who has subsequently died;

"syndicate list" has the meaning given in the Agency Agreements Byelaw (No. 8 of 1988);

"syndicate premium limit" means:

- (a) in relation to a person who is a member of the syndicate for the current year of account, the member's syndicate premium limit of that member for the current year of account together with the amount of the member's syndicate premium limit in respect of which any nomination has been made in his favour or which has been allocated to him by auction but less the amount that is the subject of any nomination made by him or which has been allocated by him by auction; and
- (b) in relation to any person who is not a member of the syndicate for the current year of account but in whose favour a nomination has been made or who, by auction, has become entitled to participate in the syndicate for the succeeding year of account, the amount of the member's syndicate premium limit in respect of which such nomination has been made or which has been allocated to him by auction less the amount of the member's syndicate premium limit in respect of which any nomination has been made by him or which has been allocated by him by auction.