

**FROM:** Head of Business Process Reform  
**LOCATION:** 86/441  
**EXTENSION:** 5932  
**DATE:** 8 October 2004  
**REFERENCE:** Y3406  
**SUBJECT:** LMP SLIP  
**SUBJECT AREA(S):** Choice of law, choice of jurisdiction and service of suit  
**ATTACHMENTS:** None  
**ACTION POINTS:** **Underwriters and brokers to action**  
**DEADLINE:** **Immediately**

## **1. Purpose of bulletin**

On 7 June 2004, Lloyd's issued a market bulletin (reference Y3327) in respect of the law and jurisdiction aspects of the LMP slip. The bulletin noted that parties are required, under the 'Choice of Law and Jurisdiction' heading of the slip, to specify:

- a. in which territory they intend any dispute relating to the contract will be heard; and
- b. which territory's law they intend will be used to determine the dispute.

The bulletin has led to a number of enquiries being submitted to the Business Process Reform department and the Worldwide Markets Directorate. This bulletin is intended to provide further clarification in relation to the most common enquiries: client requirements that no choice be made; and the interaction of choice of law and jurisdiction with service of suit provisions for US surplus lines business.

## **2. Terminology**

"Choice of jurisdiction" addresses the question of the choice of the territory that should exercise jurisdiction over any dispute, ie. in which territory's courts any dispute will be heard. This should not be confused with the 'geographical limits' or 'territorial scope' of a policy, which describe the territories in which the policy provides insurance coverage.

“Choice of law” (often referred to as “governing law”) addresses the question of which territory’s law will be applied in interpreting the contract and determining any dispute relating to it. It does not necessarily follow that the choice of law will be the same as the choice of jurisdiction.

“Service of suit” refers to the service (i.e. formally bringing to the attention of the insurer) of legal proceedings by the insured. The contract of insurance may state a particular person who is authorised or nominated by insurers to accept service of legal proceedings on their behalf. This may be, for example, a law firm or regulatory authority in the insured’s home territory.

### **3. Choice of law and jurisdiction generally**

If the parties to a contract of insurance do not consider and agree on a choice of law and on a choice of jurisdiction for that contract at the outset, so that these topics are not specified in the slip (and policy), neither the insured nor the insurer will know how the contract is to be interpreted. This may create a fundamental uncertainty as to whether certain risks are covered under the contract (as the governing law may determine the insurability of a risk) or the extent of cover afforded under the contract. Failure to make a choice of law and jurisdiction may also lead to unnecessary legal costs being incurred in determining these issues when a dispute arises.

Accordingly, Lloyd’s attaches considerable importance to the requirement to specify choice of law and choice of jurisdiction. This is supported by leading Lloyd’s brokers and managing agents, who recommend that in the absence of compelling reasons otherwise, a choice of law and jurisdiction must be made in the slip.

It is important that underwriters and brokers ensure both law and jurisdiction are dealt with in appropriate provisions of the LMP slip. Standard ‘service of suit’ clauses may not always deal with both choice of law and choice of jurisdiction. As an example, NMA 1998 only deals with choice of jurisdiction (along with provisions dealing with service of suit). An agreed clause or set of words must be included on the slip (and subsequently the policy) specifying the choice of law. Where this is to be achieved using an existing published clause, the clause name and reference number must be stated in the slip “Conditions”. Where a bespoke clause, phrase or sentence is to be used, the wording of this must be agreed on the slip, either under the “Conditions” heading or on an endorsement. It is important that the statements shown against the “Choice of Law and Jurisdiction” heading refer to the same details as agreed in the applicable clause. This is particularly important for risks that are subject to policy preparation by XChanging Ins-sure Services so that XChanging can include exactly the words required in the prepared policy<sup>1</sup>.

Choice of law may be in the form of a clause which specifies clearly a rule by which governing law is determined, in the case of multi-state or multi-territory risks.

The “Choice of Law and Jurisdiction” heading on the slip must not be left blank.

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<sup>1</sup> It is not Xchanging’s role to interpret underwriters’ intentions from the slip and create wordings to insert in the policy.

Underwriters and brokers must ensure that the agreed choice of law, jurisdiction and any service of suit provisions do not conflict with any terms or conditions already contained in the main policy wording.

#### 4. US Surplus Lines and Assumed Reinsurance Business

This section applies to US surplus lines business transacted by Lloyd's underwriters and to reinsurance assumed by Lloyd's underwriters from ceding insurers domiciled in the US, under the terms of the trust fund arrangements agreed with US regulators. The risks covered by this section are those where the US classification on the LMP slip is completed with "US Surplus Lines" or with "US Reinsurance".

The following approach reflects the legal requirements governing US surplus lines and reinsurance business pursuant to which underwriters must submit to jurisdiction in a court of competent jurisdiction in the United States of America.

In summary:

- a. the parties must use a choice of jurisdiction clause in the form of NMA 1998 or equivalent, by which underwriters subject themselves to *personal* jurisdiction in any US state in which they are sued;
- b. a clause that seeks to limit underwriters to *personal* jurisdiction in only *specified* US state(s) is impermissible; and
- c. the governing law of a specific state should be specified in the slip (and on the policy) (subject only to a clear client requirement otherwise, as noted in paragraph 7 below).

As noted in the original bulletin, in the case of US surplus lines or US reinsurance business, the jurisdiction clause should be in the form of NMA 1998 (Service of Suit Clause (USA)) or equivalent (for example, the jurisdiction heading of the slip could state "jurisdiction as per NMA 1998"). This commits insurers to responding to service of suit in any competent US court, whilst carefully preserving the rights of insurers to seek transfer or removal of the action to another State or Federal court. In order to comply with the spirit of the US regulations **no state's jurisdiction should be specified.**

As noted above, choice of law may be in the form of a clause which specifies clearly a rule by which governing law is determined, in the case of multi-state or multi-territory risks. Whilst choice of law provisions are ordinarily given effect by US courts in interpreting a policy, underwriters should be aware that there may be limited cases where a choice of law provision may be overridden by a court. Please contact Worldwide Markets for additional guidance on this point. Also, with respect to US reinsurance business, underwriters should be aware that, as a result of an AR-1 Form filed annually with most US jurisdictions as a condition to preservation of the market's approved reinsurer status, the concerned underwriters will likely be found to have submitted to the jurisdiction of courts in the ceding insurer's state of domicile notwithstanding the general scope of NMA 1998.

#### 5. US Exempt Business

The risks covered by this section are those where the US Classification on the LMP slip is completed with "US Non-regulated", which is intended to refer to direct business which is not subject to US surplus lines funding requirements either because the business falls within

certain specified classifications (e.g. MAT), or because it is a “direct” placement, i.e. was placed directly with Lloyd’s in accordance with US state-specific requirements for a “direct” placement.

**A specific territory or state is required for both choice of law and choice of jurisdiction** (subject to paragraph 7 below). Care must be taken to ensure these provisions do not conflict with any service of suit clause in the slip. Brokers and underwriters must select a suitable clause which allows for the choice of law and jurisdiction agreed on the slip. Clauses, such as NMA 1998, are not appropriate for these risks. Whilst choice of law and choice of jurisdiction provisions are ordinarily given effect by US courts, underwriters should be aware that there may be limited cases where such provisions may be overridden by a court. Please contact Worldwide Markets for additional guidance on this point.

## **6. Other country specific requirements**

Special rules apply in the US states and territories where Lloyd’s is licensed (Illinois, Kentucky and the US Virgin Islands). Please see additional guidance available on [www.loyds.com](http://www.loyds.com).

In addition to the US, certain other countries impose mandatory requirements with regard to choice of law and jurisdiction (and service of suit provisions). Care must be taken to ensure compliance with these requirements. Underwriters and brokers should refer to the country manuals on [www.loyds.com](http://www.loyds.com) for guidance on specific countries (see paragraph 9 below). Country specific guidance is continuing to be reviewed in the light of the LMP contract certainty requirements. Clarification on any affected country will be advised to the market and updated on the web site in due course.

## **7. Client requirement that no choice be made**

In exceptional cases, an insured may not wish to specify the governing law or jurisdiction. In such cases, the broker must insert the following clause on the slip against the “Choice of Law and Jurisdiction” heading: “On the instructions of the [insured[s]/reinsured[s]] no specific [choice of law] [or] [jurisdiction] is to be specified”.

**The insurer should carefully consider the additional risk this entails in its risk rating processes.**

It is anticipated that this exception will be used only very rarely. As part of its ongoing monitoring of LMP slip compliance, the Business Process Reform Office will monitor this issue, including by enquiry to brokers and leaders.

## **8. XChanging’s role**

XChanging will be policing LMP slip provisions and checking/preparing policies on the basis of the forgoing details and the provisions contained in the LMP market bulletin of 7 June 2004 (Y3327). The checks will commence with policies incepting from 1 November 2004 and not be carried out retrospectively. Transitional arrangements will be put in place to deal with older risks.

## 9. Queries

Please direct any queries relating to this bulletin to:

Lloyd's Worldwide Market Services  
Telephone: 020 7327 6677  
Email: [market.services@lloyds.com](mailto:market.services@lloyds.com)  
Box: 190b, Gallery 1

The information contained in this market bulletin is provided in order to support managing agents in meeting their commitment '**to protect Lloyd's licences and authorisations to conduct insurance business in the UK and overseas**'. The information will also help underwriters decide, prior to binding, how a risk can be underwritten in compliance with Lloyd's trading rights in the country concerned.

More detailed information on Lloyd's trading rights may be found on [www.lloyds.com](http://www.lloyds.com) under the section headed "Lloyd's trading status". Select the appropriate country and this will take you to the Quick Reference Guide for the country selected. More detailed information may then be obtained by selecting 'Manual' from the menu on the left hand side of the screen (a Manual may not, however, be available for all territories). You will be asked to input a user name and password; please contact the Market Services Desk (see above contact details) for this information.

This bulletin has been sent to active underwriters, the compliance officers of managing agents and Lloyd's brokers and for information to LMA and LMBC.

Iain Saville  
Head of Business Process Reform