

Instructions for the Original Incorporation of a Texas Lloyds Company

The general statutory reference is Texas Insurance Code, Chapter 941.

STEP 1. NAME APPLICATION

Complete Name Application form FIN300. The proposed name must not be so similar to that of any other licensed insurance company as to be likely to mislead the public. The proposed name must also include the word Lloyd's.

The name will be published in the Texas Register. On the twentieth day after publication, the name will become eligible for use if there have been no objections filed. The name reservation must be renewed unless incorporation documents are received within 120 days of the eligible date. If the name reservation is renewed, an additional 120 days is given to submit documents before the name eligibility expires.

STEP 2. FORM FIN369, ARTICLES OF AGREEMENT AND POWER OF ATTORNEY

File the completed Application form FIN369 (also known as A-211)

If a corporate attorney-in-fact, Articles of Incorporation must be submitted, certified by the Texas Secretary of State. It **MUST** be a Texas corporation.

There must be at least \$5,000,000 contributed by the underwriters to the guaranty fund and surplus.

The assets must be in the form of cash or a certificate of deposit (refer to Attorney General's Opinion WW-1331, dated May 18, 1962, regarding acceptability of certificates of deposit).

Fully executed Articles of Agreement, signed by all underwriters, must be provided as Exhibit "B" to the Application form FIN369. There must be at least ten (10) underwriters.

A Power of Attorney, signed by all underwriters, and stating that the underwriters authorize the attorney-in-fact to effect contracts of insurance on their behalf, including service of process, and to do all the things necessary to conduct the business of an insurance company, must also be attached as Exhibit "B" to the Application form FIN369.

Attach a financial statement for the company showing in detail the assets liabilities and the surplus of the Lloyds; the surplus section should allocate guaranty funds and surplus among the ten or more underwriters (if underwriters hold funds in trust, please include trust agreements), and income received disbursements made by the attorneys for the underwriters, trustees, or other officers of the Lloyd's plan.

Attach a supplemental affidavit, signed before a notary public by the attorney-in-fact, stating that the facts set out in the Articles of Agreement are true and correct and that the amount contributed to the guaranty fund and free surplus is the bona fide property of the company.

STEP 3. SUPPLEMENTAL AFFIDAVIT CONCERNING CONTROL

(This only applies when the underwriters are the actual funding party of the Lloyds, not acting in a fiduciary manner as a trustee) This affidavit should be signed and sworn to before a notary public as being true and correct by the attorney-in-fact and include disclosure of the items below. If one of the items below does not apply indicate "NOT APPLICABLE". The required elements are:

- 1) Identify and give the background of all underwriters who will contribute 10% or more to the guaranty fund and free surplus of the proposed insurance company (these persons are hereinafter referred to as "applicants").
- 2) If the applicant is not an individual, the affidavit must state the kind of business entity and the nature of its business operations for the past five years or for such lesser period as it has been in existence.
- 3) The affidavit must state the following with respect to all underwriters who will contribute 10% or more to the guaranty fund and free surplus of the proposed insurance company:
 - a. name and business address.
 - b. present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on.
 - c. material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on. If any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith.
 - d. whether or not such person has been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years. If so, provide the date, nature of conviction, name and location of court, and penalty imposed or other dispositions of the case.

STEP 4. STATEMENT CONCERNING AFFILIATES

(This only applies when the underwriters are the actual funding party of the Lloyds, not acting in a fiduciary manner as a trustee) This statement must contain:

- 1) The names of the affiliates of all applicants.
- 2) Submit a chart or listing clearly identifying the interrelationships between individual applicant(s) and all persons who are directors, officers or owners of 10% or more of the outstanding voting securities of a business entity applicant, and all affiliates.
- 3) The affidavit must indicate the percentage of voting securities of each affiliate which is controlled by that applicant or by any director, officer or owner of 10% or more of the outstanding voting securities of a business entity applicant.

- 4) State the basis of control if any affiliate is controlled other than by the ownership or control of voting securities.
- 5) State the type of organization (e.g., corporation, trust, partnership) and state or other jurisdiction of domicile of each affiliate specified in the chart or listing.
- 6) If court proceedings looking toward a reorganization or liquidation are pending with respect to any such affiliate, the affidavit must state which affiliate, and set forth the title of the court, nature of proceedings and the date when commenced.

STEP 5. A DESCRIPTION OF THE SOURCE OF FUNDS

This must contain a description of the source of funds used to contribute the 10% or more of the guaranty fund and surplus of the proposed insurance company. If any part of the funds are borrowed, furnish a description of the loan transaction, including the names of the parties thereto, the relationship if any between the borrower and lender, the amounts borrowed, the security for the loan and copies of all agreements, promissory notes and security arrangements relating thereto.

STEP 6. BUSINESS PLAN

An affidavit must be submitted containing the following elements:

- 1) The future plans of the company.
- 2) Any plans or proposals which the applicant may have to sell the company, or merge it with another company.
- 3) Disclose any financial or employment guarantees proposed for present and/or contemplated management.
- 4) Briefly describe how the management intends to develop the company and in what lines of business the company plans to engage.
- 5) Describe any plans to convert the assets of the company from cash to other investments.

In addition to the affidavit, a complete business plan must be filed in accordance with the business plan outline (starting on page 6 of this document) as well as three-year budget projections.

STEP 7. SECURITIES

(This only applies when the underwriters are the actual funding party of the Lloyds, not acting in a fiduciary manner as a trustee)

Provide a full description of any contracts, arrangements or understandings with respect to any voting rights in the insurance company which any applicant, or his affiliates, is involved, including but not limited to transfer of any of such voting rights, any joint ventures, loan or option arrangements, guarantees on loans, guarantees against loss or guarantees of profits, or divisions of losses or profits. Also identify the names and addresses of such persons with whom such contracts, arrangements or understandings have been entered into.

STEP 8. FINANCIAL STATEMENTS AND EXHIBITS

(This only applies when the underwriters are the actual funding party of the Lloyds, not acting in a fiduciary manner as a trustee)

Financial statements and exhibits for the preceding five years must be filed on behalf of all applicants (underwriters contributing 10% or more to the guaranty fund and free surplus of the proposed insurance company) and for all affiliates. If the applicant is an individual, the statements must be signed and sworn to before a notary public as correctly reflecting his/her financial condition. If the applicant is a corporation or business entity, the statements must be certified by an independent certified public accountant. If the required financial statements are not reasonably available, an affidavit must be submitted that reflects that undue effort and expense would be involved in the obtaining thereof. The Texas Department of Insurance retains the right to decide as to the ultimate necessity for and adequacy of financial statements.

STEP 9. BANK OFFICER'S AFFIDAVIT

Must be submitted which states that the funds on deposit are the bona fide and unencumbered property of the proposed insurance company and that the bank is not aware of any claims, liens or encumbrances on the funds. This affidavit must contain the notarized signature of the officer of the bank where the funds are on deposit. Proof of deposit must also be submitted (e.g., copy of the deposit slip or of the Certificate of Deposit).

STEP 10. BIOGRAPHICAL AFFIDAVITS

Must be completed and submitted for each of the underwriters and the attorney-in-fact (if individual). Biographical affidavits must contain original, notarized signatures. Biographical affidavits must also be submitted for corporate attorney-in-fact.

STEP 11. QUALIFYING EXAMINATION

Must be requested by submitting a letter with this application, addressed to the Chief Examiner of the Texas Department of Insurance. The letter must include the request for the qualifying examination, the name, address and phone number of the person who possesses the books, records and files of the company. **These books and records must be located in the State of Texas.**

STEP 12. JOINT CONTROL AGREEMENT

Must be submitted in triplicate subjecting the assets of the company to the extent of the minimum required under Texas Insurance Code, Chapter 18, to the joint control of the attorney-in-fact and the Commissioner of Insurance. It must be signed by the attorney-in-fact and include a receipt and acknowledgment of the joint control by an officer of the bank who is the custodian of such company assets.

STEP 13. DEPOSIT REPORT

Must be submitted signed in appropriate places by the attorney-in-fact and include a receipt and acknowledgment of the joint control by an officer of the bank who is custodian of such company assets.

GENERAL INFORMATION

It is necessary that the notary public's name and the expiration date of the notary's commission as a notary be clearly stamped or printed below his/her signed name. And, of course, the notary's seal must be affixed to each jurat and each acknowledgment on all instruments.

After the paperwork has been reviewed by the staff and any deficiencies resolved, an examiner will be assigned to make the qualifying examination of the company. After the examination has been completed, a certified copy of the Articles of Agreement and a consent order with a signature block for the attorney-in-fact will be prepared and sent to the company. Prior to sending the Articles and order to the company, a publisher's affidavit, with the text of the newspaper notice to be published in one or more daily newspapers of this state for four (4) consecutive weeks, must be submitted. If the order is acceptable, the attorney-in-fact will sign the order and return the page that bears their original signatures to the Department. The Commissioner's order will be then be signed by Department staff approving the incorporation. A final, fully executed copy of the order will be sent to the company.

LICENSING AND BEGINNING BUSINESS

Assuming the application is approved by the commissioner, please be reminded that even though the company has a charter, it does not yet have a license to transact the business of insurance.

PLEASE NOTE THAT A PUBLIC HEARING MAY BE REQUIRED, HOWEVER, A HEARING IS WAIVED IN MOST CASES. If a hearing is required, additional instructions will be provided.

See next page for BUSINESS PLAN OUTLINE

Other attachments:

BUDGET PROJECTION FORM

NAME APPLICATION FORM FIN300

APPLICATION FORM FIN369 (A-211)

ATTORNEY-IN-FACT AND UNDERWRITERS PAGE FIN307

BIOGRAPHICAL AFFIDAVIT UCAA FORM 11

BUSINESS PLAN OUTLINE FOR A NEWLY INCORPORATING LLOYDS INSURANCE COMPANY

NOTE: This outline is not intended to be all inclusive but rather is intended to be used as a guide to key elements that might be included in a business plan. Each business plan should be unique to a particular company and should contain sufficient detail to provide Department staff with adequate information about the viability of the company's anticipated and future operations. The plan should be phrased so that a lay person can easily understand it yet still contain the technical information required. The business plan is the sole responsibility of the company's management and adequacy of the plan is a reflection of the company's management competence.

I. OVERVIEW

- A. Name of company submitting the plan
- B. Reason for submitting the plan
- C. Name of person(s) who prepared the plan
- D. Other miscellaneous general information

II. BACKGROUND AND HISTORY

- A. Who owns the company (provide a brief description of ownership. Include organizational chart, if any)
- B. Give a brief description of affiliates and affiliates' primary business functions
- C. Give a description of owners and key personnel
 1. Biographical affidavits of owners and key personnel including, but not limited to:
 - a. Resumes
 - b. Industry experience
 - c. Current job responsibilities
 2. Other pertinent information

III. ANTICIPATED OPERATIONS

- A. Give a brief description of anticipated operations, including, but not limited to:
 1. What type of business does the company intend to write
 2. What type of policies will be written
 3. What kind of markets is the company going to target? What geographical areas?
 4. Who will produce business for the company (independent agents, third party administrators, affiliated agencies, etc.)
 5. What will be the commission structure for all products greater than 10% of the direct and assumed premium
 6. What is the anticipated number of agents the company plans to have selling products
 7. Describe insurance operations by line of business, which will comprise greater than 10% of the total premium volume, including, but not limited to:
 - a. Premium rates and premium volume

- b. Projected Texas business to be written and types of business
- c. Loss adjustment expense and claim reserves, including projected loss ratio, loss adjustment expense and amount of projected claim reserves
- d. Acquisition expenses for lines of business or acquisition of new companies
- e. Other underwriting expenses that will be in excess of 10% of the gross written premiums
- f. Reinsurance, including, but not limited to:
 - 1) What will be the company's current retention levels
 - 2) Will the company enter into any material reinsurance treaties in the first year? If so, what will be the terms of the reinsurance agreements?
 - 3) What will be the ceding commission rates as provided in the treaties? How will they be determined (sliding scale, contingent, etc.)?
 - 4) What will the settlement periods be for reinsured losses for treaties where the reinsured losses from any one reinsurer will be greater than 10% of the policyholders' surplus
- 8. Describe relevant industry trends
- B. Give a brief description of the company's anticipated strengths and weaknesses.
- C. Describe internal controls and procedures, including, but not limited to:
 - 1. What procedures or processes will the company have for reviewing the business produced by individual agents or general agents so that agents who consistently produce unprofitable business can be advised and/or so underwriting guidelines can be changed
 - 2. What procedures or processes will the company have for accounting for reinsurance premiums and losses
 - 3. What procedures or processes will the company have for accounting on a timely basis, premiums from agents or general agents
 - 4. What procedures or processes will the company have for reviewing, accepting or denying claims? Describe procedures the company has to allow it to make prompt claims payments to policyholders
 - 5. What procedures or processes will the company have for reviewing, accepting or denying proposed investments
- D. Describe anticipated or future marketing and underwriting procedures and controls including, but not limited to:
 - 1. Who will do the underwriting for the company? Is the company going to underwrite or is a general agent? What is the relationship of the underwriter to the company?
 - 2. Give a brief description of the underwriting controls that will be used to accept or reject a potential policyholder
 - 3. What will the underwriting guidelines be for direct, assumed and ceded business
- E. Give a brief description of any lawsuits filed against any of the incorporators or any of the future principal officers and/or directors. If there are any lawsuits, individuals may be asked to disclose additional information
- F. Describe the use of outside professionals or outside agencies, including, but not limited to:
 - 1. CPAs, actuaries, attorneys, etc.
 - 2. TPAs, MGAs or general agents

3. Other professionals or agencies

- G. Describe other key objectives, policies and plans including, but not limited to:

1. Identify sources and application of funds
2. Provide analysis of personnel needs for planned operational changes
3. Describe other operations:
 - a. Provide detailed investment plan, including types of investments and percentage limitations for each type of investment
 - b. Provide projections of administrative and general expenses by type of expense
 - c. Provide details of any planned dividend or any other distribution to company's stockholders
 - d. Describe debt servicing by the company or holding company, including:
 - 1) Schedule of debt servicing
 - 2) Short summary of contract to service debt and how it will be serviced

- IV. FINANCIAL PROJECTIONS FOR TEXAS BUSINESS A. State

assumptions used in financial projections:

1. Actuarial assumptions
2. Commissions and expenses
3. Investment and interest rates
4. Other significant assumptions

- B. Provide projected financial statements (2-year quarterly basis):

1. Balance sheet information
 - a. Assets
 - b. Liabilities
 - c. Capital
 - d. Surplus
2. Statement of operations
 - a. Direct writings
 - b. Assumed writings
 - c. Amounts to be ceded
 - d. Net earned premiums
 - e. Losses incurred
 - f. LAE incurred
 - g. Commission expense (direct, assumed, (ceded), net)
 - h. Other underwriting expenses
 - i. Net underwriting gain/(loss)
 - j. Net investment income
 - k. Other income
 - l. Policyholder dividends
 - m. Federal income taxes
 - n. Net income

- V. CONCLUSION AND SUMMARY

- A. Give overall summary of plan

- B. Address compliance with any abatement items
- C. Give opinion on likelihood of success and viability of plan:
 - 1. Company and management representations
 - 2. Outside professional representations
- D. Describe what other corrective action will be taken if plan does not perform
- E. Conclusion

VI. ADDITIONAL EXHIBITS AND INFORMATION

- A. Provide copies of any services agreements with managing general agencies
- B. Provide copies of operating and/or cost sharing agreements
- C. Provide copies of employment contracts that will be equal to or greater than 5% of salaries.
Include bonus contracts
- D. Provide copies of any guarantees or undertakings for the benefit of the holding company or any of its affiliates that could result in actual or contingent exposure to loss of any of the company's assets
- E. Provide copies of any surplus debentures
- F. Provide information with regards to any debt structure of the company or its holding company.
Provide a payment schedule, rate schedule and description of terms of payment
- G. Provide copies of underwriting guidelines (these are treated as confidential information)
- H. Submit samples of advertising to be used to market products in Texas for all products that produce greater than 10% of the direct and assumed premium
- I. Submit samples of agents' training materials for all products that produce greater than 10% of the direct and assumed premium
- J. Provide copies of reinsurance treaties that will be in effect which provide for 10% or greater of gross written premium, and details of any changes that will take effect in the first year such as changes in quota share or changes in retention in excess of loss

 Email filing to CLRFilings@tdi.texas.gov

► Questions?

Email us at CompanyLicense@tdi.texas.gov or call
512-676-6365.