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LMA Model Binding Authority Wordings: The New Wordings

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Old Library, Lloyd's

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Introduction

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An Overview

Mike Smith (Brit)
Chair of the LMA Binding Authority Wordings
Committee

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Wordings - Why Change

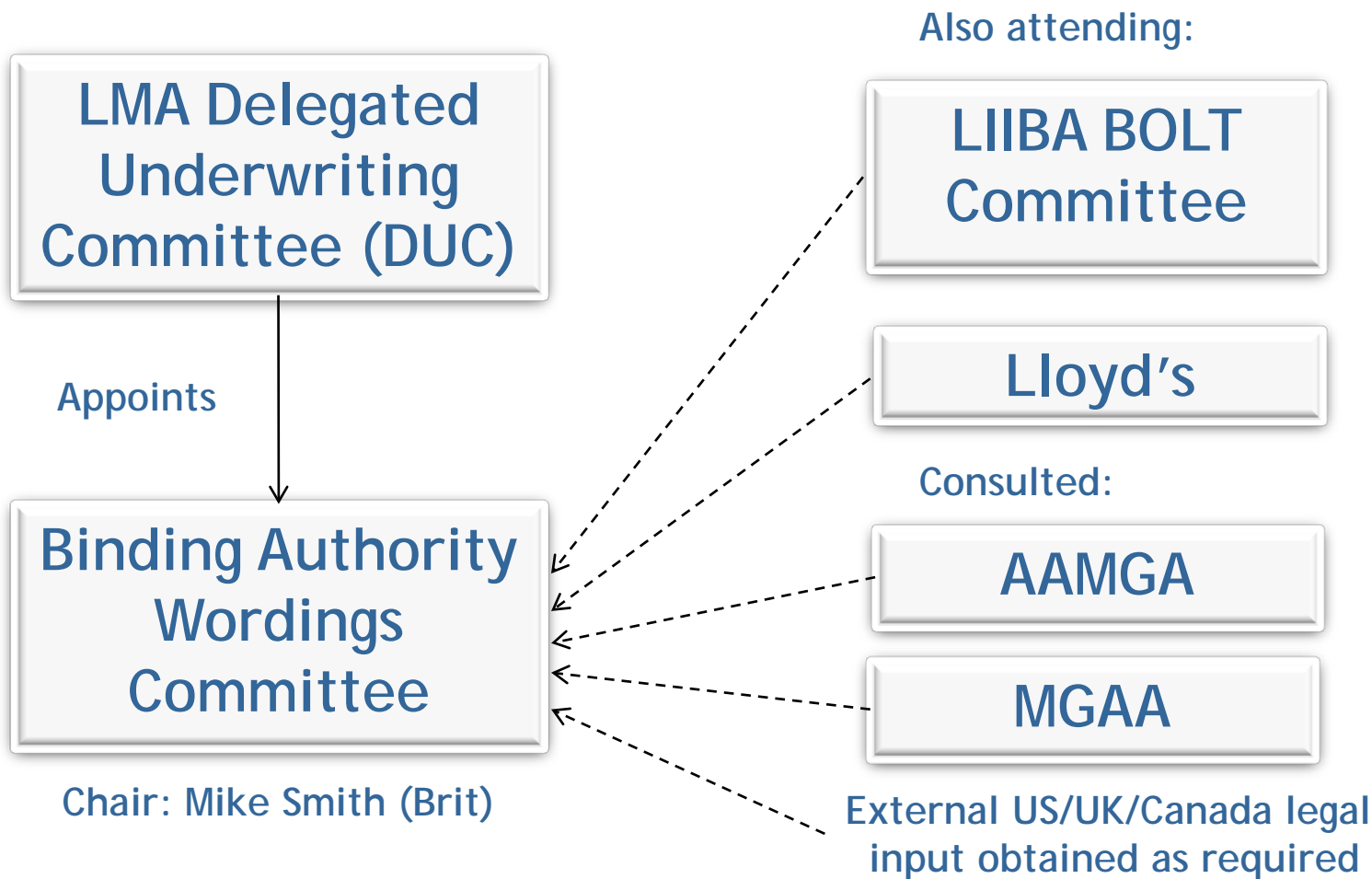
- Current wordings first prepared in 2006
- Large number of current model LMA wordings
 - Nine wordings (incl. broker and direct)
- Increasing number of “standard” endorsements (financial crime/bank accounts)
- Increasing regulatory oversight of outsourcing arrangements - not addressed in current wordings
- Evolving market practice

- Reduce number of model wordings (Worldwide/US and Canada)
- Adopt a consistent approach between wordings
- Standard endorsements included
- Make more user friendly/easier to navigate
- Reflect current regulatory requirements
- Reflect market practice
- Include more “default” standard provisions
- Ensure compliance with Lloyd’s requirements (Intermediaries Byelaw)
- Easier to develop endorsements with fewer wordings
- But... only make changes where necessary



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The Committee



“The AAMGA is pleased to confirm that it has had an opportunity to review and comment on the LMA’s new model wordings for binding authorities and supports their introduction for use in the US market. While the new wordings form the basis of the agreement between the parties, they also reflect current legal and regulatory requirements, take best practices into account, and allow for Coverholders, Brokers and Underwriters to set proper rates and terms as may be required under individualized circumstances.”

- Bernie Heinze, Executive Director



- Just three model wordings (Worldwide/US/Canada) with accompanying guidance notes
- Easier to follow format
 - Commercial terms at the front
 - Compliance (and termination) terms at the back
- Standard endorsements included
- No need for Lead Underwriter “counter signature”
- Default claims handling clause
- Updated bank account clause
- Internet trading
- References to “cancellation” updated to “termination”
- Unavoidable that there is more compliance but emphasises what coverholders can do, not just what they can't

Starting to use the wordings

- Suggested use for BAA's incepting 1 November 2013
 - If all the parties agree, they are ready for use immediately
- New MRC Binding Authority templates to be issued by the Market Reform Group in due course
- Wordings on Lloyd's Wordings Repository, LMA website, lloyds.com & XIS Model Wording Library
- LMA & LIIBA will notify their members via bulletin
- Follow up bulletin to coverholders
- Managing agent and broker engagement with their coverholders will be key

- ... These are model wordings only
- They will be suitable for the majority of binding authority arrangements
- Having a model wording reduces the time and cost of placements
- They provide a robust wording that has market support
- **But** the parties are free to agree changes to any or all of the clauses (provided they still meet all Lloyd's/legal/regulatory requirements)



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An Outline of the New Model Wordings - Part 1

Paul Jeffrey (Kiln)/Charles Rowley (Catlin)

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- Three new wordings - replace LMA3018, LMA3019, LMA3020, LMA 3021 & LMA 3024:
 - LMA 3113 - Model BAA (excl US & Canada)
 - LMA 3114 - US Model BAA
 - LMA 3115 - Canada Model BAA
- Endorsements for Canada BAA
- Endorsement for Direct BAA
- Other country endorsements - updated section numbers
- Guidance Notes
- Annotated BAA with explanatory notes of changes
- No separate wordings for marine/non-marine, etc
- Other specialist wordings (eg for service companies) remain in place

Arrangement of the Wording

- Coverholder Authority
- Scope of Authority
- Coverholder Commissions & Expenses
- Documents for Insurances Bound
- Claims & Complaints
- Reporting, Records & Aggregate Exposures
- Advertising
- Bank Accounts
- Compliance, Regulatory & General Requirements
- Termination & Non-Renewal
- Miscellaneous

- Why change? - Make life easier
 - Underwriters to Receive Agreement (s1)
 - No requirement for underwriter to countersign - only need to receive a copy of the Agreement prior to inception.
- Clarification on named authority holders
 - Persons Responsible for Operation & Control (s3)
 - New requirement to notify when absence of key individuals is likely to materially impair the coverholder's performance
 - Guidance on 'Call Centre Underwriters'

- Making life easier
- Internet
 - Grant of Authority (s4) makes internet trading permissible with underwriters agreement
- Prompt payment
 - Option to include “terms of trade”
 - Clarify obligation on coverholder to notify clients that coverholder acts as agent of the underwriters
 - Confirms coverholder to cooperate with underwriters and not act in a way that is detrimental to underwriters’ reputation
- Outsourcing
 - Delegation of Authority (s5) includes requirement for key outsourcing contracts to be agreed by Underwriters
- Other conditions or Requirements (s6)
 - The new section 14!

- Clauses have been brought together to make them easier to use - they are largely unchanged
- Automatic or Tacit Renewal of Insurance Bound (s14)
 - Automatic/tacit renewal permitted where agreed or mandatory in the local territory
 - Enhanced provisions for the run-off of non-renewed/terminated BAAs where there may be automatic/tacit renewal

Coverholder Commissions & Expenses

- Provisions brought together under a separate Part of the Agreement for ease of use but no material changes
- Commission(s) (s16)
 - Removal of the reference to contingent commission

- Consolidation
 - Section 19 and 20 created from 18,19,20,21,22 and 23
- Definition
 - 'Contract documentation' - Replaces 'certificates', 'policies', 'combined certificates' etc. (in 20.2)
- Servicing
 - Immediate confirmation of cover if contract documentation cannot be issued immediately
 - Timely issuance in all cases containing all terms in format agreed by underwriters.
- Update and reduce questions in key areas
 - New key terms to be included in all contractual documentation - UMR, deductible/excesses, complaints notices
 - Specifically allows electronic signatures
 - Requirement for copy documents to be sent to Underwriters removed (unless underwriters specifically request)
 - Updated provisions for combined certificates as per Lloyd's Market Bulletin Y4133

- Procedure for the Handling and Settlement of Claims and Pursuit of Recoveries (s21)
 - A new default provision - based on Marine wording- but can be replaced by alternative more detailed provisions
 - Sets out the basic obligations for handling claims/pursuing recoveries
 - Confirms coverholder has no authority to handle claims above values stated in Schedule or to agree ex gratia settlements
 - Must refer recommendations of denial of liability to underwriters
 - Underwriters can set service standards to ensure fair outcome for policyholders
 - Underwriters can take over the handling of claims
 - A minimum default clause only - underwriters should consider whether more detailed provisions and claims procedures are required

Reporting, Records & Aggregate Exposures

- Making reporting less confusing - for all
- Risks Written Bordereau(x)/Reporting & Aggregate Exposures (s23)
- Accounting Bordereau(x)/Reporting & Settlement (s24)
 - Distinguishes between Risks Written and Premium Paid data/bordereaux
 - New requirement to provide a risk written bordereau (to allow reconciliation)
 - Aggregate and statistical information as before recognised may be replaced by risks written or used instead of at Underwriters option.
 - Specific 'paid premium' reporting replaces 'premium' bordereaux
 - No change in claims bordereaux - advise use of Lloyd's or ACORD Standards
 - Consolidates S 12, 25 and 34.
 - Modernised to allow for real time data (XML) or other reporting mechanisms
 - "All communications and settlements between the Coverholder and Underwriter shall be made via the Lloyd's Broker" now in Introduction
- Records Statistical Information and Audit/Inspection (s25)
 - Retain records for insurances bound, claims handled and recoveries
 - Right to audit "during normal business hours" added



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Advertising

- Advertising and Promotional Material (s26)
 - Requirement for underwriters' agreement to promotional material
 - Reference to online promotional material

- Guidance Notes
 - Excellent explanatory points on:
 - Sign off, Call Centres, Master Policies, Risk Data...
- Key points summary
 - Easier due to consolidation of sections
 - Straightforward authority
 - Consolidated contract wording requirements
 - Default claims clause
 - Data clarification
 - Discuss marketing material up front



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An Outline of the New Model Wordings - Part 2

Paul Brady (Lloyd's)

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- Complaints or Proceedings (s22)
 - Greater regulatory focus on complaints - a need for locally tailored approaches
 - A new requirement to notify promptly all complaints to underwriters
 - Coverholders to implement procedures required by underwriters to ensure prompt and reasonable handling of complaints in compliance with local regulations
 - Enhanced requirements to notify legal or regulatory actions that may lead to regulatory interventions, litigation or reputational damage

- Bank Accounts (s27)
 - Based on LMA5141
 - A robust, risk-based and practical framework for holding insurance monies
 - Variations may be required for local jurisdictions (eg LMA5142A may still be suitable for UK coverholders with a statutory or non-statutory client money account)
 - Coverholder cannot invest monies without prior consent of underwriters

Compliance, Regulatory & General Requirements

- Licences & Taxes (s28)
 - Modified from the marine wording
 - Coverholder to maintain all necessary licences, etc and pay all taxes
 - Notification to underwriters of tax audit or inspection
- Business Continuity (s31)
 - New requirement for coverholder to have adequate business continuity and disaster recovery plan
 - Reflects regulatory requirements for outsourcing
- Confidentiality (s32)
 - A new provision, reflecting regulatory requirements for outsourcing
 - Mutual obligations on underwriters and coverholders

Compliance, Regulatory & General Requirements

- Conflicts of Interest (s33)
 - A new provision to reflect regulatory expectations
 - Coverholder can continue to act if full disclosure to underwriters and underwriters agree
- Compliance with the Law & Financial Crime (s34)
 - Addition of Financial Crime provisions based on LMA5173, which is already widely adopted
 - Provides for compliance with bribery/corruption, money laundering and international sanctions
 - Should not be amended without legal advice or to reduce the protection to underwriters
- Data Protection (s35)
 - Updates and replaces the previous provision to ensure compliance with current legal requirements
 - Clarifies role of coverholder in gathering/processing data

Termination & Non-Renewal

- No longer reference to 'cancellation' to reflect current terminology. Instead:
 - Termination with notice
 - Automatic termination
 - Right of immediate termination
- Termination (s36)
 - A detailed provision to give clarity
 - Removal of right to terminate for conviction of past director
 - New right to terminate when coverholder's ability to carry out its obligations are likely to be material impaired
- Effect of Termination or Non Renewal (s37)
 - Clarifies scope of ongoing authority of coverholder to run-off binding authority



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USA & Canada

Brian Hunt (QBE)

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- Why have separate wordings for the USA and Canada?
 - These territories are respectively the Lloyd's market's largest and third largest sources of income under binding authorities
 - The significance of these territories, and their specific regulatory requirements, often with state/province-specific variations, merits the retention of a tailored wording for each
- Are they different in other ways from the new model?
 - No; in fact, where the old US and Canadian wordings featured "best practice" clauses, these have been incorporated into the model wording
- What are the principal modifications?



- General Cover Conditions updated
 - LMA 5058A - Surplus Lines state-specific rules - now attached
 - Not included in body of wording as local state requirements can change
- Licences and tax
 - This section has been simplified to reflect the fact that only Surplus Lines taxes are relevant
- Bordereau section
 - Includes specific requirements for the provision of Surplus Lines information, as before
- Law and jurisdiction
 - Any contract disputes will continue to be governed by the substantive laws of the state specified in the schedule

- Amended to reflect OSFI regulatory requirements
 - Updated business continuity and dispute resolution provisions
 - Reviewed by external lawyers against OSFI requirements
- “Made in Canada” provisions now incorporated
 - Lloyd’s Canada “Attorney-in-Fact” signing procedure for non-domiciled coverholders endorsed onto the Worldwide wording
- Law and jurisdiction
 - Ontario law has been set as the default position, since “Canadian law” is not permissible; however, an alternative can be agreed between the contract parties as appropriate
- Lineage and non-Lineage accounting provisions
 - These remain unchanged, although updated endorsements have been issued for use as applicable



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Panel Discussion

Chair: Neil Smith (Head of
Underwriting, LMA)

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