

# OVERSEAS UNDERWRITING BYELAW

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## Purpose

The purpose of this Byelaw is to amend and consolidate the existing byelaws relating to *overseas underwriting* into a single byelaw.

The byelaw revokes

Membership (Overseas Deposits) Byelaw (No. 2 of 1992)

Lloyd's Japan Inc Byelaw (No. 2 of 1997)

Lloyd's Asia Byelaw (No. 17 of 1999)

Words and terms shown in italics have the meaning set out in the Definitions Byelaw.

This Byelaw was made by the *Council* on 4 February 2004 in exercise of its powers under sections 6(2) and 8(3) of, and paragraphs (1), (4), (20), (41), and (42) of schedule 2 to, Lloyd's Act 1982 and may be referred to as the Overseas Underwriting Byelaw (No. 2 of 2004).

The headings and these notes are for guidance only and do not form part of the Overseas Underwriting Byelaw (No. 2 of 2004).

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## Part A - Overseas deposits

### Provision of overseas deposits

1. The *Franchise Board* may from time to time prescribe conditions and requirements regarding the provision, or the procurement of the provision, by *members* of the *Society* of funds in respect of and incidental to the establishment and maintenance of *overseas deposits*.
2. Without prejudice to the generality of paragraph 1, any conditions and requirements prescribed under that paragraph –
  - (a) may impose requirements which are absolute or which are to vary from time to time by reference to such factors as may be specified or determined in accordance with such conditions and requirements;
  - (b) may make different provision for different cases or different classes of cases;
  - (c) may include requirements that *members* of the *Society* provide, or procure the provision of, funds by way of loans to, or deposits with, the *Society*, any *deposit company* or any other person whether as a trustee or otherwise and whether out of *members' premiums trust funds* or otherwise;
  - (d) may include a requirement that *underwriting agents* exercise any powers which they have under any *premiums trust deed* to transfer funds to any *central syndicate sub-fund* held under that *premiums trust deed*;
  - (e) may include requirements –
    - (i) to complete applications, notices and other documents in such form as may be prescribed by the *Franchise Board*;
    - (ii) to execute and deliver or otherwise become a party to any deed, trust deed, contract, assignment, undertaking, mandate, authority, power of attorney, or other document or instrument as may be prescribed by the *Franchise Board*;
  - (f) may specify circumstances in which *members* of the *Society* are to be exempt from any such *condition or requirement* or may be excused from compliance with any such *condition or requirement* to such an extent as the *Franchise Board* may think fit;
  - (g) may include requirements that –

- (i) *members* of the *Society* provide funds in different currencies;
  - (ii) provide for the determination of the amount to be provided in accordance with a specified scale or other specified factor;
  - (iii) may prescribe the manner and timing of the provision of funds;
  - (iv) may, in the case of loans or deposits, provide that any such loan or deposit be made in a particular form and on particular terms and at any rate of interest (or without interest) and at any time or times and generally upon any terms whatsoever as to repayment; and
- (h) may contain incidental, supplementary and transitional provisions.
3. The *countries* in which *overseas deposits* are to be made and the amounts of such *overseas deposits* and generally the manner in which such *overseas deposits* are to be dealt with and applied shall be in the absolute discretion of the *Franchise Board*, if such *overseas deposits* are held by the *Society*, or the directors of the *deposit company*, if such *overseas deposits* are held by the *deposit company*. Nothing contained in this Byelaw or in any *condition or requirement* made under this Byelaw shall be construed or operate as in any manner limiting such discretion or as giving any *member* of the *Society* any right, title or interest to require any such *overseas deposit* or any part of such *overseas deposit* to be deposited, dealt with or applied in any particular manner or in any particular *country*.

## Part B - Compliance

Compliance with overseas laws and regulations

4. The *Franchise Board* may take any steps and give any undertakings required by or under the laws or regulations of any *country* applicable to *members* of the *Society* in order to secure authorisation for *members* of the *Society* to transact insurance business in or emanating from that *country*.
  
5. The *Franchise Board* may from time to time prescribe conditions and requirements or issue directions to be complied with by all or some of the *members* of the *Society* or *underwriting agents* in relation to *overseas insurance business*. Such *conditions and requirements* or directions may include the requirement for all or some *members* of the *Society* (whether or not underwriting members) or for any *underwriting agent* to -
  - (a) pay directly or reimburse the *Society* in respect of any fines, costs or awards levied by any court, regulator or any other relevant authority of any *country* in which such *members* or *underwriting agents* transact *overseas insurance business*;
  - (b) deal with any matter arising in any particular *country* in a particular way, including cooperating with any Lloyd's general representative or attorney in fact in such *country* or any Lloyd's agent appointed to accept service of suit under an overseas jurisdiction clause in an insurance policy.

## Part C – Payment of Fees and Levies

### Payment of fees and levies

6. The *Franchise Board* may from time to time prescribe conditions and requirements requiring *members* of the *Society* who underwrite or who propose to underwrite or who have underwritten *overseas insurance business* to pay to the *Society* or, as the *Franchise Board* may determine, any *deposit company*, fees and/or levies for the purpose of financing, or reimbursing any expenses incurred at any time in connection with the underwriting of *overseas insurance business*.
7. The amount of any fee or levy made under paragraph 6, the manner of calculating such fee and/or levy and the date or dates on which any such levy shall be payable shall be such as the *Franchise Board* may from time to time prescribe in any *conditions and requirements* made under paragraph 6 above.

## Part D – Underwriting

### Conditions of underwriting

8. Without prejudice to the generality of the *Franchise Board's* powers under this byelaw to prescribe conditions and requirements applicable to any *member* of the *Society*, the provision of funds or the procurement of the provision of funds, compliance with overseas laws and regulations and the payment of fees and levies in accordance with any conditions and requirements made under this Byelaw shall be a condition relating to permission to underwrite insurance business at Lloyd's and the provisions of the Membership Byelaw shall apply accordingly where any *member* of the *Society* fails to comply with such condition.

## Part E – General

No set off

9. Any sum required by the *Franchise Board* by conditions and requirements made under this byelaw to be provided by or at the procurement of a *member* of the *Society* shall be paid free and clear from any set-off, counterclaim or deduction on any account whatsoever, and shall, if the *Franchise Board* so specifies, if not paid on the due date for payment, bear interest from the due date until the date payment (as well after as before judgment) at the rate prescribed from time to time by the *Franchise Board* and the *member's* obligation to provide or procure the provision of such sum, together with any interest shall be enforceable by the *Society* in any court of competent jurisdiction.

Commencement

10. This byelaw shall come into force on 1 March 2004.

The Franchise Board

11. All references in this byelaw to the *Franchise Board* shall be deemed also to be references to the *Council*. The *Franchise Board* may exercise all of the powers, discretions and functions set out in this byelaw as the agent of the *Council*.

Revocation and transitional provision

12. The following byelaws are revoked with effect from 1 March 2004:
  - (a) Membership (Overseas Deposits) Byelaw (No. 2 of 1992);
  - (b) Lloyd's Japan Inc Byelaw (No. 2 of 1997); and
  - (c) Lloyd's Asia Byelaw (No. 17 of 1999);

save that nothing in this byelaw shall affect the validity of any conditions and requirements made pursuant to the byelaws above or any other byelaw in respect of

*overseas insurance business* and such conditions and requirements shall be deemed to have been made pursuant to this Byelaw with effect from 1 March 2004.