

# MARKET BULLETIN

REF: Y4607

<b>Title</b>	Lloyd's Japan – risks controlled from outside Japan
<b>Purpose</b>	To provide details of simplified arrangements for the underwriting on an open market basis of “Japan risks controlled from outside Japan”.
<b>Type</b>	Event
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<b>Date</b>	13 July 2012
<b>Deadline</b>	Immediate
<b>Related links</b>	<a href="http://www.lloyds.com/japanopenmarketmodel">www.lloyds.com/japanopenmarketmodel</a>

**7 February 2013. Note: The model clauses in this bulletin have now been amended and issued as LMA 5194, LMA 5195 and LMA 3108.**

This bulletin introduces new and simpler arrangements for the underwriting of “Japan risks controlled from outside Japan” and for the issuance of local Japan policies. These arrangements are available to all managing agents with immediate effect and can be adopted on a risk by risk basis for individual placements.

A detailed market presentation describing the arrangement and the benefits it offers to managing agents and brokers (together with other relevant material) can be found at: [www.lloyds.com/japanopenmarketmodel](http://www.lloyds.com/japanopenmarketmodel).

## I. Background

Lloyd's underwriters are currently permitted to underwrite risks located in Japan on a direct basis in a number of classes (listed in Appendix 1). In accordance with Japan regulations, all direct risks (other than aircraft, marine and travel packages) require a local policy to be issued. For Lloyd's market participants that policy issuance can be arranged through Lloyd's

Japan Inc (LJI), a wholly owned subsidiary of Lloyd's, which acts as a local coverholder for managing agents. Lloyd's underwriters who do not issue a local policy through LJI will require a local fronting arrangement.

To date, LJI has operated arrangements to write Japan domestic risks where the placement process and risk is controlled locally.

For managing agents wishing to underwrite risks which are located in Japan but controlled outside Japan, the new arrangements set out in this bulletin establish a simplified process via LJI to issue local policies compliant with Japanese regulations. This includes placements both where the Japanese section of the risk forms part of a multi-territory programme and for stand-alone Japanese risks.

## **II. When can this process be adopted?**

The arrangements outlined in this bulletin can be used for all Japan domestic risks, which:

- are Japan risks controlled from outside Japan (see below); and
- are within one of the classes noted as “available for open market model” in Appendix 1.

To qualify as a “Japan risk controlled from outside Japan” both of the following conditions must apply:

- the head office or ownership of the Japan entity/risk is outside of Japan; and
- the insurance purchase decision is taken outside Japan

Note that this arrangement may only be utilised by the Lloyd's syndicates participating on the risk. LJI cannot issue a local Japan policy on behalf of non-Lloyd's markets.

## **III. How to use the new arrangements**

Managing agents and brokers who wish to utilise this arrangement should follow the process below. A simplified flowchart showing the process is set out at Appendix 2.

### ***Stage 1: Prepare the MRC wording***

Following a request to obtain insurance coverage, the broker prepares an MRC wording for the placement in the usual way, including to cover the Japan domestic risk element. The parties should ensure that the Japan part of the risk meets the criteria set out in Part II ('When can this process be adopted?'). If it does not the broker should contact LJI to discuss exact requirements before proceeding.

The broker must include in the MRC wording the following (or equivalent) clauses. The full wording of these clauses is set out at Appendix 3.

- 'Instruction to Bind (Risks Located in Japan)' clause
- 'Interlocking Clause (Japan Endorsement)'
- 'Japan Endorsement' clause

The following is a summary of the main points covered by the clauses:

#### Instruction to Bind Clause

This clause gives a one-off authority to LJI from Lloyd's underwriters subscribing to the placement for LJI to issue a local policy in respect of the Japanese domestic risk element.

The Instruction to Bind clause clarifies that, in accordance with Japanese regulations and practice, there is no cover for the Japanese domestic risks until the premium allocated to the Japan risks has been received by LJI.

#### Japan Endorsement

The form of the policy that LJI will issue is set out in the Japan Endorsement which should be included in the MRC wording. The policy is a short document which refers back to the terms of the MRC wording and makes it clear that the cover provided under the Japan policy is the same cover (and no more) than is provided under the MRC contract agreed by the parties.

In the Japan Endorsement, the relevant details highlighted must be completed, including the proportion or amount of premium to be allocated to the Japan domestic risks element.

#### Interlocking Clause (Japan Endorsement)

The Interlocking Clause (Japan Endorsement) should be included in the MRC contract as a separate clause and there are equivalent provisions included in the Japan Endorsement. The Interlocking Clause wording makes it clear that notwithstanding the issuance of a separate Japan policy the cover provided across both the MRC contract and the Japan policy is the same and that no additional cover is provided as a result of the issuance of a Japan policy by LJI.

Lloyd's is liaising with the LMA to give the three clauses LMA numbers, which will be notified to the market in due course.

#### ***Stage 2: Binding the MRC contract***

Once the MRC wording has been prepared the broker will offer the risk to underwriters, who may agree to subscribe for all or a part of the risk as with other open market placements. Provided the three clauses referred to in Stage 1 are included in the MRC wording there is no need to involve LJI (although LJI is available to answer any questions). Any proposals to

vary the clauses from the model clauses as appended at Appendix 3 must be first discussed with LJI.

In subscribing to the MRC contract, Lloyd's Underwriters are agreeing to the Instruction to Bind clause which is a part of the contract and by so doing the Lloyd's underwriters are authorising LJI to issue a local policy in the form of the Japan Endorsement. Lloyd's Underwriters are also taken as agreeing to the Acknowledgement and Indemnity provisions in favour of LJI set out at Appendix 4. Before participating on a risk under this arrangement, managing agents must ensure they have read and agree to the terms set out in the Acknowledgement and Indemnity.

### ***Stage 3: Transmission to LJI***

Once the MRC contract has been bound (and following any signing down), the broker should arrange for the following to be sent to LJI for the attention of the Underwriting Service Director, Makoto Iwasaki (email: [Makoto.Iwasaki@lloyds.com](mailto:Makoto.Iwasaki@lloyds.com)):

- a copy of the original underwriters' scratched and stamped MRC contract
- a copy of the broker's appointment letter
- the premium allocated to the Japan part of the risk
- instructions on to whom the local policy should be issued

Please note that Japanese regulations require that the premium referred to in the third bullet point is received by LJI before cover can incept.

### ***Stage 4: Issuance of local policy by LJI***

On receipt of the MRC contract LJI will carry out the relevant checks to ensure that the Instructions to Bind and Japan Endorsement have been properly included and meet Lloyd's requirements (if there have been any amendments). LJI will also check that the risks being written are within the terms of the licences held by LJI.

Provided everything is in order and the premium allocated to the Japan risks has been received, LJI will issue a local policy in the form of the Japan Endorsement. The local policy will append a full copy of the underwriters' scratched and stamped MRC wording. The broker will be notified and provided with a copy of the local policy, once issued.

Inception of cover in respect of the Japan risks will be the same as the intended inception date of the multi-territory programme as stated in the MRC wording or, if later, the date that the premium allocated to the Japan risks has been received by LJI. Underwriters will have no liability and no claim will be payable in respect of claims arising from Japanese domestic risks that occur prior to that date.

- Broker remuneration

Lloyd's expects that on multi-territory policies all brokerage (including for the Japan element of the risk) will be settled on a consolidated basis as part of the main placement. If a

separate broker payment is proposed to be made in Japan then managing agents should contact LJI to discuss their exact requirements. Managing agents and brokers should, however, note that Japanese regulations include restrictions on the payment of brokerage or commission to intermediaries not licensed in Japan.

#### **IV. LJI support services and fees**

Following issuance of the policy LJI will administer on behalf of managing agents all ancillary matters arising from the writing of Japanese domestic risks. This includes dealing with:

- all regulatory reporting to the Japanese Financial Services Authority (JFSA)
- management of local funding requirements
- submission of local tax returns

LJI's fee for arranging the local policy and providing the related services is 5% of the gross premium allocated to the Japanese domestic risks covered by the local policy. This amount will be deducted from the premium remitted to LJI under Stage 3 above.

##### - Claims

LJI will accept notification of claims made in relation to losses arising out of the Japanese part of the risk. Upon receipt of the claims notification LJI will promptly notify underwriters. LJI does not have any delegated claims handling authority and will therefore work in accordance with underwriters' instructions to respond to the claim. To the extent that it is able, LJI will seek to manage claims payments made locally within the funding arrangements (discussed separately below) to avoid the need for additional funds being lodged in Japan. Where additional funds are required to meet local claims LJI will make a cash-call.

##### - Tax

LJI will prepare and submit all income tax returns on behalf of members. The preparation charge for each fiscal year tax return is JPY 25,000 (about GBP 200) which is charged to members in the annual distribution process. Where payments in relation to income tax are required the relevant amount will be collected through Lloyd's central tax arrangements and paid to the Japanese tax authority. There is no requirement for managing agents to be involved in the settlement of tax.

There is no insurance premium tax in Japan.

Further details regarding Japan tax arrangements for Lloyd's underwriters are set out on Crystal.

#### **V. Japan local funding requirements**

LJI is required to ensure that underwriters meet minimum regulatory funding requirements in Japan. LJI manages a quarterly process to assess the funding requirements of syndicates that participate in LJI and will apply this arrangement to business that is written in accordance with this bulletin. All syndicate funds are held in Japan-based premium trust funds on behalf of underwriters. These trust funds are administered by LJI.

To meet the local funding requirements LJI will in the first instance retain the premium allocated to the Japanese domestic risks and which is paid to it in accordance with Stage 3. As part of the quarterly assessment LJI will keep under review the amount of funds that underwriters are required to maintain locally. Where it is able to do so, LJI will release surplus balances to underwriters.

The assets held in Japan are available to meet Japan claims and can also be taken into account for syndicate ICA assessments. Whilst in most instances the premium received by LJI will prove sufficient to cover regulatory funding requirements, in certain circumstances additional funding may be required. If this should occur, LJI will notify underwriters to make arrangements for collection of the required balance.

The LJI Solvency Guide contains more detail on the local minimum asset requirements to meet insurance reserves (including contingency reserves which can only be released in specific circumstances) and the local solvency margin calculation. The Solvency Guide also provides information on how LJI manages both the quarterly assessment process and the local premium trust funds held on behalf of syndicates. The LJI Solvency Guide can be found at [www.lloyds.com/japanopenmarketmodel](http://www.lloyds.com/japanopenmarketmodel).

## **VI. Processing through Xchanging**

Risks placed in accordance with the arrangements set out in this bulletin can be processed through Xchanging in the normal manner. The only processing change that arises is that the premium for the Japan element of the risk should be paid directly to LJI. While Xchanging will account for the Japan element of the premium it will not make a cash collection for the amount and will only collect the balance of the premium owing under the multi-territory policy.

### **Further Information**

If you have any questions regarding this bulletin or wish to discuss participation in or any other matter related to Lloyd's Japan, please contact:

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Appendix 1

LJI licences for direct business

Class of Business		Availability for Open Market Model (Commercial Risks)
Fire	Property	Yes
	Business Interruption	Yes
	Terrorism	Yes
Marine (Hull & Cargo)	Hull	not applicable
	Cargo	Yes
Transit	Transit	Yes
Personal Accident	Personal Accident	No
General Liability*	Public Liability	Yes
	Product Liability	Yes
	Directors & Officers	Yes
	Errors & Omissions	Yes
Credit	Fidelity Guarantee	Yes
Machinery Breakdown	Machinery Breakdown	Yes
Movables All Risks	Fine Arts	Yes
	Jeweller's Block	Yes
	Bankers' Blanket Bond	Yes
Miscellaneous Pecuniary Loss	Event Cancellation	Yes
	Product Recall	Yes
	Kidnap & Ransom	No

\*E&O (PI) licence cannot be extended for medical activities and dispensing risks.

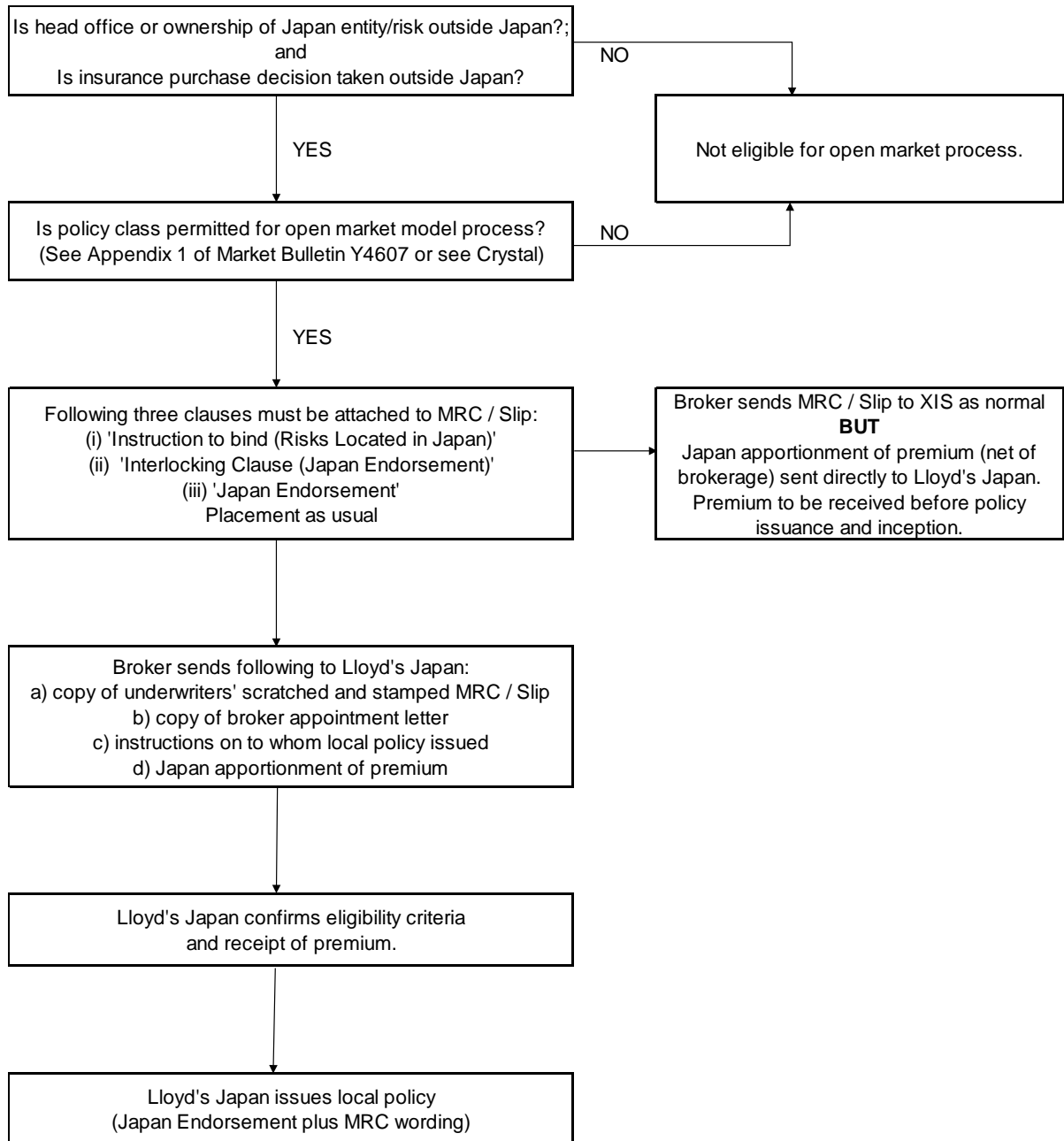
\*Medical malpractice cover is not available (no direct licence).

Managing agents and brokers should refer to Crystal for an up to date list of LJI licences.



Appendix 2

Japan Open Market Model placement process



**Appendix 3****Clauses for inclusion in MRC contract**

*(These clauses can be downloaded in Word format from Lloyds.com)*

**I. INSTRUCTION TO BIND CLAUSE (RISKS LOCATED IN JAPAN)**

Whereas the Japanese Insurance Business Law (IBL) requires that for certain categories of risks (“Japanese domestic risks”) insurance coverage may only be provided to applicants for insurance coverage by persons permitted in accordance with the IBL to carry on insurance business in Japan and in accordance with the terms of such authorisation.

Whereas Lloyd’s Underwriters have been permitted in accordance with the IBL to carry on insurance business in Japan by appointing Lloyd’s Japan Inc (LJI) to act as their general agent.

Whereas the applicants for insurance coverage wish to obtain as part of the placement cover from Lloyd’s Underwriters for risks that the parties have determined are Japanese domestic risks (for Lloyd’s Underwriters’ percentage share of the placement only). The applicants for insurance coverage hereby request such cover from Lloyd’s Underwriters to be bound through their general agent, LJI, on the terms and for the premium as set out in the Japan Endorsement appended to this contract.

- a) By signing for their participation on this contract and for their shares as shown Lloyd’s Underwriters authorise, appoint and instruct LJI to enter into a contract of insurance and issue a policy of insurance on the terms set out in the Japan Endorsement appended to this contract providing insurance coverage for that part of this placement that constitutes Japanese domestic risks.
- b) Until such time as LJI binds cover in accordance with a) (and subject to g) and the terms of cover bound by LJI) the parties agree there shall be no coverage provided by Lloyd’s Underwriters for any part of this placement that is a Japanese domestic risk.
- c) The broker is authorised on behalf of Lloyd’s Underwriters to transmit to LJI this Instruction to Bind and the terms of the coverage to be provided.
- d) Subject to g) for the avoidance of doubt LJI has no authority to amend, alter or in any way change the terms and conditions of the coverage as set out in the Japan Endorsement.
- e) Lloyd’s Underwriters further agree that LJI shall have authority to deal with all matters consequential on the binding of cover (including as set out in Lloyd’s Market Bulletin Y4607). This includes all matters relating to the handling of premium and compliance with Japanese insurance law and regulations on behalf of Lloyd’s Underwriters.

- f) Lloyd's Underwriters further note and agree to the Acknowledgement and Indemnity set out in Lloyd's Market Bulletin Y4607 and for the avoidance of doubt that Acknowledgement and Indemnity is expressly incorporated into this clause and shall have effect for the benefit of Lloyd's, LJI, their directors, officers and employees as if it was set out in full herein with the intent that it should be enforceable against Lloyd's Underwriters.
- g) Japanese regulations require that premium be paid prior to the inception of cover. Accordingly, premium allocated by the Lloyd's Underwriters to the Japanese domestic risks on this placement must be received by LJI (or its agent if applicable) prior to LJI binding cover in accordance with a) and cover incepting. If the applicable Japan premium is received by LJI after the intended inception of this placement Lloyd's Underwriters shall have no liability and no claim shall be paid by Lloyd's Underwriters in respect of claims that occur prior to the date that cover is bound by LJI in accordance with a) following receipt of the premium.

## **II. INTERLOCKING CLAUSE (JAPAN ENDORSEMENT)**

It is hereby understood and agreed that –

1. a separate contract in the form of the attached "Japan Endorsement" shall apply to a portion of the risks that are Japanese domestic risks that would otherwise be insured by the Lloyd's Underwriters under this contract.
2. the total liability of the Lloyd's Underwriters under the Japan Endorsement and under this Contract shall not exceed their proportion of the total (re)insurance coverage amount specified in this contract and liability under the Japan Endorsement for the Japanese domestic risks remains limited by the provisions of this contract.
3. in respect of the attached Japan Endorsement a separate policy will be issued by Lloyd's Japan Inc. For the avoidance of doubt there shall be no coverage provided by Lloyd's Underwriters under this contract, under the Japan Endorsement or otherwise for any part of this risk that is a Japanese domestic risk within the scope of the Japan Endorsement until a contract of insurance has been entered into on behalf of Lloyd's Underwriters by Lloyd's Japan, Inc in the terms of the Japan Endorsement and as provided for by the Instruction to Bind Clause (Risks Located in Japan).

### III. JAPAN ENDORSEMENT

JAPAN ENDORSEMENT  
(hereinafter referred to as the "Japan Endorsement")

attaching to the

Contract Ref: {UMR To Be Completed}  
commencing {DATE To Be Completed}  
(hereinafter referred to as the "Multi-Territory Contract")

Between

{INSURED'S NAME To Be Completed}  
as more particularly described in the Multi-Territory Contract  
(hereinafter referred to as the "Insured")

And

VARIOUS UNDERWRITERS AT LLOYD'S, LONDON  
(hereinafter referred to as "Lloyd's Underwriters")

The coverage provided under this Japan Endorsement is intended to cover the Japanese portion of the risks that would otherwise be insured by the Lloyd's Underwriters under the Multi-Territory Contract, for the period specified therein (the "Japanese domestic risks") and for which the Underwriters (including the Lloyd's Underwriters) have allocated a Premium of {X% / Japanese Yen / U.S.Dollars x,xxx,xx To Be Completed}, part of the premium payable under the Multi-Territory Contract.

Japanese domestic risks for the purposes of this Japan Endorsement means

- (1) any risk for which insurance coverage would otherwise be provided by the terms of the Multi-Territory Contract; but
- (2) pursuant to Japanese insurance law and/or regulation insurance coverage may only be provided to applicants for insurance coverage by persons permitted in accordance with the Insurance Business Law to carry on insurance business in Japan and in accordance with the terms of such authorisation.

The insurance of such Japanese domestic risks is hereby effected for and on behalf of certain Lloyd's Underwriters, whose definitive numbers and the proportions underwritten by them can be ascertained by reference to the Multi-Territory Contract.

The said Lloyd's Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein and within the Multi-Territory Contract and this Japan Endorsement shall incorporate all terms, conditions, exclusions and limitations in the Multi-Territory Contract relating to the cover in respect of the Japanese domestic risks.

It is hereby agreed that the interests and liabilities of the Lloyd's Underwriters for the Japanese domestic risks insured under the Multi-Territory Contract are as more particularly described in the Multi-Territory Contract. Notwithstanding any provision to the contrary in the Multi-Territory Contract, the total liability of the Lloyd's Underwriters under this Japan Endorsement and the Multi-Territory Contract shall not exceed their proportion of the total insurance coverage amount specified in the Multi-Territory Contract and liability under this Japan Endorsement for the Japanese domestic risks remains limited by the provisions of the Multi-Territory Contract.

Any payment by the Lloyd's Underwriters under this Japan Endorsement shall reduce by that amount the total liability for which Lloyd's Underwriters can be liable under the Multi-Territory Contract. Any payment by the Lloyd's Underwriters under the Multi-Territory Contract shall reduce by that amount the total liability for which Lloyd's Underwriters can be liable under this Japan Endorsement.

Japanese regulations require that premium be paid prior to the inception of cover. If the premium allocated is received by LJI after the inception of the Multi-Territory Contract the date of inception in relation to the cover for the Japanese domestic risks shall be the date that the premium allocated to the Japanese domestic risks has been received by LJI and Lloyd's Underwriters shall have no liability and no claim shall be paid in respect of claims arising from Japanese domestic risks that occur prior to that date.

The governing law of this Japan Endorsement shall be as determined by the Multi-Territory Contract.

The provisions for service of suit under this Japan Endorsement shall be as determined by the Multi-Territory Contract.

References in this Japan Endorsement to the "Multi-Territory Contract" shall refer to the Multi-Territory Contract identified by the UMR referenced above (which may be appended hereto) and shall include any subsequent issued insurer authorised evidence of cover.

## Appendix 4

### Acknowledgement and Indemnity

Underwriters that request that Lloyd's Japan Inc (LJI) issues a local Japan policy in accordance with the terms of this bulletin are taken to agree the following, the terms of which shall be deemed incorporated into any instruction to LJI to bind cover on behalf of underwriters.

Underwriters:

- 1 acknowledge that LJI will not undertake a policy checking of the contract (ie a check as to the correctness and completeness of terms and conditions in the contract);
- 2 understand that LJI will undertake all reasonable endeavours to meet any service standards that it may from time to time issue regarding the issuance of local Japan policies. However, underwriters acknowledge that no liability shall attach to Lloyd's, LJI or their directors, officers or employees for any failure to meet those service standards; and
- 3 acknowledge that the content and accuracy of the evidence of each contract of insurance is a matter for underwriters and is not the responsibility of Lloyd's, LJI or their directors, officers or employees. Accordingly underwriters agree in respect of this service performed by LJI that they shall indemnify and keep indemnified each of Lloyd's, LJI, their directors, officers and employees and underwriters hereby hold them harmless from and against all actions, claims, demands, liabilities, damages, costs, losses or expenses (including without limitation, consequential losses, and all interest, penalties, legal and other professional costs and expenses) arising out of or in connection with the signing and issuance of local Japan policies under the terms of any authorisation given.