

Change of Control (CoC) Guidance – Introductions and Definitions

A change of control application is required when a proposed new applicant and/or existing controller(s) (the “Applicant”) proposes to be a controller of a firm that is a Member of Lloyd’s (the “Member”). This is ‘stage 1’ of the process. Please note that if the change will impact multiple corporate members, one questionnaire can be provided so long as the ownership structure and responses for all the corporate members are the same.

“**Controller**” is defined in the Definitions Byelaw (No.7 of 2005) by reference to Section 422 of the Financial Services and Markets Act 2000. This questionnaire must therefore be completed by any person proposing to hold:-

- (a) 10% or more of the shares in the Member or in a parent undertaking of the Member;
- (b) 10% or more of the voting power in the Member or in a parent undertaking of the Member; or
- (c) shares or voting power in the Member or in a parent undertaking of the Member as a result of which the Applicant will be able to exercise significant influence over the management of the Member.

For the purposes of (a), (b) and (c) above, the holding of shares or voting power by a person includes any shares or voting power held by another person, where the two are **acting in concert**. Persons are acting in concert when each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement (which need not be in writing) made between them.

Under Section 1162 of the Companies Act 2006, an undertaking (i.e. a company) is a **parent undertaking** in relation to another undertaking if:

- (a) it holds a majority of the voting rights in the undertaking, or
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
- (c) it has the right to exercise a dominant influence over the undertaking by virtue of provisions contained in the undertaking's articles, or by virtue of a control contract, or
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking;

and “parent undertaking” also includes an individual who would be a parent undertaking for the purposes of those provisions if he were taken to be an undertaking.

Fees will be collected from the Member via the Member Services annual charge process unless the Member is not underwriting whereby an invoice will be raised, where applicable.

UK Tax Resident

All new Members must be UK tax resident¹ⁱ persons, e.g. UK tax resident individuals or UK tax resident Companies.

¹ resident in the United Kingdom for tax purposes” means (i) in the case of an individual, as determined in accordance with the provisions of the Finance Act 2013, and (ii) in the case of a company, as determined in accordance with the provisions of the Corporation Act 2009 and any applicable Double Taxation arrangements.

Please note, Lloyd's reserves the right to require the Applicant to provide Lloyd's with a legal opinion addressed to Lloyd's from a legal adviser acceptable to Lloyd's stating, inter alia, that (a) the application will not be in breach of any laws or regulations of that jurisdiction; and (b) that if an LLP it will be recognised under such laws or regulations.

The Member's tax residence may be affected if a change of control results in a change to the location from which the Member is centrally managed and controlled. This needs to be advised to and discussed with Lloyd's immediately. It must be confirmed that the applicant acknowledges this.

If a member of an LLP subsequently becomes a non-UK tax resident, they will be asked to resign from the LLP, or if they are the sole member/partner of the LLP, then the LLP will be required to cease underwriting at Lloyd's.

Contingent Liabilities

Applicants acquiring an interest in a Member which has previously underwritten insurance business at Lloyd's (whether or not it still continues to do so) should be aware that it continues to have contingent liabilities in respect of that insurance business, notwithstanding that the years of account on which the business was written may have been reinsured to close.

Stage 1 – Change of Control Application

The following documentation should be provided as part of the Stage 1 application process:

- i. A completed and signed information form for each of the proposed controllers (this includes new directors) together with supporting evidence.
- ii. Pre and post structure charts which detail the full ownership structure before and after the change.

The applicant may seek an exemption from providing an information form where they are;

- a. an existing individual member of Lloyd's
- b. already approved, or made application to be approved, as a Controller, Director, LLP Member or Limited Partner of another corporate member
- c. registered with the FCA and/or the PRA as an approved person

Stage 2 – once the Change has taken place and advised to Companies House

The Stage 2 process applies to all change of controls as Corporate Members are required to seek approval for any changes they wish to make within their structures. Once approval has been given, Corporate Members have **3 months** from the date of the consent letter

(given as part of the approval) to action the change and provide Lloyd's with the relevant documentation and evidence that the change has taken place.

This includes:

- *Confirmation of the effective date of the change*
 - *Evidence that the change has taken place e.g. copy of certified updated share registers post the change of ownership, certified copy of stock transfer forms etc*
 - *Signed voting constituency form*
 - *Signed tax forms*
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In addition, a tax letter may be issued as part of the approval letter therefore responses to the questions on that letter will also be required.

Failure to provide all the relevant stage 2 documentation within the 6-month deadline will result in a new application needing to be submitted and additional fees collected.

Other CoC Guidance for Members

- A 10% beneficial owner (BO) and controller threshold is always applicable regardless of risk assessment, however simplified due diligence (SDD) may be able to be applied in certain circumstances, which **could** mean that Lloyd's would not need to review any 10% or greater shareholders of the regulated/listed entity when applying SDD
- Should any shareholder exceed ultimate ownership of 10% in a Lloyd's member who previously held less than 10%, the following applies;
 - If currently approved by Lloyd's a CoC Questionnaire must be submitted **prior to the change**, Lloyd's will then confirm whether a Cross Deficit Clause (CDC) is needed. Once the CDC requirement is satisfied Lloyd's can issue consent. Certified evidence of the change alongside the usual CoC application forms (group structure chart, Voting Constituency Form) must also be provided and Lloyd's will need to complete a partial review to ensure that due diligence remains accurate. ***This process must be completed in full within 3 months of the change***, failure to comply will result in a breach fee being due and potentially the imposition of sanctions. The usual change of control fee will still be applicable;
 - If new to Lloyd's then follow the existing CoC process, i.e. complete the online CoC Questionnaire, Information Forms, providing supporting documentation and gaining Lloyd's consent before making the change.
- Should any controller's interest change by 10% or more (including LLPs) then Lloyd's must be notified **in writing**. Certified evidence of the change must also be provided. Lloyd's will complete a partial review to ensure that due diligence remains accurate. ***This process must be completed in full within 3 months of the change***, failure to comply will result in a breach fee being due and potentially the imposition of sanctions. Lloyd's consent is not required and no fee is due.
- For LLPs, if there has been a change to LLP interests which does not meet the above, Lloyd's must be notified **in writing** and TFPF applications completed as required. ***This process must be completed in full within 3 months of the change***. For changes to LLP interests no fee is due and Lloyd's consent is not required. However should a TFPF application be required then the usual fee and Lloyd's consent will be applicable. Please note that all LLP partners must be UK tax resident;
- Should an existing controller's (greater than 10%) ultimate ownership fall below 10% then Lloyd's must be notified via a written letter. Certified evidence of the change must also be provided and Lloyd's will complete a partial review to ensure that due diligence remains accurate.
This process must be completed in full within 3 months of the change, failure to comply will result in a breach fee being due and potentially the imposition of sanctions. Lloyd's consent is not required and no fee is due;
- Any changes which do not result in any of the above do not require notification to Lloyd's and will be picked up during Lloyd's other processes, i.e. declaration of compliance, cyclical reviews, new applications, etc. Lloyd's consent is not required and no fee is due.

Other CoCo Guidance for TPFPs

- The BO threshold is risk dependant, i.e. 10% for high risk, 25% for low/medium. SDD can also be applied, where applicable.
- Should any shareholder exceed ultimate ownership of 10%/25% (depending upon the risk assessment) in the TFPF who previously held less than 10%/25%, then:
 - If they are currently approved by Lloyd's then Lloyd's must be notified of this change via a written letter. Certified evidence of the change must also be provided and Lloyd's will need to complete a partial review (see below) to ensure that our due diligence remains accurate. ***This process must be completed in full within 3 months of the change***, failure to comply will result in a breach fee being due and potentially the imposition of sanctions. Lloyd's consent is not however required.
 - If they are new to Lloyd's then Lloyd's must be notified of this via a written letter and a full trigger event review must be completed, including Information Forms for any new entities. ***This process must be completed in full within 3 months of the change***, failure to comply will result in a breach fee being due and potentially the imposition of sanctions. Lloyd's consent is not required and no fee is due.
- Should an existing BO's (greater than 10%/25%) ultimate ownership fall below 10%/25% (as applicable) then Lloyd's must be notified via a written letter. Certified evidence of the change must also be provided and Lloyd's will need to complete a partial review (see below) to ensure that our due diligence remains accurate. ***This process must be completed in full within 3 months of the change***, failure to comply will result in a breach fee being due and potentially the imposition of sanctions. Lloyd's consent is not required and no fee is due.
- Should any BO's interest change by 10% or more then Lloyd's must be notified of this via a written letter. Certified evidence of the change must also be provided and Lloyd's will need to complete a partial review (see below) to ensure that our due diligence remains accurate. ***This process must be completed in full within 3 months of the change***, failure to comply will result in a breach fee being due and potentially the imposition of sanctions. Lloyd's consent is not required and no fee is due.
- Any changes which do not result in any of the above (i.e. changes which do not pass the 10%/25% BO threshold or are less than 10%) do not require notification to Lloyd's and will be picked up during Lloyd's other processes, i.e. cyclical reviews, new applications, etc). Lloyd's consent is not required and no fee is due.