

## Lloyd's 2006 Claims Scheme

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This Lloyd's Claims Scheme (the "Scheme") has been made by *the Franchise Board* under paragraph 12 of the Underwriting Byelaw. The *Franchise Board* will keep the operation of the Scheme under review and may revise it from time to time following consultation with the *LMA*, the *scheme service provider(s)* and the London Market Insurance Brokers Committee.

Words and terms shown in italics have the meaning set out in schedule 1 to the Scheme.

The additional provisions set out in the footnotes to the Scheme apply only in respect of a *special category claim*.

### Scope of the Scheme

1. The *Franchise Board* requires every *managing agent* to comply with and implement the following principles and arrangements set out in the Scheme for the *determination* of every claim made on an *insurance* underwritten by two or more *syndicates* on or after 1 April 2006 other than –
  - (a) where each of the *syndicates* are managed by the same *managing agent*;
  - (b) term life claims;
  - (c) a claim administered under the *Claims Payable Abroad Scheme*;
  - (d) where the *Franchise Board* otherwise gives a *managing agent* or any class or group of *managing agents* dispensation from this Scheme whether in respect of a class or type of claim or otherwise;
  - (e) *exempt binding authority claims*; or
  - (f) *exempt satellite risk claims*.
2. Claims which must be determined in accordance with this Scheme are referred to as *scheme claims*.

## Receipt of a claim

3. Upon receiving notification of a *scheme claim*, a *leading Lloyd's underwriter* shall ensure that it has been properly identified as the *leading Lloyd's underwriter* in respect of the *insurance* to which the claim relates and, if so, it shall –
  - (a) acknowledge receipt of the claim to the insured or its agent;
  - (b) use its best endeavours to agree with other *Lloyd's underwriters* who shall be the sole *leading Lloyd's underwriter* for any other slips within the same layer of coverage where they are written on substantially the same terms through the same *Lloyd's broker*;
  - (c) review the claim information presented by or on behalf of the insured (in whatever readable format) and if not included request (i) evidence of the *insurance* in question (ii) such preliminary claim information as appears reasonably necessary to commence *determination* of the claim; and
  - (d) take reasonable steps to ensure that the relevant *scheme service provider*<sup>1</sup> is informed of the receipt of the claim and provided with the same information.

## Claims handling

4. Every *managing agent* and every *scheme service provider* shall act in accordance with *Lloyd's Claims Management Principles*.
5. A *scheme claim* must be *determined* by –
  - (a) the *leading Lloyd's underwriter* on behalf of the *leading Lloyd's syndicate*<sup>2</sup>; and
  - (b) a *scheme service provider* on behalf of each *following Lloyd's syndicate*<sup>3</sup>

following appropriate consultation between them and before any payment is made to (or any binding agreement to pay is entered into with) the insured notwithstanding any agreement (in the slip or elsewhere) to the contrary.

6. Notwithstanding the provisions of paragraph 5 of the Scheme –

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<sup>1</sup> and the *second Lloyd's underwriter*

<sup>2</sup> and by the *second Lloyd's underwriter* on behalf of the *second Lloyd's syndicate*

<sup>3</sup> other than the *second Lloyd's syndicate*

- (a) in his or her *determination* of a *scheme claim*, the *leading Lloyd's underwriter*<sup>4</sup> may at any time consult with one or more of the *following Lloyd's underwriters*;
- (b) the *leading Lloyd's underwriter*<sup>5</sup> may delegate the *determination* of a *scheme claim* to another person provided that the delegation is properly documented and notified to the relevant *scheme service provider* and any relevant *Lloyd's broker*.

#### Professional advisers and reports

7. A *professional adviser* will be appointed and instructed by the *leading Lloyd's underwriter* and the *scheme service provider* only. However where the *professional adviser* has not been selected in advance of a *scheme claim* the *leading Lloyd's underwriter* shall not instruct a *professional adviser* on behalf of the *following Lloyd's syndicates* without the agreement of the *scheme service provider*, except
  - (a) in the cases where the appointment of the *professional adviser* is essential to protect the position of the *syndicates* and
  - (b) where the *leading Lloyd's underwriter* has been unable to contact the *scheme service provider* notwithstanding having used his or her best endeavours
8. When a *professional adviser* is appointed by a *leading Lloyd's underwriter* and the *scheme service provider* they shall ensure that the *professional adviser* is informed of –
  - (a) the identity of the *managing agent* which manages the *leading Lloyd's syndicate* and the identity of the *scheme service provider*;
  - (b) evidence of the *insurance*; and
  - (c) references which identify the claim.
9. A *professional adviser* appointed in accordance with paragraph 8 of this Scheme shall be instructed to send all reports to the *leading Lloyd's underwriter*<sup>6</sup> and the *scheme service provider*.
10. A *professional adviser's* fees shall be agreed by the *leading Lloyd's underwriter* and the *scheme service provider*.

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<sup>4</sup> and the *second Lloyd's underwriter*

<sup>5</sup> and the *second Lloyd's underwriter*

<sup>6</sup>, the *second Lloyd's underwriter*

Brokers may show

11. Without prejudice to paragraph 5 or any other provision of the Scheme, where a *Lloyd's broker* has been directed by the insured to show its claim to the *Lloyd's underwriters* which underwrote the *insurance*, the *Lloyd's broker* may show the claim to each *Lloyd's underwriter*.

Matters requiring referral to all following Lloyd's underwriters

12. The *scheme service provider* shall not agree on behalf of any *following Lloyd's underwriters* any *ex gratia* settlement, commutation or rescission of an *insurance*, other than in accordance with the terms of that *insurance*, without referring the matter to the *following Lloyd's underwriters* for agreement.

Notifications to following Lloyd's underwriters

13. The *scheme service provider* shall notify the *following Lloyd's underwriters* of the following matters or events as soon as practicable –
  - (a) a new *scheme claim*;
  - (b) the recommended reserve or reserves for a *scheme claim*;
  - (c) any revision to the recommended reserve or reserves;
  - (d) the commencement of *dispute resolution proceedings* relating to a *scheme claim*;
  - (e) the procedures that the *scheme service provider* has implemented to manage any conflicts of interest in the *determination* of the claim including where the *scheme service provider* acts for the *leading Lloyd's underwriter*<sup>7</sup> and *following Lloyd's underwriters*; and
  - (f) where the *scheme service provider* has been notified that the *leading Lloyd's underwriter*<sup>8</sup> has delegated the *determination* of a *scheme claim* to another person under paragraph 6(b) of the Scheme, the identity of that person.

and a *following Lloyd's underwriter* may request the *scheme service provider* to provide such further information as it may reasonably require.

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<sup>7</sup> and/or the *second Lloyd's underwriter*

<sup>8</sup> or the *second Lloyd's underwriter*

## Disagreement

14. If the *leading Lloyd's underwriter*<sup>9</sup> and the *scheme service provider* disagree on the *determination* of a claim they shall promptly seek to resolve that disagreement amongst themselves. If the disagreement cannot be resolved the *scheme service provider* (with the *leading Lloyd's underwriter*<sup>10</sup> where he or she so wishes) shall consult with the *following Lloyd's underwriters* in order to agree on a way in which to proceed.
15. If a *following Lloyd's underwriter* and the *scheme service provider* disagree on the *determination* of a claim they shall promptly seek to resolve that disagreement amongst themselves. If the disagreement cannot be resolved the *scheme service provider* shall consult with the *following Lloyd's underwriters* in order to agree on a way in which to proceed.

## Processing of claims payments

16. Where a *scheme claim* has been *determined* the *leading Lloyd's underwriter* and the *scheme service provider* shall ensure that all supporting information has been properly documented prior to payment of the claim being authorised.
17. Where a *scheme claim* is to be paid directly to the insured the *leading Lloyd's underwriter and the scheme service provider* shall agree who shall notify the relevant *Lloyd's broker* prior to the claim being paid and that person shall make the notification.

## Payment of claims to reinsureds

18. Where a *scheme claim* has been *determined* and payment is to be made to a reinsured the *scheme service provider* shall process the payment provided that a *managing agent* may, by giving 10 working days written notice (containing the information set out in schedule 3 to the Scheme) to the *scheme service provider, Lloyd's* and any relevant *Lloyd's broker*, withdraw its authority to process payments to the reinsured (for periods of up to 6 months) if the *managing agent* wishes to properly exercise a right of set-off and –
  - (a) the reinsured has been declared bankrupt or insolvent; or

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<sup>9</sup> or the *second Lloyd's underwriter*

<sup>10</sup> or the *second Lloyd's underwriter*

- (b) the reinsured is an insurance company which no longer accepts new or renewal business and has withdrawn from the central settlement systems of the *IUA*; or
- (c) the reinsured owes £375,000 or equivalent currency or more (or such other amount which may be prescribed by the *Franchise Board* from time to time) to the relevant *syndicate* and –
  - (i) such amount has been due and payable to that *syndicate* for a period of 6 months or more; and
  - (ii) the reinsured has not disputed that it owes the monies to the *syndicate*.

#### Commencement

19. This Scheme shall come into force on 1 April 2006.

## Schedule 1 Definitions

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In this scheme,

“*active underwriter*” shall have the meaning given to it in the Definitions Byelaw;

“*binding authority*” shall have the meaning given to it in the Definitions Byelaw;

“*Claims Payable Abroad Scheme*” means the scheme which enables Underwriter’s at Lloyd’s to use the services of Lloyd’s Agents to adjust and settle claims brought by local consignees under specific Lloyd’s marine cargo policies of insurance. This is also known as Settlement of Claims Abroad.;

“*coverholder*” shall have the meaning given to it in the Definitions Byelaw;

“*determination/determine*” means all claims handling activities necessary in order to (i) accept or deny a *scheme claim*, in whole or in part; (ii) agree any amount payable and (iii) resolve finally any open matter by agreement or, if necessary, dispute resolution ;

“*dispute resolution proceedings*” means any litigation, arbitration, regulatory hearing or other contested proceeding to determine a *scheme claim*;

“*exempt binding authority claims*” has the meaning set out in schedule 2 of this Scheme;

“*exempt satellite risk claims*” means a claim on a contract of *insurance* coded with such risk codes as the *Franchise Board* may from time to time prescribe;

“*following Lloyd’s underwriters*” means the *Lloyd’s underwriters*, other than the *leading Lloyd’s underwriter*, who underwrite the *insurance* on behalf of a syndicate;

“*following Lloyd’s syndicates*” means *syndicates* that have underwritten the *insurance* other than the *leading Lloyd’s syndicate*;

“*Franchise Board*” means the board established by the Council of Lloyd’s with that name;

“*insurance*” shall also be deemed to include reinsurance save where the context otherwise provides;

“*IUA*” means the International Underwriting Association of London;

“*leading Lloyd’s underwriter*” means the first *Lloyd’s underwriter*, in slip order, to underwrite the *insurance* on behalf of a *syndicate* or such other *Lloyd’s underwriter* nominated on the slip as the *leading Lloyd’s underwriter*;

“*leading Lloyd’s syndicate*” means the first *syndicate*, in slip order, to underwrite the *insurance* or such other *Lloyd’s syndicate* nominated on the slip as the *leading Lloyd’s underwriter*;

“*Lloyd’s Claims Management Principles*” means the claims management principles and minimum standards prescribed from time to time by the *Franchise Board* under paragraph 12 of the Underwriting Byelaw;

“*LMA*” means the Lloyd’s Market Association;

“*Lloyd’s broker*” shall have the meaning given to it in the Definitions Byelaw;

“*Lloyd’s underwriter*” means the *active underwriter* of a *syndicate* or its staff;

“*managing agent*” shall have the meaning given to it in the Definitions Byelaw;

a “*professional adviser*” may include, but is not limited to, a lawyer, adjuster, surveyor, actuary or accountant;

“*scheme claims*” means claims that must be determined in accordance with this scheme;

“*scheme service provider*” means a service provider authorised by the *Franchise Board* to provide services under this Scheme;

“*second Lloyd’s syndicate*” means the second *syndicate*, in slip order, to underwrite the *insurance* or such other *Lloyd’s syndicate* nominated on the slip as the second *Lloyd’s underwriter*;

“*second Lloyd’s underwriter*” means the second *Lloyd’s underwriter*, in slip order, to underwrite the *insurance* on behalf of a *syndicate* or such other *Lloyd’s underwriter* nominated on the slip as the second *Lloyd’s underwriter*;

“*special category claim*” means a *scheme claim* made on –

- (a) legal liability insurance (other than the classes and categories set out in Schedule 4)
- (b) bankers blanket bond, forgery or fidelity insurance;
- (c) contract frustration insurance;
- (d) political risk insurance;
- (e) credit risk insurance

where

- (i) the slip provides that the *second Lloyd’s underwriter* may determine claims on behalf of the *second Lloyd’s syndicate*;
- (ii) the *second Lloyd’s underwriter* has not delegated the determination of the claim to a *scheme service provider*;

“*syndicate*” shall have the meaning given to it in the Definitions Byelaw;

“*Third Party Administrator*” shall have the meaning given to it in the Delegated Underwriting Byelaw;

“TPA” means *Third Party Administrator*;

“*TPA Agreement*” means an agreement which specifies the nature and extent of the *Third Party Administrator’s* authority to settle claims arising out of any *insurances* underwritten under the relevant *binding authority*.

## Schedule 2

### Exempt binding authority claims

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1. Subject to paragraphs 2 and 3 of this Schedule, an *exempt binding authority claim* is a claim made on an insurance which was underwritten by a *coverholder* in accordance with a *binding authority* where
  - (a) authority to *determine* claims has been delegated to the *coverholder* or *TPA* in accordance with the terms of the *binding authority* or *TPA Agreement*; or
  - (b) the *leading Lloyd's underwriter* agrees to *determine* the claim on his or her own behalf and on behalf of the *following Lloyd's underwriters* to whom the *leading Lloyd's underwriter* has accepted a duty of care and this agreement is set out in the slip.
  
2. Notwithstanding paragraph 1 of this Schedule, *exempt binding authority claims* shall not include claims which meet the following criteria-
  - (a) a liability claim that involves death, brain injury, spinal injury, loss of sight or hearing, loss of limb, or permanent disability or disfigurement and the *coverholder* or *TPA* has not been granted authority in respect of such a claim in the *binding authority* or *TPA Agreement*; and/or
  - (b) the *coverholder* or *TPA* in question proposes for any reason to deny coverage or reject payment of the amount claimed, in whole or in part and the *coverholder* or *TPA* has not been granted that authority in accordance with the terms of the *binding authority* or *TPA Agreement*;
  - (c) *dispute resolution proceedings* against *Lloyd's underwriters* have been commenced and the *coverholder* or *TPA* has not been granted authority in respect of such *dispute resolution proceedings* in the *binding authority* or *TPA Agreement*; or
  - (d) the *leading Lloyd's underwriter* elects to refer the claim to the *scheme service provider* upon first advice or receipt of first report and will document the file accordingly.
  
3. If, upon receipt of the first report by the *leading Lloyd's underwriter* it is unclear whether the claim is an *exempt binding authority claim* the claim must be referred to the *scheme service provider* and will be *determined* in accordance with the Scheme.

### Schedule 3

#### Notice of Withdrawal for Processing Claims Payments

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The written notice to the *scheme service provider* in accordance with paragraph 18 of this Scheme must contain the following information and relevant supporting documents:

- Full name and details of the reinsured as it appears on the slip(s)
- Confirmation that a right of set-off exists against the reinsured
- A statement of net monies owed
- Confirmation that the monies owed have not been disputed i.e. that no formal written communication has been received by the Lloyd's underwriter from the reinsured denying the claim(s) in whole or in part and that no proceedings have been commenced by the reinsured in respect of the claim(s)
- Dates on which the collecting notes were issued
- Confirmation that the broker(s) has passed on collecting notes to the reinsured and is not holding any monies due to the syndicate from the reinsured
- Copies of the slips on which claims have been advised (with the *scheme service provider's* references) or are likely to be advised with signing numbers and dates. These are required so that the *scheme service provider* can administer the process effectively
- Any other document that the managing agent considers to be relevant

The written notice must be signed by either the Managing Director/CEO or the Compliance Officer of the underwriter's *managing agent* and sent with attachments to the Opt-Out Manager of the *scheme service provider*, Lloyd's Reinsurance Department and the relevant *Lloyd's broker*.

Schedule 4  
Special Category Claims – Exemptions

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*Scheme claims* made on the following categories and classes of legal liability insurance shall not be treated as *special category claims* under this Scheme –

- a. P&I, Shiprepairers Liability, Charterers Liability, Cargo Liability (excluding claims involving US Assureds or subsidiaries or where a US lawsuit has been filed or the occurrence is in US territorial waters;
- b. Aviation Liability – risk codes L, AO and AP;
- c. Auctioneers Liability;
- d. Bailees Liability to goods including care custody and control;
- e. Boiler & Machinery Liability (ex USA as above);
- f. Collision Liability (Running Down Clause);
- g. Forwarding Agents Liability;
- h. Furriers Liability;
- i. Garage Keepers Legal Liability;
- j. Guest Voluntary Settlement (Aviation);
- k. Logging Liability;
- l. Motor Truckers Liability to goods;
- m. Recours des Voisins;
- n. Reinsurance with a full Reinsurance Clause (where there is no claims control or claim co-operation provision);
- o. Risques Locatif;
- p. Road Hauliers Liability to goods/Convention Merchandise Route (CMR);
- q. Security Carriers Liability;
- r. Shipowners Liability to Cargo (but not cargo's liability);
- s. Stevedores Liability;
- t. Warehouse Owners Liability to goods; and
- u. Wharfinger Liability.