

Emergency Trading Protocol

Denial of Access to One Lime Street

March 2020 (v.2.1)

Confidential

Lloyd's Emergency Trading Protocol

Emergency Arrangements for Placement and Claims Handling

Introduction

1. In circumstances where it is not possible to access the Underwriting Room and/or for staff of some managing agents, Lloyd's brokers, Lloyd's and/or Xchanging (DXC) to access their offices, Lloyd's has put in place this protocol to supplement face to face and electronic trading that can take place elsewhere to ensure that –

all necessary insurance and reinsurance can continue to be placed (or existing cover endorsed);

and

time critical aspects of claims handling and determination can be undertaken remotely using alternative mechanisms.
2. All participants in the Lloyd's market are expected to have given consideration to this protocol in the context of their business continuity planning and wherever possible to have made appropriate arrangements to implement it.
3. The Council of Lloyd's expects all participants in the Lloyd's market to work together to ensure that disruption caused by an emergency is minimised through the use of this protocol.
4. Any questions concerning the Lloyd's Emergency Trading Protocol should be sent by email to:

Lloyd's: EmergencyTradingProtocol@lloyds.com

LIIBA: enquiries@liiba.co.uk

LMA: lma@lmalloyds.com

For other general questions relating to Lloyd's business continuity, please email:

BusinessContinuity@lloyds.com

Lloyd's Protocol for Placement¹

Introduction

1. The market's developing use of electronic placement via recognised electronic placement systems (eg. PPL) provides a secure and sound method of submitting, negotiating and binding the placement and endorsement of insurance contracts. These mechanisms should be used wherever possible to supplement or replace face to face trading in the event of an emergency. The protocol for use of electronic placement is published from time to time via the market associations' websites www.lmalloyds.com and www.liiba.co.uk and the list of fully or conditionally recognised electronic placement systems can be found on www.lloyds.com: <https://www.lloyds.com/market-resources/requirements-and-standards/electronic-placement>.
2. If for any reason the use of electronic placement systems is not possible or electronic stamps are not able to be utilised, Lloyd's has put the following fallback email protocol in place.
3. Under English law, insurance contracts may be entered into by email and in an emergency can be done using this protocol. This protocol has been kept as simple as possible particularly because those affected by an emergency may be working with reduced resources and support e.g. working from home on a personal PC or a mobile hand-held device. However, nothing in this protocol is intended to call into question the validity of contracts of insurance entered into in other ways.
4. All emails sent under this placement protocol should include the words "this email is being sent in accordance with the Lloyd's Emergency Trading Protocol" or "ETP".
5. Underwriters and brokers must ensure they have satisfied themselves that the individuals they are dealing with are appropriately authorised to enter into contracts of insurance (including reinsurance) on behalf of their syndicates and broker firms.

Entering into contracts

6. In summary, under English law a contract (and an insurance contract is no different) is formed when there –
 - a. has been an offer. An offer is an expression of willingness to contract on specified terms with the intention that it is to become binding when it is accepted by the person to whom it is addressed;
 - b. is acceptance of that offer. An acceptance is a final and unqualified expression of assent to the terms of the offer; and
 - c. is communication of the acceptance to the offer.
7. Brokers and underwriters should bear the above elements in mind when communicating by email to ensure that the communications do not give rise to unexpected legal consequences.

Oral contracts

8. Brokers and underwriters should avoid, wherever possible, entering into contracts orally as this may lead to subsequent uncertainty as to what was agreed.

¹ Use of the term *placement* in this Protocol is intended to also include *endorsement* and *extension of cover*

Preliminary negotiations

9. Where a broker wishes to enter into preliminary negotiations with an underwriter (for example to obtain an indicative quote for a risk) the subject heading for the email should include the words "Preliminary negotiations".

Disclosure

10. Prior to making an offer to contract the broker must ensure that they have disclosed all material information to the underwriter in question in the usual manner. That may be done in the body of an email or by attaching documents to it.

Offer to enter into contract (with lead underwriter)

11. At the point at which the broker or the underwriter wishes to make an offer to enter into an insurance contract they should send an email containing all of the information required for it to be contract certain. This may be done in the body of the email or by attaching documents to it.
12. The subject heading for the email should include the words "Offer to enter into contract". For the purposes of marine insurance the offer should be made by the broker to the underwriter. (See section 21 of the Marine Insurance Act 1906)
13. The email should include the full name of the sender at the bottom of the email and confirmation that the sender is authorised to make the offer on behalf of the broker or managing agent for whom they work.
14. "Subjectivities", particularly subjectivities arising as a consequence of the emergency, should be dealt with carefully and in accordance with the principles set out in appendix 1 to the Contract Certainty Principles and Guidance September 2018. <https://img.london/wp-content/uploads/2019/07/CC-COP-Sept-2018.pdf>

Acceptance of offer

15. Where the recipient of an "Offer to enter into contract" email wishes to enter into a contract on the terms of that offer, they should reply by email and the subject of the email should include the words "Acceptance – entering into contract". The acceptance must exactly fit the offer. Accordingly, nothing in the body of an acceptance email should disagree with the offer email as that may constitute a counter offer (and so should be headed "Offer to enter into contract"). In particular, the contract should not contain a mode of execution clause which does not permit the use of email.
16. The acceptance email should include the sender's full name at the bottom of the email and confirmation that the sender is authorised to accept the offer on behalf of the broker or managing agent for whom they work.

Written lines and identity of the syndicate

17. Whenever an underwriter sends an offer or acceptance email it must include –
 - a. the line (expressed either as a percentage or as a monetary amount) that the syndicate is offering to underwrite or has agreed to underwrite; and
 - b. the syndicate number of the syndicate in question;
18. Where the lead underwriter's line is less than the broker's order, the broker should repeat the above process with other underwriters in order to complete the placement.

Extension of existing cover

19. It may be convenient to simply extend existing cover by a short period until the emergency has subsided. That may/should be done using this placement protocol i.e. offer and acceptance emails.

Cancellation of Cover

20. Any cancellation of cover should be considered carefully with clear cancellation instructions issued and acknowledgements clearly confirmed via email.

Administration

20. It may not be immediately possible to complete the administration associated with the contract. However, proper records of the contract must be kept so that the administration can be commenced as soon as offices and systems become available for use again.
21. Each managing agent is expected to have maintained an email list of key internal contacts to provide administrative support to underwriters by email. That should include actuarial support and support to monitor aggregate exposures on contracts entered into by email.

Lloyd's Claims Handling Protocol

Information

Xchanging Claims Services Ltd (XCS) operates in multiple territories and offices across the UK and India. XCS also has the capability to work remotely and access systems in the event of an office closure. Between 95-98% of all transactions are received electronically via Electronic Claims File (ECF).

Authorised Persons

1. Underwriters and brokers must ensure that they have satisfied themselves that the individuals they are dealing with are authorised and able to receive notification of claims and to handle claims remotely where necessary during the emergency on behalf of their syndicates and broker firms.

Notification of claims

2. Managing agents and XCS are expected to ensure arrangements are in place for claims to be notified to them by email during the emergency, where necessary.

Handling and determining claims

3. The relevant Lloyd's Claims Scheme will continue to apply during the emergency.
4. ECF and associated applications are fully functional remotely and therefore should continue to be used - Managing agents and XCS do not need to be located in their place of work to access the systems.
5. Managing agents should review the DXC service status screen if they are experiencing any connectivity issues: <https://dxclm.statuspage.io/>
6. Managing agents are expected to have made arrangements to ensure continued processing of claims files which are not on ECF where time critical aspects of claims handling may be required during the emergency. Please continue to use the XCS Barrier, located on the 31st Floor of 30 St Mary Axe (the Gherkin) where possible. If this is not possible then please send to XCSpaperTP@xchanging.com
7. For any urgent enquiries into XCS, please use the following XCS mailboxes XCSTP.urgentECF@xchanging.com or XCS.ChathamBinders.urgents@xchanging.com

Payment of claims

8. Claims payment transactions and the related movement of funds will continue to be processed through existing XCS and Lloyd's Settlement Trust Fund Office (STFO) channels and processes.