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# EIOPA Recommendation 9

## Managing Agent guide

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# EIOPA Recommendation 9

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# Introduction

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## Lloyd's EIOPA Recommendation 9

The adoption of EIOPA Recommendation 9 by European national regulators requires Lloyd's Insurance Company S.A. (Lloyd's Brussels) to make changes to the business it can accept through non-EU authorised intermediaries (Coverholders and Brokers).

Recommendation 9 also has implications for the administration of business to be transferred to Lloyd's Brussels pursuant to the Part 7 scheme being undertaken by Lloyd's on 30 December 2020.

This document provides guidance on the requirements for Managing Agent, Brokers and Coverholders and on the options for transferring the servicing of the business.

## Contact us

For general enquiries about this guide please contact [lloydsbrussels.delegatedauthority@lloyds.com](mailto:lloydsbrussels.delegatedauthority@lloyds.com).

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# EIOPA Recommendation 9

## EIOPA Recommendation 9 (1 of 2)

### What is EIOPA Recommendation 9 and why is it required?



In February 2019, the European Insurance and Occupational Pensions Authority (EIOPA) published its 'Recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union'. Recommendation 9 in that document addresses firms carrying on distribution activities and provides that: *“Competent authorities should ensure that all intermediaries carrying out distribution activities which target EU27 policyholders and EU27 risks fall under the scope of the IDD”*.



Based on EIOPA's interpretation of the Insurance Distribution Directive (IDD), Recommendation 9 has been taken as requiring EU national regulators to ensure that where both the risk location and the policyholder are located in the EU (cumulative test), then all intermediaries in the distribution chain must be authorised to undertake IDD activities by the appropriate EU regulatory authority.



While the EIOPA Recommendations are non-binding, member states are required to indicate whether they will comply and, if they do not intend to comply, to provide reasons for doing so. All member states, including the EEA countries of Norway, Iceland and Liechtenstein, have indicated that they will comply with Recommendation 9. Note that EIOPA Recommendation 9 does not apply to reinsurance.



Note that although the EIOPA Recommendations do not make specific reference to reinsurance, distinct from insurance, EIOPA has emphasised that Recommendation 9 is intended to apply to intermediation activity involving reinsurance and managing agents should proceed on that basis. For intermediaries dealing with reinsurance that are presently relying on passporting rights, arrangements will in any event need to be made to ensure that the intermediary that takes over any IDD regulated activities will have appropriate authorisation.

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## EIOPA Recommendation 9 (2 of 2)

### Recommendation 9 and the Part VII transfer

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#### **Part VII transfer**

- Lloyd's is undertaking a Part VII transfer to ensure the orderly run-off of existing (EEA) policies and claims without breaching legal or regulatory requirements
- All in-scope EEA business will transfer to Lloyd's Insurance Company S.A. (Lloyd's Brussels), with a 100% quota share reinsurance agreement back to the originating Syndicates, and Managing Agents will administer the policies and claims related to the Part VII book of business, as outsourced service providers of Lloyd's Brussels
- The risks in-scope for the Part VII Transfer are those EEA risks underwritten at Lloyd's from 1993 up to 12 April 2019 for direct business, and up to the end of October 2020 for reinsurance business (where not already written into Lloyd's Brussels). Please note that Inwards reinsurance business is in-scope only where the legally recognised cedant is domiciled in Germany, and that any multi-jurisdictional business with both EEA and non-EEA risks will need to be split, with only the EEA business transferring
- The effective transfer date proposed is 30 December 2020, subject to UK High Court approval

#### **Recommendation 9 impacted policies that are also included on the Part VII transfer**

- The Part VII transfer will provide for the transfer of the insuring entity from the relevant syndicates to Lloyd's Brussels
- Policies that are in-scope to be transferred under Part VII, and which are also 'impacted business' under Recommendation 9, will need to be administered by an EU authorised firm from 1 January 2021. This will require that EU authorised Brokers and Coverholders are appointed to take over the administration of all policies that are transferred as a result of Part VII

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# Implications of Recommendation 9 for intermediaries – an overview

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## Implications for intermediaries (1 of 2)

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- UK intermediaries that currently operate in the EU under EU passporting arrangements will lose their permission to carry on regulated activities within the EU
- EU firms currently operating in the UK under EU passporting rights will lose those permissions when the transition period ends
- While the UK's Financial Conduct Authority (FCA) has put in place a Temporary Permission Regime as a simple mechanism to allow EU intermediaries to continue operating in the UK, no similar regime has been put in place for UK firms looking to continue operating in the EU
- As it is likely to be difficult for many UK authorised intermediaries to obtain the necessary authorisations to continue operating in the EU, in practice they will be required to identify or otherwise establish EU authorised firms to take over their EU book of business to act as the intermediaries for Lloyd's Brussels
- Recommendation 9 has been interpreted to require that all firms in the distribution chain are appropriately IDD authorised, where both the policyholder **and** risk location are in the EU (this is referred to as impacted business). This is somewhat contrary to previous understandings of IDD that certain wholesale intermediaries may not require authorisation under IDD on the basis that their activities were not carried out within the EU
- As a result of Recommendation 9, there are a number of UK Coverholders and Brokers that will be required to cease carrying on any activities that could fall within IDD and will need to ensure that the handling of their business is transferred to an EU authorised firm
- The need for all Coverholders and Brokers dealing with impacted business to be authorised by an EU regulator has implications for these risks written at Lloyd's

## Implications for intermediaries (2 of 2)

### For Current business written by Lloyd's Brussels

- Since April 2019, all EEA business at Lloyd's has been underwritten by Lloyd's Brussels. With the end of the Brexit transition period
  - All new and renewing impacted business needs to have intermediaries in the chain that are EU authorised firms
  - The administration of all business written by Lloyd's Brussels since April 2019, where IDD regulated activities are involved, needs to be transferred to be administered by suitably authorised EU Brokers or Coverholders
- Lloyd's Brussels has been working closely with the Broker and Coverholder community throughout 2020 to support the migration of this business

### For Part VII transferred business also impacted by Recommendation 9

For all business which is subject to the Part VII transfer the administration of the business, where IDD regulated activities are involved, needs to be transferred to be administered by suitably authorised EU Brokers or Coverholders

#### Important note

Lloyd's Brussels's regulator in Belgium, the National Bank of Belgium (NBB) has made clear its expectation that Lloyd's Brussels will ensure that its distribution chain has the appropriate licences

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# Implications of Recommendation 9 for Brokers

## Implications for Brokers (1 of 4)

### What are Brokers required to do?

#### For Current business written by Lloyd's Brussels

- All UK and Rest of World (ROW) authorised Brokers currently placing business with Lloyd's Brussels have been asked to sign an **addendum to their TOBA** with Lloyd's confirming that no new or renewing risks falling within Recommendation 9 will be placed with Lloyd's Brussels from 1 October 2020; instead from this date the business needs to be placed by an EU authorised firm

#### Important note

Lloyd's set the 1 October 2020 deadline for ceasing accepting new and renewing impacted business to start reducing the impacted business that Lloyd's Brussels has through non-EU authorised intermediaries and to allow those intermediaries a period to migrate the administration of that business to another intermediary that is authorised in an EU member country

- From the end of the year the administration of all existing business must also be migrated to be administered by an EU Broker that is appropriately authorised – for business being transferred mid-term, a **Broker of Record change will be required** (see below)

#### For Part VII transferred business also impacted by Recommendation 9

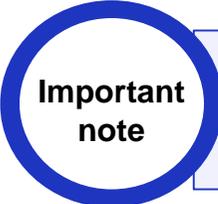
- All impacted business transferred as part of the Part VII transfer must be administered by an EU authorised Broker
- Where there is a transfer of the Broker, a **Broker of Record change is required**. While best practice is to endorse any policy transferring mid-term to note the change of Broker, in view of the number of Broker of Record changes likely to be required, Brokers and managing agents may agree alternative arrangements to note the change of Broker
- The change of the Broker mid-term also raises issues for the processing of transactions through DXC as all transactions following the transfer should be in the name of the new Broker with funds processed through the new EU authorised Broker's bank accounts

## Implications for Brokers (2 of 4)

What are Brokers required to do?

### For Part VII transferred business also impacted by Recommendation 9 (cont'd.)

- This may cause difficulties where Brokers' systems do not allow for the change of Broker mid-term. For the purposes of processing transactions through DXC, it is proposed that Brokers include their EEA Broker code in the same network security group as their London code. This removes the need to carry out a mid-term Broker change and enables the Brokers to manage the process via their internal network security administrator
- Having regard to some of the operational challenges that can arise from a mid-term change of Broker, LIIBA has produced a note which sets out how Brokers may transfer the Broker of record mid-term to the EU firm but have certain activities outsourced back to the original UK authorised firm to allow it to continue with the administration of non-IDD regulated activities. Brokers will need to carefully assess and, where appropriate, obtain their own advice on which activities can be properly outsourced back to the original Broker. If you would like to obtain a copy of the note, please email [enquiries@liiba.co.uk](mailto:enquiries@liiba.co.uk).



**Important  
note**

Should the Broker decide to carry out the change of Broker of Record, this action should be executed before the Part VII Scheme Effective Date (30 December 2020)

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## Implications for Brokers (3 of 4)

### Additional actions to consider

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#### 1. Transferring the book of business to the Broker's existing EU authorised group company or establishing a new EU authorised firm

- In many cases the Broker will have an existing EU group company that is able to take over the book of business from the UK entity, or will be able to establish a new EU authorised firm for this purpose
- EU authorised Brokers who wish to do business with Lloyd's Brussels must first be registered as a Lloyd's Broker for which Lloyd's operates a fast-track process for groups that have an existing registered Lloyd's Broker. For further details contact [lloydsbrussels.toba@lloyds.com](mailto:lloydsbrussels.toba@lloyds.com).
- All Brokers that place business with Lloyd's Brussels are required to have a TOBA with Lloyd's Brussels and a separate, updated TOBA wording has been developed for EU authorised firms (colloquially referred to as the EuroTOBA). Each firm only requires a single TOBA with Lloyd's Brussels; there is no need for a separate TOBA for any UK branch that the Broker may have. To ensure all participants are operating on equivalent terms, Lloyd's Brussels is not able to agree variations to the TOBA with brokers.

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## Implications for Brokers (4 of 4)

### Additional actions to consider

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#### 2. Reverse Branching

- Where a Broker firm looks to transfer its EU book of business to be serviced by a new EU authorised entity, it will need to consider how that firm will carry on business with managing agents, which may require the intermediary to transact business in the UK. As this will often involve the Broker in carrying on regulated activities under UK rules, the EU Broker may need to establish a branch in the UK and to obtain FCA authorisation for that branch (commonly referred to as 'reverse branching')
- In some circumstances, the EU firm may conclude that it is able to place and administer its business without having a presence in the UK and without becoming involved in regulated activities onshore in the UK. If this is the case, then the Broker may not need to set up a 'reverse branch' in the UK. In such cases, as part of any Lloyd's Broker's registration process, Brokers must provide evidence that the firm has obtained legal advice that it does not need to be authorised as a Broker in the UK
- Cases where the EU firm does not require a branch and permissions from the FCA are likely to be the exception

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# Implications of Recommendation 9 for Coverholders

## Implications for Coverholders (1 of 2)

### What are Coverholders required to do?

#### For Current business written by Lloyd's Brussels

- Managing Agents have been asked to endorse their CAAs with UK/ROW authorised Coverholders writing EU risks, to exclude Recommendation 9 impacted business from 1 October 2020 (unless the CAA in any event expires before the end of the year). A new endorsement, LBS0082 has been prepared for this purpose
- All managing agents were provided with a schedule of all the CAAs they lead, and were asked to certify that all CAAs on the list had been endorsed with LBS0082 (unless the CAA expires before the end of 2020 and would be renewed to a EU authorised firm)

#### Important note

Lloyd's set the 1 October 2020 deadline for ceasing accepting new and renewing impacted business to start reducing the impacted business that Lloyd's Brussels has through non-EU authorised intermediaries and to allow those intermediaries a period to migrate the administration of that business to another intermediary that is authorised in an EU member country

- From the end of the year, the administration of impacted CAAs will need to be migrated, which can be done, for example, by endorsing the CAA to replace the UK/ROW Coverholder with the EU authorised firm

#### For Part VII transferred business also impacted by Recommendation 9

- All impacted business transferred as part of the Part VII transfer must be administered by an EU authorised Coverholder
- Managing agents must identify the solution that works best for them. To assist in this process Lloyd's will, where it can provide data, help managing agents identify those CAAs that are required to be transferred to EU Coverholders to take over the run-off

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## Implications for Coverholders (2 of 2)

### Additional actions to consider

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#### **1. Transferring the book of business to the Coverholder's existing EU authorised group company or establishing a new EU authorised firm**

- In many cases the Coverholder will have an existing EU group company that is able to take over the book of business from the UK entity, or the intermediary will be able to establish a new EU authorised firm for this purpose
- Live CAAs that are renewing before the end of the year will need to be renewed to the EU Coverholder:
  - If it is mid-term, the CAA will require novation by an endorsement to the CAA
  - If the CAA also writes non-impacted business, then it may be appropriate to operate the CAA with joint Coverholders. In this case, it must be clear that the UK/ROW authorised firm will not undertake any activities that would require authorisation under IDD. The wording of LBS0082, appropriately modified, may be used for this purpose
- For any prior year CAAs being transferred, or binding authorities (BAA) transferring under the Part VII, the CAA/BAA will need to be endorsed to novate to the EU authorised Coverholder. These contracts will not have to be cancelled and replaced

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# Implications of Recommendation 9 for Managing Agents

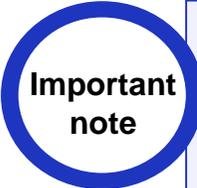
## Implications for Managing Agents (1 of 4)

### What are Managing Agents required to do?

Managing agents need to actively engage with their Brokers and Coverholders for all EU business to ensure that their EU business is migrated to an appropriately authorised EU firm. This applies to all business that currently requires administration or claims handling. Business that is fully run off does not require the appointment of a new intermediary unless further servicing of policies is required

#### For Current business written by Lloyd's Brussels

- Ensure that from 1 October 2020 all new or renewing risks placed with or bound to Lloyd's Brussels are dealt with by an EU authorised intermediary firm
- In a very limited number of cases, Lloyd's Brussels has agreed with UK/ROW authorised Brokers and Coverholders that they can continue to bring impacted business to Lloyd's Brussels after 1 October 2020:
  - For Brokers, the revised date will be shown on the TOBA addendum all Brokers have been asked to sign, which they will be able to share with managing agents. A full list of those Brokers where the 1 October 2020 deadline has been extended can also be found at <https://lloydsbrussels.com/about/lloyds-brussels-hub> <https://lloydseurope.com/about/lloyds-brussels-hub/>
  - For Coverholders, any extension has been agreed with the lead managing agent (following consent from Lloyd's) and should be reflected in the CAA endorsement and therefore managing agents will already be aware of the extension. The 1 October 2020 deadline also does not apply to CAAs that expire before the end of the year
- From the end of the year managing agents must ensure that the administration of all business is transferred to an EU authorised Broker or Coverholder



#### Important note

In migrating business, it remains important that managing agents continue to have regard to the interests of policyholders. Accordingly, prior to 1 January 2021, where strict compliance with the 1 October 2020 deadline will cause policyholder detriment, Lloyd's Brussels will accept impacted business to be written or renewed through the existing non-EU authorised intermediary. This should, however, only be applied on an exceptional basis and from the end of the year no dispensations can be allowed

# Implications for Managing Agents (2 of 4)

## Options for Managing Agents

In addition to exploring if the Coverholder can transfer the book of business to its existing EU authorised group company or if the Coverholder can, by establishing a new EU authorised firm, Managing Agents should consider the following additional options:

### 1. Transfer the book of business to a Managing Agent service company Coverholder

- Many managing agents will have EU authorised service company Coverholders and it may be possible to transfer the run-off of CAAs written by Lloyd's Brussels or any BAAs transferring under the Part VII scheme to their service company. In this case, the CAA/BAA will need to be endorsed to novate to the service company
- Please note the managing agent must be satisfied that the service company has the necessary capabilities to take on the administration of the book in question

### 2. Transfer the book of business to a third party Coverholder or Broker

- In some cases, particularly where a Coverholder or Broker is withdrawing from a portfolio of business, it may be necessary to identify a third party EU authorised firm that is able to take on the administration/run-off of the book and to act as the intermediary
- If not already approved, Coverholders will first need to be accredited as Lloyd's approved Coverholders and Brokers will require registration as a Lloyd's Broker and a TOBA with Lloyd's Brussels. The list of Brokers that already have a TOBA with Lloyd's Brussels is available at <https://lloydseurope.com/about/lloyds-brussels-hub/>

# Implications for Managing Agents (3 of 4)

## Options for Managing Agents

### 3. Administration of the business directly by Managing Agent

- For binding authority business, where the Coverholder does not have a Brexit solution, the managing agent may choose to bring the administration of the business back in-house, where it has the capabilities necessary to manage the business
- This is likely to be a solution for older books of business in run-off where there is limited activity required to service the expiring risks.
- Managing Agents should note the restrictions in place where the managing agents are required to deal directly with policyholders. For additional details please refer to the guidance note for Managing Agents published by Lloyd's Brussels in December 2019. Managing agents requiring a copy of this guidance should send an email to [Lloydsbrussels@lloyds.com](mailto:Lloydsbrussels@lloyds.com)

### 4. Use of Delegated Claims Administrators (DCA) (formerly known as TPAs)

- Any administration of policies that involves activities regulated under IDD will require the intermediary to have the appropriate authorisation from an EU regulator
- If the servicing of a Binding Authority or CAA requires claims handling activities only, it may be possible for managing agents to appoint a DCA. This includes the possibility of appointing a UK-based firm
- In general, EU countries have not expanded the requirement for IDD authorisation to pure claims handling activities. Managing agents may therefore appoint DCAs based in the UK and that are solely engaged in claims handling activities, to handle claims on Lloyd's Brussels business in the EEA



**Important  
note**

The above **only applies to firms that are purely involved with claims handling**. Firms that undertake both IDD authorised activities and claims handling cannot be appointed solely to carry out claims handling, as EU authorisation may still be required for these firms

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## Implications for Managing Agents (4 of 4)

### Options for Managing Agents

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#### 4. Use of Delegated Claims Administrators (DCA) (formerly known as TPAs) cont'd.

- Changes to the Intermediaries Byelaw mean that from 30 September 2020, all DCAs now require prior approval by Lloyd's before they can be appointed. DCAs that were notified to Lloyd's under Lloyd's previous requirements have been grandfathered onto the register of approved delegated claims administrators and are therefore approved DCAs.
- A full list of approved DCAs will be available on Lloyds.com or can be viewed by managing agents through the Insights Hub

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# Further Information

We are grateful to the market for the steps taken to ensure their readiness to comply with Recommendation 9 and we will continue to work with participants as they implement their Brexit solutions. If you have any questions, please send them to:

[lloydsbrussels.toba@lloyds.com](mailto:lloydsbrussels.toba@lloyds.com) – Broker related questions

[lloydsbrussels.delegatedauthority@lloyds.com](mailto:lloydsbrussels.delegatedauthority@lloyds.com) – Coverholder related questions

[part7@lloyds.com](mailto:part7@lloyds.com) – Recommendation 9 questions related to Lloyd's proposed Part 7 arrangement