

MARKET BULLETIN

REF: Y5001

Title	CORPORATE INTERAVAILABILITY – CONDITIONS AND REQUIREMENTS
Purpose	To notify the market that new Conditions and Requirements for members participating in a corporate interavailability arrangement have been issued
Type	Event
From	Steve Jules, Head of Market Finance Finance +44 (0)20 7327 5314 (Steve.Jules@lloyds.com)
Date	24 May 2016
Deadline	To apply to corporate interavailability arrangements taking effect for the 2017 year of account
Related links	N/A

Summary

The new Conditions and Requirements for Corporate Members Participating in an Approved Interavailability Arrangement (C&Rs), which came into effect on 23 May 2016, are attached. The C&Rs replace those issued under Market Bulletin Y2273 dated 24 March 2000.

Background

There have been a number of developments in corporate membership at Lloyd's since the conditions and requirements for corporate interavailability arrangements were last updated in 2000, for example, the introduction of limited liability partnerships as a new category of member, and changes to the Funds at Lloyd's (FAL) trust deeds. Accordingly, to bring the requirements up to date, new C&Rs in the form attached have been made. Subject to certain further additional changes, the C&Rs are in the same form as those on which Lloyd's consulted with interested parties in Q3 2015.

Overview of the new C&Rs

At the time the previous conditions and requirements were made (2000), corporate interavailability arrangements were limited to members (in the form of companies) within the

same group, where the group wished to consolidate underwriting into one member going forward. Since then, there has been an increasing trend towards the common ownership of corporate members of all types (ie. including Scottish limited partnerships and limited liability partnerships) whether by corporate entities or by individuals. Consequently, there has been an increase in requests to Lloyd's for approval to consolidate the underwriting of those vehicles into one member going forward.

Separately, new forms of FAL trust deed have been introduced at Lloyd's, which include additional trust powers. The availability of these additional powers has a bearing on the mechanism by which FAL is made interavailable.

In view of the above, the new C&Rs now apply to corporate interavailability arrangements between all types of corporate member, not just those which are companies, subject to the members concerned being under common control; the C&Rs also reflect the revised process and supporting documentation required to give effect to the interavailability of FAL using the trust powers in the new forms of trust deed. Other changes to bring the C&Rs up to date have been introduced, e.g. to reflect the fact that the set-aside calculation is no longer required, and the removal of the requirement, in almost all cases, to register the charges created under the FAL trust deeds at Companies House.

The full text of the new C&Rs is set out at Schedule 1 to this Bulletin. Attached at Schedule 2 are Guidance Notes which should be read in conjunction with the C&Rs and give more detail on how they are to be applied. Schedule 3 provides a high-level overview of a typical corporate interavailability arrangement.

Costs

The fee for a corporate interavailability arrangement will be £1,000 (+VAT) per ceasing member, capped at £10,000 (+VAT) per application. Applicants should also be aware that Lloyd's reserves the right to appoint external legal advisers in respect of a corporate interavailability application, and should this be necessary the applicant would be expected to pick up these costs (n.b. an estimate would be provided in advance).

Applicants would also be expected to appoint their own legal advisers in respect of their application, and to ensure that they have taken appropriate advice on the implications of it from a tax perspective.

Implementation

The C&Rs have been approved on behalf of the Council and come into force on 23 May 2016.

Any queries in relation to this Bulletin should be directed to either Kevin Nethersell (ext. 6253) (kevin.nethersell@lloyds.com) or Simon Hardy (ext. 5264) (simon.hardy@lloyds.com).

**CONDITIONS AND REQUIREMENTS FOR CORPORATE
MEMBERS PARTICIPATING IN AN APPROVED
CORPORATE INTERAVAILABILITY ARRANGEMENT**

These conditions and requirements are made under paragraphs 16 and 40 of the Membership Byelaw (No.5 of 2005) and all other powers enabling.

1. Interpretation and Application

- (1) The provisions of Appendix 1 shall have effect.
- (2) These conditions and requirements are in addition to the Membership and Underwriting Conditions and Requirements (Funds at Lloyd's) and the Membership and Underwriting Requirements (Corporate Member) except where such other requirements are modified by the provisions hereof.

2. Application Procedure and Consent

- (1) A corporate interavailability arrangement may only be implemented if it is between corporate members controlled by the same person and has been approved by an authorised person.
- (2) The corporate members proposing to participate in an approved corporate interavailability arrangement must submit a written application to the Head of Market Finance no later than 30 September in the year preceding the year in which the arrangement is to become effective.
- (3) The written application must provide the following information:-
 - (a) the structure of the corporate group and the identity of the ceasing member(s) and the continuing member(s);
 - (b) details of the current funds at Lloyd's position of the ceasing member(s) and continuing member(s) in the group and their funds at Lloyd's position following implementation of the proposed arrangement; and
 - (c) such additional information as an authorised person may require.

3. Agreements and documentation

- (1) In order to implement the approved corporate interavailability arrangement each of the ceasing member(s) and the continuing member(s) shall:-
 - (a) have completed and executed or procured the completion and execution of:-
 - (i) one or more interavailable trust deeds in Lloyd's prescribed form for the holding of Lloyd's deposits and, where applicable, Lloyd's life deposits; and

- (ii) one or more Funds at Lloyd's transfer instruments, or deeds of total or partial determination release and resettlement, each in Lloyd's prescribed form, by which the ceasing member's Lloyd's deposit and/or Lloyd's life deposit will be transferred to one or more interavailable trust deeds in the appropriate form;
- (b) provide and procure the provision to the Society of:-
 - (i) a letter addressed to the Society from each ceasing member, continuing member and (where applicable) the holding company of such members setting out the benefits of the approved corporate interavailability arrangement to that member or (where applicable) the holding company and the advantages and disadvantages of the arrangement to existing and future insurance creditors of each ceasing member and continuing member; and
 - (ii) copies of the minutes of a meeting held by each ceasing member, continuing member and (where applicable) holding company approving the entering into of the approved corporate interavailability arrangement and the execution of the required documents. In the case of the ceasing member(s) and continuing member(s), the minutes must contain a statement to the effect that the directors (or, if a LLP or SLP, the members or general partner respectively thereof) have considered the financial position of the member at the time of execution of the documents to give effect to the approved corporate interavailability arrangement, and immediately thereafter, and are satisfied that there is no ground on which the member could be found to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (iii) if so requested by the Society, in the case where a ceasing member's Lloyd's deposit and/or Lloyd's life deposit is provided by a third party depositor which is a company, a confirmation of financial position in the Lloyd's prescribed form from that third party depositor;
- (c) if so requested by the Society, procure the provision of a deed of indemnity in favour of the Society (in a form acceptable to the Society) from a company within the same group as the ceasing member and the continuing member or otherwise from such person as an authorised person may agree;
- (d) in the case where the ceasing member is a company, and except to the extent that the ceasing member's objects are unrestricted or otherwise permit it:-
 - (i) amend the ceasing member's articles of association by either: (a) adding the standard form objects clause (in Lloyd's prescribed form) to make the entering into of the approved corporate interavailability arrangement a principal object of the ceasing member, or (b) removing the company's objects in their entirety; and
 - (ii) provide a copy of the shareholders' resolution and the amended articles of association evidencing the amendment made in

- accordance with (i) above;
- (e) in the case where the ceasing member is a company, procure the provision of a shareholders' resolution from the ceasing member's shareholder(s) by which the shareholder(s) approve the entering into of the approved corporate interavailability arrangement;
 - (f) in the case where the ceasing member's Lloyd's deposit is provided by way of an approved covenant and an approved charge, procure the provision to the Society of:-
 - (i) a deed of covenant (interavailable) and a deed of further charge in Lloyd's prescribed form;
 - (ii) a Supplemental Agreement varying a Master Agreement in Lloyd's prescribed form; and
 - (iii) a confirmation of financial position from the covenantor in Lloyd's prescribed form;
 - (g) if so requested by the Society, procure the provision to the Society of a legal opinion (in a form acceptable to the Society) in respect of the approved corporate interavailability arrangement;
 - (h) provide to the Society or procure the provision to the Society of such additional deeds, agreements, undertakings and opinions in connection with the approved corporate interavailability arrangement as an authorised person may require.
- (2) In the case where a ceasing member is party to a members' agent's agreement, the ceasing member shall provide to the Society a Confirmation and Request to Lloyd's in the prescribed form confirming, inter alia, that the ceasing member (and in the case where that ceasing member is a SLP or LLP, the limited partner(s) or member(s) respectively thereof) have been properly advised of the consequences of entering into the approved corporate interavailability arrangement and, if required, a Power of Attorney in the prescribed form to appoint one or more attorneys to do such things as are necessary to give effect to the arrangement.
- (3) A list of the relevant deeds, agreements and other documentation for the purposes of these conditions and requirements is set out at Appendix 2.

4. Post completion steps

- (1) In the case where a ceasing member (being a company) has amended its articles of association pursuant to paragraph 3(1)(d), the ceasing member shall notify the Society that it has filed a copy of its amended articles (together with the shareholders' resolution referred to in paragraph 3(1)(d)(ii) above) with Companies House in accordance with the requirements of the Companies Acts.
- (2) In the case where a ceasing member (being a company) has procured the provision of a shareholders' resolution pursuant to paragraph 3(1)(e) above, the ceasing member shall notify the Society that it has filed a copy of the said resolution with

Companies House in accordance with the requirements of the Companies Acts.

5. Prescribed Forms

- (1) A form or other document is in the prescribed form if it is in the form as an authorised person may prescribe from time to time or have prescribed for the purposes of these conditions and requirements.
- (2) An authorised person may at any time:-
 - (i) alter or replace any of the prescribed forms or other documents referred to in these conditions and requirements; or
 - (ii) prescribe such other forms or documents for the purposes of these conditions and requirements; and
 - (iii) approve variations or additions to any of the prescribed forms or other documents referred to in these conditions and requirements.

6. Exemptions and variations

The Director, Finance, the Head of Market Finance or the Head of Market Services may at any time grant a corporate member or members to whom these conditions and requirements apply exemption from such provisions of these conditions and requirements, or vary the application of these conditions and requirements to that corporate member or those corporate members, on such terms and conditions as he or she sees fit.

7. Commencement and revocation

- (1) These conditions and requirements shall come into force on 23 May 2016.
- (2) The conditions and requirements that came into effect on 12 November 1999 are hereby revoked.

APPENDIX 1

Interpretation

1. Except where otherwise provided, the words and expressions used in these conditions and requirements have the meaning given to them in the Membership Byelaw (No. 5 of 2005), the Definitions Byelaw (No. 7 of 2005) or the Membership and Underwriting Conditions and Requirements (Funds at Lloyd's).
2. In these conditions and requirements:
 - (1) words and expressions importing the masculine gender include the feminine and neuter; and
 - (2) words in the singular include the plural and vice versa.
3. The headings in these conditions and requirements shall not affect the interpretation of these conditions and requirements.
4. In these conditions and requirements, unless the context otherwise requires:-

“approved corporate interavailability arrangement”

means a corporate interavailability arrangement approved by an authorised person;

“authorised person”

means, in relation to any provision in these conditions and requirements, the Franchise Board or any sub-committee or officer or employee of the Society authorised by the Council or Franchise Board to discharge the duties and functions or to exercise the powers and discretions specified in that provision;

“corporate interavailability arrangement”

means an interavailability arrangement where:

- (i) the member which is to cease underwriting insurance business at Lloyd's is a corporate member; and
- (ii) the successor member is another corporate member which is controlled by the same person that controls the corporate member;

“ceasing member”

means, in relation to a corporate interavailability arrangement, the corporate member which is to cease underwriting insurance business at Lloyd's at the end of the current year of account and make its Lloyd's deposit or its Lloyd's life deposit interavailable to a continuing member;

“continuing member”

means, in relation to a corporate interavailability arrangement, the corporate member which is controlled by the same person that controls the ceasing member and which will continue to underwrite

for the next following year of account and to which the Lloyd's deposit or Lloyd's life deposit of one or more ceasing members is to be made interavailable;

“LLP”

means a limited liability partnership;

“SLP”

means a Scottish limited partnership.

APPENDIX 2

List of Relevant Deeds, Agreements and Other Documentation

1. Deposit Trust Deed (Interavailable – Corporate Member) (GEN) (14)
2. Deposit Trust Deed (Interavailable – Corporate Member) (LIFE) (14)
3. Deposit Trust Deed (Third Party Deposit) (Interavailable – Corporate Member) (GEN) (14)
4. Deposit Trust Deed (Third Party Deposit) (Interavailable – Corporate Member) (LIFE) (14)
5. Security and Trust Deed (Interavailable – Corporate Member) (GEN) (14)
6. Security and Trust Deed (Interavailable – Corporate Member) (LIFE) (14)
7. Security and Trust Deed (Covenantor) (Interavailable – Corporate Member) (GEN) (14)
8. FAL transfer instruments, or deeds of total or partial determination release and resettlement, in the appropriate form
9. Confirmation of financial position for a third party depositor
10. Deed of Covenant (Interavailable)
11. Deed of Further Charge
12. Confirmation of financial position for a covenantor
13. Supplemental Agreement varying a Master Agreement
14. Deed of Indemnity
15. Standard Form Objects Clause
16. Board minutes
17. Legal opinion
18. Confirmation and Request to Lloyd's
19. Power of Attorney

Guidance Notes

The notes below provide further guidance on certain provisions in the new Conditions and Requirements for Corporate Members Participating in an Approved Corporate Interavailability Arrangement (C&Rs). References are to the paragraphs of the C&Rs at Schedule 1 of this Bulletin.

Paragraph 2 – Application Process and Consent

As per the definition in Appendix 1 of the C&Rs, a “corporate interavailability arrangement” may only be approved if made between corporate members that are controlled by the same person (whether corporate or natural). It should be noted that, for this purpose, “control” may be exercised otherwise than through full share ownership.

In order to determine whether corporate members are under common control, reference should be made to the definition of “controller” in the Definitions Byelaw (No. 7 of 2005) and to section 422 of the Financial Services and Markets Act 2000, to which that definition refers.

The written application referred to in paragraph 2(3) should specify the basis upon which common control is exercised over the participating corporate members.

Paragraph 3 – Agreements and documentation

The Society will provide a list of the documents that it requires (the “**Documents List**”) in respect of each approved corporate interavailability arrangement following receipt of a written application made in accordance with paragraph 2.

In each case, certain items on the Documents List (such as the FAL trust deeds) will be provided by the Society. Other items (e.g. board minutes) must be submitted in draft by the applicants for the Society’s approval. Guidance notes on the production of these items will be provided by the Society with the Documents List.

Paragraph 3(1)(a)(ii)

The Society’s current prescribed forms of trust deed include a power of transfer that can be exercised by the Society (the “**Power of Transfer**”). In the context of a corporate consolidation, this makes it possible (provided that certain conditions are met) for FAL that is held on trust by the Society for a ceasing member to be directly transferred to a trust by which it supports the underwriting of both the ceasing member and the continuing member.

Certain earlier prescribed forms of Lloyd’s trust deeds (i.e. those in place prior to the introduction of the (09) form deeds) (“**Old Trust Deeds**”) do not include a Power of Transfer. In the case where a ceasing member’s FAL is still held under an Old Trust Deed the transfer of that FAL to an interavailable trust deed must take place by an alternative mechanism, e.g. release and resettlement (where the ceasing member’s FAL is released from the trust deed and immediately resettled on the terms of an interavailable trust deed.

Paragraph 3(1)(a)(ii) requires the completion of the appropriate FAL transfer instruments, or deeds of total or partial determination, release and resettlement, by which the FAL will be transferred to interavailable trust deeds. Lloyd’s will determine the forms of instruments or

deeds required on a case-by-case basis, depending on how the FAL in question is held.

Paragraph 3(1)(b)(iii)

In the case where a ceasing member's FAL comprises a third party deposit provided by a company and held under an Old Trust Deed, the Society may request that the depositor provides a Confirmation of Financial Position. This is because the transfer of the FAL to an interavailable trust deed involves the release and immediate resettlement of the FAL, thereby creating a technical insolvency risk. The Confirmation of Financial Position is designed to give comfort to the Society as to the solvency of the depositor in deciding whether or not to effect the transfer of the FAL.

Paragraph 3(1)(c)

Under the previous conditions and requirements, the provision of an indemnity was a requirement of all corporate consolidations. Going forward, the requirement for an indemnity will be limited primarily to the following circumstances:

- where the ceasing member's FAL is held under an Old Trust Deed; and/or
- where there is a material increase in the risk profile of the continuing member's underwriting business compared to that of the ceasing member(s).

The purpose of the indemnity is to protect the Society from any liability arising from a decision to exercise its powers to give effect to the corporate interavailability arrangement requested by the applicants.

Paragraph 3(1)(d)

The requirement for a ceasing member that is a company to amend its articles of association is to ensure that there is no question regarding the capacity of the company to enter into the corporate interavailability arrangement. The paragraph has been revised to take account of the fact that, following the implementation of certain provisions of the Companies Act 2006, it is now possible for a company to dispense with its objects entirely, so that there is no limitation on the company's capacity to act. If the ceasing member's articles require amending, it may be easier to dispense with the objects entirely rather than add the Lloyd's standard form objects clause.

Paragraph 3(1)(e)

This paragraph requires the ceasing member to procure a resolution from its shareholder(s) approving the entering into of the corporate interavailability arrangement and the execution of the deeds in question. The purpose is to mitigate any risk of challenge to the arrangement, by providing confirmation that the directors have authority to enter into the transaction and are not in breach of their fiduciary duties to the company.

Paragraph 3(2)

The Confirmation and Request to Lloyd's, and the Power of Attorney, referred to in this paragraph were previously combined into one document. They have now been split into two, to cater for the fact that the Power of Attorney may not be required in every case, if, for example, the persons otherwise authorised by the Power of Attorney to sign documents on behalf of the ceasing member already have power to do so, e.g. by virtue of already being

directors of the member, or (in the case of LLPs) directors of a designated member of the LLP.

Paragraph 4

As per paragraphs 3(1)(d) and 3(1)(e) of the C&Rs, it will be necessary for a ceasing member which is a company to obtain resolutions from its shareholder(s) to approve the corporate interavailability arrangement and/or amend its articles. Such resolutions must be filed at Companies House, and the purpose of paragraph 4 is therefore to provide comfort to the Society that this requirement has been met.

Paragraph 6

The ability of certain persons to grant exemptions from or variations to the C&Rs is included to provide flexibility, so that particular circumstances affecting a member or members can be accommodated or addressed expediently. If possible, prior notice of the use of this power would be given with the opportunity to comment on it.

Member	Value	2014	2015	2016	2017	Fund	Description
MEMBER A LTD	£20m					NON DEPOSIT FAL LLOYD'S DEPOSIT	Cannot be made inter-available unless held in Lloyd's DEPOSIT Forward inter-available to Member B Ltd from 2017
	£30m						
	£50m						
MEMBER B LTD	£30m					Inter-available Deposit Funds at Lloyd's	Forward inter-available from Member A Ltd to Member B Ltd from 2017 Member B Ltd's own FAL (can be non deposit FAL as it is not inter-available)
	£60m						
	£90m						

Summary

1. Member A Ltd ceases underwriting and transfers its capacity to Member B. Member A's Lloyds Deposit is made inter-available to Member B Ltd. The Non Deposit FAL of Member A cannot be made inter-available.
2. The inter-available Lloyd's Deposit is only available to support ceasing Member A's creditors and the future underwriting creditors of Member B. The existing FAL of Member B is available to support its existing underwriting creditors and future underwriting creditors
3. Arrows show the direction of the inter-available funds. Inter-available funds can only be made forward inter-available
4. Inter-availability can only commence from the beginning of a year of account