

Endorsements for Binding Authority Contracts

Guidance for managing agents

Date September 2023

Feedback from both managing agents and brokers as well as insights into processes via DCOM has identified that guidance regarding the correct approach to effective dates of endorsements to binding authority contracts would be beneficial. In particular, a high volume of queries are received by the DCOM service desk by users seeking to register retrospective endorsements.

In order to assist the market we have set out below Lloyd's expectations for the use of 'retrospective endorsements'. Retrospective endorsements are endorsements where the date inserted for when the endorsement takes effect is before the date when there is full and final agreement of the terms, as evidenced by all the parties signing the endorsement.

In certain specific cases of proposed retrospective endorsements, we set out below details of where we will now require that managing agents obtain prior agreement from Lloyd's before adopting the endorsement. But this note also makes clear that in the majority of cases Lloyd's prior agreement is not needed.

Background

The Contract Certainty Code of Practice (September 2018, at A.2) says the following regarding the use of retrospective contracts and endorsements:

"Wherever possible, the insured and insurer should enter into the contract prior to inception. In circumstances where this is not possible, Contract Certainty can still be achieved by applying the Contract Certainty principles. Firms should be able to demonstrate the extent to which contracts are being entered into later than inception, their causes and actions being taken to reduce their frequency."

It is therefore recognised in the Contract Certainty guidelines and by Lloyd's that retrospective endorsements cannot always be avoided and there may be good reason that endorsements need to be backdated. Nevertheless, the Contract Certainty guidelines require that wherever possible, the parties should have complete and final agreement of all terms prior to inception.

The risks of excessive or improper use of retrospective endorsements are that:

- Changes to binding authority agreements are often backdated unnecessarily or incorrectly. This means there is an excessive number of 'retrospective endorsements', where the inception date has been backdated to the inception of the binding authority or some other date prior to the date when the endorsement was entered into by all the parties.
- Failing to enter into endorsements promptly and relying on them applying retrospectively creates legal uncertainty, risking determent to the policyholder, coverholder and managing agent. In some instances, retrospective endorsements are being used to implement inappropriate changes to the binding authority arrangement.

Example

For example, a change to Section 3.2 "The Person(s) Authorised to Bind Insurances" should be identified and changed on the binder **prior** to this authority being granted. If this were to be backdated this would suggest the person has already been acting outside the parameters of the agreement and therefore in breach of the agreement and the Intermediaries Byelaw.

Lloyd's recognise there can be special circumstances and human error which would mean a retrospective endorsement would be required, however we expect managing agents to have the appropriate controls in place to prevent these from occurring regularly.

Oversight

Managing agents should have robust processes in place to ensure endorsements are bound before they take effect so that retrospective endorsements are only adopted where strictly required and not because of inefficiency or poor oversight and control of coverholder relationships.

Lloyd's are introducing a new process for registering retrospective endorsement which all managing agents must follow from 1st January 2024. The new process is outlined below:

Lloyd's is requiring that retrospective endorsements that fall into 'Category 1' below are referred to Lloyd's for prior approval. Lloyd's has seen evidence that retrospective endorsements falling into Category 1 are sometimes being used to make incorrect changes to the binding authority.

Lloyd's will monitor through DCOM the use of retrospective endorsements and, where there is evidence of a higher use by managing agents, we will investigate and, where appropriate take action to require the managing agent to improve their processes. This will also be taken into account in setting the managing agent ratings for The Principles of Doing Business.

Category	Types of changes included endorsements	Process
<p>Category 1 – Referral required Any endorsements which will retrospectively amend the binding authority agreement in any of the ways listed are required to be referred to Lloyd’s DA team for prior agreement.</p>	<ul style="list-style-type: none"> • UMR (other than where there is a mid-term broker change) • Agreement template • Capacity changes • Year of Account • Inception or expiry date • Parameters of binding authority – where this change could trigger either a valid claim being excluded or new claim being covered, which was not originally covered by the terms of the contract: Class of business, coverage, exclusions, territorial changes, limits and deductibles/ excess, period of insurances, income and aggregate limits. 	<ol style="list-style-type: none"> 1. Prior to the endorsement being agreed, the lead managing agent should email coverholders@lloyds.com to refer the endorsement to the Lloyd’s DA team. Please complete and include the referral information table in Table 1, below. 2. The managing agent will then need to liaise with Lloyd’s DA team and may be required to provide additional information so that Lloyd’s can understand the reason why the retrospective endorsement is required. 3. Once Lloyd’s have received the appropriate information the managing agent can then proceed with the endorsement. 4. These types of endorsements will trigger a validation error on DCOM when the date that all parties have agreed to the endorsement is after the effective date. 5. The broker can raise a ticket via the Market Support Centre portal and can attach the email confirmation from Lloyd’s or confirm the endorsement number and UMR. 6. DA team to check Lloyd’s agreement vs. endorsement match and then agree override on DCOM.
<p>Category 2 – Manage internally Managing Agents should manage these endorsements in accordance with best practice. Justification should be evidenced</p>	<p>All endorsements not listed in Category 1. This includes but is not limited to:</p> <ul style="list-style-type: none"> • Change in coverholder/ broker and/or their address • Any change to Person(s) responsible listed in the binding authority agreement 	<ol style="list-style-type: none"> 1. These endorsements will trigger a validation error on DCOM (when the effective date is prior to the confirmation date). 2. Managing agents should raise a ticket via the Market Support Centre portal and will be asked to confirm that

<p>for any retrospective endorsements that are required.</p>	<ul style="list-style-type: none"> • Parameters of binding authority – where this change will not trigger either a valid claim being excluded or a new claim being covered, which was not originally covered by the terms of the contract: COB, coverage, exclusions, territorial changes, limits and deductibles/ excess, period of insurances, income, and aggregate limits • Binding authority controls: Notifiable percentage, claims authority, reporting requirements, bordereaux requirements • Commissions; profit commission, brokerage, coverholder commission, any other fees. • Contractual requirements: Data protection, notice of termination • Change in UMR if not unique • Manifest errors – for example instances where a ‘0’ is left off a number or it can be evidenced that the binding authority, as a result of an administrative error, incorrectly reflects the original intention of all the parties. 	<p>these are a Category 2 endorsement and that the appropriate controls have been followed</p> <ol style="list-style-type: none"> 3. Managing agents will be expected to be able to evidence the reason why endorsements have been backdated. For example, if the reason is because of a mistake in the slip the managing agent should be able to evidence that the change reflects the original intention of the agreement. 4. Once this information has been validated, Lloyd’s will agree an override on DCOM so the endorsement can be correctly processed.
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Table 1 Table of information to be included in 'Referral email' from managing agent

UMR	
Endorsement No.	
DCOM ID	
Change being made	
Rationale for retrospective endorsement	

Please direct any questions relating to this guidance and its contents to coverholders@lloyds.com.