

MARKET BULLETIN

REF: Y4535

Title	Master Policies & Group Schemes
Purpose	To provide updated guidance on worldwide master policies and group schemes written at Lloyd's and to notify the market of changes to the review process for the United States
Type	Event
From	Peter Montanaro, Head, Delegated Authorities
Date	30 November 2011
Deadline	1 January 2012

This bulletin sets out updated guidance regarding the writing of master policies and group schemes worldwide, including US and multi-jurisdictional master policies.

The main changes with which managing agents need to familiarise themselves are:

- The introduction of new guidance on the writing of master policies and group schemes worldwide to ensure compliance with Lloyd's delegated underwriting requirements, international licences and tax obligations (see Appendix 1).
- Changes to the process for master policies/group schemes written in the US, effective 1 January 2012. Managing agents will be able to adopt the approach which is most appropriate for their syndicates in order to ensure that all US tax and regulatory requirements are met. It will no longer be a requirement for all arrangements to have the prior approval of Dewey & LeBoeuf LLP. Lloyd's will, however, continue to monitor managing agents' compliance.
- Changes to the requirements for writing master policies in the US, in accordance with the Non-admitted and Reinsurance Reform Act ('NRRA'). For now, the process in respect of Australian master policies/group schemes described in Appendix 1 remains unaltered, but is currently being reviewed.

Although the terms master policies and group policies are used by different parts of the market, for the purposes of this bulletin these terms are interchangeable.

1. General requirements for writing master and group policies

Lloyd's recognises that master policies and group schemes have become a common way of providing coverage to individuals who belong to a group or association without the need to issue separate policies to each of the individuals. These types of arrangement can make matters administratively more convenient and reduce costs.

Master policies and group schemes, however, have a number of features that require particular attention:

1. To ensure that the arrangement does not constitute delegated underwriting (which requires compliance with Lloyd's delegated underwriting requirements); and
2. To ensure that the arrangement complies with Lloyd's international licences and tax obligations. Particular issues can arise where the individuals covered by the master policy are in multiple locations.

To assist managing agents in ensuring compliance with the above, Lloyd's has prepared updated guidance on how it expects managing agents should approach the writing of master/group policies. The updated guidance is set out at Appendix 1 and managing agents are asked to ensure that these requirements are implemented. The requirements apply to all master policies and group schemes written in all territories (including the US).

Managing agents should note that, as set out in Appendix 1, it is now a requirement that a record be kept of all master policies written by a syndicate. Managing agents must all be able to evidence that an appropriate and proportionate review of each master policy is carried out at suitable intervals to ensure compliance with the requirements in Appendix 1. For master policies/group schemes written in the US, this review needs to include the matters addressed in Section 2 below.

During the first part of 2012 Lloyd's will discuss further with managing agents its expectations in this regard, including organising a presentation for the market. A review of the processes put in place by managing agents will be carried out towards the end of 2012.

The Delegated Underwriting Code of Practice will be updated to reflect these new requirements and they will be made available on Crystal.

2. Requirement for master policies written in the U.S

Lloyd's has previously treated US master policies differently to master policies issued in other jurisdictions, requiring independent review and sign off of these policies to ensure all compliance and taxation issues are being properly addressed.

Lloyd's has conducted a review of the arrangements for US master policies. In view of the updated guidance provided in Appendix 1, Lloyd's has decided that there is no longer a need to differentiate US master policies from policies written in other jurisdictions. Accordingly, from 1 January 2012, Lloyd's will no longer require that US master policies be reviewed and signed off by Dewey & LeBoeuf LLP ('D&L') prior to inception.

While Lloyd's is removing the requirement for prior review and approval by D&L, Lloyd's nevertheless expects that managing agents will conduct their own review of US master policies/group schemes, to ensure that all legal, regulatory and tax requirements have been addressed before the policy is incepted, as well as annually on renewal. It is expected that

managing agents will familiarise themselves with the requirements relating to master policies, and will review their compliance regimes to ensure that they have adequate controls in place for the underwriting of these policies. Managing agents that intend to carry out the review of master policies/group schemes internally, without recourse to external legal advice, must be able to demonstrate an appropriate level of expertise. Managing agents that do not have the necessary in-house expertise should ensure the programme is reviewed by external lawyers who are familiar with the applicable rules.

The obligation to ensure that the master policy/group scheme complies with the relevant US requirements is a matter for managing agents. Managing agents must not delegate responsibility to the broker.

To assist, D&L has prepared guidance for US master policies/group schemes, a summary checklist of which is attached as Appendix 2. The associated guidance memorandum is available to managing agents in the US section of Crystal¹. This has been amended in the light of the changed procedures outlined below and of the recent legal changes arising as a result of the Non-Admitted and Reinsurance Reform Act ('NRRA'). As a result of this Act, the National Association of Insurance Commissioners ('NAIC') developed the Non-admitted Insurance Multistate Agreement ('NIMA') to facilitate premium tax sharing between the states on multistate surplus lines placements. NIMA adds to the NRRA definition of 'home state' to create a separate definition of the terms in the context of group insurance. This definition has been adopted by some states and could be read to require individual regulatory compliance (i.e. diligent search of the admitted market) for each group member.

The US General Cover Conditions for use in conjunction with the Model Binding Authority Agreements for US coverholder arrangements include references to the current approval process for US master policy/group schemes. Lloyd's will be liaising with the LMA to update those wordings. In the meantime, with effect from 1 January 2012, managing agents may wish to agree suitable endorsements to their Binding Authority Agreements to reflect the new arrangements.

2.1 The Current Requirements (prior to 1 January 2012)

Lloyd's currently requires that before any US master policy/group scheme is placed with underwriters, the underwriters (or Lloyd's broker acting on behalf of the underwriters) must arrange for the programme to be reviewed and approved by D&L.

2.2 Lloyd's Requirements from 1 January 2012

From 1 January 2012, managing agents will no longer be required to present details of their US programmes to D&L for review prior to writing the business.

However, managing agents should conduct a thorough review of any US master policy/group scheme business prior to binding the risk and on renewal. This may include seeking advice from D&L or engaging another legal firm with a recognised insurance regulatory specialism, to provide advice on US placements.

2.3 Transitional arrangements for 2012

In order to support managing agents placing US master policy/group scheme business, Lloyd's will maintain a limited retainer with D&L for a transitional period of 12 months, from 1 January 2012 to 31 December 2012.

¹ Crystal: US > Routes into Lloyd's > Master Policies

During this time Lloyd's encourages managing agents to contact D&L with any specific queries they may have relating to US master policy/group scheme business. D&L can assist managing agents with their compliance issues during this period, and provide advice as to how to structure US master policy/group scheme business.

Following this transitional period, managing agents should continue to seek legal advice where they have compliance concerns about US master policy/group scheme business. However, Lloyd's will no longer maintain a retainer with a specified law firm for this purpose.

Lloyd's will continue to monitor the way in which managing agents manage their US master policies/group schemes. Where Lloyd's is concerned about the compliance capabilities of a managing agent in respect of master policies, Lloyd's may still require the managing agent to submit any master policy/group scheme programmes to D&L for review, either on a one off basis, or annually.

Further Information

Questions relating to compliance with Lloyd's delegated underwriting requirements should be directed to your Delegated Authorities Team account executive.

For questions or more information on the change to the process for the approval of US master policy/group schemes, please contact:

Lloyd's International Trading Advice

Tel: 020 7327 6677 or Email: LITA@lloyds.com

Appendix 1 - Requirements for writing master and group policies

A master or group policy is an insurance policy issued to a master or group policyholder (the “policyholder”) who purchases the insurance to provide the benefit of insurance coverage for others, usually individuals (the “covered parties”). The individuals who are covered parties, however, are not parties to the insurance contract.

Although the terms master policies and group policies are used by different parts of the market for present purposes these terms are interchangeable.²

Where the master/group policy permits the policyholder post-inception to declare additional covered parties to the policy, which underwriters are bound to accept, then Lloyd’s is satisfied that this type of arrangement does not require coverholder approval, subject to the requirements below being met. Nevertheless, a master/group policy arrangement does have some similarities to delegated underwriting. Lloyd’s therefore expects managing agents to manage the associated risks and comply with the requirements set out in this section. It is important that managing agents do not use master/group policies inappropriately as a mechanism for avoiding Lloyd’s delegated underwriting requirements and accordingly the use of master/group policies by managing agents will be kept under review.

Master/group policies can also raise difficult regulatory and licensing issues in some jurisdictions. Where these arise it is important that they are properly addressed.

Where the managing agent cannot comply with the requirements set out below, the arrangement must not be written as a master/group policy without the agreement of the Delegated Authorities Team. In these cases, it may be appropriate to write the scheme under a binding authority agreement through an approved coverholder.

Managing agents should note that while master/group policies are common arrangements, the legal principles which apply to them in the United Kingdom and in other countries remain uncertain and under-developed. The correct legal analysis of such arrangements may also differ in different jurisdictions and suitable local legal advice may be required. Managing agents should consult Crystal for advice on any local regulatory requirements.

Specific Requirements for the writing of master/group policies

Managing agents should only write insurance schemes as master/group policies, where they comply with the following requirements. We expect that managing agents will regularly review master/group policies to ensure ongoing compliance with these requirements. The policy renewal date provides an opportunity to complete such reviews.

1. The covered parties must be individuals and must belong to a clearly identifiable and genuine group, for example by virtue of common employment, association, occupation or activity. This connection must arise other than by reason of the

² Master/group policies should be distinguished from Risk Purchasing Groups (RPGs) or Risk Retention Groups (RRGs) in the United States. These arrangements are governed by specific US federal laws and are not the subject of this guidance. See further below and the content on the United States on Crystal for further information on these groups.

master/group policy. Customers whose only connection is that they purchased the same product from a vendor will not satisfy this requirement unless there is a genuine ongoing customer relationship (through the continuing provision of a non-insurance service) arising from that group of customers purchasing the product such that a clearly defined group can be identified.

Examples which would be considered a group: (1) An employer holding a master/group policy for the provision of employee group health policies. Therefore the employees are the covered parties. (2) A professional association holding a master/group policy providing liability insurance for the individual members (3) A bank holding a master/group policy providing travel insurance as a benefit for the current account customers of the bank.

Examples which would not be considered a group: (1) Individuals who have booked a holiday through the same travel agent are not part of the same group and cannot be declared to a travel insurance master/group policy issued to the travel agent. (2) A supermarket creates an association, members of which are entitled to special offers from the supermarket, including certain insurance products. As the association exists only to sell the insurance and other special offers a master/group policy arrangement is not appropriate in this case.

2. The policyholder must have a legitimate interest in providing cover for the defined group of members. Lloyd's would not regard the ability of the policyholder to generate a fee, commission or other payment for providing cover to the members as being, a sufficient "legitimate interest" for these purposes. The policyholder should not have as its principal purpose the procurement of insurance for its members. Implicit in this requirement is that the policyholder provides substantial non-insurance benefits to its members.
3. The policyholder may receive some form of remuneration as a result of administering the master/group policy. Ordinarily this will be limited to covering the administrative costs of the policyholder. However, where financial benefits do go beyond meeting expenses, the potential conflict of interest that arises for the policyholder must be considered. A way of addressing this would be full declaration of such benefits to its members but managing agents may manage this issue in other ways. Note that in some jurisdictions, policyholders may require approval to carry on regulated activities as an intermediary before they are able to receive remuneration. In these cases, managing agents should ensure that the policyholder has the necessary regulatory authorisations. See paragraph 8 below.
4. The policyholder should have no discretion as to who can be declared to the policy or as to the premium charged or terms of coverage, nor should they provide any advice regarding the insurance coverage. This, however, does not prevent the master/group policies providing different options to proposed covered parties who wish to obtain the benefit of the master/group policy. For example, a group health scheme may offer different options for family and individual cover with the rates varied according the package adopted. Similarly, the policyholder should not have any authority to deal with claims on behalf of underwriters.
5. The policyholder should not produce insurance documentation on behalf of underwriters. However, appropriate confirmation or details of the cover that has been purchased must be provided to the covered parties. Subject to any local licensing requirements, these details may be provided by the policyholder. Any such

details provided to the covered parties must make clear that the only insuring document is the master/group policy document and that a copy of that document may be viewed at the request of the covered party. The agreement between the managing agent and the policyholder should clearly specify who is responsible for providing any such details to the covered parties. This includes any explanatory or promotional material.

In certain circumstances, policies that do not meet all the above requirements may still be written as master/group policies, however guidance must be sought from the Delegated Authorities Team.

- **Regulatory and tax matters**

6. The type of cover provided to the covered parties must be permitted to be written under relevant local regulations. Managing agents should have regard to the location of the covered parties as a relevant factor to consider in ensuring compliance. Where covered parties come from different jurisdictions more difficult questions can arise and where appropriate suitable legal advice should be obtained.
7. Local tax requirements must be satisfied. Managing agents should refer to Crystal, or seek professional advice, to determine which are the relevant local tax requirements. Consideration should be given to the location(s) of the covered parties as well as the location of the policyholder.
8. The master/group policy must comply with local conduct of business requirements. Such requirements could include filing of wordings, approval of sales literature and complaints handling. Consideration should be given to the location of the policyholder as well as the location(s) of the covered parties. Managing agents must take particular care as to whether the activities of the policyholder in administering the master/group policy constitute regulated intermediary activity in the relevant territories. If the activities of the policyholder could constitute a regulated activity, the managing agent should ensure that the policyholder has the necessary regulatory authorisations. Whether the policyholder is carrying on regulated activities will depend on the rules of the local territory and the activities that the policyholder will be required to perform to administer the master/group policy.
9. Managing agents should take steps to ensure that any business underwritten or arranged by or under the master/group policy does not result in coverage being arranged or any claim paid or benefit provided to or for any party that would expose the Managing Agent or underwriters to any sanction, prohibition or restriction under any applicable international trade or economic sanctions, laws or regulations.
10. Where the tax or regulatory rules of more than one jurisdiction may apply it is important that managing agents ensure that risks are coded appropriately to ensure there is compliance with Lloyd's reporting and statutory tax requirements.

USA and Australia

In two territories, additional requirements apply to the underwriting of master/group policy programmes. These are:

1. The United States – Because of the detailed rules that govern master policy/group scheme arrangements in the US, from 1 January 2012, ahead of the renewal of

each scheme, managing agents are expected to conduct a review of all US master policies written by them to ensure that all legal, regulatory and tax requirements have been addressed before the policy incepts, as well as annually on renewal. It is expected that managing agents will be familiar with the requirements relating to master/group schemes and will review their compliance procedures to ensure that they have adequate controls in place for the underwriting of these policies. Managing agents that intend to carry out the review of master policies/group schemes internally, without recourse to external legal advice, must be able to demonstrate an appropriate level of expertise. Managing agents that do not have the necessary in-house expertise should ensure the programme is reviewed by external lawyers who are familiar with the applicable rules. The obligation to ensure that the master policy/group scheme complies with the relevant US requirements is a matter for managing agents. Managing agents should avoid delegating this responsibility to the broker. Further information regarding master policies in the US can be found on Crystal.

Insurance underwritten to US Risk Purchasing Groups (RPG) / Risk Retention Groups (RRG) is permitted and these arrangements are governed by the US *Federal Liability Risk Retention Act* (1986). Guidance should be sought from a law firm with appropriate expertise where a RPG or RRG is being established. While some of the risk management principles outlined in this guidance may be applicable to RPGs / RRGs managing agents will be expected to comply the specific requirements set out in the federal legislation to the extent it conflicts with these principles.

Lloyd's Underwriters are admitted in Kentucky and Illinois and there may be special requirements as to insureds that reside in those states that are covered by master/group policies. Additional information may be obtained from Lloyd's Kentucky, Inc. or Lloyd's Illinois, Inc.

2. Australia - Master/group policies cannot be written at Lloyd's without approval from the Lloyd's general representative in Australia. This is to ensure that Australian master/group policies are constructed and issued in such a manner to be in compliance with all Australian regulatory and tax obligations. Underwriters should ensure that when placing their lines on such contracts that they have had sight of the letter of approval from the Lloyd's general representative confirming that the contract of insurance is in order. Further information and details of the information required by the general representative in Australia can be found on Crystal.

Recording and Monitoring Compliance

So that Lloyd's is better able to monitor managing agent's approach, managing agents should keep a record of all master/group policies written by a syndicate. Managing agents must also be able to evidence that an appropriate and proportionate review of each master/group policy is carried out at suitable intervals to ensure compliance with the requirements set out above. For master policies/group schemes written in the US, managing agent reviews need to address expressly and demonstrate compliance with the particular regulatory and tax requirements that apply there.

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**GROUP INSURANCE PROGRAMS IN THE UNITED STATES:
 SUMMARY CHECKLIST FOR LLOYD'S BROKERS AND UNDERWRITERS**

Managing agents may access the memorandum that accompanies this checklist in the US section of Crystal. The following preliminary information must be considered for all group (or association) insurance programs in the United States.

1. Complete details about the group, including the date of establishment, a copy of its articles of association (or incorporation) and bylaws, the requirements and benefits of membership, etc.;
2. Copy of the Confirmation of Coverage or the Notice or Evidence of Insurance that will be issued to each insured member of the group;
3. Copy of the Slip and the Master Policy wording;
4. Specification of the state in which the group is headquartered (i.e., the “home state”);
5. Identification of all U.S. brokers involved, and information as to the states in which they hold surplus lines licenses and non-resident brokers' licenses;
6. List of states in which insured members reside and, therefore, where Evidences will be issued;
7. Premium payment: explanation of whether the premium is assessed as part of the insured member's membership fee or as a separate payment, and how and to whom the premium is paid by the insured member (e.g., directly to the broker or to the group);
8. Security: The name of the leader and confirmation as to whether the coverage is underwritten 100% at Lloyd's and, if not, as to which companies are involved and their respective percentage participation; and
9. Marketing: Explanation of how the insured members are initially informed about the coverage available and a copy of any promotional or marketing material used in connection with the coverage or in connection with the solicitation of new members of the group where the material mentions the coverage, together with an explanation of how, to whom, and by whom such materials will be distributed.

To the extent applicable, please ask for our separate guidance regarding risk purchasing groups formed pursuant to the Liability Risk Retention Act of 1986 as amended.

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