

MARKET BULLETIN

REF: Y4686

Title	Changes to the charge registration regime for Lloyd's corporate members
Purpose	To advise the Lloyd's market of changes to the charge registration regime for Lloyd's corporate members which take effect from 6 th April 2013
Type	Event
From	Simon Hardy, Solicitor, Lloyd's Legal & Compliance General Counsel's Division 020 7327 5264 (Simon.Hardy@lloyds.com)
Date	28 March 2013
Deadline	
Related links	http://www.legislation.gov.uk/ukxi/2013/600/contents/made http://www.companieshouse.gov.uk/pressDesk/news/part25CompaniesAct.shtml

Summary

The Companies Act 2006 (Amendment of Part 25) Regulations 2013 ("the Regulations") have been approved by Parliament and come into effect on 6th April 2013. The Regulations make material changes to the charge registration regime under Part 25 of the Companies Act 2006 ("the Act"), including as regards the registration of charges created by UK companies which are corporate members of Lloyd's. Separate legislation has also been passed to amend the charge registration regime for limited liability partnerships ("LLPs") in the same way, meaning that the changes described below also apply to corporate members of Lloyd's which are LLPs.

In detail

Detailed guidance on the changes brought into effect by the Regulations can be found on the Companies House website via the link set out above. Of particular note from a Lloyd's perspective is that Part 25 of the Act now stipulates that all charges created by a company (or LLP, as that Part is applied to LLPs) are registrable, unless otherwise exempt. Further to discussions between Lloyd's and the Department for Business, Innovation and Skills, the following exemption has been included in Part 25 of the Act at section 859A(6):

"This section does not apply to...

- (b) a charge created by a member of Lloyd's (within the meaning of the Lloyd's Act 1982) to secure its obligations in connection with its underwriting business at Lloyd's."

As a result of this exemption, the vast majority of charges that are currently registered by Lloyd's at Companies House will no longer be required to be registered. Whilst the total number of filings made should reduce dramatically, certain charges will still need to be registered, for example, those created by a depositor (which is a UK company) under a Deposit Trust Deed (Third Party Deposit). The filing of such charges will continue to be carried out by the Corporation, but there will be cost savings to the market as the registration of a charge currently attracts a fee of £13 per filing.

Charges registered by Lloyd's

The Corporation has reviewed the portfolio of charges which it currently registers in relation to corporate members (including LLPs), with a view to determining which of them would be within the scope of the exemption set out above. The result of this analysis is set out at the Schedule attached, which can be used as a guide to identify which charges the Corporation will be continuing to register going forwards.

Other charges

The Corporation is aware that corporate members may create charges other than those identified in Schedule 1, for example under arrangements entered into pursuant to the power to borrow set out in clause 23 of the Premiums Trust Deed. Under the revised Part 25 of the Act, all charges other than those which are exempt will be capable of registration. Accordingly, it will be up to the chargee or another interested party to determine whether or not such a charge was within the scope of the exemption at s. 859A(6)(b) of the Act. It will no longer be a criminal offence to fail to register a charge, but if a charge which is not otherwise exempt is not registered within the 21 day timeframe it will be void against a liquidator, administrator or creditor of the company (s. 859(H)(3)). In these circumstances the Corporation expects market participants to continue to exercise care to ensure compliance in this area.

Other changes to the charge registration regime

The revised Part 25 of the Act makes a number of other changes to the charge registration regime, for example, new charge registration forms will be introduced. Further information can be found on the links set out above, or alternatively market practitioners should seek their own legal advice.

Charges registered before 6th April 2013 under the current regime will be unaffected by the new arrangements. However, any corporate member which has charges under Lloyd's instruments registered against it which it considers can be removed should contact Market Services for guidance in the first instance.

Any queries on this Bulletin should be directed to Simon Hardy (details set out above).

Application of s. 859A(6)(b) exemption – analysis

A. <u>LLOYD'S INSTRUMENTS WITHIN SCOPE OF EXEMPTION</u>	
<u>Instrument creating charge</u>	<u>Reason for categorisation</u>
<u>'Working' Trust Deeds</u>	
Premiums Trust Deed (General Business)	The charge created by this deed secures the payment of 'Permitted Trust Outgoings' as defined in the deed (e.g. claims, reinsurance premiums) – these are clearly obligations of the member in connection with its underwriting business at Lloyd's (and therefore within the scope of the exemption).
Premiums Trust Deed (Long Term Business)	As above, in respect of long-term business written by the member.
Lloyd's American Instrument	The charge created by this instrument secures 'Permitted Dollar Trust Outgoings' (as defined in the instrument) – in essence, 'Permitted Trust Outgoings' in respect of dollar denominated business written by the member. The charge therefore falls within the scope of the exemption.
Lloyd's Canadian Trust Deed	The charge created by this instrument secures 'Permitted Canadian Trust Outgoings' (as defined in the deed) – in essence, 'Permitted Trust Outgoings' in respect of the Member's 'Canadian business'. The charge therefore falls within the scope of the exemption.
Lloyd's Asia (Singapore Policies) Instrument 2002	The charge created by this instrument secures 'Permitted Singapore Policies Trust Outgoings' (as defined in the instrument) – in essence, 'Permitted Trust Outgoings' in respect of 'the Member's Singapore Policies business'. The charge therefore falls within the scope of the exemption.
Lloyd's Asia (Offshore Policies) Instrument 2002	The charge created by this instrument secures 'Permitted Offshore Policies Trust Outgoings' (as defined in the instrument) – in essence, 'Permitted Trust Outgoings' in respect of 'the Member's Offshore Policies business'. The charge therefore falls within the scope of the exemption.

<u>'Funds at Lloyd's' Trust Deeds</u>	
Deposit Trust Deed (General Business)	<p>The purpose of the various 'Funds at Lloyd's' (FAL) trust deeds is to provide security for the member's underwriting obligations incurred by it 'as an underwriting member of the Society'.</p> <p>In broad terms, the assets held under these deeds are available to meet policyholder claims in the event that the member's assets held under the 'working' trust deeds identified above are insufficient.</p> <p>Each FAL deed creates a charge over the property held by the trustees pursuant to the trust deed, which is currently registered by Lloyd's. Given the purpose of these deeds as described above, the charges created thereby clearly fall within the scope of the exemption.</p>
Deposit Trust Deed (Long Term Business)	
Security and Trust Deed (General Business)	
Security and Trust Deed (Long Term Business)	
Deposit Trust Deed (Interavailable – Corporate Member version) (General Business) ¹	
Deposit Trust Deed (Interavailable – Corporate Member version) (Long Term Business)	
Security and Trust Deed (Interavailable – Corporate Member version) (General Business) ²	
Security and Trust Deed (Interavailable – Corporate Member version) (Long Term Business)	
Deed of Adherence (in respect of a Lloyd's Deposit Trust Deed (Interavailable – Individual Member version)) (General Business)	
Deed of Adherence (in respect of a Lloyd's Deposit Trust Deed (Interavailable – Individual Member version)) (Long Term Business)	
Deed of Adherence (in respect of a Lloyd's Security and Trust Deed as amended by a Deed of Application) (General Business)	
Deed of Adherence (in respect of a Lloyd's Security and Trust Deed (Interavailable – Individual Member version)) (General Business)	
Deed of Adherence (in respect of a Lloyd's Security and Trust Deed (Interavailable – Individual Member version)) (Long Term Business)	

¹ Including, for the avoidance of doubt, any 'reverse interavailable' versions of the same.

² As per footnote 1.

B. LLOYD'S INSTRUMENTS NOT WHOLLY WITHIN SCOPE OF EXCLUSION³

<u>Instrument creating charge</u>	<u>Reason for categorisation</u>
Deposit Trust Deed (Third Party Deposit) (General Business)	<p>Under the terms of these deeds, a third party (rather than the member themselves) provides the assets which secure the member's underwriting obligations. The deed creates two charges, one registered against the depositor (if a company) and one against the member (if a company or limited liability partnership).</p> <p>The charge against the depositor, not being a Lloyd's member, would require registration, although the one against the member would still benefit from the s.859A(6)(b) exemption.</p>
Deposit Trust Deed (Third Party Deposit) (Long Term Business)	
Deposit Trust Deed (Third Party Deposit) (Interavailable – Corporate Member version) (General Business)	
Deposit Trust Deed (Third Party Deposit) (Interavailable – Corporate Member version) (Long Term Business)	
Deposit Trust Deed (Third Party Deposit) (Interavailable – Individual Member version) (General Business)	
Security and Trust Deed (Covenantor) (General Business)	<p>Under the terms of these deeds, a third party covenants to pay sums on account of the FAL obligations of a member (or two members in the case of the second deed). The charge created by the third party, not being a Lloyd's member, would not benefit from the exemption, although the charge(s) created by the member(s) would.</p>
Security and Trust Deed (Covenantor) (Interavailable – Corporate Member version) (General Business)	
Fixed and Floating Charge	<p>This deed creates charges over assets of the third party covenantor for the purposes of securing the covenant to pay given under the Security and Trust Deed (Covenantor). The covenantor would be not a member so the exemption would not apply.</p>
Deed of Further Charge	<p>This extends the security provided by the Fixed and Floating Charge to cover any additional covenants to pay given by the covenantor. Again, the charge would not be exempted.</p>
Membership Agreement (re: 'Cross-Deficit Clause')	<p>The 'Cross-Deficit Clause' in this Agreement requires the member (on demand) to pay out of its future profits an amount equal to any</p>

³ It should be noted that each of the first seven instruments listed does create a charge against the member which would fall within the scope of the exemption – see explanatory text.

	<p>undischarged underwriting obligations of a 'Connected Company' (i.e. another Lloyd's member under common control). The Agreement creates a charge that is currently registered by Lloyd's.</p> <p>This charge would not benefit from the s.859A(6)(b) exemption because it is not a charge which secures the member's own obligations, but the obligations of a different member.</p>
Bespoke Deeds of Undertaking applying the 'Cross-Deficit Clause'	<p>These deeds are used to apply the 'Cross-Deficit Clause' in cases where the members are connected but the clause is not otherwise contained in the members' Membership Agreements. If the members are companies or limited liability partnerships, the charges created are registered at Companies House.</p> <p>For the reasons given above, any such charges would continue to be registered under the revised Part 25.</p>

nb. references to "the charge" in the Schedule above are without prejudice to the question of whether, as a matter of law, what is being created under the instrument is a charge.