

15 October 2015

GUIDANCE NOTES APPLYING TO:

- LMA3113M, LMA3114M & LMA3115M - MULTI-YEAR BINDING AUTHORITY AGREEMENTS
 - LMA5237 - FOLLOWING YEAR TRANSFER OF MULTI-YEAR BINDING AUTHORITY AGREEMENTS ENDORSEMENT
-

Introduction

Lloyd's has made requirements which allow Binding Authority Agreements ("BA") to have a period of up to 36 months from the date of inception of the BA. See Market Bulletin Y4931. The requirement specifying the maximum period for BAs is set out in Lloyd's [Requirements made pursuant to the Intermediaries Byelaw](#) at paragraph 10(e).

Where BAs are written for multi-year periods issues of the allocation of business to different syndicate years of account need to be addressed. As Lloyd's syndicates are annual ventures, the application of contract law means that all policies written under a BA must be allocated to the underwriters of the syndicate year of account that entered into the BA. For multi-year BAs this will be the original syndicate year of account. Accordingly, unless arrangements are made to change the position, where multi-year BAs are entered into, it is not possible for managing agents to allocate the business written across different syndicate years of account.

To address this, Lloyd's has developed a process which allows multi-year BAs to be written at Lloyd's and for the business written to be allocated to the correct years of account of the participating syndicates that bound the risk. To support the writing of multi-year BAs in compliance with Lloyd's requirements, the LMA has issued new model BA wordings.

This guidance note provides guidance on the new model wordings. It should be read together with and is supplemental to the existing guidance issued by the LMA for writing BA business, which can be found at: www.lloyds.com/coverholders. This guidance note and the model wordings have been produced in cooperation with Lloyd's and are intended to be compliant with Lloyd's requirements for writing multi-year BAs.

IMPORTANT NOTE: Managing agents should note that failing to write multi-year BAs in an appropriate manner may mean, under contract law, that all business written under the BA must be allocated to the first year of account of the syndicate. Accordingly any proposal to write a multi-year BA which is not in accordance with the process mandated by Lloyd's and not using the model binding authority wordings issued by the LMA must be discussed with Lloyd's.

Model Wordings

The LMA has issued the following model wordings that are suitable for use for multi-year BAs:

- **Multi-Year Binding Authority Agreements:** LMA3113M, LMA3114M & LMA3115M

Each of these model wordings is suitable for multi-year placements. They contain the same terms as the corresponding annual BA model wording (LMA3113, LMA3114 & LMA3115) with only the changes necessary for a multi-year arrangement as set out below.

- **Following Year Transfer of Multi-Year Binding Authority Agreements Endorsement:**
LMA5237

This model endorsement is suitable for use with LMA3113M, LMA3114M & LMA3115M. It confirms to the Coverholder that the multi-year BA has been transferred to a new syndicate year of account and provides the syndicate reference numbers for the new year of account.

Application and Scope

Lloyd's has mandated that all managing agents that wish to enter into BAs of more than 18 months must follow the process developed for multi-year BAs as per Market Bulletin Y4931.

Where the BA is for more than 12 months up to 18 months, managing agents can choose to use the multi-year BA process and model wordings. In this case, all business written after 12 months will be allocated to the following year of account. Alternatively, managing agents can continue to place the BA (using LMA3113, LMA3114 & LMA3115 or equivalent) as an annual BA and allocate all the business to the original year of account.

Due to the processing complexities involved, multi-year BAs should not be used at this time for the following binding authority arrangements (see Market Bulletin Y4931):

- Binding authorities where the coverholder has authority to bind risks with periods greater than 18 months
- Master binding authority arrangements

Multi-Year BAs - Practical Guidance

1. Entering into Multi-Year BAs

The process of placing a multi-year BA is the same as for an annual BA. Accordingly the parties should comply with Lloyd's current requirements for placing BAs and the guidance notes provided by the LMA: see www.lloyds.com/coverholders.

The main difference is that for multi-year BAs the parties can include a period which is up to 36 months.

However, while multi-year BAs mostly operate in the same way as annual BAs, a limited number of changes are required to the model BA wordings. The LMA has accordingly issued three multi-year versions of the existing model BA wordings: LMA3113M, LMA3114M & LMA3115M. Each 'M' version of the BA wording is suitable for use for multi-year placements in place of the corresponding annual version.

The differences between the multi-year and annual version of the model BA wordings are:

- gross premium income limits and aggregate exposures limits continue to be annual limits, i.e. there will be separate annual limits for each year of the BA (see Sections 12.1, 12.2 and 23.2.3);
- a provision to allow the syndicate to transfer the binding authority to the following year of account of the same syndicate (see new Section 37A). See further below; and
- the ability of a participating syndicate to terminate on shorter notice as at the anniversary date of the BA in the exceptional circumstances where the syndicate will cease to underwrite all business and go into run-off for the following year of account (see new Section 37A.4).

Lloyd's has placed a copy of LMA3113M on its website highlighting the changes made from LMA3113 (see www.lloyds.com/coverholder). The changes for the other model wordings are the same.

2. Annual Transfer

As Lloyd's syndicates operate as annual ventures, to ensure business written under a multi-year BA is allocated to the correct year of account of a syndicate, it is necessary to transfer the multi-year BAs each year to the relevant syndicate year of account. Without a suitable transfer mechanism in place, all business written under the BA must be allocated to the original year of account of the participating syndicates.

LMA3113M, LMA3114M & LMA3115M have therefore been drafted to provide for a suitable legal transfer mechanism. The process for arranging the transfer has been developed by Lloyd's with the involvement of leading counsel.

- Explanation of the annual transfer arrangement

The following is an explanation of how the annual legal transfer works:

- Each 'M' version of the model wording now includes a new section confirming that the Coverholder agrees to the annual transfer of the BA between syndicate years of account. (see new Section 37A). Note that the new section only allows for the transfer between syndicate years of account - it does not allow for changes to the participating syndicates, or their participation which must still be agreed in accordance with current market practice outside of the transfer process by way of a separate endorsement.
- Section 37A provides that at the anniversary date of inception of the BA, the BA agreement transfers to the following year of account of the participating syndicates. The transfer is on the basis that the identity and proportion of each participating syndicate remains the same and only the year of account of the syndicate changes. Any changes to syndicate proportions or the participating syndicates must be dealt with separately in accordance with current market practice by way of a separate endorsement. The position of the Coverholder remains unchanged.
- The outgoing year of account can continue to enforce the BA for its year of account. The incoming year of account only joins the BA for the second year and has no rights or liabilities in respect of the first year of the BA.
- The transfer mechanism requires that the incoming syndicate year of account must elect to accept the transfer. This cannot be done before the new syndicate years of account have been formed. Lloyd's will therefore carry out a simple administrative process once a year in November or December each year for all managing agents to confirm on behalf of their syndicates that they agree to the transfer of all multi-year binding authorities. Although election will be in November or December each year, the transfer of each BA only takes effect at the anniversary date of the inception of each multi-year BA.
- At the anniversary date of the multi-year BA inception managing agents (via brokers if appropriate) should endorse the BA to confirm the transfer of the multi-year BA. This should also confirm details of the new syndicate reference numbers. LMA5237 has been prepared for this purpose. Note that under contract law the legal transfer is still effective even if the endorsement is not entered into. Nevertheless, as the endorsement includes the new syndicate reference numbers, it is important that managing agents ensure the endorsement is executed so that the risks, premium and claims can be properly allocated to the new year of account.
- With effect from (and including) the anniversary date of the date of inception of the multi-year BA all business bound on or from that date must be allocated to the new year of account of all the participating syndicates. This includes all premium payable under policies bound from that date and all claims payable under those policies. Business (including premium and claims relating to that business) written prior to the date of transfer must continue to be allocated to the previous year of the syndicate.
- At the second anniversary of the multi-year BA, the BA transfers again to the next following syndicate year of account using the same process.
- Underwriters need to give thought to any profit commissions allowed. It is advised to keep this annual to avoid further complications.

- Practical steps required for transfer arrangement

In practice, therefore, to write multi-year BAs, managing agents need to do the following:

- Bind the multi-year BA in the normal way using LMA 3113M, LMA 3114M & LMA 3115M. These wordings contain all the necessary provisions to ensure compliance with Lloyd's requirements for multi-year BAs. The Schedule to the 'M' version of the model wordings is unchanged from the annual model wordings. When completing the Schedule:
 - The period for the multi-year BA can be up to 36 months; and
 - The Gross Premium Income Limit (Section 12.1) should be annual figures
 - Maximum Total Aggregate Limit (Section 23.2.3) should be annual limitations whether the basis of agreement is rolling in force or per annum. Underwriters should ensure this is clear on the schedule.
- Each year, managing agents will be required by Lloyd's to sign an election on behalf of their new syndicate years of account confirming agreement to the transfer of all current multi-year BAs. The transfer to the new year of account, however, only takes effect at the anniversary of the inception date of each multi-year BA.
- Endorse the multi-year BA each year using LMA5237. This confirms to the Coverholder that the transfer has happened and provides the broker (if applicable) with each syndicate's new references number. Any delay or failure in completing this endorsement, however, will not invalidate the transfer.

There are no other actions required of the parties, including the Coverholder and Broker, other than as set out above.

Note that Lloyd's has also set out details of how the multi-year BA should be processed, including via Xchanging. This can be found in Appendix 2 of Market Bulletin Y4931.

3 Change of Participating Syndicates & Termination

- Change of participating syndicates

Where there is a change in the participating syndicates or their participations on a multi-year BA this must be addressed in accordance with current market practice for mid-term changes by way of an endorsement either to increase the proportion of the current participating syndicates to make up the difference or for the addition of a replacement syndicate.

The transfer arrangements described in this guidance note are not suitable for effecting changes to the participating syndicates.

- Termination

Section 36 of the model wording BA (both for annual and multi-year BAs) deals with termination. In particular, section 36.1 provides that the Underwriters can terminate the BA by giving notice which is not less than the period agreed by the parties and stated in section 36.1.1 of the Schedule. Syndicates that do not wish to continue underwriting business on a multi-year BA into a new year of account of the syndicate must ensure that they give notice in sufficient time to come off the multi-year BA with effect from the anniversary date of the BA inception date. Failure to do so may result in the multi-year BA being automatically transferred, as set out above, to the new year of account for the syndicate.

As with annual BAs, where part of the capacity on a multi-year BA terminates their participation part way through the BA period, replacement syndicates will be required to take up the shortfall if the BA is to continue. These changes must be endorsed before transfer happens as detailed above.

Note that the multi-year BA model wordings also include a new sub-section 37A.4. This sub-section deals with the exceptional circumstance where a syndicate may elect or be required to cease underwriting all business at the end of the year of account but the length of the notice period under section 36.1 means that the syndicate is no longer able to give notice to terminate as at the

next anniversary date of the multi-year BA. Sub-section 37A.4 now allows the syndicate to give shorter notice provided notice is given by 1 December of the current year of account. The notice will expire at the next anniversary date of inception of the applicable multi-year BA.

Related requirements and guidance

Practitioners looking to place a multi-year BA should also ensure they are familiar with the following:

- Market Bulletin Y4931 -sets out Lloyd's requirements for multi-year BAs. These requirements will be incorporated into the Lloyd's '[Code of Practice - Delegated Underwriting](#)'.
- LMA Guidance Note to the model annual binding authority agreements - this applies to multi-year BAs, except as varied by this guidance note - available, with all model agreements for BAs at www.lloyds.com/coverholders.

All Lloyd's requirements and guidance for BAs can be found at www.lloyds.com/coverholders.

Please note that nothing in these Guidance Notes is intended to, or should be construed as, superseding, amending or derogating in any way from the terms of the BA itself.