

Lloyd's: law and practice

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With a contribution from David Clissitt, partner, Deloitte LLP, and a foreword by Lord Thomas.

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Book review by Jonathan Goodliffe, solicitor

Introduction

This welcome new textbook provides comprehensive coverage of the law and regulation affecting the Lloyd's market and those who operate within it.

The author's approach is descriptive as well as analytical. So a reader new to the subject can get a gentle introduction to how Lloyd's operates, its constitution, and how it is regulated. This is mainly provided by the first three chapters. The last chapter puts this material into context by describing how the regime came under challenge in the "Lloyd's litigation" and how the challenge was met by the reconstruction and renewal of the market between 1990 and 1996.

Layout

Chapters 4 to 10 analyse the regulation of the Lloyd's market under the Financial Services and Markets Act 2000 (FSMA – as since amended) and the role of members, syndicates, managing agents, members agents and Lloyd's brokers.

Chapter 11 covers placing and accepting of insurance at Lloyd's. Among other things it discusses the case law on the relationship between policy and slip and the operation of the subscription market, including the role of leaders and followers¹.

Lord Thomas, now Lord Chief Justice, in the foreword, describes chapter 12 on delegated underwriting as "meticulously explained" and remarks:

"I doubt whether anything can substitute for the underwriter being sure of the integrity and business capabilities of the agent to whom authority is given, having a real understanding of the underwriting being carried out by the agent and undertaking the most careful supervision and questioning of what is being done".

¹ Here the reader may also usefully refer to "London market issues: leaders, followers and layers" by Julian Burling, Helen Ashenden and Jacquetta Castle [124] BILA Journal 18.

Arguably this standard is currently required under the FCA/PRA Handbook/ Rulebook risk management and outsourcing requirements and will be required under the Solvency II Directive (see page 218 of the book).

Chapter 16 discusses capital requirements derived from what is now the PRA Rulebook as they have been adapted to the Lloyd's market and as they will be changed under the Solvency II regime. The book went to press as at March 2013, so the author was also able to give full coverage to the Solvency II approach, as proposed to be transposed in the UK under the draft Prudential Sourcebook for Solvency II Insurers (SOLPRU)², chapter 13 of which applies specifically to Lloyd's.

This is followed by chapters 17 and 18 describing the financial resources requirements applied to the market at syndicate and member level. Trust fund requirements applied to Lloyd's in a number of overseas jurisdictions, including the USA, are also considered.

Other chapters include coverage of:

- claims processes (chapter 13),
- the operation of the Lloyd's Central Fund (chapter 19),
- the annual Lloyd's solvency test (chapter 20),
- taxation of members (chapter 22 provided by David Clissitt of Deloitte LLP).
- transfers of business to or from members of Lloyd's and issues as to whether such transfers will be recognised in overseas jurisdictions (chapter 23),
- enforcement and discipline (chapter 24),
- the various arrangements for resolving different species of disputes arising within the Lloyd's market (chapter 25)
- how Lloyd's members operate in the most significant overseas insurance markets and how they are regulated there (chapter 26),
- the special insolvency regime developed for the Lloyd's market under the Insurance reorganisation and winding up directive (2001/17/EC) "in circumstances where there is not necessarily any confidence that sufficient assets will be available to meet shortfalls in members' premium trust funds" (chapter 28).

Appendix

An appendix provides the full text of the most significant documentation relevant to the market (Lloyd's Acts and the main standard form agreements and trust deeds).

Comment

The author's approach to the subject is comprehensive detailed and thorough. Yet the book is set out and composed in a clear, logical, readable and readily understandable style. It has already become an essential tool for practitioners dealing with Lloyd's transactions.

² as published by the Financial Services Authority in July 2012 (CP 12/13).

A second edition might usefully include a table of FCA and PRA Handbook and Rulebook provisions.