

**DELEGATED AUTHORITIES –  
AGENCIES, AUTHORITIES & LIABILITIES – A  
UK PERSPECTIVE**

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# Topics

- A. General Observations
- B. Legal Principles
- C. Role of the placing broker
- D. The Managing Agent
- E. Disclosure
- F. The Contract and Specific issues

## A. General Observation

- Delegation of underwriting, claim handling, collection of premium
- Broker or underwriting agency
- Advantages
  - distribution channels
  - cost effective in new business types
- Renewed interest : 1/3 of Lloyd's business  
£8bn of premium income

## A. General Observations (2)

- Binder = a commercial agreement
- Not a contract of insurance
- No industry standard
- Binders and other agreements must compliment/  
be consistent
- Awareness of duties

## A. General Observations (3)

- Full authority
- Pre-determined risk selection and rates
- Prior submit

## B. Legal principles – duties/obligations

- 1) Contractual obligations
- 2) Common law / agency
- 3) Lloyd's
- 4) FCA and/or PRA

# Legal principles – duties/obligations (2)

## On the coverholder

- Contract
  - Express
  - Implied
- Tortious (concurrent liability with contract)
- Fiduciary (as agent)

## On the underwriter

- Contract
  - Express
  - Implied

# Legal principles – duties/obligations (3)

## Contractual obligations

- Coverholder ----- > ----- Insurer
- Broker (placing the binder) ----- > ----- Coverholder

## Accounting for premium

- Coverholder ----- > Broker > ----- Insurer

# Legal principles – duties/obligations (4)

## Contractual terms

Binders generally include:

- Binding Authority limits
- Payment of premium and accounting
- Payment of commission
- Claims handling/payment of claims

# Legal principles – duties/obligations (5)

## Contractual terms

- Auditing/performance review/inspecting records
- Termination of binder
- Jurisdiction and law

## Beware:

- Changing practices over time

# Legal principles – duties/obligations (6)

## Common law / agency

- Obligations on the cover holder
  - Implied duty to act with reasonable skill and care
  - Fiduciary duties

*“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary...”*

*Bristol & West Building Society V Mothew (1998)*

# Legal principles – duties/obligations (7)

## Common law / agency

In practice this means:

- Always acting in the best interests of the principal
- Not to make secret profits
- To act in good faith
- Not to have conflicts of interest
- To act within the terms of the authority given
- A duty to disclose and report material information to the principal

Note:

- Applies to individuals as well as companies

# Legal principles – duties/obligations (8)

## Authority

- Actual authority
- Ostensible authority
- Delegation of authority
  - Dilution of authority/limits of authority
- Ratification

# Legal principles – duties/obligations (9)

## Lloyd's

- Intermediaries Byelaw
- Lloyd's Code of Practice – Delegated Underwriting

## FCA

- Authorisation of coverholder and insurer
- See - *CIC Insurance Company Costa Rica*

## C. The Placing Broker

- Not a party to the contract
- Participates in operation of the binder
  - Premium remittances; communications
- Generally – no duty owed to the insurer

## The Placing Broker (2)

- Sub-agent of the insurer when binder effected
- A duty may be assumed
  - *Pryke v Gibbs Hartley Cooper (1991)*

## D. The Managing Agent

- Authority from syndicate members to enter binders
- Duty of care to members in contract and tort
- Lead underwriters/
  - Lloyd's Claims Schemes
  - arbitration process
  - Limitation of Liability £2m per claim (£10m per year)
  - no liability for consequential losses

# E. Disclosure

## Disclosure

*MIA 1906 ss17-19*

## Misrepresentation

*Misrepresentation Act 1967*

## Disclosure (2)

- Personal liability

*Sphere Drake Insurance v Euro International Underwriting  
(2003)*

- Fraudulent misrepresentation
- Concealment

- Fraud unravels all

*Markel/QBE v Surety Guarantee Consultants (2009)*

# F. The Contract and Specific issues

## Negotiation and terms

- Consistency between slip contract and binder
- Consistency between documents
- Supplement duties/obligations with express provision

# The Contract and Specific issues (2)

## Claims

- Potential loss of control
- Binder and Claims Handling Agreement
- Claims settlement within delegated authority?
- Detailed framework and reporting structure
- Differentiate between underwriters

# The Contract and Specific issues (3)

## Terminating the Binder

- Breaches of authority - actionable breach
- Plan for termination
- Properly drafted notice
- Timing of notices

# The Contract and Specific issues (4)

## Terminating the Binder

- Delivery up of insurance documents
- Handling the run-off
  - *Temple Legal Protection Ltd v QBE Insurance (Europe) Ltd (2008)*
  - *Europe Assistance Insurance Limited v Temple Legal Protection Ltd v (2007)*

# The Contract and Specific issues (5)

- Ownership
  - *Hiscox Underwriting v Dickson Manchester & Co Ltd* (2004)
- Exclusivity
  - Diverting business
  - Insurer has right of first refusal
- Proprietary Rights
  - Insurance Documentation
  - Marketing Material
- Non Solicit

## To Conclude..

- Potential increasing exposure for professional indemnity market
- Coverholder
- Broker
- Managing agents - Consortia
  - Lloyd's Claims scheme

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