Lloyd's Publishes Guidance on Modified Freehold Capacity

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A more flexible route for private capital to secure long-term, tradable participation in Lloyd's syndicate

Modified Freehold Capacity ("MFC"), which was introduced in 2024, has quickly established itself as a valuable tool to attract and retain alternative sources of capital at Lloyd's. As noted by Lloyd's itself, MFC is becoming a popular option, particularly for newly established syndicates and other syndicates admitting tradable capacity for the first time (examples include Fidelis Syndicate 3123 and OAK Re Syndicate 2843).

Managing Agents have been somewhat reluctant to grant traditional freehold capacity to new syndicate members because the old rules are very rigid and, amongst other things, severely limit a managing agent's right to reallocate unused capacity, alter pre-emptions or agree different commercial terms with different syndicate members. So instead, they have been granting limited tenancy capacity ("LTC"), which is generally for a short-term period and creates no saleable rights in the auctions for the member.

MFC preserves the core features of traditional freehold capacity, including security of tenure and auction tradability, while permitting targeted changes to the standard managing agents' agreement. The structure was designed to address concerns that have historically made managing agents reluctant to admit traditional freehold capital while offering investors a more durable position than LTC.

For private equity sponsors, asset managers and other alternative capital providers, MFC can therefore offer a useful middle ground: a long-term, transferable participation right, coupled with contractual terms that better reflect the economics and governance of a sponsored or turnkey syndicate.

What Is Modified Freehold Capacity?

A Lloyd's member participates in a syndicate under a standard managing agents' agreement. Under the standard form, the managing agent's appointment continues for the current and all subsequent years of account unless terminated in one of the limited circumstances permitted by Lloyd's. That continuing right to participate is the member's "*security of tenure*"; a capacity carrying that right is commonly called freehold capacity.

MFC does not alter the member's underlying security of tenure. The member remains entitled to participate in future years of account, subject to the standard termination regime, and its capacity remains tradable through the Lloyd's Capacity Auctions. The "*modified*" element instead consists of Lloyd's-approved amendments to other rights and protections under the standard managing agents' agreement.

However, legal tenure under the MFC does not guarantee the same level of economic participation overtime. The model MFC terms permit members to consent in advance to an increase in syndicate allocated capacity of more than 7.5%, without the managing agent obtaining a further consent under the Syndicate Pre-Emption Byelaw. They also permit an accelerated timetable for offering and accepting pre-emption rights.

Capacity taken up through that process must generally be retained for the following year of account unless sold in the auctions and may not simply be dropped. Separately, where a member reduces its participation or declines to take up all of its pre-emption entitlement, the resulting capacity may be reallocated by the managing agent, including to an affiliated member and on separately agreed terms.

An MFC member therefore retains its continuing right to participate but not necessarily an unchanged percentage interest in the syndicate. To avoid dilution as the syndicate grows, the member may need to commit additional Funds at Lloyd's within the accelerated timetable. This does not qualify the member's security of tenure in the strict legal sense, but it can materially affect the economic value of that tenure.

Freehold, Modified Freehold and Limited Tenancy

Feature	Traditional freehold	Modified freehold	Limited tenancy
Tenure	Current and future years, subject to the standard termination regime.	Same security of tenure as traditional freehold.	Fixed term or terminable on notice; participation ends under the agreed LTC terms.
Tradability	Tradable in the annual Capacity Auctions.	Tradable in the annual Capacity Auctions.	Not tradable in the annual Capacity Auctions.

Feature	Traditional freehold	Modified freehold	Limited tenancy
Pre-emption	Standard pre-emption process; increases above the applicable 7.5% threshold require member consent under the Syndicate Pre-Emption Byelaw.	Modified and accelerated pre-emption process, including advance consent to capacity increases above 7.5% and restrictions on dropping capacity taken up through pre-emption.	Subject to the applicable LTC terms; no standard entitlement to participate beyond the agreed tenancy.
Contractual terms	Standard managing agents' agreement.	Standard agreement plus Lloyd's-approved modifications.	Standard agreement varied principally to limit the period of participation.
Investor profile	Long-term third-party capital seeking full standard protections.	Long-term or strategic alternative capital seeking liquidity plus tailored governance and economics.	Capital seeking defined-duration underwriting exposure or a simpler exit.

As the table above shows, LTC provides no enduring right to participate beyond the agreed fixed term or notice period. That's because once the fixed term expires or the permitted notice takes effect, the capacity returns to the managing agent unless renewed.

MFC, by contrast, remains a freehold tenancy. The managing agent cannot ordinarily terminate the member's participation at its discretion, and the member retains a participation right that can be transferred through the auctions. The trade-off is that the member agrees in advance to a package of modifications that may narrow rights (including with regard to pre-emption) that would otherwise attach to traditional freehold capacity.

Why MFC May Appeal to Alternative Capital

- **Durable access to underwriting performance.** Unlike LTC, MFC can provide continuing exposure across multiple years of account without requiring periodic renegotiation or renewal.
- **A transferable asset and potential exit route.** Auction tradability can create liquidity that is unavailable for LTC, although pricing and buyer demand will depend on the syndicate and market conditions.
- **Alignment with growth capital.** Pre-emption rights allow investors to support expansion and maintain their proportional position, subject to the accelerated timetable and additional capital requirements.

- **More sponsor-friendly governance.** The permitted modifications can accommodate the realities of third-party managing agents, service companies, affiliated businesses and differentiated commercial arrangements among capital providers.

- **Flexibility in capital composition.** A syndicate may combine MFC with LTC, enabling a sponsor to assemble a mix of longer-term tradable capital and fixed-duration capacity.

What May Be Modified?

Lloyd's will consider MFC amendments case by case, using standard-form drafting where possible. Its guidance, published on 9 July 2026, identifies the following categories as ordinarily capable of approval:

- conflicts of interest and the managing agent's duty to account for gains or profits;

- advance consent to capacity increases above 7.5%, accelerated pre-emption mechanics and restrictions on dropping capacity taken up through pre-emption;

- waiver of mandatory offer rights and an agreed expert mechanism for valuing consideration in a minority buy-out;

- acknowledgement that other members may receive different or more advantageous commercial terms, and that dropped capacity may be reallocated by the managing agent;

- disclosures and limitations of liability concerning the syndicate plan and expected performance;

- the appointment of an investment manager and the investment of premium trust fund assets;

- cessation of underwriting without compensation to members; and

- an obligation to enter into a novation to a replacement managing agent approved by Lloyd's.

Certain provisions are available only where, and for so long as, the syndicate operates under a turnkey managing agent arrangement. These include the specified pre-emption, mandatory-offer and minority-buyout provisions, as well as the model liability, investment and cessation terms. The replacement-managing-agent provisions are not themselves stated to be turnkey only, although the model terms provide that the liability, investment and cessation provisions will not ordinarily continue following a change of managing agent.

Implementation and Investor Diligence

MFC is presently available principally when a syndicate is first established or when an existing syndicate admits tradable freehold capacity for the first time. This is because all affected members must agree to the amendments. This consent requirement means that implementing MFC after a syndicate already has a broad base of traditional freehold members will generally be impracticable.

For a new syndicate, the proposed amendments are reviewed by Lloyd's through the "*Making it Happen*" syndicate set-up process and, if approved, form part of the permission to underwrite. Once capacity is auction-traded, incoming members agree to the MFC terms through the syndicate list and related addendum. Managing agents must disclose the material MFC terms before the Capacity Auctions and make the full variations available to prospective purchasers.

Investors should therefore diligence both the continuing tenure right and the modifications that sit around it. Particular attention should be paid to pre-emption funding obligations and dilution, fee and profit commission terms, conflicts and affiliated-service arrangements, liability limitations, cessation rights, investment governance, and the treatment of capacity if the managing agent or sponsor changes.

Lastly, Investors should also assume that the MFC package will be difficult to amend once underwriting has commenced, as substantive changes will generally require the agreement of every member, subject to limited processes for fee or profit commission changes, manifest errors and other uncontroversial amendments approved by Lloyd's.

The Takeaway

MFC is likely to become an increasingly important part of the capital toolkit for new Lloyd's syndicates. It preserves the continuity and auction tradability that make freehold capacity attractive to long-term investors, while permitting a more tailored contractual framework that may be more acceptable to sponsors and turnkey managing agents. For private equity and other alternative capital providers, MFC can therefore offer a more durable route into Lloyd's underwriting than LTC, together with a potential secondary-market exit. That benefit must, however, be assessed against the modified pre-emption regime, the possibility of economic dilution and the other Lloyd's-approved modifications applicable to the specific syndicate.

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Please do not hesitate to contact us with any questions.

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