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SUBJECT: AMENDED NEW YORK LAW ON BINDING
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In our previous market bulletin, entitled “New York Binding Authority Business”, dated 19th June 1998 (reference Y907), we advised the market of new legislation which, for the first time, allowed New York excess line brokers to hold binding authorities on behalf of eligible excess line insurers. Our bulletin also explained that there were some significant restrictions and certain requirements for such binding authorities.

The purpose of this bulletin is to advise of a new bill making two significant amendments expanding the authority of excess line brokers. This bill also clarifies and enhances the original legislation.

What Business Can Be Bound?

First, the **new law makes it legal, under New York law, to bind out of state risks**. The New York Insurance Department (“NYID”) interpreted the first legislation to allow excess line brokers to bind risks only if some portion of the risk is located in New York. However, the amended bill makes it clear that excess line brokers holding a binding authority may bind risks located entirely outside the state. It is of course important that such placements are **only made in accordance with the surplus lines laws of the state where the risk is located**, and should not be in violation of such state’s laws. In general terms, it is important to note that out of state risks may only be written in NY when there is a licensed surplus lines broker in the state where the risk is located actively involved in the placement.

As advised in our earlier bulletin, the new legislation expressly permits the granting of binding authorities to properly licensed surplus lines brokers in New York for the binding of surplus lines risks. The binding authorities must be properly filed with ELANY (Excess Lines Association of New York). **Binding authorities can not be issued for the binding by New York coverholders of reinsurance or exempt business.**

Cancellation Restrictions

Second, the **new law allows notices of cancellation to be issued, by the coverholder on risks bound under a binding authority**, but only:

- A) for non-payment of premium;
- B) for material increase in the hazard insured; or
- C) upon discovery of a material misrepresentation in the application for insurance.

These two amendments above are most helpful in facilitating binding authorities. Nonetheless a number of restrictions still apply and therefore for completeness we repeat below the remaining requirements and restrictions covered in our earlier bulletin.

Processing and Documentation Requirements

Prior to binding any risk and issuing any certificate, the excess lines broker must file with ELANY (the Excess Lines Association of New York) a copy of the binding authority agreement. Such agreement must set forth at a minimum:-

- A description of the classes of insurance which can be bound;
- The maximum dollar limits for each class of business;
- The maximum period for which business can be bound;
- The geographical limits; and
- The name and phone number of the principal contact person at the eligible unauthorised insurer. (In respect of the binding authority agreement submission review check list, the name and phone number of the principal contact person is deemed to be The Manager, Complaints Department, Lloyd's, 1 Lime Street, London, EC3M 7HA. Tel 011 44 171 327 5693, Fax 011 44 171 327 5225)

Certificates issued under New York binding authorities must also contain the minimum information as shown below in the General Cover Conditions. It is the responsibility of the Underwriter, in conjunction with the Lloyds broker, to ensure that these standards are met.

The legislation also prohibits claims handling agreements being shown on the binding authority agreement. In addition, as a result of other legislation already in effect the commission split between the brokers in the placing chain should not be shown on the binding authority agreement.

General Cover Conditions

These requirements have necessitated an amendment to the General Cover Conditions of binding authorities in respect of New York business. Paragraph (a) of the existing Territorial Exclusions and/or Limitations of the General Cover Conditions should therefore be deleted and replaced, by endorsement, with the following wording:

Paragraph (a) of the Territorial Exclusions and/or Limitations of the General Cover Conditions;

No business to be bound by the New York office of any broker owned by or affiliated with the Coverholder or by a New York Coverholder unless;

- 1) they are and remain a licensed excess lines broker in the state of New York
and
- 2) the business is properly exported surplus lines business
and
- 3) they have filed written evidence of their authority to bind coverage with the Excess Lines Association of New York (ELANY) **and**
- 4) such written evidence of their authority to bind coverage does not include the authority to handle claims on coverage bound under the binding authority; **and**
- 5) such written evidence does not authorise notice of cancellation to be issued, except for;
 - a) non-payment of premiums,
 - b) material increase in the hazard insured; or
 - c) discovery of material misrepresentation in the application for insurance;**and**
- 6) such written evidence requires certificates issued under their authority to contain the following information as a minimum;
 - i) description and location of the subject of insurance
 - ii) coverage provided (by kind/class and limits)
 - iii) conditions
 - iv) term (policy period) of insurance
 - v) gross premium
 - vi) name and address of the excess line broker
 - vii) name and address of producing broker
 - viii) name(s) of insurer(s)
 - ix) name and address of insured

Brokers are advised that in order to comply with local filing requirements, LPSO will not sign New York binding authorities at stage 1 without production of the full binding authority agreement wording.

If you require any further information, please contact Ben Jacob (North America Information Services, Lloyds extension 6677).

This bulletin has been sent to all active underwriters, managing agents, Lloyd's brokers and known computer bureaux.

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