

22<sup>nd</sup> October 2014

LIIBA 58/2014



## **IRELAND**

### **Handling Client Money**

The Irish Brokers Association (IBA) issued a Bulletin in August 2014, accompanied by legal advice, drawing attention to the client money provisions under Irish Law. Regulation 16 and the Irish IMD Regulations stipulate that premiums paid by a customer are taken to have been paid to the insurer and that claims are not taken to have been paid to the customer until the customer actually receive the monies i.e. mandatory risk transfer.

Concern was expressed that the terms of business agreements in force between Lloyd's brokers and insurers and Lloyd's brokers and Irish brokers did not properly reflect this position. Following discussions with the LMA, Lloyds and the IBA we would like to clarify the position.

Binding Authorities: - where there is a binding authority agreement along the model lines (LMA 3113 of 1<sup>st</sup> July 2013) between the managing agent and the Irish Coverholder there would be no breach of Regulation 16 as the agreement makes it clear that monies are held in segregated trust accounts as agent of the syndicate.

Open Market: - where there is a London placing broker and Irish producing broker two terms of business agreements are likely to be in place, one between the insurer and the London broker and one between the London and the Irish broker.

As regards the insurer/London Broker toba no issues with Regulation 16 should arise providing one of the following routes is adopted:

- (a) there is a risk transfer toba in place as per the 2005 model toba (with or without the 2011 RT TOBA Endorsement)
- (b) there is a non risk transfer toba in place as per the model non risk transfer toba of 2011. Crucially the 2011 model, in clause 6.2 confirms that where the broker holds monies on behalf of the insurer/managing agent 'by reason of any legal or regulation requirements or, if specified in the relevant slip' then the broker shall hold such monies as agent and trustee of the insurer/managing agent.

In addition nothing in the toba between the London broker and the Irish broker should state that such monies are held on behalf of the insured. The LIIBA model client toba provides for client money to be retained in accordance with CASS Rules and confirms that monies may either be held on behalf of insurers or clients.

The LIIBA model sub broker toba of 2004 contain provisions which confirm monies will be held in accordance with FCA rules or local requirements if the sub broker is elsewhere in the EU. Both model clauses are compatible with the Irish Regulations.

On this basis a combination of (a) or (b) above and a suitable wording in the toba with the Irish Broker will satisfy the Irish requirements laid down in Regulation 16.

This note has been reviewed by the IBA and LMA. A copy of this note has been provided to Lloyd's and is available on Crystal.

David Hough  
**Chief Executive**