

# MARKET BULLETIN

REF: Y4510

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<b>Title</b>	Financial Crime Endorsement to Binding Authority Wordings
<b>Purpose</b>	To inform the Lloyd's Market of newly drafted financial crime endorsements
<b>Type</b>	Event
<b>From</b>	Andy Wragg, Senior Manager, International Regulatory Affairs 020 7327 6387 or <a href="mailto:andy.wragg@lloyds.com">andy.wragg@lloyds.com</a>  Peter Montanaro, Head, Delegated Authorities 020 7327 5971 or <a href="mailto:peter.montanaro@lloyds.com">peter.montanaro@lloyds.com</a>
<b>Date</b>	11 August 2011

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## Introduction

As Lloyd's market participants will be aware, regulatory expectations of the UK insurance industry to ensure appropriate anti-financial crime systems and controls are increasing, together with regulatory penalties for non-compliance, as seen in recent high profile actions by the FSA.

Financial crime by connected third parties is a particular risk that managing agents need to manage appropriately and, as recommended by the UK's Ministry of Justice's ("MoJ") Guidance under the UK Bribery Act, one way of doing so is the use of anti-financial crime terms and conditions, with appropriate termination provisions, in contracts with third parties. Due to their relationship with managing agents, coverholders can pose a potential financial crime risk as "associated persons" under the UK Bribery Act and therefore the recommendation by the MoJ has led to the development of a financial crime endorsement for attachment to the model binding authority wordings, LMA 3018, 3019, LMA 3020, LMA 3021, LMA 3024.

As referenced in [Market Bulletin Y4492](#) on anti-bribery compliance, Lloyd's, in conjunction with the LMA and LIIBA, has drafted a financial crime endorsement for inclusion in binding authority contracts and the final version is now ready for use. It should be noted that due to the different paragraph numbering across the model binding authority wordings there are different versions of the endorsement for attachment to the non-marine and marine model binding authority wordings and "direct" versions for binding authority contracts where no broker is involved. The versions of the endorsement are attached at Appendix 1 and will be added to the Lloyd's Wordings Repository ("LWR"), [www.lloydswordings.com](http://www.lloydswordings.com), in due course. For those who do not have access to the LWR, please see the following link:

<http://www.lloyds.com/The-Market/Tools-and-Resources/Resources/LMA-binding-authority-model-agreements>.

### **The scope of the endorsement**

The wording of the financial crime endorsement has been drafted to respond not only to bribery implications but to also take account of money laundering and international sanctions. The endorsement sets out the expectation that coverholders will have appropriate systems and controls to ensure that any financial crime risk that they pose to managing agents is mitigated. However, it is for managing agents to ensure the compliance of their coverholders through the usual methods including the audit process.

### **Ongoing Compliance**

It is important that managing agents note that the application of the endorsement's requirements needs to be proportionate to the financial crime risk posed, and in order to determine this, Lloyd's recommends that managing agents carry out risk-based due diligence, assessing each coverholder against the money laundering, financial sanctions and anti-bribery risks they pose. Consideration of jurisdiction and class of business risk should inform the due diligence assessment, which should be documented. It is also essential to ensure that the coverholder is monitored on an ongoing basis and that robust compliance audits of coverholders are carried out, with recommendations implemented where appropriate.

A financial crime endorsement may provide contractual certainty for underwriters in specified circumstances but does not remove a managing agent's obligations to carry out or have performed due diligence of the coverholder's compliance relative to the risk profile of the coverholder in question.

### **Managing Agents guidance to coverholders**

Managing agents should ensure that coverholders understand the rationale for the endorsement as coverholders will benefit from understanding the wider context of its application. It may be helpful to clarify that the endorsement has been drafted in recognition that a coverholder, as a contractual counterparty, is an "associated person" of a managing agent under the UK Bribery Act and that in the event of an act of bribery or corruption, a coverholder could create criminal liability for its principal.

To understand their anti-financial crime obligations, there is existing guidance on [www.lloyds.com](http://www.lloyds.com) for coverholders with regard to [anti-money laundering and international sanctions compliance](#) and Lloyd's is currently drafting guidance with regard to anti-bribery compliance that will be posted on Crystal imminently. In addition, by the end of 2011, Lloyd's aims to launch an on-line training tool for coverholders to complete in respect of anti-financial crime compliance. Whilst this training tool will assist coverholders in understanding the potential financial crime risks they pose for managing agents and their obligations towards ensuring compliance, it is nevertheless managing agents' responsibility to determine whether their coverholders require any additional training.

Finally, managing agents should assess and explain the extent they expect a coverholder to comply with the obligations set out within the endorsement, in particular 37.1 where there is a requirement that the coverholder uses "best endeavours" to ensure that its associated parties (i.e. producing agents) are in compliance with all laws "where applicable". The approach required could vary, according to the risk profile of the coverholder but if deemed proportionate to the risk, the managing agent could request that the coverholder undertakes risk-based due diligence of its producers, including replicating similar anti-bribery terms and conditions into any applicable contracts. To support their request, Managing agents might want to cite the MoJ guidance, Section 39, which addresses this point:

*"The principal way in which commercial organisations may decide to approach bribery risks which arise as a result of a supply chain is by employing ... anti-bribery procedures... (e.g. risk-based due diligence and the use of anti-bribery terms and conditions) in the relationship with their contractual counterparty, and by requesting that counterparty to adopt a similar approach with the next party in the chain".*

Managing agents should assess if the above is practical and proportionate for their coverholders to undertake based on their risk assessment of the coverholder and document their decision accordingly.

### **Conclusion**

Whilst managing agents should ensure compliance by their coverholders with the terms of the financial crime endorsement, this should be proportionate to the financial risk posed.

If you have any questions about the content of this bulletin, please contact Andy Wragg, Senior Manager, International Regulatory Affairs on 020 7327 6387 or [andy.wragg@lloyds.com](mailto:andy.wragg@lloyds.com) or Peter Montanaro, Head, Delegated Authorities on 020 7327 5971 or [peter.montanaro@lloyds.com](mailto:peter.montanaro@lloyds.com).

### **Further Information**

If you require additional information or wish to discuss this matter in more detail, please contact:

#### **Lloyd's International Trading Advice**

Lloyd's Desk, Ground Floor, Underwriting Room

Telephone: 020 7327 6677

Email: [LITA@Lloyds.com](mailto:LITA@Lloyds.com)

[www.lloyds.com/crystal](http://www.lloyds.com/crystal)

**APPENDIX 1**

Financial Crime Endorsements (LMA5173, LMA5174, LMA5175 and LMA5176)

**FINANCIAL CRIME ENDORSEMENT (Broker)**  
**(For attachment to LMA 3018, LMA 3019, LMA3020 & LMA3024)**

By this endorsement the Binding Authority Agreement is amended as follows -

**1. By making the following amendments in SECTION 16 (Cancellation and Termination)**

**1.1 to insert new paragraph 16.3.4:**

“The Coverholder fails to comply with any relevant law or regulation in the jurisdiction in which it is located or in any other jurisdiction in which the Coverholder does business or otherwise fails to comply with the requirements of Section 37 of this Agreement.”

**1.2 to amend existing paragraph 16.3 as follows:**

“The Underwriters and Coverholder specifically agree that the Underwriters reserve the right to cancel the Agreement at any time with immediate effect upon the occurrence of any of the events set out in 16.3.1 to 16.3.4 inclusive;

The Underwriters shall give written notice of such cancellation and the Agreement shall terminate at the date specified in the notice;”

**1.3 to replace existing sub-paragraph 16.3.2 as follows:**

“The Coverholder or any past or present director, officer, partner or any individual named in the Agreement:-

16.3.2.1 is convicted of a criminal offence or where such a person had been convicted of a criminal offence prior to the commencement of this Agreement which had not been disclosed to the Underwriters. For the purposes of this 16.3.2.1 only the criminal offence shall be one that involves fraud, dishonesty, financial crime or is any other criminal offence that may materially affect the operation of this Agreement;

16.3.2.2 causes Underwriters to be subject to any criminal sanction;”

**1.4 to amend existing paragraph 16.4 as follows:**

“The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1, 16.3.2 and 16.3.4. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2, or the Underwriters’ rights under 16.3;”

2. By replacing existing SECTION 37 with the following:

## SECTION 37

### COMPLIANCE WITH THE LAW AND FINANCIAL CRIME

- 37.1 Without prejudice to any of the rights or obligations otherwise specified in the Agreement, the Coverholder shall comply with all applicable laws for the legal and proper solicitation and handling of all insurances bound or intended to be bound, and shall use its best endeavours to ensure that any other parties with whom it deals in carrying out its duties under the Agreement comply with such laws where applicable.
- 37.2 The Coverholder shall not undertake any activity in any way that would constitute a criminal act in the jurisdiction in which it is located or doing business, or which would expose Underwriters to any criminal sanction.
- 37.3 The Coverholder shall conduct its business in accordance with all relevant anti-money laundering and international economic or financial sanctions legislation. In addition, the Coverholder will not act contrary to any additional anti-money laundering or international economic or financial sanctions requirements by the Underwriters and/or Lloyd's other than where compliance with those requirements would be contrary to local law.
- 37.4 The Coverholder, on behalf of the Underwriters, shall not provide cover or pay any claim or provide benefit hereafter to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Coverholder and/or the Underwriters to any sanction, prohibition or restriction under any applicable international economic or financial sanctions legislation.
- 37.5 The Coverholder shall not accept, offer or facilitate payment, consideration, or any other benefit, which constitutes an illegal or corrupt practice contrary to any applicable anti-bribery legislation.
- 37.6 The Coverholder shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of this Section 37.

**FINANCIAL CRIME ENDORSEMENT (Direct)**  
**(For attachment to LMA 3018 & LMA 3019)**

By this endorsement the Binding Authority Agreement is amended as follows -

**1. By making the following amendments in SECTION 16 (Cancellation and Termination)**

**1.1 to insert new paragraph 16.3.3:**

“The Coverholder fails to comply with any relevant law or regulation in the jurisdiction in which it is located or in any other jurisdiction in which the Coverholder does business or otherwise fails to comply with the requirements of Section 37 of this Agreement.”

**1.2 to amend existing paragraph 16.3 as follows:**

“The Underwriters and Coverholder specifically agree that the Underwriters reserve the right to cancel the Agreement at any time with immediate effect upon the occurrence of any of the events set out in 16.3.1 to 16.3.3 inclusive;

The Underwriters shall give written notice of such cancellation and the Agreement shall terminate at the date specified in the notice;”

**1.3 to replace existing sub-paragraph 16.3.2 as follows:**

“The Coverholder or any past or present director, officer, partner or any individual named in the Agreement:-

16.3.2.1 is convicted of a criminal offence or where such a person had been convicted of a criminal offence prior to the commencement of this Agreement which had not been disclosed to the Underwriters. For the purposes of this 16.3.2.1 only the criminal offence shall be one that involves fraud, dishonesty, financial crime or is any other criminal offence that may materially affect the operation of this Agreement;

16.3.2.2 causes Underwriters to be subject to any criminal sanction;”

**1.4 to amend existing paragraph 16.4 as follows:**

“The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1 to 16.3.3. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2, or the Underwriters’ rights under 16.3;”

2. By replacing existing SECTION 37 with the following:

## SECTION 37

### COMPLIANCE WITH THE LAW AND FINANCIAL CRIME

- 37.1 Without prejudice to any of the rights or obligations otherwise specified in the Agreement, the Coverholder shall comply with all applicable laws for the legal and proper solicitation and handling of all insurances bound or intended to be bound, and shall use its best endeavours to ensure that any other parties with whom it deals in carrying out its duties under the Agreement comply with such laws where applicable.
- 37.2 The Coverholder shall not undertake any activity in any way that would constitute a criminal act in the jurisdiction in which it is located or doing business, or which would expose Underwriters to any criminal sanction.
- 37.3 The Coverholder shall conduct its business in accordance with all relevant anti-money laundering and international economic or financial sanctions legislation. In addition, the Coverholder will not act contrary to any additional anti-money laundering or international economic or financial sanctions requirements by the Underwriters and/or Lloyd's other than where compliance with those requirements would be contrary to local law.
- 37.4 The Coverholder, on behalf of the Underwriters, shall not provide cover or pay any claim or provide benefit hereafter to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Coverholder and/or the Underwriters to any sanction, prohibition or restriction under any applicable international economic or financial sanctions legislation.
- 37.5 The Coverholder shall not accept, offer or facilitate payment, consideration, or any other benefit, which constitutes an illegal or corrupt practice contrary to any applicable anti-bribery legislation.
- 37.6 The Coverholder shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of this Section 37.

LMA5174 (Direct)  
10 August 2011

**FINANCIAL CRIME ENDORSEMENT (Broker)**  
**(For attachment to LMA3021)**

By this endorsement the Binding Authority Agreement is amended as follows -

**1. By making the following amendments in SECTION 16 (Cancellation and Termination)**

**1.1 to replace existing sub-paragraph 16.3.2 as follows:**

“The Coverholder or any past or present director, officer, partner or any individual named in the Agreement:-

16.3.2.1 is convicted of a criminal offence or where such a person had been convicted of a criminal offence prior to the commencement of this Agreement which had not been disclosed to the Underwriters. For the purposes of this 16.3.2.1 only the criminal offence shall be one that involves fraud, dishonesty, financial crime or is any other criminal offence that may materially affect the operation of this Agreement;

16.3.2.2 causes Underwriters to be subject to any criminal sanction;”

**1.2 to insert new paragraph 16.3.5:**

“The Coverholder fails to comply with any relevant law or regulation in the jurisdiction in which it is located or in any other jurisdiction in which the Coverholder does business or otherwise fails to comply with the requirements of Section 37 of this Agreement.”

**1.3 to amend existing paragraph 16.5 as follows:**

“The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1, 16.3.2, 16.3.5 and 16.4. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2, or the Underwriters’ rights under 16.3;”

**2. By replacing existing SECTION 37 with the following:**

**SECTION 37**

**COMPLIANCE WITH THE LAW AND FINANCIAL CRIME**

37.1 Without prejudice to any of the rights or obligations otherwise specified in the Agreement, the Coverholder shall comply with all applicable laws for the legal and proper solicitation and handling of all insurances bound or intended to be bound, and shall use its best endeavours to ensure that any other parties with whom it deals in carrying out its duties under the Agreement comply with such laws where applicable.

- 37.2 The Coverholder shall not undertake any activity in any way that would constitute a criminal act in the jurisdiction in which it is located or doing business, or which would expose Underwriters to any criminal sanction.
- 37.3 The Coverholder shall conduct its business in accordance with all relevant anti-money laundering and international economic or financial sanctions legislation. In addition, the Coverholder will not act contrary to any additional anti-money laundering or international economic or financial sanctions requirements by the Underwriters and/or Lloyd's other than where compliance with those requirements would be contrary to local law.
- 37.4 The Coverholder, on behalf of the Underwriters, shall not provide cover or pay any claim or provide benefit hereafter to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Coverholder and/or the Underwriters to any sanction, prohibition or restriction under any applicable international economic or financial sanctions legislation.
- 37.5 The Coverholder shall not accept, offer or facilitate payment, consideration, or any other benefit, which constitutes an illegal or corrupt practice contrary to any applicable anti-bribery legislation.
- 37.6 The Coverholder shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of this Section 37.

LMA5175 (Broker)  
10 August 2011

**FINANCIAL CRIME ENDORSEMENT (Direct)**  
**(For attachment to LMA3021)**

By this endorsement the Binding Authority Agreement is amended as follows -

**1. By making the following amendments in SECTION 16 (Cancellation and Termination)**

**1.1 to replace existing sub-paragraph 16.3.2 as follows:**

“The Coverholder or any past or present director, officer, partner or any individual named in the Agreement:-

16.3.2.1 is convicted of a criminal offence or where such a person had been convicted of a criminal offence prior to the commencement of this Agreement which had not been disclosed to the Underwriters. For the purposes of this 16.3.2.1 only the criminal offence shall be one that involves fraud, dishonesty, financial crime or is any other criminal offence that may materially affect the operation of this Agreement;

16.3.2.2 causes Underwriters to be subject to any criminal sanction;”

**1.2 to insert new paragraph 16.3.4:**

“The Coverholder fails to comply with any relevant law or regulation in the jurisdiction in which it is located or in any other jurisdiction in which the Coverholder does business or otherwise fails to comply with the requirements of Section 37 of this Agreement.”

**1.3 to amend existing paragraph 16.5 as follows:**

“The Coverholder shall inform the Underwriters immediately upon becoming aware of the occurrence of any of the events set out in 16.2, 16.3.1, 16.3.2, 16.3.4 and 16.4. Any failure by the Coverholder so to advise shall not affect the automatic termination of the Agreement under 16.2, or the Underwriters’ rights under 16.3;”

**2. By replacing existing SECTION 37 with the following:**

**SECTION 37**

**COMPLIANCE WITH THE LAW AND FINANCIAL CRIME**

37.1 Without prejudice to any of the rights or obligations otherwise specified in the Agreement, the Coverholder shall comply with all applicable laws for the legal and proper solicitation and handling of all insurances bound or intended to be bound, and shall use its best endeavours to ensure that any other parties with whom it deals in carrying out its duties under the Agreement comply with such laws where applicable.

- 37.2 The Coverholder shall not undertake any activity in any way that would constitute a criminal act in the jurisdiction in which it is located or doing business, or which would expose Underwriters to any criminal sanction.
- 37.3 The Coverholder shall conduct its business in accordance with all relevant anti-money laundering and international economic or financial sanctions legislation. In addition, the Coverholder will not act contrary to any additional anti-money laundering or international economic or financial sanctions requirements by the Underwriters and/or Lloyd's other than where compliance with those requirements would be contrary to local law.
- 37.4 The Coverholder, on behalf of the Underwriters, shall not provide cover or pay any claim or provide benefit hereafter to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Coverholder and/or the Underwriters to any sanction, prohibition or restriction under any applicable international economic or financial sanctions legislation.
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LMA5176 (Direct)  
10 August 2011