



Modernisation of the London Insurance Market

Harnessing Electronic Communications in
Support of Placement

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Corporation of Lloyd's

BUSINESS FLOW

The policyholder
The broker
The coverholder

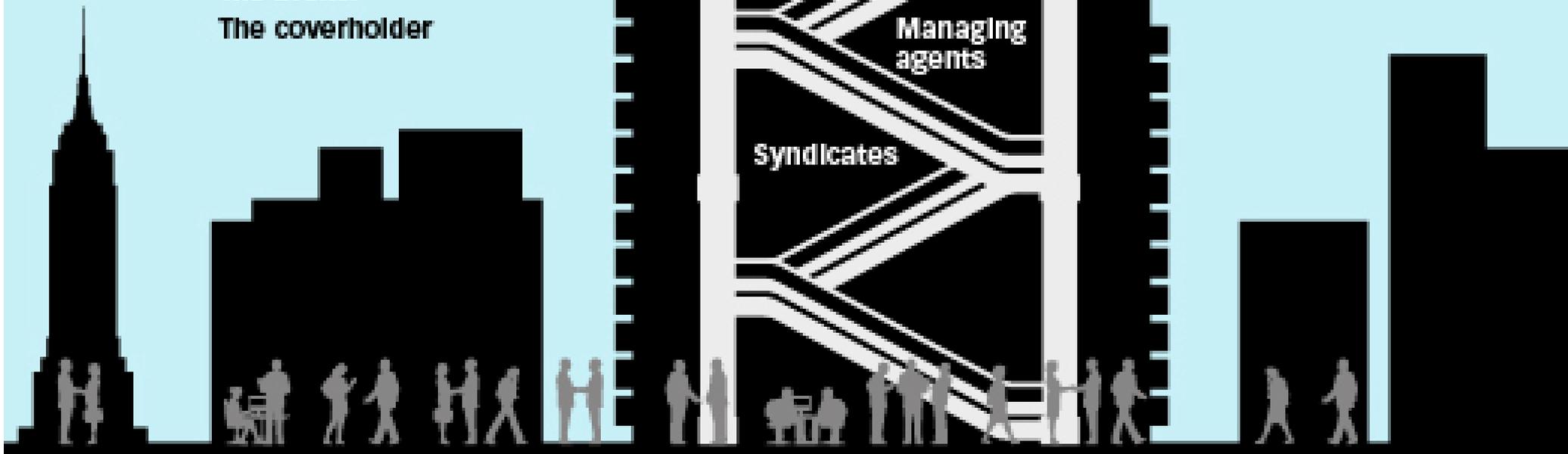
£ \$ € ¥

CAPITAL FLOW

Members

Managing agents

Syndicates



Players in the London Market

Lloyd's Market Association: provides professional, technical support to the Lloyd's underwriting community and represents their interests.

International Underwriting Association (IUA): Exists to promote and enhance the business environment for international insurance and reinsurance companies operating in or through London.

London & International Insurance Brokers' Association (LIIBA): the trade association representing the interests of insurance and reinsurance brokers operating in the London market.

London Market Group (LMG): a market wide body made up of the CEOs of market participants, CEOs of the trade associations and representatives of IUA, Lloyd's, LMA, LIIBA.

Significant Developments

MARKET CRISIS

- 1980s and 1990s – a traumatic period for Lloyd's
- Need to improve the way contracts were written – clarity of assumed risk and insurer liability.
- London Market Principles 2000: LMP slip 2001 (mandatory from 1st Jan 2004)
- Contract Certainty: Market Reform slip 2006 → Market Reform Contract 2007

REGULATION

- The FSA took on responsibility for regulating the underwriting of insurance from December 2001.
- Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation
- The FSA took on responsibility for regulating all insurance intermediaries on 14 January 2005

John Tiner, December 2004

I am told that the major brokers have thousands of outstanding policy wordings from 2002 and prior. All told there maybe several hundred thousand outstanding policy wordings across the insurance market. I understand that there continues to be a high error rate on policies – about 35% - much the same as it was several years ago. Automation is a key factor, but process simplification, integration and discipline are needed badly if this significant problem is to be resolved. Perhaps most of all it needs a change in mindset by all market players so that accuracy and getting it right first time become the norm.

John Tiner, December 2004

As the FSA prepares to take on regulatory responsibility for insurance mediation, we challenge the London Market – the underwriters, the brokers, the infrastructure providers and the clients - to develop and execute as rapidly as is possible a market based solution to this issue of contract certainty. Consistent with our philosophy of working with the grain of the market, the FSA wants to see the insurance industry grasping this nettle and moving to a business and operating model which is transparent and efficient. As I have said, we want to see the end of a practice which is "deal now, detail later".

Process: Subscription Market

1. Prepare slip using Market Reform Contract (MRC) template – use of MRC and adherence to Contract Certainty Code of Practice is mandatory for Lloyd's underwriters.
2. Obtain quotes
3. Firm Order Noted (FON)
4. Obtain written line / “scratch” of leading underwriter
5. Obtain full / over-subscription from following underwriters
6. Adjust risk percentages
7. Prepare signing slip – “signed lines”
8. Obtain initial of leading underwriter
9. Prepare policy form
10. Obtain signature from central signing facility

Modern Practice: Placement

London Market Group (LMG) modernisation programme:
Electronic Support for Placing

- Exchange Hub (using ACORD data standards)
- (In progress) London Market Target Operating Model (TOM) programme
 - Placing Platform Ltd (PPL)
 - Structured Data Capture (SDC)

Legal Issues:

- What is the impact of using a mixture of media and multiple records in the formation of the contract? Which takes precedence in the event of inconsistency?
 - Does hard law provide an answer?
 - Does soft law or “market understanding”?
- Legal Framework: Interchange Agreement and Business Process Protocols.

Quotation vs Slip

- *Pindos Shipping Corp v Raven (The Mata Hari)* [1983] 2 Lloyd's Rep. 449, 452-453
 - “fresh negotiation”
- *Dunlop Haywards (DHL) v Barbon Insurance Group Ltd* [2009] EWCA Civ 354, para 82
 - “essentially an administrative process”

DHL v Barbon [2009] EWCA Civ 354, [82], per Rix LJ

The Mata Hari ... was a case ... where an alleged oral “held covered” agreement was overtaken by a fresh negotiation concluding in many new terms. It was impossible therefore to say that the class maintained warranty could not have been deliberately introduced at that point without any error. In the present case, however, ... all the essential terms of the excess cover were already in place at the time of the quotation sheet and FON. Those were brief documents, but they were premised on the considerable information provided and the terms of the expiring insurances. It is said therefore that the drawing up of the slip was an essentially administrative process, and that it was for that reason that those who signed the slip were for the most part ... junior colleagues of the underwriters who had signed the quotation sheet and/or FON. It certainly appears to be the case that none of those junior colleagues can recall anything about the signing of the slip. It may be that there was some minor addition or alteration to the slip, but the matter is obscure to me, and the overturning of the whole basis of the contract is quite another matter.

Slip vs Policy

- *Ionides v Pacific Fire & Marine Insurance Co* (1871) LR 6 QB 674, 685 , affirmed by (1872) LR 7 QB 517.
 - “may be given in evidence where it is, though not valid, material”
- *Youell v Bland Welch* [1992] 2 Lloyd’s Rep 127
 - Only admissible where there is a request for rectification (obiter)
- *HH Casualty and General Insurance v New Hampshire Insurance Co & Ors* [2001] EWCA Civ 735
 - In principle always permissible to look at the slip “as part of the matrix or surrounding circumstances of a later contract” (obiter)
- *Great North Eastern Railway v Avon Insurance plc* [2001] 1 Lloyd’s Rep IR 793 (CA), para. 31
- *Assicurazioni Generali SpA v Ege Sigorta AS* [2002] Lloyd’s Rep. IR 480 (QB), at 484

Assicurazioni Generali [2002] Lloyd's Rep. IR 480, 484

'... the tendering of wording by a London broker to an underwriter is, in so far as the function of the wording is to reflect exactly what has already been agreed in the slip, a purely ministerial exercise. Unless expressly indicated by the broker as containing matters inconsistent with the pre-existing slip, the tender of wording would not be understood as an offer to vary the contract nor would the signature of the wording be understood by the broker as an acceptance of an offered variation. It would be understood only as agreement that the broker had accurately turned the slip contract into policy wording. Consequently, if both the broker's staff and the underwriters' staff incorrectly agreed that the wording was accurate, whereas in truth it was not, what had been accomplished would not be an amended contract but a wording inaccurately reflecting the true contract.'

LMA, Guide to London Market Processing (March 2016), 6

A number of electronic placing systems exist which use a PDF (or similar) image of the MRC or manage the process via email but these are the exception. In addition, a small number of brokers and underwriters have begun using XML (data)-based versions of the MRC which enable underwriters to automatically capture and reuse risk data within their own systems.

The publication of *'London Matters'* identified opportunities to introduce efficiencies through the adoption of a utility platform for placing and endorsing risks. In addition, leading brokers have indicated a desire to place all risks in London via a single electronic channel supporting both face-to-face and remotely broked placements. However, at this time there is no market-wide standard data-based quotation and placing system and the Placing Platform Limited (PPL) project seeks to address this. PPL is under the oversight of the LMG.

LMA, Guide to London Market Processing (March 2016), 23

Objectives

The objectives are to:

- provide a single channel for all risks to be placed in the London market
- record key data relating to those risks centrally
- provide a resulting dataset that can be consumed and augmented by other data stakeholders throughout the lifecycle of the risk.

Benefits

Benefits of participating in a market approach include:

- an efficient market governance solution
- better value from collective purchase and the coordinated management of service
- a formalised role for insurers (and particularly underwriters) including greater influence over development of functionality and protocols.

In turn the platform will provide the starting point of an efficient risk lifecycle based on structured data.

Crema v Cenkos [2010] EWCA Civ 1444, [40]

There can be problems determining the terms of a contract when it is not wholly written, but is either entirely oral or is partly oral and partly in writing, particularly when it is a business contract between two people who are used to dealing in a particular business or trade. This is because commercial men frequently use their own kind of shorthand. There may well be common assumptions about what is to happen in certain circumstances and neither the particular circumstances, nor what is assumed will happen if they occur, are articulated expressly when the contract is agreed orally or some of its terms are put in writing.

Oral/ Paper/ Electronic Communications

- Admissibility of electronic evidence
 - UNCITRAL Model Law on Electronic Commerce 1996, art. 9
 - Civil Evidence Act 1995, ss 8 and 13.
- Interchange agreements applicable among users of electronic communication systems can pre-establish the moment when underwriter becomes bound (evidence of agreement). E.g. Interchange Agreement relating to use of The Exchange.
- Content of the agreement (evidence of cover): *Evidence of Cover in Electronic Placing: Guidance* issued by LMG
- Where there is conflict or ambiguity
 - LMG p 9 Rule of thumb: “latest information available at time of acceptance”
 - LMG p 10 Order of precedence

LMG, Evidence of Cover in Electronic Placing, 2010, 10

Where information is presented at the same time but in multiple formats, there is scope for differences in the data, leading to ambiguity about which information is correct. In an ACORD placement message, for example, there could be a difference between structured data in the message and the associated placing document accompanying the same message.

Where material differences exist between information supplied in various forms within an ACORD message at a common point in the placing process, the following order of precedence applies.

- 1) The MRC or other placing document (e.g. scanned or Word/pdf) associated with the message.
- 2) Supporting business documents (e.g. schedule of values) associated with the message.
- 3) Other supporting information (e.g. graphics, pictures, videos and sounds) associated with the message.
- 4) Structured ACORD compliant risk data, delivered within the ACORD XML message.

For any bi-lateral agreement on precedence of data to take effect, the intention of the trading partners should be formalised by an agreement.

LMG, Electronic Support for Placing, 2012, 6

In circumstances where the broker and underwriter record their agreement on paper, this agreement should be captured electronically so the benefits of using the process are realised. Any risk that the later electronic version differs from the paper agreement is no different to that which exists in an entirely paper process where an agreed MRC may be tidied-up and re-presented. This risk should be managed in the same way as present. If the position requires it, scans of the previously agreed MRC can be included with messages requesting final agreement.

Both the broker and underwriter may regard agreeing electronically after having agreed on paper as an unnecessary step. However, what it does ensure for both parties is that their systems include a complete and consistent record and audit trail of all contracts, allowing a single processing approach for further activities such as submissions to XIS.

Resources

- ACORD and LMG, *Electronic Placing of Insurance Risks: Business Process Protocols*, v1.1, January 2009
- LMA *Guide to London Market Processing: Current Market Processes and Related Modernisation Activity* (Issue 20 - March 2016)
- LMG *Electronic Support for Placing Systems Processes and Procedures*, Version 1.6, January 2012
- LMG, *Evidence of Cover in Electronic Placing: Guidance* (v 1.6, May 2010)
- LMG, *London Matters: The competitive position of the London Insurance Market* (November 2014)
- Xchanging, *Electronic Policies User Guide*, Version 1.1, March 2010