



## REINSURANCE OF LIFE INSURERS: UNDERWRITING CONSIDERATIONS

This guidance has been prepared jointly by the LMA and Clyde & Co LLP. It explores issues to be considered when underwriting reinsurance of life providers, with reference to the financial regulation regarding the role of general insurers.

### Please note:

- This guidance provides a brief summary of the position and is not intended to be exhaustive. If further advice is required, underwriters should contact the LMA or seek their own independent legal advice.
- This advice applies to all K risk codes without exception but does not address any other business, in particular it excludes P and N risk codes or contracts considered to be miscellaneous financial risks, Class 16 General Insurance, such as stop loss contracts, in relation to which Underwriters should seek their own legal advice.

### Regulatory Principles: Direct and Reinsurance

General insurers may only insure risks which fall within the general insurance categories of the [Regulated Activities Order 2001](#). In relation to K risk codes this is Classes 1 and 2, being Personal Accident and Sickness<sup>1</sup>.

Reinsurance is assessed according to the subject matter of the underlying risk and cannot be considered a class in its own right for regulatory purposes.

General insurers cannot provide life insurance. The prohibition on writing life is absolute, there are no exceptions for “short term life” or for “incidental life”. As a guide, life insurance has some or all of the following key indicators:

- Responds solely on the contingency of continuation or termination of life;
- Pays a fixed benefit, not an indemnity;
- Requires no proof of financial loss;
- Is written on a long term basis or subject to special rules on cancellation.

Class 1 specifically permits general insurers to underwrite accidental death. This can be covered on a benefit basis.

Neither Class 1 nor 2 permits general insurers to underwrite death by sickness.

### Permissible Risks

General insurers may underwrite reinsurance of life insurers provided that that the reinsurance does not cover death other than accidental death.

General insurers may also reinsure business that insures a variety of disability risks<sup>2</sup>, medical expenses and other risks which they are entitled to underwrite on a direct basis.

<sup>1</sup> Members of Lloyd's may underwrite both life and non-life business provided all life business is underwritten through life syndicates and non-life business by non-life syndicates. NB there is a requirement for separate PTFs.

<sup>2</sup> Underwriters should be aware that they **cannot** underwrite disability for a term exceeding 5 years

Accidental death can be carved out from a book of life insurance business but to do so, specific, clear definitions are required.

### Prohibited Risks

General insurers may not reinsure business where the reinsurance includes death by sickness. This absolute prohibition extends to all types of sickness. For the avoidance of doubt, pandemic, epidemic and the like are accumulations of death by sickness.

### Exceptions

Whether there has been death by accident depends under English law upon the proximate cause.

Thus accidental death could extend to include death from sickness caused by an accident (e.g. gangrene following a broken bone; or cholera following a natural disaster).

The LMA recognises that some business introduced to Lloyd's from other jurisdictions contains underlying policies with definitions of accident that extend to include:

- (a) "unforeseen, external cause" events such as insect bites, anaphylactic reactions or similar that are particular to tropical parts of the world; and/or
- (b) pandemic and epidemic outbreaks; and/or
- (c) occurrences not usually considered to be accidental under English law (e.g stroke)

It is likely that (a) would be considered an acceptable variation of accidental death.

Syndicates may need to consider obtaining specific legal advice where local regulators accept that accident extends to (b) and/or (c) in the underlying insurance to ensure that the proposal also meets UK regulatory requirements for general insurers.

### Recommendations

All reinsurance contracts should contain an accident definition. This should be entirely separate from any event definition or hours clause

Reinsurers of life providers should give consideration to protect against aggregation, in particular by reference to an event definition with an hours provision.

An event definition is aimed at restricting aggregation and should be kept separate from a definition of "accident" which is aimed at triggering coverage.

If reinsurance of a life insurer is proposed, we recommend the following best practice, sample clauses for which are set out in **Appendix 1**:

- (a) Ensure the "Interest" section in the slip specifically records the extent of cover;
- (b) Restrict coverage to death claims that are only as a result of an accident rather than trying to exclude death by sickness or any specific type of sickness;
- (c) Achieve (b) by definitions of Death and Accident and consider a definition of "Death by Accident";
- (d) Consider an Accidental Occurrence definition, with an hours provision;
- (e) Consider an exclusion for any losses arising from Death other than Death by Accident.

### Contacts

If you require further information please contact Adrian Graham at the LMA on 020 7327 8378 or [adrian.graham@lmalloyds.com](mailto:adrian.graham@lmalloyds.com) or Michelle Crorie at Clyde & Co on 020 7876 4506 or [michelle.crorie@clydeco.com](mailto:michelle.crorie@clydeco.com).

## APPENDIX 1

Sample clauses should be read alongside the recommendations in the attached guidance and are offered as suggestions only. Sections in square brackets are intended to be subject to amendment according to the specific risk underwritten.

### Interest/Business Covered/Class

*"This contract shall indemnify the Reinsured for losses in respect of all policies underwritten by the Company [classified as...] save for benefits paid for Death other than Death by Accident."*

### Definition of Death

*"Death means all loss of life."*

### Definition of Death by Accident

*"Death by Accident means Death caused by an Accident and which occurs within [12] months of the Accident."*

### Definition of Accident

*"Accident means a sudden, unexpected, unusual, specific, [external and violent] event which occurs at an identifiable time and place during the period of insurance;*

*or*

*the definition contained within the original policies of the Reinsured where such a definition exists."*

### Definition of Accidental Occurrence

*"The term "Accidental Occurrence shall mean all individual losses arising out of and directly occasioned by one event occurring at an identifiable time and place [which affects xx or more insureds]."*

*The duration of the Accidental Occurrence so defined shall be limited to [24] consecutive hours and within a [10] mile radius for any Accidental Occurrence hereunder and no individual loss which occurs outside such period and/or radius shall be included in that Accidental Occurrence.*

*The Reinsured may choose the date and time when such period of consecutive hours commences and also the specific [10] mile radius determining the Accidental Occurrence.*

*If any event is of greater duration than the above period, the Reinsured may divide that event into two or more Accidental Occurrences provided that no two periods overlap and provided no period commences earlier than the date and time of the first recorded individual loss to the Reinsured arising out of the event."*

### Exclusion of Death

[To be inserted into an exclusions section]

*"This reinsurance will not pay any claim caused by or arising from Death other than Death by Accident."*