



LMA Model Binding Authority Agreements - Guidance to Coverholders

Coverholders are critical business partners to the Lloyd's market, bringing to the market around a third of its business. They are highly knowledgeable and professional participants in the underwriting process and the Lloyd's Market wants to continue building long term profitable relationships with the Coverholder community.

To help achieve this the LMA seeks to support the market by producing the most appropriate resources including model binding authority wordings that are commercially flexible, compliant with the appropriate regulations, legally robust and that set out the parties' obligations in as clear and unambiguous a way as possible.

The LMA is therefore pleased to announce the launch of three new model binding authority wordings which are intended for use from 1 November 2013 (or earlier if all the parties agree): LMA 3113 (Worldwide excl USA/Canada); LMA 3114 (USA); LMA 3115 (Canada). These wordings will be made available to replace a number of existing model binding authority wordings that were last updated in 2006.

We expect that the new wordings will be fully supported by the Market and our Coverholders. We recognise therefore that Managing Agents, Brokers and Coverholders will need to become familiar with the new wordings before they start to be used later this year.

The purpose of this note is to provide you with some information about the new wordings and answer some questions you may have by way of the FAQs below. You may well have other questions and, if so, you should contact your Lloyd's Broker in the first instance, or your Managing Agent (if there is no broker in the chain).

What is the LMA issuing?

We are issuing three new binding authority wordings. These are -

- LMA 3113 (Worldwide excl USA/Canada)
- LMA 3114 (USA)
- LMA 3115 (Canada)

A number of endorsements for use with the Canadian binding authorities have also been updated and a short endorsement has been produced for use where the binding authorities are placed direct (LMA 5209).

These wordings are intended to replace the following nine current model wordings -

- LMA3018 (US Non-Marine) (Direct and Broker)
- LMA3019 (Non-Marine, excl USA/Can) (Direct and Broker)
- LMA3020 (Canada Non-Marine) (Direct and Broker)
- LMA 3021 (Marine) (Direct and Broker)
- LMA 3024 (Non-Marine) (Lloyd's Broker)

As you will notice when you look at the wordings, as well as reducing the number of model wordings we have also slightly re-ordered the sections. In making that change we recognise that you may be used to the current order of the sections but we are certain that, over time, the new arrangement will make the wordings easier to use because they are consistent across all 3 new wordings and relocate the sections in a more logical order with the authority sections up front and the contract documentation sections later.

Accompanying guidance notes are also available for each of the new wordings. And in addition, for information purposes, an "annotated" version of the new wording is available, which explains in more detail the key differences between the old and new wordings.

Details of how to access all the documents are at the end of this bulletin.

These new wordings represent a significant improvement on the existing wordings and we hope that the guidance and the annotated version will make using the wordings easier for both Coverholders and Underwriters.

Why have you issued new wordings?

Since 2001 the LMA has published a suite of model binding authority wordings. These have been almost universally adopted by Underwriters and Coverholders and have been well received. Having model wordings makes doing business easier and means that you can have some confidence that the wording is robust and reflects market practice. However, the current set of nine wordings was last updated in 2006 and seven years on, those wordings would benefit from an update in several key areas.

For instance, since 2006 there have been several standard compliance related endorsements developed for binding authorities. It makes little sense for these boiler plate clauses to be separately endorsed to almost every binding authority when they could easily be incorporated in the wordings.

We have also seen increased regulatory oversight of outsourcing arrangements (which includes coverholder arrangements) both in the UK but also from regulators around the world. That means changes are required to keep the model wordings in line with the expectations of our regulators. Finally, market practice and technology have continued to evolve over recent years; for example, with risk, premium and aggregate reporting processes and the growth of internet trading. The new model wordings reflect these changes best market practice.

For these reasons, the LMA decided to undertake an exercise to update and refresh the model binding authority wordings. At the same time it was felt that that there had been an over-proliferation of wordings over time. Many of the current wordings are very similar with little reason for the differences. Having more wordings than necessary makes business more complicated for Underwriters and Coverholders with little obvious benefit to the market. The LMA therefore saw an opportunity to reduce the number of model wordings by taking the best of each of the current wordings and combining them.

What were the objectives in preparing these new wordings?

The new wordings were produced by the LMA's binding authority wording committee. For continuity purposes the committee contained several members who were involved in the production of the first model agreements in 2001 and the updated versions in 2006. The committee had a number of key objectives in undertaking its work.

1. Reduce as far as possible the number of existing model wordings
2. Seek to incorporate as far as possible the standard endorsements that were being used in the market
3. Make the wordings more user-friendly
4. Reflect the regulatory and compliance changes we have seen in recent years (not just in the UK but also overseas)
5. Introduce more default provisions that the parties are then free to build upon or replace, for example delegation of claims authority

Are these new wordings a complete rewrite of the previous wordings?

No, the wordings have not been rewritten, they have simply been updated and many of the existing clauses remain largely unchanged.

The wordings still comprise a standard set of model clauses setting out the rights and obligations of the Coverholder and Underwriters. There remains a schedule for the parties to complete with the contract specific details such as Class of Business, premium income and specific reporting obligations. This format has worked very effectively, provides good flexibility and will not change.

We have only made changes where we thought changes were needed. We have consulted widely with brokers via the London & International Insurance Brokers' Association (through its Binding Authority Committee), the Managing General Agents Association (UK) and in the U.S. via the American Association of Managing General Agents (the AAMGA).

So what is different?

It is right that some things have changed and there are some new provisions. Full details of the key changes are in the "annotated" version of the new binding authority available

as set out at the end of this bulletin. More information can also be found in the Guidance produced to accompany the wordings. Some of the headline changes are as follows -

1. The order of the binding authority clauses has been changed, and we believe improved. Generally all the commercial clauses are dealt with first, with the regulatory, legal and termination provisions at the end. (The "annotated" version of the binding authority will help you find the new section numbers for clauses.)
2. The requirement for the Underwriter to sign the schedule of the agreement following signing by the Coverholder has been removed.
3. One of the most significant new sections is the default claims handling clause. Until now, while the Marine model binding authority agreement did include a clause, the Non-Marine versions did not set out any specific obligations for Coverholders regarding dealing with claims. This led to a significant variation in the approaches being taken across the market which could cause issues for coverholders with multiple binding authorities. We therefore decided that default provisions should be included across the board and therefore there is a new clause setting out the Coverholder's obligations for handling and settling claims and pursuing recoveries. However, the clause leaves it for the parties to set the level of authority delegated. To be clear this provision is intended as a minimum default clause and in particular it does not set out the specific claims procedures that a Coverholder should follow. These will still need to be set out in the schedule itself and, if required, the parties can replace the entire claims section with more substantive procedures.
4. The reporting requirements have been updated to reflect moves towards real time reporting of data and to include the provision of risk written bordereau(x) (as well as paid premium bordereau(x)).
5. We have incorporated a new bank account clause section. This is based on the existing US bank account clause (LMA5141) that has been used since 2009 and has worked well in giving Underwriters and Coverholders the legal assurance they require on having monies held securely and on the ownership of interest whilst acknowledging how in practice Coverholder bank accounts tend to be set up.

6. We have updated the audit and inspection rights. This includes providing Lloyd's and other relevant regulatory bodies with rights to access the Coverholder's business premises to inspect and audit the records. This reflects current outsourcing regulatory requirements.
7. A short provision has been included to deal with complaints. This provides that Underwriters should be promptly notified of all new complaints and allows for procedures to be agreed by the Underwriters and Coverholder for how complaints should be handled. Exactly what the procedures should be will depend somewhat on the requirements of the local territory.
8. Another new clause in the body of the wording is the inclusion of the 2011 model "financial crime" clause (in the form already used by the Market). We see the inclusion of such a clause as being absolutely critical for Coverholders going forward, and we know regulators now expect to see more detail in financial crime provisions.
9. There are also new or updated provisions on confidentiality, business continuity and conflicts of interest, which all reflect increased current outsourcing regulatory requirements.

So why will using this wording be better for us as a Coverholder?

We think there are a number of real benefits to Coverholders in using these new wordings. These include -

1. The current requirement that the Lead Underwriter needs to countersign the binding authority, after the Coverholder has signed the binding authority agreement, has been removed. Where both Underwriters and the Coverholder have signed the binding authority and the Underwriters have received a copy of the binding authority agreement as signed by the Coverholder, then the binding authority can become effective. There is no need (unless the parties agree to the contrary) for Underwriters to countersign after the Coverholder, as long as all of the Underwriters' unqualified participations are on the contract prior to the Coverholder signing it.

2. The new wordings reflect the fact that Coverholders are increasingly binding insurances using web-based systems. The new wordings make clear that Coverholders can bind insurances online, as long as they have the pre-agreement of Underwriters.
3. The new wording makes clear that the Coverholder can refer to Lloyd's in its marketing or promotional materials, so long as the reference to Lloyd's complies with Lloyd's brand guidelines on Lloyds.com.
4. A new confidentiality clause has been included which makes clear the obligations of confidentiality on both Underwriters and the Coverholder. We hope this express agreement to confidentiality will be seen as providing Coverholders with valuable additional protection.
5. We have also made a number of changes simply to make the wording easier to read. This includes making the numbering of sections more intuitive and bringing related sections together. For instance under the current wording there are several sections that deal with obligations regarding certificate issuance. This has been replaced by a single section with Lloyd's requirements for the content of the certificates being brought together.

Are these new wordings mandatory? Can we make changes?

These wordings are not mandatory. A model wording will not fit all circumstances and therefore the parties are free to amend or indeed create their own bespoke wording, as long as it remains compliant with Lloyd's and all other legal and regulatory requirements (with which your Lloyd's Broker or Managing Agent will be familiar). However, we hope that the new wordings will be as widely used as the existing model agreements.

Where can I find the new wordings and guidance?

The new wordings have been issued to the market under LMA Bulletin [LMA13-018-AG]. Together with the Guidance Notes they can be found on Lloyd's website (www.lloyds.com). The wordings can also be found in the following places, although login details may be required:

- [Lloyd's Wordings Repository](#)

- [LMA website](#)
- [Xchanging Model Wordings Library](#)

Can I still use the old wordings?

As the LMA wordings are model wordings it is for the parties to decide which wording they wish to use for their binding authority arrangements. The new wordings, however, are intended to update the current wordings and include a number of important new clauses that are necessary to ensure regulatory compliance. They also reflect changes in market practice. Therefore, while we recognise it may take time to get used to the new wordings, we would expect them to be widely adopted in place of the current wordings.

Who should I speak to if I have further questions?

You should contact your Lloyd's Broker in the first instance (or your Managing Agent if there is no broker in the chain). You can also find more information by going to the Delegated Authorities section of Lloyds.com

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