

MARKET BULLETIN

REF: Y4562

Title	Byelaw amendment - Third Party Administrators
Purpose	To inform market of new requirements in relation to claims outsourcing
Type	
From	Tom Bolt
Date	10 February 2012
Deadline	Byelaw in force from 1 March 2012
Related links	http://www.lloyds.com/The-Market/Operating-at-Lloyds/Regulation/Acts-and-Byelaws

Following discussions with the LMA, the Council of Lloyd's has made amendments to the Intermediaries Byelaw to establish a byelaw framework in respect of outsourced claims handling authority. Accordingly, at its meeting on 2 February 2012, the Council made –

- 1 the Intermediaries (Claims Determination) Amendment Byelaw; and
- 2 the Requirements made under that Byelaw.

The new byelaw provisions replace Part G of the existing Intermediaries Byelaw and come into force from 1 March 2012. The new requirements are included in the Underwriting Requirements¹. Links to the new byelaw and requirements are above.

Scope of the byelaw

The new byelaw provisions are designed to establish a clear framework for claims outsourced arrangements. This will help enable Lloyd's to achieve its vision of fast and fair claims handling, help protect Lloyd's reputation and control the risks associated with the outsourcing of this key function.

¹ Chapter 2 of the Underwriting Requirements (at paragraph 17A-C)

The provisions discussed below principally only apply where a managing agent appoints a TPA to handle claims on risks bound under a binding authority. In particular, the notification process and the “suitability criteria” only apply at this time to TPAs appointed to determine claims² in respect of risks bound under a binding authority.

The main provisions in the byelaw

Entities to whom managing agents may delegate claims determining authority

It is important there should be clarity as to whom managing agents may delegate authority to determine claims. The byelaw sets out (paragraphs 36A and 36B) a definitive statement as to whom managing agents may delegate their authority to determine claims.

- In respect of risks bound under binding authorities, this includes to coverholders and also to TPAs where the TPA meets the relevant minimum suitability criteria (see below).
- In other cases, managing agents should only delegate claims determining authority to entities who are competent and appropriate taking into account the applicable Lloyd’s claims management principles and minimum standards.³

Minimum suitability criteria for TPAs

Minimum suitability criteria have been set that in-scope TPAs need to meet (see byelaw paragraph 36A(h) and Requirements paragraph 17A). For the avoidance of doubt, Lloyd’s will not be centrally assessing or “approving” potential TPAs using these criteria. Instead these are the minimum criteria that managing agents should use when they assess potential TPAs. The criteria are consistent with market guidance that the LMA’s Binding Authorities Claims Group (the “BACG”) has already established for assessing new TPAs.

The byelaw also requires managing agents to inform Lloyd’s if they believe that an existing TPA is no longer fit and proper or poses a reputational risk to Lloyd’s.⁴ If a managing agent has such a concern they should contact the Lloyd’s Claims Team within the Lloyd’s Performance Management Directorate.

Content of Claims Delegation Agreements

Requirements have also been set to ensure that managing agents have clear, comprehensive and suitable written agreements delegating claims handling authority with coverholders and TPAs. (See byelaw paragraph 36H and requirements paragraph

² See paragraph 36C of the Intermediaries (Claims Determination) Amendment Byelaw for the definition of the phrase “to determine claims”

³ See Claims Minimum Standards 2, 3, 4, 5, and 6 (h) – (m)

⁴ See FSA Handbook (FIT 2.1) for guidance as to “fit and proper”

17(b)(c)). The agreement terms may be as set out as applicable in the binding authority wording, in a separate claims agreement or in both.

To the extent that current claims agreements do not include all the areas required, then Lloyd's is content that full compliance should be achieved for agreements renewing after 1 January 2013 (although we would encourage full compliance as soon as possible where practical).

Notification to Lloyd's of TPAs

Going forward managing agents need to notify Lloyd's of the identity of TPAs they intend appointing so that a central list of TPAs can be maintained. (Byelaw paragraph 36D). The purpose of this notification process is so that if a managing agent proposed to use a TPA with which Lloyd's has concerns, Lloyd's would have the ability to discuss the matter with that managing agent and with any other managing agents who deal with that TPA.

Lloyd's recognises that the responsibility for assessing TPA rests with the relevant managing agent(s). Accordingly, on receiving notification of a TPA, Lloyd's will proceed on the assumption that the managing agent has assessed each TPA notified to Lloyd's and that the managing agent is satisfied that the TPA meets the "suitability criteria".

Lloyd's will not therefore challenge the appointment of a TPA (or use its reserve powers) other than where it has specific reason to believe that to be necessary to protect Lloyd's brand or reputation. In such circumstances Lloyd's would discuss its concerns with the relevant lead managing agent in the first instance.

Details of the notification process will be separately emailed to managing agents' Heads of Claims.

Future development

Lloyd's had originally proposed that all TPAs should be subject to these provisions (including the notification provisions) whether or not the TPA is appointed to determine claims under binding authorities. In response to feedback from the market Lloyd's has agreed that it is sensible to deal with TPAs appointed to determine claims under binding authorities in the first instance and to work with the LMA to extend the scope of the Byelaw so that it covers all TPAs and other claims handlers.

Queries

Queries should be addressed to Helen Ashenden (Lloyd's Claims Team) 020 7327 5781 or helen.ashenden@lloyds.com