

MARKET BULLETIN

REF: Y4097

Title	New Wordings for South African Binding Authority business
Purpose	To advise the market of new wordings to be used on South African Binding Authority business
Type	Event
From	Cameron Murray, Senior Manager, International Regulatory Affairs, International Market Access Contact details: 020 7327 6854/cameron.murray@lloyds.com
Date	19 December 2007
Deadline	With effect from 1 January 2008
Attachments	Appendix 1 LSW1598 South Africa Binding Authority Endorsement Appendix 2 LSW1073a South African Bank Account Arrangements Endorsement Appendix 3 Market Bulletin Y2197 – South Africa: Impact of the Regulations Issued under the Short-Term Insurance Act No 53

Purpose of bulletin

To notify the market of two new wordings for South African Binding Authority business.

This market bulletin should be read in conjunction with previous market bulletins:

- Y2197 South Africa: Impact of the Regulations issued under the Short-Term Insurance Act No 53 of 1998 and other regulatory/fiscal issues, dated 15 December 1999 (attached as Appendix 3 as no longer available electronically);
- Y2312 Policyholder Protection Rules (Short Term Insurance) 2000; and
- Y2554 Policyholder Protection Rules (Short Term Insurance) 2001.

This bulletin should be read by managing agent staff, underwriters and Lloyd's brokers writing or handling South African Binding Authority business.

Wordings

1 LSW 1598 – South Africa Binding Authority Endorsement

Market Bulletin Y2197, dated 15 December 1999, discussed the impact of the Regulations under the Short Term Insurance Act No. 53 of 1998 ('the Act'), which were introduced with effect from 1 January 1999. The bulletin discussed various issues including the requirement that only one South African intermediary may collect premium in respect of personal lines business, the payments of premiums to Lloyd's underwriters and the remuneration of intermediaries. The bulletin also mandated the use of LSW1074a on all South African Binding Authority contracts.

LSW1074a has now been retired and replaced with LSW1598 (attached as Appendix 1). LSW1598 is an updated, redrafted wording that is now mandatory with effect from 1 January 2008 on all new and renewing South African Binding Authority contracts where the coverholder is domiciled in South Africa and that ensures compliance with various aspects of legislation and regulations under the Act. Please note that where business incepting or renewing on 1 January 2008 has been bound before the issuance of this bulletin, it is acceptable for LSW1074a to be used.

Please note that under this wording, in accordance with Regulation 4.3(1) of the Act, a Coverholder shall, within a period of 15 days after the end of every month in which premiums are received, pay those premiums to the Lloyd's underwriters concerned. (payment to the Lloyd's broker will be deemed to be payment to Lloyd's underwriters). It should be noted that if more than one intermediary (including the Coverholder) is authorised to collect/hold the premium in relation to the same short-term policy, the period between the receipt of premium by the first intermediary and payment to Lloyd's underwriters shall not exceed the period mentioned above.

The new wording does not cover bank account arrangements, which are now addressed through the new LSW1073a wording (attached as Appendix 2).

Brokers and Underwriters are requested to ensure that they are familiar with the wording of the endorsement to ensure that agreed terms on contracts are not in conflict with the wording.

2 LSW1073a – South African Bank Account Arrangements Endorsement

Please note that LSW1073 has been retired and replaced with LSW1073a, to reflect more accurately the arrangements for South African Bank Accounts.

This wording should be used with effect from 1 January 2008 on all new and renewing South African Binding Authorities where South African bank accounts are being used to make payments to Lloyd's underwriters. Please note that where business incepting or renewing on 1 January 2008 has been bound before the issuance of this bulletin, it is acceptable for LSW1073 to be used.

Queries:

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The information contained in the market bulletin is provided in order to support managing agents in meeting their commitment 'to protect Lloyd's licenses 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.

Cameron Murray
Senior Manager, International Regulatory Affairs
International Market Access

SOUTH AFRICAN BINDING AUTHORITY ENDORSEMENT
(for use in conjunction with South African Binding Authority Wordings)

The Coverholder agrees to comply with the following:

1. **Licence Requirements:** The Coverholder undertakes to comply with all relevant local insurance, financial advisory, fiscal and taxation laws, regulations, codes of conduct and requirements and to hold all the proper licence, licences, approval or approvals according to South African law.
2. **The Coverholder's General Responsibilities:** The Coverholder shall not perform any duties as a Coverholder for which the Coverholder does not have an appropriate level of expertise and knowledge and if not approved to do so by Lloyd's.

In all communications arising out of or relating to the Agreement, the Coverholder shall ensure that it is clearly stated that the Coverholder acts as agent of the Underwriters. In particular, and without limiting the operation of the obligations set out in the previous sentence, the Coverholder shall: (a) advise third parties, including but not limited to brokers, Insureds, intending Insureds and government authorities, of its status as agent of the Underwriters for whom it is acting; and (b) not purport to act, or represent to any third party that it is acting, in the capacity of a Principal in respect of any matter arising out of or relating to the Agreement; and (c) comply, with all laws applicable to their agency including the Policyholder Protection Rules and the Financial Advisory and Intermediary Services Act, 2002 with all subsidiary legislation including Codes of Conduct.

If the Underwriters are held responsible for the conduct of the Coverholder, its agents or employees by virtue of the operation of South African law or otherwise, where such conduct was not within the scope of or was in breach of the Coverholder's authority, as set out within the Agreement, the Coverholder shall fully indemnify the Underwriters the entire sum which the Underwriters are ordered or held liable to pay and in addition, all legal costs on an attorney and own client basis which the Underwriters may incur.

If the Underwriters are held to have committed offences against South African law or any other law by reason of acts or omissions of the Coverholder, its agents or employees, the Coverholder shall fully indemnify the Underwriters the entire sum which the Underwriters are ordered or held liable to pay and, in addition, all related legal costs on an attorney and own client basis which the Underwriters may incur.

3. **Premium Collection/Payment:** The Coverholder (or its agent or premium collection agency) is hereby authorised to collect premium on behalf of the short-term insurer, being the Underwriters. If the Coverholder is not party to the South African Bank Account Endorsement, then it must collect such premiums and hold security in terms of the South African Short-term Insurance Act, 1998 and the Regulations and other subordinate legislation thereunder ("the Act") particularly Part 4 of such Regulations.

In accordance with Regulation 4.3(1) of the Act, a Coverholder shall within a period of 15 days after the end of every month in which premiums are received:

- (a) pay to the short-term insurer concerned, the total amount of those premiums received; and
- (b) for every month in respect of which the contract is in force, furnish the short-term insurer with a bordereau relating to the premiums received, the commissions payable and the amounts paid to the short-term insurer.

4. **Commission:** The Coverholder shall not be paid or accept commission before the date on which the premium in respect of which it is payable has been paid to the short-term insurer or Lloyd's broker.

5. **Remuneration of Coverholders:** The Coverholder who will have been authorised by the Underwriters in accordance with Section 48 of the Act, but who is not remunerated other than by way of regulated commission (i.e. a retail coverholder), shall not receive commission more than the prescribed maximums, as set out in the Act, in respect of a certificate, irrespective of how many intermediaries render services in relation to a certificate currently:

(a) for a motor policy, 12.5% of the premium payable under the certificate; or

(b) for any other short-term policy, 20% of the premium payable under the certificate.

Coverholders who receive remuneration other than by way of regulated commission (i.e. wholesale coverholders), must not

(a) enter into any kind of short-term policy other than the kind to which the binding authority relates;

(b) enter into any short-term policy in relation to which another independent intermediary who

(i) holds, directly or indirectly, shares or any other interest in the wholesale coverholder

(ii) in which, or in the business of which, the wholesale coverholder holds, directly or indirectly, share or any other interest;

(iii) who is the wholesale's debtor or creditor;

(iv) who is related within the second degree of consanguinity or affinity to the wholesale coverholder

renders services as an intermediary; or

(c) transact insurance directly with the insured in relation to the class of business pertaining to the binding authority in respect of which such remuneration is received.

6. **Certificate Issuance:** In respect of short term insurance, excluding reinsurance thereof, the Coverholder must furnish a certificate of insurance to the insured within 30 days of entering into or varying the contract. The certificate must fully embody the contract of short term insurance and incorporate the wording of the policies that the Underwriters have authorised the Coverholder to enter into on its behalf. On renewal, as a minimum, details of any amendment must be furnished within the 30 days provided that the policy wordings may not be amended without the prior approval of the Underwriters.

7. **Certificates:** It is a condition of the Agreement that the format of any certificate issued under the Agreement shall include South African service of suit and South African law and jurisdiction provisions.

8. **Policyholder Protection Rules:** It is a condition of the Agreement that the Coverholder undertakes:

(a) to comply with the provisions of the South African Policyholder Protection Rules (Short-Term Insurance) 2001 ("Policyholder Protection Rules"), and any subsequent amendments to these Policyholder Protection Rules, as if each reference to the "insurer" were a reference to the Coverholder as well as the provisions of the Financial Advisory and Intermediary

Services Act, 2002 and any applicable Code of Conduct or other subordinate legislation thereunder ("FAIS Act").

- (b) in connection with performing its obligations in paragraph (a) above on their own behalf and on behalf of the Underwriters to do all things reasonably necessary, or reasonably required by the Underwriters, in order to ensure that the Underwriters comply with:
 - (i) the Policyholder Protection Rules and the FAIS Act.
 - (ii) all other laws applicable to the business.
9. **Code of Good Business Practice:** It is a condition of the Agreement that the Coverholder undertakes:
- (a) to comply with the South African Insurance Association Code of Good Business Practice ("the Code").
 - (b) in connection with performing its obligations in paragraph (a) above on their own behalf and on behalf of the Underwriters to do all things reasonably necessary, or reasonably required by the Underwriters, in order to ensure that the Underwriters comply with the Code and any direction of the South African Insurance Association.
10. **Promotion of Access to Information Act:** It is a condition of the Agreement that the Coverholder ensures that it is aware of its obligations under the Promotion of Access to Information Act, 2000 ("the Act") and all other laws relating to the information of the insureds and prospective insureds. The Coverholder shall process data regarding Insureds in accordance with the Act and for the purposes only of providing insurance to Insureds and prospective Insureds and of performing intermediary services in connection with such insurance.
11. **Taxes:** It is a condition of the Agreement that the Coverholder shall, be registered for Value Added Tax (VAT) and shall be responsible for accounting for VAT on business bound under the Agreement in accordance with the relevant provisions of the South African tax law and the procedures set out by Lloyd's South Africa.
12. **Complaints:** It is a condition of the Agreement that the Coverholder shall in respect of disputes or complaints notified to Lloyd's South Africa, respond to the Lloyd's South Africa office within 10 working days of the notification of such dispute or complaint.
13. **Ombuds**
- 13.1 **Ombudsman for Short-term Insurance:** The Coverholder acknowledges that Underwriters subscribe to the office of the Ombudsman for Short-term Insurance who will consider all complaints where a claim does not exceed ZAR800, 000 or such other amount as may be agreed upon by the Underwriters and the Ombudsman. It is a condition of the Agreement that the Coverholder agrees to co-operate fully with the Ombudsman in relation to any complaint and to act upon any ruling which shall be binding on Underwriters, on behalf of the Underwriters.
 - 13.2 **FAIS Ombud:** If any dispute or complaint is referred to the FAIS Ombud under the FAIS Act the Coverholder will notify the underwriter immediately and comply with all lawful requirements of the FAIS Ombud and abide by any lawful rulings when they are final.

14. **Indemnities continue:** It is a condition of the Agreement that:

(a) each indemnity contained in the Agreement is a continuing obligation despite:

- (i) any settlement of account; or
- (ii) the occurrence of any other thing,

and remains in full force and effect until all money owing, contingently or otherwise, under the indemnity has been paid in full; and

(b) each indemnity contained in the Agreement:

- (i) is an additional, separate and independent obligation and no one indemnity limits the generality of any other indemnity; and
- (ii) survives the termination of the Agreement.

12/07

LSW1598

SOUTH AFRICAN BANK ACCOUNT ARRANGEMENTS ENDORSEMENT

It is agreed that Underwriters will establish a bank account (*the LSA account*) in South Africa to be administered by Lloyd's South Africa Pty Ltd (*LSA*) in order to receive premiums due to them under this binding authority (Agreement No. {Missing}) made between the Underwriters and {Missing} (*the Coverholder*).

It is understood and agreed that payment to Underwriters into the said banking account, for business accepted by {Missing} (*the Coverholder*), will be deemed to be received by the short-term insurer (certain Underwriters at Lloyd's). Any money in the LSA account will be dealt with as trust money on behalf of the Underwriters and the Coverholder will be in a fiduciary relationship to the Underwriters in relation to any dealings with that money.

Accordingly, {Missing} (*the Coverholder*) shall not be required to provide security, in terms of Part 4 subsection 4.1(2) of the Regulations under the Act, to the short-term insurer (certain Underwriters at Lloyd's) on premiums due to Underwriters under this binding authority that are received into this bank account.

It is agreed by Underwriters that the Coverholder may instruct LSA to pay from the LSA account VAT due to the South African Revenue Services on business accepted on behalf of Underwriters under this binding authority. In addition, any VAT inputs due to Underwriters may be credited to the LSA account.

It is further agreed that the Coverholder may instruct LSA to transfer monies held in the LSA account to the Coverholder to be held by the Coverholder in a trust bank account on behalf of Underwriters for the purpose of paying claims in respect of business accepted by the Coverholder on behalf of Underwriters under this binding authority. The Coverholder must at all times keep such monies segregated from its own property and other property held by it or to its account.

Where the Coverholder establishes a separate bank account (*a claims fund*) on behalf of Underwriters, the Coverholder shall, subject to the limits set out below, instruct LSA as to the amounts to be transferred on behalf of Underwriters to that claims fund from the LSA account. Such transfers shall be made monthly or at such other intervals as LSA and the Coverholder may from time to time agree. Any interest or capital appreciation earned on or attributable to assets held by the Coverholder on behalf of Underwriters shall belong to Underwriters.

The maximum amount that may be transferred from the LSA account to the Coverholder for the purpose of establishing a claims fund is {Missing}. Thereafter, amounts not exceeding {Missing} in aggregate may be transferred from the LSA account to the claims fund in any calendar month.

It is further agreed that the Coverholder may also instruct LSA to transfer commission or other remuneration due to it under the binding authority and any commission due to producing brokers in respect of business accepted by the Coverholder on behalf of Underwriters under this binding authority.

The Coverholder shall instruct LSA as to the amounts to be remitted to Underwriters from the LSA account (via the Lloyd's broker) after deduction of bank charges and the monthly administration charge levied by LSA which charge shall be debited from the LSA account and paid to LSA.

It is agreed that the Coverholder will be solely responsible for the reconciliation of the LSA account and the claims fund account on a monthly basis and will provide LSA with confirmation of closing balances, and if required by LSA will also provide a reconciliation thereof.

1/7/07

LSW1073A

FROM: Frank Speight
LOCATION: International Department
EXTENSION: 6520
DATE: 16th December 1999
REFERENCE: Y2197
SUBJECT: SOUTH AFRICA: IMPACT OF THE REGULATIONS ISSUED UNDER THE SHORT-TERM INSURANCE ACT NO. 53 OF 1998 & OTHER REGULATORY/FISCAL ISSUES
ATTACHMENTS: Endorsements
ACTION POINTS: **Managing Agents, Brokers and Underwriters to note**
DEADLINE: **Immediate**

1 INTRODUCTION

- The new Short-Term Insurance Act No 53 of 1998 (“the Act”) was introduced with effect from 1 January 1999. The regulations issued under the Act, which only apply to direct business, contained a number of ambiguities necessitating discussion and resolution with the South African Regulator, the Financial Services Board (“FSB”). The Market Bulletin Y2104, of 11 August 1999, highlighted the main issues i.e. those that were resolved and those that were yet to be clarified.
- Following further discussion between Lloyd’s South Africa (LSA) and the FSB, this Market Bulletin sets out to clarify the remaining outstanding issues.

2 REGULATIONS

2.1 ONE SOUTH AFRICAN INTERMEDIARY FOR THE PURPOSES OF COLLECTING PREMIUMS IN RESPECT OF PERSONAL LINES BUSINESS

- Personal lines business is defined in Section 1 of the Act and means short-term business in respect of which the policyholder is a natural person.

- Regulation 4.3(3) determines that not more than one person shall be authorised to receive a premium in relation to a policy, which forms part of personal lines business.

Bank Accounts Held by LSA on behalf of Underwriters

- The FSB has confirmed that the temporary arrangement devised by LSA of opening bank accounts in South Africa in the name of certain underwriters at Lloyd's, and administered by LSA to pay the premiums into, is an acceptable solution to ensure that the 'only one intermediary rule' is not compromised. Therefore, this proposal is being offered to the market as a permanent solution.
- Please note, if there is more than one (South African) intermediary in the chain between the Lloyd's Broker and the insured (e.g. there is a coverholder **and** a sub agent involved) then the only one intermediary rule is breached. Therefore, premiums would need to be paid, by the insured, to either the coverholder or sub agent who would then remit the premium to LSA. LSA, acting on instructions from underwriters, Lloyd's brokers or coverholders will then reimburse the 'other' intermediary with any fees or commissions due.
- If the parties to a binding authority contract intend to utilise the LSA bank account solution, it will be necessary to attach an endorsement to the existing binding authority contracts, the wording of which is attached as Appendix 1.
- **Hitherto, LSA has not charged any fee for opening and administering these bank accounts as they were seen as a temporary solution. However, since the bank accounts have now been accepted by the FSB as a permanent solution, a permanent resource would need to be allocated to operate this facility. It is therefore proposed that a flat fee be charged with effect from 1st January 2000. This fee will, initially, be R500.00 for each account per month.**
- For further information on the operation of these accounts, please contact Amit Khilosia, General Manager, Lloyd's South Africa on 00 27 11 884 0486.

Underwriting Manager

- Underwriters may wish to note that a number of wholesale coverholders are lobbying for the status of "underwriting manager" to be recognised and an association has already been formed.
- The FSB has not confirmed whether the status of "underwriting manager" will be recognised. However, the FSB has stated that the underwriting manager would still be regarded as an intermediary for the purposes of the Regulations.
- The resolution as to whether underwriting managers may be exempted from the security, as mentioned in Part 4 of subsection 4.1(2) of the Regulations.

2.2 POLICY ISSUANCE FOR PERSONAL LINES BUSINESS

- The Act requires that the policy must be furnished to the policyholder within 30 days in the case of personal lines business.
- For binding authority business it is usual practice for the coverholder to issue full contracts of insurance locally therefore mitigating the problem regarding the 30 day rule.
- The FSB have confirmed that where risks are written via a master policy, it may be acceptable for the evidence of insurance (e.g. certificate) to be construed to be the policy itself for the purposes of the Act. In these cases if the master policy can be made available to the insured on request, this may be sufficient for regulatory purposes, provided the master policy itself is referred to within the evidence of insurance.

2.3 PAYMENT OF PREMIUMS TO LLOYD'S UNDERWRITERS

- The Regulations stipulate that Lloyd's underwriters may authorise an independent intermediary to receive premiums payable to it under short-term policies, subject to the intermediary holding a security in terms of Part 4 subsection 4.1(2) of the Regulations. The intermediary, shall, within a period of 15 days after the end of every month on which premiums are received, pay such premiums to the insurer. Furthermore, the authorised person shall, for every month in respect of which the authority is in force, furnish the short-term insurer with a bordereaux within a period of 15 days after the end of the month concerned. **The FSB confirmed that it would not regard payment to wholesale coverholders to be deemed to be payment to insurers.**
- The FSB confirmed that payments into the special bank accounts, maintained by LSA, within the 15 days would comply with this rule. Use of the special bank accounts would also alleviate the requirement to hold a security in terms of Part 4 subsection 4.1(2) of the Regulations.

2.4 SERVICE COMPANIES

- The FSB's interpretation of the Act is that subsidiary service companies of managing agents are **not** classed as an extension of the syndicate and therefore are classed as an intermediary for the purposes of the Act.
- With regard to commission, the above confirmation would mean that service companies, who wish to deal directly with the public, can only do so if they receive no more than the prescribed commission. (See 2.5 below).
- The FSB confirmed that whole or partial ownership of the service company was irrelevant.

- If the service company did not want to operate as an intermediary, the FSB suggested that an option open to the service company would be to establish itself as a subsidiary insurance company. However, by doing this, the managing agent would be disadvantaged by virtue of the onerous solvency requirements peculiar to all South African insurance companies incorporated and registered under the applicable laws in the Republic of South Africa.

2.5 REMUNERATION OF INTERMEDIARIES

- Controls are imposed regarding the remuneration package afforded to coverholders and the capacities in which they can act.
- The Act states that if the coverholder is remunerated by the insurer other than by way of commission for a specific binding authority, then the coverholder can act **in a wholesale capacity only** for that binding authority. Thus he will not be able to deal direct with the assured, in relation to the class of business pertaining to that specific binding authority.
- There is a commissions ceiling which regulates commissions which can be paid **by the underwriter to the retail coverholder, producer or sub-agent** being 12.5% in respect of motor policy premiums and 20% in respect of premiums relating to all other short-term policies.
- A coverholder who operates under a binding authority agreement from Lloyd's, for a specified class of business, in accordance with Section 48(2) of the Act, can be remunerated by means of a fee (including a profit commission) and is therefore not constrained by the prescribed commission rates. However, such coverholders would be prevented from retailing directly with the insured, in accordance with Section 48(3)(c) of the Act.
- As a consequence of these provisions it has been necessary to attach a special endorsement to all South African binding authorities incepting with effect from 1 September 1999 (LSW1074). A slightly modified version to the earlier version is attached as Appendix 2 (LSW1074a), although LPSO will accept the use of the earlier version of the endorsement until 1 March 2000.

‘Outsourcing’

- Intermediaries defined in Section 48(1) of the Act (retail coverholders) can only receive commission by way of remuneration from an insurer in accordance with the Act.
- Consequently, brokers and coverholders have suggested that they are exploring the possibility of outsourcing certain functions to third parties who would be remunerated accordingly.

- The FSB advised that outsourcing to such third parties i.e. independent administrators would be acceptable under the terms of the Act. However, any such outsourcing arrangement with **a related company** may not be considered acceptable under these terms. The FSB may examine such ‘intra-group’ relationships to establish the existence of: a separate legal entity, personnel and payroll, premises, directors and shareholders, where any connection to an intermediary would potentially breach these rules.
- In accordance with an independent legal opinion, if such **related companies** are used to provide genuine outsourcing services, then it should not matter that these ‘intra-group’ companies may have similar directors, shareholders or premises. Furthermore, it should not even matter that there are the same employees, provided that the costs of the employees are properly apportioned between the two companies’ businesses according to the work they perform on behalf of the two companies. As long as the separate company, undertaking the services, does not carry out business as an intermediary, then outsourcing should be permissible. The FSB has indicated that it is not in disagreement with this opinion.

3 **POLICYHOLDER PROTECTION RULES – PERSONAL LINES BUSINESS**

- In July the draft Policy Holder Protection Rules were issued by the FSB. The purposes of these rules are to enable policy holders to make informed decisions in regard to short term insurance products and such policyholders are currently defined as 'any natural person, close corporation, or partnership.'
- The provision of these rules applies to both insurers and intermediaries and incorporate a number of disclosures which fall to both. Following consultation with Market Associations, and the members of the South African Working Group, a response to the FSB has been prepared by the BDU and LSA which outlines the legal and practical difficulties Lloyd's would face in complying with these rules.

4 **FINANCIAL ADVISORS BILL**

- There are plans to introduce a Financial Advisors Bill, which may ultimately be enacted. The purpose of the Bill is to regulate any intermediary (including insurance brokers) that provides financial advice. The BDU and LSA will maintain a ‘watching brief’ on this issue and inform the market accordingly, so as to ensure that Lloyd's is included in the consultative process. It is likely that any members agents based in South Africa would be covered by this Bill.

5 UPDATE ON VAT

VAT

- VAT is chargeable on all goods and services at a flat rate of 14%. Whilst historically Lloyd's has been exempt from the registration of VAT, the South African Tax Authority (SATA) has been under increasing pressure from government and the domestic insurance market to include Lloyd's under this tax.
- Consequently the SATA has decided to bring Lloyd's business into the VAT regime but it shall only apply to **business generated by South African coverholders i.e not open market business**. LSA and the Lloyd's Taxation Department will continue to liaise with SATA to bring this matter to a satisfactory conclusion. Upon the resolution of this issue, the market and local coverholders are to be advised of their responsibilities in administering this tax. **It is understood that this tax will not apply before 1 January 2001.**

6 SHORT-TERM LIFE BUSINESS

- In recent years Lloyd's underwriters have been unable to conduct life business in South Africa. As a consequence of the introduction of the new Act, the FSB and LSA have taken the opportunity to revisit this issue. The FSB adopted a fairly broad interpretation of what was construed to be a short-term policy and had informally indicated that if a short-term policy were written for a period not exceeding five years, then the policy would be a short-term policy. However, the FSB has now formally advised that what constitutes a short-term life policy is where it is defined within the legislation. For example, accident and health is defined within the Act and therefore can be written under a short-term policy. However, funeral expenses are defined as an assistance policy under the Long Term Insurance Act (Lloyd's is not licensed under this Act), therefore this business cannot be written as a short-term policy. **The FSB have advised that they intend to be strict in their monitoring of the writing of funeral expenses.**

7 EXPROPRIATION AND CURRENCY INCONVERTIBILITY INSURANCE COVER (E&CII)

- The transfer of funds between Additional Securities Ltd ("ASL") and the Lloyd's South African Transitional Trust Fund ("LSATTF") (in respect of 1998 and prior years) meant that the world-wide policy issued to ASL which affords E&CII protection to ASL's interests in respect of certain foreign countries, ceased to operate in respect of South Africa. The portion of ASL deposits transferred to the LSATTF and any funds deposited into the Lloyd's South African Trust Fund ("LSATF") (in respect of 1999 and future years) therefore now falls outside the remit of the new policy.

- It was suggested in earlier Market Bulletins that Managing Agents and Underwriters wishing to purchase similar cover for their share of syndicates' funds in the LSATTF and the LSATF make their own arrangements for that purpose if they wish to do so.
- In recent years Berry Palmer & Lyle Ltd (BP&L) placed political risk insurance for ASL to cover their South African (and other) deposits on a similar basis. BP&L has confirmed that they have bound a master policy to give similar cover for individual syndicates. The master policy has been designed to accept declarations in respect of the South African deposits of individual syndicates. The wording for the master policy which sets out the form of the declaration which will attach the risk to the master policy and the proposal form is available from either Andrew Miller or Finn McGuirk directly at BP&L.

8 **LLOYD'S TREASURY DEPARTMENT INVESTMENT REPORT – LLOYD'S SOUTH AFRICAN TRUST FUND**

Lloyd's Treasury Department is responsible for the investment of South African Trust assets on behalf of the market. A summary of the third quarter's report for 1999 is attached as Appendix 3.

If you have any questions concerning the above, please contact Linda Zuberi on Lloyd's extension 5755.

9 **CONTACTS**

- If you have any other questions regarding the South African trading arrangements, please contact Keith Stern or Maxine Hooper, International Department on Lloyd's Extensions 6026 and 6291 or Amit Khilosia, General Manager, Lloyd's South Africa on 00 27 11 884 0486.
- This bulletin is being sent to all compliance officers, managing agents, active underwriters, brokers and market associations.

Frank Speight
 Head of International
Business Development Unit

South African Bank Account Arrangements Endorsement

It is understood and agreed that Underwriters will set up a banking account through Lloyd's SA (Pty) Ltd in order to receive premiums on their behalf due under this binding authority which has been granted to(*the coverholder*)

It is understood and agreed that payment to Underwriters into the said banking account, for business accepted by (*the coverholder*), represents a payment in terms of Section 45 of the Insurance Act, No 53 of 1998 and Regulations under the said Act.

Accordingly,(*the coverholder*) shall not be required to provide security to the Insurers (certain Underwriters at Lloyd's) in terms of Part 4 subsection 4.1(2) of the Regulations under the Act.

It is further understood and agreed that a portion of the monies, as agreed by Underwriters from time to time, received in the said account may be transferred to (*the coverholder*), in order that (*the coverholder*) may administer this binding authority on behalf of Underwriters.

All other terms, conditions and exclusions under this binding authority remain unaltered

South African Accounts and Commissions Endorsement

Notwithstanding anything to the contrary contained herein the following paragraphs are deemed incorporated within this contract:

1.0 An authorised intermediary* (the Coverholder, the sub-agent or the premiums collection agency) authorised by the short-term insurer (Lloyd's South Africa Pty Ltd on behalf of certain Underwriters at Lloyd's), shall within a period of 15 days after the end of every month in which premiums are received, pay to the short-term insurer concerned, the total amount of those premiums received.

Regulation 4.3(1) of the Short-Term Insurance Act

* If the intermediary is not a party to the Endorsement LSW1073 as set out in section 5.0., then it is required that they hold a security in terms of Part 4 subsection 4.1(2) of the Regulations under the Act.

The Coverholder shall, for every month in respect of which the contract is in force, furnish the short-term insurer with a bordereau relating to the premiums received, the commissions payable to that intermediary and the amounts paid to the short-term insurer, within a period of 15 days after the end of the month concerned.

Regulation 4.4(b) of the Short-Term Insurance Act.

2.0 Commission shall not be paid or accepted by the Coverholder before the date on which the premium in respect of which it is payable has been payable to the short-term insurer or Lloyd's Broker.

Regulation 5.2 of the Short-Term Insurance Act

3.0 The following intermediaries shall not receive commission more than the prescribed maximums as set out in the Regulations:-

- Intermediaries who have not been authorised by Lloyd's underwriters in accordance with Section 48(2) of the Act, which include Open Market Correspondents.
- Intermediaries who will have been authorised by Lloyd's underwriters in accordance with Section 48(2) of the Act, but who are not remunerated other than by way of commission, which include 'retail coverholders' and sub-agents.

When these circumstances apply, no commission shall exceed, in respect of:

- a) a motor policy, 12.5% of the premium payable under the certificate; or
- b) any other short-term policy, 20% of the premium payable under the certificate.

Regulation 5.3 of the Act.

- Irrespective of how many intermediaries falling within the above two categories render services in relation to a certificate, the total commission payable in respect of that certificate shall not exceed the maximum amount payable in terms of Regulation 5.3 of the Act.

4.0 Wholesale coverholders who have been authorised by Lloyd's underwriters in accordance with Section 48(2) of the Act, and who receive remuneration other than by way of profit commission, cannot transact insurance directly with the insured in relation to the class of business pertaining to the binding authority in respect of which such remuneration is received.

Paragraph 48(3c) of the Act

5.0 The Financial Services Board (FSB) confirmed that if a bank account is opened in South Africa in the name of certain Underwriters at Lloyd's and administered by Lloyd's South Africa (Pty) Ltd, then premiums paid into that bank account will be deemed to be received by the short-term insurer (certain Underwriters at Lloyd's).

If premiums for business transacted by Lloyd's correspondents are not received by them, and paid into these accounts, the Lloyd's correspondent need not provide security as contemplated in Regulation 4.2 to the Short-Term Insurance Act.

This procedure will satisfy the requirements in respect of payment to short-term insurers as contemplated in Regulation 4.3(1) and (3).

The FSB approved the use of the South African Bank Account Arrangements LSW 1073 Endorsement where the establishment of such arrangements has been specifically agreed between the parties to this contract and Lloyd's South Africa Pty Ltd. Inclusion of this Endorsement LSW 1074a shall not in itself be taken as agreement by Underwriters to the establishment of such an arrangement.

6.0 This endorsement is intended for use on binding authorities granted by certain underwriters at Lloyd's to authorised intermediaries in South Africa.

Lloyd's Treasury Department: 3rd Quarter 1999 Investment Report

1. Performance Benchmark

Investment parameters are approved and policy reviewed by Lloyd's Investment Committee. The Treasury Department charge a fee of seven basis points (0.07%) per annum, based upon the value of funds under management at the end of each quarter.

The parameters permit a portfolio duration between zero and two years. Neutral, or benchmark duration, is considered to be one year. Investments are permitted in fixed bank deposits or Government bonds. A minimum 50% of total market value must be invested in South African Government Bonds.

2. Currency Risk

All portfolio assets are maintained and returns quoted in South African Rand. The currency has been volatile over the year and over the period from the end of January to the end of October has declined in value against Sterling by 3.9%. Agents wishing to protect the Sterling value of assets from volatility in the South African Rand exchange rate should consider utilising currency hedging arrangements. Lloyd's Treasury Department may be able to facilitate such arrangements on an individual basis, if required.

3. Capital Markets

Short-term interest rates have been cut by a total of just over 700 basis points since the beginning of the year. This has resulted in a dramatic change in the shape of the yield curve from an inverted curve at the start of the year to a positively sloping curve at the end of October. Consequently, fixed interest markets have produced high returns particularly in the shorter end of the maturity spectrum.

4. Investment Policy

Due to poor availability of short dated South African Government bonds, the fund remains heavily weighted in cash. Portfolio duration has been maintained close to the neutral position of 1 year since the inception of the fund in February.

5. Investment Performance

The fund out performed the benchmark over the second and third quarters. Since inception in February to the end of the third quarter the fund returned 11.5% against a structured benchmark return of 10.9%.