

MARKET BULLETIN

REF: Y4133

Title	Binding Authorities US and non-US Combined (“joint”) certificates issued by coverholders
Purpose	To advise managing agents and brokers of new procedures relating to combined certificates
Type	Event
From	Rolf Tolle, Director Franchise Performance
Date	11/03/08
Deadline	Immediate Effect
Related links	http://www.lloyds.com/actsandbyelaws

The purpose of this bulletin is to advise managing agents and brokers of –

- the removal of the general prohibition on permitting combined certificates to be issued under binding authorities for US business;
- to advise the market of a revised several liability clause to be used for combined certificates issued under all binding authorities (ie both for US and non-US risks); and
- to confirm that in respect of certificates that are solely underwritten by Lloyd’s underwriters, managing agents may continue to authorise coverholders to use their existing several liability clauses (such as LSW 1001).

Background

From time to time Lloyd's managing agents wish to permit their coverholders to issue “combined certificates” to policyholders (i.e. a single certificate that evidences a contract of insurance in which a proportion of the security is to be provided by insurers other than members of Lloyd’s. Such a certificate has previously been referred to as a “joint certificate” and is so described in the various Model Binder Wordings issued by LMA).

Lloyd's has set certain rules regarding the use of such certificates. These are set out in chapter 2 of the requirements made under the Intermediaries Byelaw at paragraph 16 which can be accessed at <http://www.lloyds.com/actsandbyelaws>

In summary these requirements generally permit a managing agent to permit a coverholder to issue combined certificates provided always that the appropriate several liability clause is included.

US risks

In the case of US risks Lloyd's has until now endorsed provisions in the LMA's US General Cover Conditions that prohibit in most cases coverholders from issuing combined certificates.

Lloyd's has reviewed this prohibition on combined certificates in particular as there is no equivalent prohibition on single combined policies being issued for US risks underwritten on open market basis.

Lloyd's believes that it is no longer appropriate for the general ban to remain in place on combined certificates for US risks. Instead, in the event that a managing agent having carefully considered the relevant legal and credit risks involved believes that it is appropriate and prudent to permit its coverholder to issue a combined certificate then it may do so. However, in order to minimise the associated risks it is vital that the new procedures below are adopted.

New procedures for all combined certificates (ie both US and non-US risks)

1. Before it permits a coverholder to issue combined certificates under a binding authority, the managing agent must make sure that it knows the identity of the non-Lloyd's co-insurer(s) who will be represented on combined certificates issued under the binding authority. The Managing Agent should be satisfied that it is appropriate in all circumstances for Lloyd's underwriters to be party to combined certificates with that co-insurer..

Where the managing agent permits a coverholder to issue combined certificates but the co-insurer is not a party to the same binding authority, then the managing agent does not need to name the co-insurer on the Lloyd's binding authority. But the managing agent does need to know the identity of the co-insurer and, as above, satisfy itself that the issuance of combined certificates with that co-insurer is appropriate.

(In neither scenario above is there a requirement by Lloyd's for the managing agent to thereafter see each individual combined certificate that the coverholder issues.)

2. The certificate to be issued should not include a Lloyd's logo or be titled "Lloyd's Certificate" or similar.
3. An appropriate several liability clause must be incorporated in every combined certificate issued by the coverholder to a policyholder. A new clause suitable for use by coverholders on combined certificates is attached as Annex 1 (and has been issued as LMA 5096) and should be used going forward for both US and non-US risks.

Also the LMA has produced an endorsement (LMA 5097) for attachment to Lloyd's model binding authority agreements where permission has been granted for a coverholder to issue combined certificates.

The clause and endorsement are available on the Lloyd's Wordings Repository. See www.lloyds.com/Lloyds_Market/Tools_and_reference/Lloyds_Wordings_Repository.htm

4. The combined certificate must clearly set out the name, address and proportion of risk assumed by each syndicate/other insurer participating on the risk. (For the purposes of Lloyd's syndicates the address of Lloyd's may be given (ie One Lime Street, London EC3M 7HA, UK). Where there are several Lloyd's syndicates on the combined certificate the Lloyd's address only needs to be shown once on the schedule of insurers.

Lloyd's is aware that where non-US combined certificates have been permitted to be issued to-date, the Lloyd's participation has been shown on the combined certificate as a single proportion rather than per syndicate (eg as X% Underwriters at Lloyd's). **In those circumstances only** managing agents may continue to permit its coverholders to issue combined certificates showing the Lloyd's participation as a single figure. However, Lloyd's would encourage the disclosure of syndicate participations where possible.

5. The managing agent must ensure that it has appropriate mechanisms in place, such as a regular audit, so that it is satisfied that each combined certificate is issued with the necessary several liability clause and complies with the other requirements set out above. In particular, the managing agent should ensure that the binding authority clearly requires the inclusion of the new several liability wording in each combined certificate that will be issued. (If using an LMA model wording this several liability clause should be included in the binding authority schedule.)
6. The other requirements set out in the requirements in the Intermediaries Byelaw must be complied with.

The several liability clause attached to this bulletin has been prepared in order to minimise the relevant legal and credit risks. However, no clause can entirely eliminate these risks and it must be for each managing agent to determine on a case by case basis whether it is satisfied that it is appropriate for combined certificates to be issued.

Reporting requirements regarding use of combined certificates

Until further notice managing agents are requested to inform the Lloyd's Delegated Authorities Team of all cases where they have authorised coverholders to issue combined certificates. This is for Lloyd's information purposes.

Please provide details to coverholders@lloyds.com

Procedures for all non-combined certificates (ie only underwritten by Lloyd's underwriters)

In respect of certificates that are only underwritten by Lloyd's underwriters, managing agents may continue to use their existing several liability clause (such as LSW 1001).

Amendments to the Underwriting Requirements

Lloyd's has amended the several liability clause contained in the requirements made under the Intermediaries Byelaw to bring it in line with the new several liability clause.

However, where a managing agent is using the current several liability language contained at paragraph 16(d) of Chapter 2 of the Underwriting Requirements then they may continue to permit their coverholders to use that clause until that current binding authority expires (although managing agents are encouraged to adopt the new several liability clause as soon as possible). All new and renewal binding authorities where combined certificates will be issued must include the several liability clause referred to in this bulletin.

This bulletin has been discussed with the LMA and LMBC. If any managing agent or Lloyd's broker has any queries relating to any matters set out in this bulletin they should in the first instance contact:

- Paul Brady, Lloyd's Legal & Compliance - 0207 327 5750/paul.brady@lloyds.com
- Peter Martin, LMA – 020 7327 4595/peter.martin@lmalloyds.com

Annex 1

Several Liability Clause

PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.