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A History of Lloyd's in South Africa

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A dissertation submitted to the Faculty of Commerce, Law and Management of the University of the Witwatersrand, Johannesburg, in fulfillment of the degree Master of Commerce (Insurance and Risk Management) by dissertation.

February 2012

Declaration

I hereby declare that this is my own unaided work, the substance of or any part of which has not been submitted in the past or will be submitted in the future for a degree to any university and that the information contained herein has not been obtained during my employment or working under the aegis of, any other person or organisation other than this university.

(Name of Candidate) Signed

Signed this…….. day of……. 2012 at the University of the Witwatersrand, Johannesburg.

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My loving parents, who have been very supportive throughout my studies and have provided constant care and understanding.

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1. Abstract

Lloyd's of London is well-known throughout the world as a major insurance market. Lloyd's history in South Africa, however, until now has not been documented. This dissertation seeks to provide a detailed account of a history of Lloyd's in South Africa, highlighting its contribution towards the development of the South African insurance market. The study starts with a history of Lloyd's in the United Kingdom. This is followed by the history of Lloyd's in South Africa starting with the first discovered record of Lloyd's in South Africa and concludes by setting out its current position in the South African insurance market.

Keywords: Lloyd's of London, South African insurance market, business history.
JEL classification: G22, N17.

2. Research Objective

This dissertation does not have a research question in the traditional sense. It has a research objective. The objective of this research is to provide a detailed history of Lloyd's of London operation in South Africa and thereby add to the academic body of knowledge. This dissertation can be divided into two parts, the history of Lloyd's in the United Kingdom and the history of Lloyd's in South Africa. The first part sets the scene for the second and will focus on the changes at Lloyd's since its establishment - starting with the history of Lloyd's from its early days as a coffee house run by Edward Lloyd, the move to premises at the Royal Exchange, Lloyd's branching out into non-marine insurance, the large claims and fraud allegations from the 1980s and the formation of Equitas in response to the liability crisis of the 1980s, and its subsequent sale. Legislation governing Lloyd's will also be discussed including the Lloyd's Acts throughout its history.

The second part seeks to document a history of Lloyd's in South Africa, from the time Lloyd's first started transacting business, its development, the legislation governing its operation in South Africa and the influence it has exerted in the South African insurance market.

3. Methodology

There is a large body of literature covering the history and operation of Lloyd's of London in the UK and other parts of the world especially the United States of America. From this literature a comprehensive summary of a history of Lloyd's in the UK is produced herein to contextualise the South African development.

Currently the history of Lloyd's in South Africa has not been documented. The following methodology was implemented to construct this thesis. Firstly, persons who had information were interviewed. An interview with the former long standing, South African representative of Lloyd's, Mr Ronnie Napier was conducted to discuss his role as representative, recollection of historical events and gathering documents on the history of Lloyd's in South Africa. This was followed by interviews with the current South African representative of Lloyd's, Mr John Sibanda and the general manager of Lloyd's South Africa, Mr Amit Khilosia, regarding their duties and responsibilities. Secondly, documents dealing with Lloyd's in South Africa were searched for in the industry and an in depth examination of the Hansard Parliamentary debates covering the records pertaining to the legislation dealing with Lloyd's in South Africa was made. This was followed by an in depth examination of the South African Select Committee reports dealing with Lloyd's in South Africa. Insurance magazines from the 1900s onwards ending with the latest industry magazine, *Cover*, were read for any articles dealing with Lloyd's. Finally, a visit was made to Lloyd's of London in the UK in an attempt to obtain information on Lloyd's in South Africa. This methodology sought to gather information including any documents that might be available as well as personal knowledge and experience.

To engage with others in the academic field on this topic, two work-in-progress presentations on a history of Lloyd's in South Africa were presented. One was at the Economic Research Southern Africa (Ersa) Business History Workshop held in Muldersdrift[1] and the other was at the

[1] Bartylak, A.M (2010) "A History of Lloyd's in South Africa" *Economic Research Southern Africa*, Business History: Theory and Practice Workshop, Muldersdrift.

36th Annual Economic and Business Historical Society Conference held in Columbus, Ohio, USA[2]. From the information obtained through this process the history of Lloyd's was compiled.

[2] Bartylak, A.M (2011) "A History of Lloyd's in South Africa" *36th Annual Economic and Business Historical Society Conference*, Columbus, Ohio, USA, 14 – 16 April.

4. A History of Lloyd's in the United Kingdom

4.1. Origins of Lloyd's (1680s – 1920s)

4.1.1. Edward Lloyd

Lloyd's originated from merchants who came together in a coffee house, owned by Edward Lloyd to discuss business in the city centre of London.[3] Lloyd's bears the surname of the man who operated the coffee house, and controlled and ran it for over 20 years. "He was Edward Lloyd and his shop was situated in Tower Street at the eastern end of the city" (Gibb, 1957: 4). Not much is known about the life of Edward Lloyd (Esquiros, 1868: 167). The most that can be said is that he was born in or close to 1648, was married three times and owned his first coffee house around 1688-1689 (Straus, 1973: 47). His business grew over time and prospered. Men would meet at his coffee house and find reliable men that would insure ship owners against perils of the sea, men-of-war, fire, enemies, pirates and thieves. His clients consisted mostly of ship-owners, captains and commercial businessmen. The exact date of Edward Lloyd's death is uncertain. Various authors provide different dates. Wright & Fayle (1928: 31) observe that Edward Lloyd's health was failing in 1712 and he died in the same year at the age of 65. However, Raphael (1995: 37) holds that Edward Lloyd died on the 16th February 1713 while Raynes (1950: 110) states that it was on the 15th February 1713.

The first printed reference made to Lloyd's coffee house is dated February 1688 and occurs in an advertisement which appeared in the *London Gazette*.[4] A gentleman was robbed and he wanted to offer a reward for anyone who found his stolen gold watches. If anyone had any news they could either give it to him personally or to the coffee house of Edward Lloyd. This indicates that Lloyd's coffee house must have been quite well-known and popular to be the one chosen out of all other coffee houses available. Lloyd's was seen as the place to do business (Gibb, 1957: 7)

[3] Anonymous (1925b: 19); Anonymous (1928b: 33); Anonymous (2010b: 6); Kuvin (1954: 407); Elliott (1907: 11); Stewart (1984: 1) Fegan (1919: 2); Panama-Pacific Exposition (1915: 14).
[4] Gibb (1957: 6), Raphael (1995: 33), Davison (1987: 20), Hodgson (1987: 49), Flower & Jones (1981: 20), Martin (1876: 60), Brown (1973: 17) and Straus (1973: 48).

and if one was looking for recreation or socializing other coffee shops or taverns were visited (Raphael, 2005: 34). London was the heart of the shipping world in the 17th century and Edward Lloyd took that opportunity to make his coffee house the meeting place for individuals interested in shipping (Raphael, 1995: 35).

In 1696 Lloyd tried his hand at the newspaper business. He published *Lloyd's News* which unfortunately only lasted 5 months (Hodgson, 1986: 49; Raphael, 1995: 36). However, it was seen as a respectable newspaper containing information valuable to merchants and captains which was not published in the general newspaper, *London Gazette*, at that time (Martin, 1876: 74). In his last edition he accidently published the proceedings followed by the House of Lords which contained a small mistake. The House of Lords immediately ordered him to correct the mistake in his next edition. He refused and thereafter never published *Lloyd's News* again.[5] As a general newspaper it was below standard but as a shipping newspaper it was well ahead of its time (Martin, 1876: 65). Even though his newspaper was unsuccessful, Edward Lloyd still supplied his customers with shipping intelligence which he received from correspondents (Wright & Fayle, 1929: 25). Roughly 10 years after the opening of the coffee house, Lloyd was seen as a shipping expert. He had become well informed on shipping and did not disclose the names of his correspondents from whom he received shipping information. By 1710 Lloyd's coffee house was considered the "chief commercial Salesroom in London" (Flower & Jones, 1981: 29) and, according to Raynes (1950: 112) Lloyd's was already the "main home of individual underwriting" as early as 1760 insuring marine risks as well as dabbling in other risks.

A custom was formed at Lloyd's coffee house whereby the *Kidney* (a youth) read any news arriving at Lloyd's in a clear voice while everyone listened to him reciting the newspaper with any new information.[6] Susequently, this took the form of news being read from a rostum, followed, many years later, by the caller who informed brokers of any telephone calls (Raphael, 1995: 36). Auctions also took place at the Lloyd's coffee house where many items, not necessarily to do with shipping, were sold (Flower & Jones, 1981: 27 & Martin, 1876).

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[5] Raynes (1950: 110); Flower & Jones (1981: 24); Martin (1876: 75); Straus (1973: 53); Elliott (1907: 11).
[6] Wright & Fayle (1929: 26); Hodgson (1987: 49); Flower & Jones (1981: 27); Martin (1876: 105); Brown (1973: 18); Straus (1973: 55); Fegan (1919: 2 – 3).

4.1.2. 17th and 18th century structure of insurance market

The insurance market at the end of 17th century and beginning of 18th century consisted of brokers and underwriters (Gibb, 1957: 18). Underwriters accepted risk and the brokers fixed the terms for both parties. At this point in history brokers preferred to be called 'office-keepers' as the word broker had become disreputable and had negative connotations to it.[7] The appellation broker was used by shady and dishonourable traders resulting in the word broker acquiring an aura of dishonesty. For the purposes of this text, however, the term brokers will be used throughout without negative connotation.

Brokers worked as the agents for the merchants and ship-owners. After the terms were written up the broker made sure that each party had signed the contract. Underwriters at that time did not occupy offices. Individuals who were underwriters underwrote part-time in their spare time, separate from the daily running of their businesses (Wright & Fayle, 1929: 35). The market was not concentrated at the Royal Exchange and brokers had to travel the whole city seeking merchants, bankers and ship-owners who would be interested in insuring their goods. Underwriters risked their personal fortunes and not only the profits made from their trade. Therefore the only control mechanism in place at the time was the broker's good judgement. The broker's duty was to his client, the insured. His job was to insure the full value of the risk at the best possible price with reliable underwriters who could pay their share of the loss should the risk materialise.

The market at Lloyd's was described as follows: "A successful merchant would become an underwriter, a member of an underwriting syndicate, who wrote through a deputy, usually a member of the syndicate, each name taking a line of risk" (Raynes, 1950: 279). An underwriter would write through a deputy that he hired when he was not at his writing box[8] (Raynes, 1950: 186).

[7] Gibb (1957: 18); Flower & Jones (1981: 40); Brown (1973: 22); Raphael (1995: 35); Hodgson (1987: 50).
[8] For a discussion on the box refer to Chapter 5.2.1.

Through the Bubble Act of 1721 two insurance companies received royal charters, the Royal Exchange Assurance[9] and the London Assurance,[10] conferring the privilege of being the only two companies that were able to provide marine insurance in England. An Act was passed to stop other companies, many of them being insurance companies, from competing with the South Sea Company thereby declaring all companies without a royal charter to be illegal. The Bubble Act stated that no other companies were allowed to enter into insurance business.[11] This prohibition, however, did not extend to any individual wanting to underwrite risks, thereby allowing individual underwriters to continue at Lloyd's (Luessenhop & Mayer, 1995: 54; Martin, 1876: 98; Tomlins, 1820; Billah, 2009: 37). However, these two corporations did not stay exclusively in marine underwriting and by April 1721 both had received fire and life charters. Their main focus shifted to fire insurance and left marine to be dealt with by the private underwriters and merchants. In reality, the Bubble Act actually favoured the Lloyd's underwriters by removing any competition that might have arisen in the field of marine insurance.[12] The Bubble Act was repealed in 1825 (Morgan & Thomas, 1962: 40).

4.1.3. A broker in the 18th century

Gibb (1957: 54) describes a broker of the 18th century as having the duty to find the best terms for his client as well as correctly selecting strong underwriters, who have the means to pay, from the financially poor underwriters, and had to make sure that any underwriter of doubtful financial standing would not underwrite a line of his client's risk. The brokers knew the men, watched them and knew who was reckless and who was cautious. A broker had many more duties in the 18th century compared to a broker in the 1900s. He had to show the risks, write out the policies, get underwriters to sign it and adjust the claims.

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[9] Histories of the Royal Exchange include: *The Royal Exchange* by A.E.W Mason in 1920; *The Royal Exchange Assurance: A History of British Insurance 1720 – 1970* by Barry Supple in 1970; *The Stock Exchange: Its History and Functions* by Professor E. V. Morgan and W.A Thomas in 1962.

[10] Histories of the London Assurance include *The London Assurance: A Second Chronicle* by Bernard Drew in 1949 as well as *The London Assurance: 1720 – 1920* by G.S. Street in 1920.

[11] Morgan & Thomas (1962: 34, 37); Hodgson (1987: 51); Martin (1876: 90); Brown (1973: 23).

[12] Hodgson (1987: 51); Martin (1876: 103); Brown (1973: 24).

The broker slip[13] was, until recently, the keystone of Lloyd's business. It became popular in the 18th century. Wright & Fayle (1929: 289) explain how all insurance at Lloyd's was done through the broker making a 'slip' where the risk was set-out and each underwriter would initial at the bottom of the slip stating how much of the risk he was willing to take (Fegan, 1919: 3). This would continue until the slip was filled and the whole risk was insured. From this slip, a formal policy would be drawn-up and thereafter be signed by the underwriters concerned. The slip has now been replaced by an electronic system.

4.1.4. Lloyd's List

In 1734, Lloyd's made another attempt at providing its customers with shipping intelligence through the creation of *Lloyd's List*. "It was the demand of the underwriters for shipping intelligence that led, in 1734, to the establishment of *Lloyd's List*" (Wright & Fayle, 1929: 71). Insurance was similar to gambling at that stage and merchants, having suffered a loss would attempt to insure their ship after the loss had occurred, hoping to find someone willing to insure it and who had not heard that the loss had occurred. Lloyd's provided the much needed information which deterred this practice through the *Lloyd's List*.[14] Wright & Fayle (1929: 76) describe *Lloyd's List* as being a single sheet of paper in length, the front having general adverts and commercial information and the back contained the shipping intelligence. For the first three years *Lloyd's List* only contained shipping intelligence and from 1737 it added the price of stocks as well as the rates of exchange, the price of gold and silver, the price of annuities and announced the lottery prizes to be won (Raynes, 1950: 111; Flower & Jones, 1981: 48 & Martin, 1876: 109).

There were many wars during the 18th century i.e. the War of Jenkins' Ear (1739 – 1742), the Seven Years War (1756 – 1763), the American War of Independence (1775 – 1783) and the Napoleonic Wars (1799 - 1815). Almost every policy Lloyd's wrote covered the risk of capture by privateers while travelling in convoy, seizure in a port and detention. Throughout these wars Lloyd's suffered many losses – some of which tested the possibility of destroying Lloyd's - but it

[13] For an example of a Lloyd's slip, refer to Appendix 1.
[14] Davison (1987:21); Martin (1876: 107); Esquires (1868: 174); Anonymous (1925b: 19); Anonymous (1928b).

nevertheless remained successful, profitable and was most brokers' first port of call when looking for underwriters. These wars brought lucrative shipping risks to Lloyd's (Flower & Jones, 1981: 60). *Lloyd's List* became very popular as it published details of captured English ships, or any capture of the enemy ships due to the English (Martin, 1876). The Government sent all its shipping intelligence directly to Lloyd's Coffee House (Straus, 1973: 66).

The first Register Book, which contained the particulars of ships needing insurance, was established at Lloyd's between 1764 and 1766.[15] This was only available to members of the society and not to the public. The information contained in the Register Book included: the name of the ship, who is the master of the ship, the port of destination, weight of ship, men on board and the date and place of when the ship was built (Hodgson, 1986: 65). The last column was reserved where members would indicate by way of a vowel the condition of the ship. The vowels A, E, I, O, U represented the grading of the hull while the letters G, M, B, standing for good, middle and bad, depicted the condition of the equipment on board the ship.[16] Esquiras (1868: 171), Martin (1876: 400) and Brown (1973: 134) also mention the *Loss Book* or the *Black Book* of Lloyd's which was written by hand and contained everyday accounts of shipwrecks or any other marine disasters.

Lloyd's List is still published on a daily basis and is the oldest existing newspaper in the world (Luessenhop & Mayer, 1995: 58).

4.1.5. Lloyd's dividing into two factions and the move to new premises

After the Seven Year War and during the peace which followed, gambling, which had nothing to do with legitimate insurance, became popular (Straus, 1973: 77). It became a trend for people to take out insurance on the lives of famous individuals (without having an interest in their lives) by betting on how long they were expected to live. As soon as it became known that a well-known individual was ill, a market on the prospect of his survival would be established at Lloyd's or at other coffee houses (Raphael, 1995: 38; Hodgson, 1986: 52; Fegan, 1919: 4, 7). Another

[15] Wright & Fayle (1929: 84), Martin (1976: 327); Straus (1973: 75).
[16] Raynes (1950: 112); Martin (1876: 327); Straus (1973: 76).

example was that of insuring whether an accused would be convicted of murder or set free (Luessenhop & Mayer, 1995: 58).

The more serious underwriters at Lloyd's found this gambling form of business distasteful and, in 1769, moved premises to set up their own business, a competitor to Lloyd's, at 5 Pope's Head Alley led by the head waiter Thomas Fielding (died January 1778) who took the lease out on the new premises in his name.[17] In this way the new Lloyd's coffee house was founded. This was the end of the old Lloyd's and it is regarded as the birth of the Society which continues to exist to the current day (Gibb, 1957: 46). The gambling form of business was the immediate cause of the split. The building that new Lloyd's occupied was too small and after 2 years, in 1771; they moved out but struggled to find suitable new premises. This move led to the election of a committee consisting of nine subscribers who were given full powers to find an appropriate building to be the new venue of Lloyd's. This was the first Committee of Lloyd's which formed in January 1772. This election of a committee and move to new premises also led to the first payment of a subscription fee. This move signalled the change from Lloyd's operating from privately owned coffee house to a self-governing body (Gibb, 1957: 47; Hodgson, 1986: 53). At this time, as stated by Straus (1973: 86) "Lloyd's Coffee-house fades out of the picture. Henceforth we are dealing with Lloyd's".

By 1773 the committee still had not found new premises and John Julius Angerstein (1732 - 1823) decided to take charge.[18] Angerstein's marine policies had become very well-known and were simply known as 'Julians' throughout the market.[19] He was not a committee member but an ordinary foreign subscriber. He approached the Mercers Company (which managed the Royal Exchange) without consulting the committee and represented himself as an envoy of Lloyd's. He called a meeting of the subscribers, attended a meeting of the committee to which he was not invited and fixed a deal with the Mercers Company to let one of the rooms above the Royal Exchange. Lloyd's moved to their new premises in March 1774 (Flower & Jones, 1981: 57; Straus, 1973, 98). The location included a kitchen, two coffee rooms and a smaller room used by

[17] Raynes (1950: 113); Flower & Jones (1981: 54); Martin (1876: 120, 275); Brown (1973: 28); Hodgson (1987: 52); Straus (1973: 80); Anonymous (1925b: 19).
[18] Wright & Fayle (1929: 114); Martin (1876: 145); Brown (1973: 29).
[19] Raphael (1995: 38); Hodgson (1987: 54); Martin (1876: 178); Brown (1973: 31); Straus (1973: 94).

the Committee. The first room was opened to the public and any customers could enter, whilst the second room was used exclusively by the subscribers. Investigation of his contribution to Lloyd's - finding the new premises and organising additional property - he was elected as a member of the Committee, bringing it to 10 members (Straus, 1973: 110). Angerstein later became the chairman of Lloyd's for the period 1790 – 1796 and also became known as the father of Lloyd's with his portrait hanging at the library at Lloyd's.[20]

The committee left the masters[21] to look after the room, collect information for *Lloyd's List,* manage the newspaper, collect the subscription fees and carry on the correspondence with informants abroad. But at the same time let it be known to the subscribers that Lloyd's could get rid of the masters at any time. From 1774 it was known that the committee had the balance of power in their favour and ran Lloyd's. The masters were only tenants.[22] Gibb (1957: 64) is of the view that they were actually servants with a free hand to perform any action they chose. Gibb (1957: 69) goes further and states that since 1774 the committee had become the "guardian of the underwriters general interests, their defence against attack and their mouthpiece when they wanted to speak as a body to the outside world". Today, the committee has much the same function, its reach however has become stronger operating within more elaborate regulations. However, the core of its duties has remained the same.

The Room became increasingly crowded as the number of underwriters subscribing to its use increased drastically due to the alluring high profits that could be made during the period of war. By the year 1786, the Subscribers Room had become unbearably overcrowded and Angerstein negotiated for the adjacent property to be leased to provide additional space as another Subscribers Room (Wright & Fayle, 1929: 171). This overcrowding led to one of the most fundamental reforms in the constitution of Lloyd's. Several underwriters (including Angerstein) told the Committee that they were making a declaration at a general meeting held on the 26th March 1800 to address the problem of overcrowding and decided to restrict the right of being a

[20] Flower & Jones (1981: 80); Martin, (1876, 178 & 241).
[21] Once the new Lloyd's was formed someone was needed to act as a general manager to oversee the activities at Lloyd's. A person was chosen, by the committee, from the waiters and given the title of 'master'. The first master at the new Lloyd's was Thomas Fielding (Martin, 1876: 275).
[22] Flower & Jones (1981: 58); Martin (1876: 278); Brown (1973: 33).

subscriber to only include merchants, underwriters and brokers on being recommended by two or more members (Straus, 1973: 142). On that day the Committee acquired the power to choose the subscribers that it liked and refuse those to whom it objected.

By 1810, London was the centre of the business of insurance, as it was indeed of commerce in general, and Lloyd's underwriters had ninety percent of the total insurance business in London. Gibb (1957: 51) mentions that the Royal Exchange Assurance and London Assurance were too timid and cautious to provide any competition worth mentioning.

4.1.6. Trust Deed of 1811

In 1810, the organizational considerations of underwriters at Lloyd's were limited. The solvency of the underwriter was not investigated and no security had to be offered in case an underwriter defaulted. Gibb (1957: 56) states that "the greatest insurance market in the world, a market which offered its customers nothing but promises to pay, took no steps to see that the promises would ever be implemented." This shows that failures to pay a valid claim must have been rare since this unregulated system worked. Indeed to this day Lloyd's maintains that in its entire history it has never failed to pay a valid claim.

A resolution was confirmed on the 15th August 1811 that a Trust Deed should be signed by all subscribers where the committee's functions and powers were to be formally written down (Wright & Fayle, 1929: 273; Martin, 1876: 288). In 1811 Lloyd's members signed a Trust Deed binding themselves to a set of rules and regulations, organised a central discipline which they obeyed, and adopted a constitution of the society which was used for the next 60 years (Raphael, 1995: 43; Hodgson, 1986: 57; Straus, 1973: 230). The original deed document was destroyed by a fire in 1838 but a copy survived in the Minute Books. Up until the passing of the 1871 Act of incorporation, the Trust Deed "was the one formal bond of association between the Subscribers to Lloyd's" (Wright & Fayle, 1929: 273). Each individual had to sign the Trust Deed before he could become a subscriber and over 1 100 men subscribed their names (Straus, 1973: 170).

Wright & Fayle (1929: 382) summarise Lloyd's as follows: "In reviewing the development of Lloyd's which has covered more than two centuries, this epoch of Incorporation is seen to be the culmination of that evolution of which the first stage was marked by the formation of New Lloyd's in 1769, the second by the move to the Royal Exchange in 1774, and the third by the execution of the Trust Deed in 1811."

4.1.7. Development of the Agency System

A benefit from the committee was that they developed and supported the system of Lloyd's agents throughout the world. Before 1811, each underwriter had their own agent at different sea ports using them to survey damaged ships and goods that the underwriter was personally interested in. A special committee proposed that the house committee of Lloyd's should be given the power to appoint Agents who would act for the benefit of all underwriters and not just for individual underwriters. This suggestion was accepted and in August 1811 the committee started appointing Agents with the first Lloyd's agents being appointed on the 13th November 1811. Agents received no remuneration from Lloyd's and received a fee from the parties they dealt with. The Agency System was an immediate success as agents surveyed damage to ships in foreign ports, suppled information to Lloyd's on the movement of ships and approved claims.[23]

Lloyd's appointed its first Secretary in 1804 by the name of John Bennett, Jnr who held that position of office till 1834. John Bennett, Jnr was ambitious and driven. He developed the news service and organised the mechanism of using agents (Flower & Jones, 1981: 118; Straus, 1973: 144; Martin, 1876: 282). He was a great figure in the history of Lloyd's and his contribution was extremely valuable. He made his agents perform two services i.e. looking after the underwriters' interests in the area to which they were assigned to, and supplying Lloyd's with constant news of ships' movements which was then placed into the daily editions of *Lloyd's List* (Davison, 1987: 21). Another benefit that Lloyd's received from the Agency System was that Lloyd's was able to learn what type of insurance policies, customs and insurance business existed overseas.

[23] Raphael (1995: 48); Straus (1973: 171).Martin (1876: 279); Esquires (1868: 173).

The committee also started another source of gathering news by founding signal stations to report the movements of ships as they travelled from port to port on their routes. Some of these stations were maintained and controlled by employees of Lloyd's and not the Agents.

Gibb (1957: 96) notes that other insurance companies wanted desperately to get hold of the Lloyd's agencies and their intelligence service. Lloyd's had a massive advantage over all other conventional insurance companies. Gibb (1957: 97) summarises the condition of Lloyd's in 1838 as follows: the number of subscribers was declining and it was under heavy pressure from competitors but the one thing it had going for it was the almost world-wide organisation of shipping news that Lloyd's (through its agents) was able to maintain. Lloyd's was still the "hub of the wheel for the world's marine insurance" (Gibb, 1957: 97).

4.1.8. The Great Fire of 1838

On the 10th January 1838, the Royal Exchange was devastated by fire and Lloyd's was suddenly homeless. This disaster was classified as a national disaster (Raphael, 1995: 44; Hodgson, 1986: 58). The very next day Lloyd's was saved from a total stoppage in their business by the help of its rivals, the Jerusalem Coffee House, announcing that they would be open to receive Lloyd's business (Flower & Jones, 1981: 97; Straus, 1973: 201). Afterwards, Lloyd's moved into temporary premises at the South Sea House where it stayed for 6 years. The chairman of Lloyd's stated that no valuable documents were destroyed (the minute books had been saved) and the financial loss to the subscribers was minimal. However, there was total destruction of files containing the *Lloyd's List*. The original Trust Deed of 1811 did not survive but a copy survived (Straus, 1973: 199). The committee had a new deed prepared (with the same terms and conditions as before) after this loss and every subscriber had to sign it along with every new member. This lasted for 33 years until Lloyd's received a new constitution, this time enshrined in legislation as the 1871 Lloyd's Act of Parliament.

4.1.9. Structural changes at Lloyd's

Gibb (1957: 103) and Straus (1973: 205) describes that until 1843 every subscriber to Lloyd's had full access to Lloyd's. £25 had to be paid as an entrance fee and 4 guineas for the annual subscription otherwise no admission was permitted. If the money was paid the individual could use the Room for anything that he wanted: broking, underwriting or just reading the shipping intelligence. As from 1843 the Committee separated Lloyd's into two rooms, the Underwriting Room and the Merchants Room. Subscribers could choose to only use the Merchants Room but then were not allowed to enter the Underwriting Room. Gibb (1957: 103) outlines the new committee's segregation of four types of subscribers:

(1) *Members*: They had access to all facilities at Lloyd's – brokers, shipping news, voting at meetings and access to all the other rooms. This new system that Lloyd's had implemented meant that the old system of underwriting (free-for-all underwriting) with which Lloyd's had initially started had changed forever. The creation of this membership finalised that change. Wright & Fayle (1929: 346) make it very clear that only Members could sit on the Committee, vote at the General Meetings and underwrite risks. This category included the Names (Luessenhop & Mayer, 1995: 69).

(2) *Annual Subscribers*: They were allowed to use all the Rooms' but could not vote, stand for the Committee or sign a policy. This category consisted of mostly brokers who took orders from the public and placed their risks with the underwriting member. They had to pay 4 guineas subscription fee and no entrance fee (Straus, 1973: 205).

(3) *Merchant's Room*: Merchants, bankers, traders, accountants and lawyers used this room. They had full access to all the news about the shipping world and also had access to the Lloyd's brokers if there was ever anything they wanted to insure. They had to pay 2 guineas subscription fee and no entrance fee. It only lasted 10 years (even though it was so successful) and in October 1853 was scrapped because of the lack of space at the premises and space was needed for the other rooms (Straus, 1973: 213). All the subscribers of the Merchant's Room, if they wanted to

continue being at Lloyd's, had to pay the full entrance fee and 4 guineas and become members. Most of the Merchant's Room subscribers accepted this offer.

(4) *Captains Room Subscribers*: Outsiders who could not get entry into the Underwriting room or the Merchant's room used this Room. There was a restaurant which could be used as a meeting place for seamen, people who wanted to buy ships, people who wanted to conduct auctions etc. This room was open from 9am – 9pm. They had to pay 1 guinea subscription fee and no entrance fee. Soon after its opening, gate-crashing started and individuals used it as a normal restaurant (Hodgson, 1986: 58). This room was judged to be a failure.

4.1.10. New premises

Lloyd's moved back to the newly rebuilt Royal Exchange which opened its doors on the 26 December 1844 (Flower & Jones, 1981: 98; Straus, 1973: 207). The move to the new Royal Exchange inspired the revision of the Constitution of Lloyd's and led to Lloyd's making another significant change in 1846 by the division of Lloyd's into two categories. Members of Lloyd's were put into two different classes: those who had the privilege of underwriting risks, called the underwriting members, and those who did not have such a privilege, called the non-underwriting members. Both paid, on election, an entrance fee of £25 but the underwriting agents also paid an annual subscription of 10 guineas while the non-underwriting members continued to pay only 4 guineas (Esquires, 1868: 188; Straus, 1973: 214).

Initially, in 1844 Lloyd's did not remove membership of any member who became insolvent – it was not worried about insolvency of members. As from December 1851, enforced through a bye-law passed by the committee, a member was automatically expelled if he was found to be insolvent (Raphael 1995: 45 & Straus, 1973: 220). By 1866 this view had changed and the deposit system was well established (Brown, 1973: 38). New candidates wishing to be accepted as members had to deposit £500 each as security before being accepted. Lloyd's was the first to require deposits. They were the pioneers of this idea and the government followed suit when it became concerned about the number of failed insurance companies. Up until 1867 Lloyd's was the only institution that put money aside for the eventuality of an insolvency.

4.1.11. The Lutine Bell

In 1799, during the Napoleonic wars, the *HMS Lutine* was lost in a storm and was shipwrecked.[24] In 1857 the ship's bell was salvaged and installed in the front of the trading room at the Royal Exchange. Each time Lloyd's moved to new premises the bell moved with it and is always placed in the middle of the trading floor. This bell was rung to announce to the room that news had arrived of an insured disaster (Luessenhop & Mayer, 1995: 51) or news of an overdue ship (Raphael, 1995: 20). It was rung once for bad news and twice for good news (Flower & Jones, 1981: 114). However, today it is mostly used only on ceremonial occasions (Raphael, 1995: 32; Hodgson, 1986: 78; Brown, 1973: 117).

4.1.12. Signal stations

The agency system was boosted by the introduction of the signal stations. Colonel Sir Henry Hozier (1838 - 1907) occupied the position of Secretary from 1874 till 1906 (Davison, 1987: 21; Straus, 1973: 240). He was extremely intelligent and a talented mathematician and scientist. Raphael (1995: 49) described him as "forceful, vain, ambitious and autocratic, he rapidly established his authority, putting proposals for the reform of the market to the committee within a week of his arrival". One of Hozier's contributions to Lloyd's was expanding and strengthening the signal stations (Hodgson, 1986: 66; Flower & Jones, 1981: 114; Brown, 1973: 99). He pioneered wireless telegraphy and as a result the first telegraphic instrument was installed in the Merchant's Room. He secured permanent wireless rights for Lloyd's at their signal stations used by the Agents. These signal stations would watch for ships and as a ship passed they would send news to London which would be received in a matter of seconds. In September 1873 Hozier married Henrietta Ogivly. Their second daughter was Clementine who married Sir Winston Churchill, later the Prime Minister.

[24] Raphael (1995: 32); Hodgson (1987: 33); Brown (1973: 116); Straus (1973: 130); Anonymous (1913f: 1160); Martin (1876: 187).

4.1.13. Cuthbert Heath (born 23 March 1859- died 8 March, 1939)

Cuthbert Heath played a pivotal role in the development of Lloyd's. Gibb (1957: 161) expressed the following opinion of Heath "by his experiments and achievements in fire and accident insurance he did more than any other man of the last hundred years to change the character of Lloyd's and fix the pattern of its future". "He was the father of modern Lloyd's and foster-father of modern company insurance".

Heath was born partially deaf and could not realise his first passion to follow in his father's footsteps into the Navy (Raphael, 1995: 51; Straus, 1973: 254). "Throughout his life Cuthbert Heath had one overwhelming asset. He knew how to capitalise his talents" (Brown, 1980: 40). He had inherited the family talent for languages and he decided to build on this talent. At the age of 16 Heath spent a year in France followed by 9 months in Germany where he studied both languages. Afterwards, at the age of 18, he worked for Messrs Henry Head and Co's, which was a firm of Lloyd's underwriters and insurance brokers. Heath began at the bottom by filling inkwells and worked his way through the ranks. This was the start of his historical and memorable career (Brown, 1980:61).

Heath was elected as an underwriter in 1880 at the age of 21 and by 1885 had started his first non-marine syndicate[25] at Lloyd's (Luessenhop & Mayer, 1995: 61; Brown, 1973: 66). In the beginning of Heath's career he was a marine underwriter who wrote non-marine fire business on the side and towards the end of his career he was a non-marine underwriter who wrote marine business on the side. The development of the non-marine market at Lloyd's occurred in the late nineteenth century which was during the time of Heath. He was largely responsible for Lloyd's diversifying out of marine insurance (Dickson, 1960: 158). When non-marine underwriting began at Lloyd's it was done by the marine underwriters who had decided to branch into this new form of insurance and started up new syndicates. Lloyd's at that stage did not have separate marine and non-marine underwriters (Raynes, 1950: 327).

[25] Refer to chapter 5.2.3 for a discussion on syndicates.

Heath's success can be attributed to the fact that he was not afraid to take risks and accepted risks that other underwriters would not, based simply on the fact that it had not been done before. In his view, if people wanted to insure something that meant that there was demand for such insurance and he was prepared to supply the insurance for that new demand. His famous answer was 'Why not?' when asked why he insures the risks that he did (Raphael, 1995: 52; Hodgson, 1986: 62). "Cuthbert was young, ambitious and doing something no underwriter had done before him" (Brown, 1980: 69). He hardly ever turned down a risk; he would always find a way to insure, at the right premium.

Heath did not shy away from paying claims in full if they were legitimate as he did in 1906 with the San Francisco earthquake when he told his agent to pay all policyholders in full, regardless of the wording of their policies (Davison, 1987: 22; Hodgson, 1986: 64). This placed Lloyd's on the insurance map in North America (Way, 1989: 8).

Some of the policies that Heath pioneered include: burglary policy, risk of merely losing something, all risks on personal jewellery a.k.a. jeweller's block,[26] revolutionising fire policies to include insuring loss of profits, theft, bomb-damage cover, employer's liability, earthquake and hurricane insurance, workmen's compensation, banker's blanket bond insurance, (Luessenhop & Mayer, 1995: 61), trade indemnity (Raphael, 1995: 53), and excess of loss insurance.[27] He even

[26] Davison (1987: 12); Hodgson (1987: 63); Flower & Jones (1981: 123); Brown (1973: 66); Straus (1973: 255).

[27] One of Heath's contributions to Lloyd's was the invention of vertical reinsurance as opposed to horizontal insurance (Hodgson, 1987: 65). Where a risk was too large for one insurer to retain for their own account it was spread amongst a group of insurers each taking a percentage of the risk through horizontal insurance. The policy wording can either be written after the broker has managed to find enough insurers to insure the full risk or after one insurer accepts the full risk and then, after the policy is signed, finds quota share reinsurance for the part of the risk above his retention level. This horizontal insurance is favourable in situations where the full amount of the total risk is known so that if a loss occurs the insurer knows the maximum amount he will be liable to pay. For example: A ship is insured for its full value of £1 million. An insurer who accepted 10% of the risk knows that the most he will ever be liable to pay is £100 000 on that risk. However horizontal insurance may not be the best solution for risks that do not have a known maximum amount. For example: the risk of a plane crashing into a small country town where the damages awarded to the deceased's family by the court, buildings destroyed, fires to natural surrounds are unknown and can lead to astronomical amounts. In this way the insurance policy itself is an insurable risk that needs its own insurance cover (Luessenhop & Mayer, 1995: 62). Heath introduced vertical cover such as excess of loss that will only pay after the loss has reached the limit of the insurance policy beneath the reinsurance excess of loss. Vertical reinsurance or horizontal insurance can then be used to cover the excess of loss policy itself. Regarding premiums – on horizontal cover the premium is shared pro rata to the amount of the risk accepted by each insurer whereas on vertical insurance the premium has to be calculated according to the likelihood of that cover ever being invoked i.e. the likelihood of the risk ever exceeding the limit of the insurance policy (Luessenhop & Mayer, 1995: 63).

insured people against getting smallpox provided that the insured was vaccinated (Brown, 1980: 90). He also started to insure the diamond industry as far back as 1887 for lost or stolen diamonds. The cover for lost or stolen diamonds led to Lloyd's offering one of its most specialised forms of insurance – kidnap and ransom insurance (K&R) – still used by corporations in developing countries (Luessenhop & Mayer, 1995: 61).[28]

As an individual he is remembered as being "in every way a giant but always a gentle one" (Brown, 1980: 77). He was very tall and very intelligent, always wore a moustache, driven to success, soft spoken and a kind natured soul who was courteous to everyone regardless of their rank at Lloyd's.

The Lloyd's Act of 1871 only dealt with marine insurance and Heath brought into Lloyd's new business that was outside the protection of the Act and the protection of the deposits. According to the Trust Deed the deposits could only be used to pay marine policies. It was clear that there was no security available for fire and other non-marine insurance except the private accounts of the underwriters and the premiums that were paid. The committee viewed non-marine business to include fire insurance only. Gibb (1957: 171) states that Lloyd's now had 'two different standards of security – the marine fortified by deposits and guarantees and the non-marine dependent only on current premiums and the underwriters' uncharged capital". As long as Heath did nothing to prejudice or upset marine underwriters the committee had no jurisdiction over him when he was writing (in his personal capacity and not as a Lloyd's underwriter) non-marine polices in the Room. But by 1902 Lloyd's started collecting non-marine deposits and non-marine polices were viewed as being Lloyd's policies and the original Act was extended to include any business of insurance not only restricted to marine in the second Lloyd's Act of 1911. This second Lloyd's Act legally recognised that non-marine insurance was being written at Lloyd's stating that "the carrying on by members of the Society of the business of insurance of every description, including guarantee business" (Raynes, 1950: 329).

The deposit was a cure to help underwriters once they were already in financial trouble and was not a preventative mechanism. New ways were constantly being thought of to increase the

[28] Specialist firms now offer K&R insurance.

security at Lloyd's which led to the creation of the Lloyd's audit and the mechanism of putting premiums in trust[29] (Straus, 1973: 262). The first steps to these two reforms were taken in 1903 by asking every new candidate before his election whether he would agree to put all his premiums in trust so that they would be available only to cover his underwriting liabilities. He would not be able to spend the premium money in any other way. Everyone agreed. It would however, be unfair to ask the new members to put their premiums in a trust without asking the older members belonging to the same syndicates to do the same thing. Therefore the reform was started but then had to be postponed for either the older members to die, retire or voluntarily put their premiums into a trust.

Another achievement made by Heath was the expansion of the syndicate size. Underwriters would only write risks for themselves and maybe for one or two friends. Heath expanded this until underwriters had many Names they were writing risks for, this being the direct predecessor of the large size of syndicates today (Raphael, 1995: 55; Flower & Jones, 1981: 127).

The Times wrote the following about Heath in December 1911 summarising his achievements: "Mr Heath is head of CE Heath and Co, brokers and underwriters, and a director of the Excess Insurance Company, the Fine Arts and General Insurance Company, and of John Broadwood & Sons. He was the pioneer of Lloyd's fire business, and practically all the miscellaneous classes of insurance. While he has been a leader in what may be decided as the most hazardous risks, he has consistently pressed for safeguarding further the financial security of Lloyd's members" (Brown, 1980: 115).

4.1.14. The Audit

Heath created a model to test the solvency of an underwriter and refused to guarantee any of his colleagues unless their account was audited and they received an auditor's certificate (Hodgson, 1986: 70; Straus, 1973: 260). After the San Francisco earthquake of 1906 (Hindley, Allen, Czernuszewicz *et al*, 2000: 2) Heath's certificate was the model on which the committee created

[29] The premium trust fund was set up by the committee compelling underwriters to place the premiums they received into such fund to be used as security for the future payment of claims (Brown, 1973: 40).

their audit certificate. Heath was the brain behind the mechanisms of the audit and its implementation in 1908 and thereafter (Flower & Jones, 1981: 136; Brown, 1973: 41).

The mechanism of the audit is as follows. The accounting format used is the underwriting accounts method where each year is treated as a separate risk year. The finalised results of each year are only known 3-4 years after the close of the year. Profits (if any) are retained in a reserve from each year as a precautionary step and the Name has to pay his expenses from his own personal savings. Once the first 3-4 years are over, the Name can receive his profits made every year from that point onwards i.e. the profits an underwriter made in 1911 would only be received in 1915, the profits he made in 1912 would only be received in 1916 etc. During the 3-4 years the account is subjected to a meticulous audit to make sure that each year has sufficient assets to cover all current and future liabilities associated with that and previous years. If the requirements are not met at any time the underwriters is forced to stop underwriting immediately (Wright & Fayle, 1929: 424).

This audit provided valuable protection for the Names and gave them confidence. A Name usually does not have any underwriting knowledge and relies on his underwriter to know which risks to accept and which to decline. A Name is defined by Wright & Fayle (1929: 422) as "an underwriting member of Lloyd's represented by an Agent. He is a capitalist pure and simple." The Name exposes himself to limitless liability and trusting everything he owns on the ability of his underwriter. Gibb (1957: 213) summarises that the audit, premium trust deeds, deposits and guarantees were all testimony to the security at Lloyd's. The audit was seen as the best measure of making sure that no irresponsible underwriters existed.

The amount of information and intelligence needed by an underwriter at Lloyd's had increased tremendously to be able to competently deal with all of the new risks which needed to be insured. It influenced the growth of the underwriting syndicate. In the beginning every man signed a line for himself personally. Later an underwriting member would appoint a substitute (today known as an underwriting agent) and authorise him to write a line on his behalf. This substitute then started writing lines on behalf of more than one underwriter. In this way the underwriting syndicate was formed.

In October 1936 Lloyd's decided to include a clause in all their policies that would exclude war risks on land. The whole world was asked to sign the agreement, excluding America because they were outside of bombing range. Everyone agreed. A resolution was passed to exclude land war risks. This was the birth of the war exclusion clause in all land based non-marine insurance policies worldwide. This agreement worked well for underwriters and insurers but had the opposite effect on merchants' and property owners who no longer could receive war cover and had to cover their own risk. For two years this gap created by the war exclusion clause was left open. A month before the start of WWII, on the 4 August 1939, government finally filled this gap and as from the 28th August 1939 companies and individuals were able to buy government war risks insurance on their property. The universal agreement signed by all private insurers gave the government a monopoly in land war risks.

4.1.15. The Signing Office

Overcrowding was again a problem at Lloyd's as the rooms remained the same size but the number of underwriting and non-underwriting members increased. The difficulty of signing policies (because of this lack of space) forced the brokers to suggest a new system/method of getting policies signed to the Committee. This made the Committee finally realise that Lloyd's was in desperate need for new space. Gibb (1957: 247) and Wright & Fayle (1929: 437) describe the old method of getting a policy signed as being chaotic and frantic as the following:

- A broker's senior clerk presented a slip of paper to many underwriters. This slip contained all the details of the risk. Different underwriters acting for different syndicates would each accept a certain percentage of the risk.
- Once the entire risk was placed the senior clerk would take it back to his office and give it to the policy department.
- The policy department transcribed the details onto a stamped policy – to serve as a legal document carrying the names of the underwriters who insured the risk.
- Once the policy was printed, the broker had to take this policy back to the underwriters who had signed the original slip to now also sign the policy.

- Once the underwriting clerk had signed the policy (the actual signing was done by the junior clerks of the underwriters by stamping them with a rubber stamp) it was put into a metal box on the side of the table from which the broker would collect the signed slip and move onto the next underwriter.
- This partially signed policy would be taken back to the broker's office every evening and taken back to the Room every day until the entire policy was signed.

"This was a crude way of doing important business" (Gibb, 1957: 248). As business grew, the underwriting clerks started getting more and more polices to sign. Eventually signing up to 400 polices a day. It became very difficult to check if every policy was correct. The broker's clerks "swarmed and struggled around the signing boxes searching for their policies in the wire baskets, grabbing them when found and carrying them along to other boxes until the process of signing was complete" (Gibb, 1957: 249). This process could take up to a week on a large policy. The condition of the document was terrible as it deteriorated by being passed between many hands to get signed. Usually it would be tattered and torn and this would be sent to the insured in that same deteriorated state.

In 1913 brokers devised a new, more efficient method of signing polices and brought it to the Committee for approval. The Committee realised that the only way to implement this new method would be to have more space. The Committee approved closing down the Captains Room and used it as extra space for policy signing and the underwriting purposes.

This led to the formation of the Signing Office in 1917. The Signing Office brought three advantages to Lloyd's (Wright & Fayle, 1929: 438): (1) Policies were systematically checked against the slip ensuring the policy accurately represented the terms agreed upon. (2) Polices were no longer separated or accidentally lost from the slip. (3) Slips were no longer crumpled and dirty since they were no longer passed between so many hands.

Space was still needed since business was steadily growing. Lloyd's was forced to move from the Royal Exchange to new premises at Leadenhall Street in 1923. Gibb (1957: 261) states that one of the main reasons for moving was to bring all the groups that had scattered into different

buildings over time back together again under one "parental roof". The rest of the building was brought by Lloyd's in 1936 and the housing problem was temporarily solved. By 1948 Lloyd's had once again outgrown its new home and in 1950 it was decided to buy a bombed site on the opposite side of Lloyd's on the other side of Lime Street and build a new building there.

4.1.16. The Harrison Scandal[30]

In 1923 a Lloyd's underwriter, Stanley Bruce Knowles Harrison, offered credit insurance which, because of its financial nature, is a difficult class of insurance compared to, for example, property insurance which is subject to real property and specific perils. He became involved with dishonest people and fraudulently suffered serious losses. He hid his real negative financial position from the committee by supplying the audit with a false book of accounts. It was subsequently found that he owed £367 000 which he could not pay (Hodgson, 1986: 72; Straus, 1973: 265). Lloyd's as an organisation acted contrary to its historical position and agreed to settle the underwriter's obligations. Sturge (chairman at the time) made a historical statement: "If we do not pay these bills, the name of Lloyd's will be seriously injured and will never recover during our lifetime" (Hodgson, 1986: 73; Brown, 1973: 43; Gibb, 1957: 271). This was the first action of collective responsibility for Lloyd's. Underwriters had never been asked to pay for a fellow underwriter's defaulted accounts. There was no legal authority forcing them to pay, Sturge was playing on their moral sense of duty asking them to pay for the sake of Lloyd's survival and safeguarding its reputation in the public eye. They all agreed, saving Lloyd's from being labelled as dishonest by the public (Flower & Jones, 1981: 169). "The settlement of Harrison's is an important milestone, because it was the first time that the market publicly acknowledged its collective responsibility for the actions of its members" (Raphael, 1995: 58).

The Harrison scandal left Lloyd's unwilling to have anything more to do with credit insurance. However, some underwriters were unhappy with the decision to exclude credit insurance from being offered at Lloyd's (Brown, 1973: 43). A compromise was reached, credit insurance would be allowed but only through reinsurance i.e. Lloyd's underwriters were not allowed to be direct

[30] The Harrison scandal was interesting enough to the insurance profession to receive brief mention in a South African insurance magazine, the *African Insurance Record* (Anonymous, 1924b: 15).

insurers of credit insurance. The necessary machinery needed to prevent a reoccurrence of the Harrison scandal was found in the already existing Policy Signing Office (Gibb, 1957: 291). As a result of the Harrison scandal, a further safe-guard was introduced into the Lloyd's policy against fraud from the 1st January 1924 stating that no policy will be recognised by Lloyd's unless it bears the Lloyd's Signing Office seal at the foot of the policy. If the seal of the Policy Signing Office did not appear on a policy then it was assumed it was not a true Lloyd's policy. The Lloyd's marine policy became standardised on the 1st of January 1924 and no other policy shall be in force other than one with the seal of the Lloyd's Policy Signing Office (Wright & Fayle, 1929: 127). This scandal also led to the creation of the Central Fund set up to cover any future defaults by underwriters unable to pay claims consisting of contributions made by all members of Lloyd's (Brown, 1973: 44).

4.1.17. Foreign legislation

Increasingly countries began to pass domestic legislation regulating insurance. This had an impact on the operation of Lloyd's. The marine underwriters were not too worried about foreign legislation. They were of the opinion that merchants sought the best market to insure their goods therefore if they offered better rates and quicker settlements of claims to clients than the foreign insurance companies then people would choose Lloyd's over all other insurers. The non-marine market was more sensitive to foreign legislation. They were more aware of the battle they would have to fight to get business on the home ground of other insurers in foreign countries. In 1937 Lloyd's finally saw that this could be a matter of concern and devised an approach to deal with problems of foreign legislation.

There were a number of countries which had passed legislation requiring that domestic and foreign companies carrying on business within the country put down a deposit before opening an office for any type of insurance. Gibb (1957: 297) is of the opinion that insurance is international in nature and it is illogical to require a country to say that all risks must be borne exclusively by its own national companies. It does not make sense to require the same insurance company to deposit its assets and deposits in every country it operates. This reduces the company's overall financial strength by the amounts it has deposited in other countries. They are

forced to stay immobile in one area and are not allowed to be moved to an area that is currently in need or would offer higher returns. It should not matter where the money is being kept as long as the company can pay all its claims. The problem was highlighted by Rhodesia, where after the Smith government declared UDI, sanctions were imposed and Lloyd's was unable to pay valid claims.[31]

The main question posed by Gibb (1957: 298) is "Why has it been more difficult for Lloyd's than it was for companies to adapt itself to the changing conditions and comply with the demand of modern foreign legislation?" An insurance company is one corporated body. The insurance company provides the cover and signs the policy in its own name and 50 years later the same company is still covering that same risk. At Lloyd's, things work differently. An underwriter takes on the risk personally and signs his own polices. Underwriters could change from year to year. Lloyd's is a market and not a company. The average career of an underwriter is 20 years and someone who has had a policy with Lloyd's for 30 years might find that the Names who have taken on his risk have changed considerably in those 30 years. "The policy is still a Lloyd's policy but the shoulders that bear the risk are not the same shoulders" (Gibb, 1957: 299). This distinction between an insurance company and Lloyd's plays a substantial role when discussing the placement of deposits overseas.

In 1920 it became apparent that some foreign countries would require a deposit of £20 000 and if Lloyd's did not provide such a deposit it would lose much of its foreign business. This led to the question of who should pay the deposit. Individual underwriters did not have that amount of capital in their personal capacities. The Lloyd's corporation had no power to make such deposits out of the Lloyd's funds. A third party would have to provide such funding. It became clear that a body was needed that would deal solely with foreign deposits but be under the control of the Committee of Lloyd's and not individual underwriters.

The majority of foreign Acts focused on how to deal with foreign insurance companies and not how to deal with Lloyd's as a market, which worked very differently from a normal company. In 1929 a clerk drafted a memorandum to the committee of Lloyd's outlining the problem of

[31] Refer to chapter 6.4.4

foreign legislation, and suggested a method to solve the problem. The matter was urgent. The memorandum stated the following three things that foreign governments insisted upon (Gibb, 1957: 306): (1) Provision of a deposit, (2) Acceptance of legal service and (3) Payment of tax. The problem was that Lloyd's found it difficult to fulfil these three criteria. The only body that was equipped to deal with foreign government was the Committee of Lloyd's. The clerk proposed that in every country where legal representation was required "Lloyd's should open a registration office which would keep track of the business done, would arrange the payment of taxes as they fell due, would be authorised to accept service on underwriters' behalf and generally would superintend the relations between underwriters and the government" (Gibb, 1957: 306). The proposals where accepted and implemented in 1937 by the creation of a financial company which would be owned by the members but controlled by the Committee, whose sole purpose would be to provide foreign countries with the funds that domestic legislation required. This company's revenue would come from the underwriters' premium income and would be separate from their trust funds. The new company was named Additional Securities Limited (Flower & Jones, 1981: 172).

4.1.18. Foreign Names

Lloyd's only allowed foreigners and women to become Names at Lloyd's in 1969 (Luessenhop & Mayer, 1995: 20; Stewart, 1984: 2). The first foreigner to become a Name at Lloyd's was an American by the name of Bernard (Bernie) Daenzer (1916 - 2010) who was a director of the Alexander Howden agency (Luessenhop & Mayer, 1995: 24).

4.1.19. Foreign currencies and exchange

Underwriters in the 1960s had a much broader general knowledge about international trade and finance than their predecessors. According to Gibb (1957: 321) this change in the outlook of an underwriter and sudden need to gain knowledge about international trade can be traced to changes in underwriting techniques and the change in international finance. When the sterling ruled supreme every exchange was carried out in pounds – underwriters had no need for knowledge of the exchange system and exchange rates and risks. When the British pound lost its

dominance, policyholders started asking to be rather paid in their home currency, since the risk was in that currency and not in pounds. In most countries this became a legal requirement. This required the underwriter to have some knowledge of foreign banking and exchange rates. This led to Lloyd's facing the problem of dealing with foreign currencies and exchange.

4.1.20. Risks insured at Lloyd's

Lloyd's is very significant in the insurance market since it is able to accept large, complex and esoteric risks (Rasmussen, Owen & Smith 1997: 3) which no other insurer will underwrite (Davison, 1987: 12; S.C, 1943: 7). Examples of some of the strange risks insured at Lloyd's include as listed by Gibb (1957: 324), Wright & Fayle (1929: 442) and (Luessenhop & Mayer, 1995: 62):

- Owner of a block of flats insured his premises for the suicide of one of his tenants which might scare away prospective tenants,
- A newspaper insured the risk of someone guessing the first three horses to finish a race and thereby winning a prize,
- An advertisement was placed in a newspaper that every child who sends a letter to a certain address on the day of Mickey Mouse's birthday will receive free cake. Insurance was taken out for the risk that too many kids reply to the ad and would pay out if more than 2000 kids replied,
- Surgeons can insure their hands,
- Dancers can insure their feet,
- A movie company can insure the possibility of their losses incurred if the lead actor was found to be on drugs,
- Inventors of medication could insure themselves against any unknown disastrous side effects of their medicine,
- The possibility of rain on the wedding day (Luessenhop & Mayer, 1995: 116),
- The possibility of giving birth to twins and the extra expense involved (Luessenhop & Mayer, 1995: 116),
- Even the Loch Ness Monster was insured, in 1971, if anyone was to find the monster and deliver it alive at a premium of £2 500 (Borch, 1976).

- A film company took out a US$1million policy against the possibility of one of their actresses falling in love and getting married before the end of filming (Flower & Jones, 1981: 161).
- A European wine maker has insured a taster's nose for the loss of his nose and sense of smell for 5 million euro (Hosken, 2008a: 69).

Lloyd's is prepared to write risks which fall outside the scope of a standard policy (Rasmussen, Owen & Smith 1997: 3).

Most of the experiments at insuring strange risks were made by the non-marine underwriters of Lloyd's who first insured cars in 1904 and branched into aviation insurance in 1911 (Luessenhop & Mayer, 1995: 65). Today the aviation market is almost as big as the marine and non-marine market. Marine underwriters also write some non-marine business and this business was named Incidental Non-Marine. Aviation risks can be written by both marine and non-marine underwriters. The birth of aviation insurance was in 1911 (Margo, 1979: 3). Initially, when planes were still being experimented with, the plane itself was uninsurable but Lloyd's did offer third-party liability cover to the planes' owners since no airports existed and planes had to land where they had the space and would sometimes destroy a farmer's crops (Flower & Jones, 1981: 142; Margo, 1979: 9).

4.1.21. Lloyd's as a society

Lloyd's, according to Gibb (1957: 341) "has a personality of its own, a character without which the work that has been done by it would not have been possible". All members have different personality types but the one thing that they all have in common is their loyalty to Lloyd's. "From this diversity the society develops a unity" (Gibb 1957: 341). Lloyd's harmonises all the different personality types to develop a personality of its own. The necessity of making a livelihood brings all these men together but they end up being friends and a part of a very large family.

The formation of the society is summarised in the following fashion (Gibb, 1957: 343): The Corporation was born in 1871 when Queen Victoria assented to the first Lloyd's Act. The Act

stated that Lloyd's had "long existed as a society in the City of London". This was the first private statute of Lloyd's (Ferguson, 1983: 57). It does not say when the society was started. Some argue it was when Edward Lloyd first opened his coffee house in 1688, others say it was in 1739 when the War of Jenkins' ear broke out and others state it was when Lloyd's moved to its new premises in Pope's Head Alley. By 1774 it was definitely a society when it moved to the Royal Exchange and by paying their first subscriptions recognized their mutual relations with each other. This relationship was solidified in 1811 by the creation of the Trust Deed – the constitution of Lloyd's. In the same year the subscribers elected a Committee that would oversee the workings of Lloyd's. All the members now officially belonged to a single body. Lloyd's was already a society by the time the Act of Parliament of 1871 was put in place on the 25th of May (Flower & Jones, 1981: 105; Martin, 1876: 356). The essential functions of Lloyd's were laid out in this Act as being (Martin, 1876):

- "The carrying on of marine insurance by its members" (Gibb, 1957: 344). Premises were found to house this growing market.
- "The collection, publication, and diffusion of intelligence with respect to shipping" (Gibb, 1957: 344). Lloyd's published its own newspaper in 1734.
- "The protection of the interests of members in respect of shipping, cargoes and freight" (Gibb, 1957: 344). The election of the Committee, in 1772, (who stood up for the rights of underwriters making sure they were protected against fraudulent policyholders, hostile politicians, foreign government and other fraudulent underwriters) attests to this point as well as the creation of the network of agencies to protect underwriters from fraudulent claims.

Three examples stated by Gibb (1957: 346) show how the Society has helped structure Lloyd's and help underwriters: (1) Forming the Policy Signing Office which "revolutionized the system of signing polices at Lloyd's" allowing a lot more polices to be signed in a much shorter space of time. (2) Forming Additional Securities where the underwriters were given help in arranging their finances and in the best use of their resources. (3) The annual audit was the most valued contribution that the Society gave to Lloyd's in 1908. Every member accepted the compulsory audit without revolt or disagreement, showing yet again the loyalty and trust that members had in the Society of Lloyd's.

4.1.22. Conclusion

In the history of Lloyd's the following names stand out (Gibb, 1957: 364):
In the infancy stage of Lloyd's there was Edward Lloyd who opened up the coffee house where shipping merchants and owners gathered to discuss their business. John Julius Angerstein, in 1774, who added great value to underwriting at Lloyd's and is named Father of Lloyd's. He moved Lloyd's to the Royal Exchange premises. John Bennet Jnr who was not an underwriter but employed by the Society, the first secretary of the Committee of Lloyd's in 1804. He was the founder of the modern day intelligence service at Lloyd's. Colonel Hozier, also not a member but an employee and was secretary from the 1st April 1874 till 1906. The work he did for the intelligence Service in founding the signal stations was very beneficial for the growth of Lloyd's. He also reformed the administration of Lloyd's which added great value to the generations to follow. Cuthbert Heath who was seen as the father of non-marine insurance and the first to introduce the idea of an audit which proved to be highly beneficial for Lloyd's, and lastly, Arthur Sturge, in the excellent way in which he handled the Harrison scandal and for acquiring the property on Leadenhall Street for Lloyd's.

Gibb (1957: 363) makes the following statement on Lloyd's "No one can study its history or understand its working without realizing how much every member owes to the corporate enthusiasm of its leaders, both in the past and in the present" and "Lloyd's is at its best when the loyalty thread is at its strongest". Esquires (1868: 176) summarises Lloyd's as being "Individuality in union". A good definition of Lloyd's was provided by William Farrant, the Caller at Lloyd's, who stated that "Individually, we are Underwriters; collectively we are Lloyd's, and it is in the Room that the individuals combine together to become the most important insurance market in the world."[32]

[32] Brown (1980: 50); Wright & Fayle (1929: 420); Hodgson (1987: 57); Flower & Jones (1981: 105).

4.2. Period between 1960s – 1990s

4.2.1. Cromer Report

Starting in the 1960's signs began to appear that all was not well at Lloyd's. The Cromer Report led by Lord Cromer, published in 1969, was one of the first official indications of things not running smoothly at Lloyd's. It was commissioned in response to the decline in the number of Names joining Lloyd's resulting in a decline in the capacity of Lloyd's to accept risks. This was as a result of Hurricane Betsy in 1965.[33] The report was concerned with the fact that some brokering companies owned underwriting firms which led to a serious problem of conflict of interest. Members at Lloyd's had limited knowledge, if any, of the law of agency although it was a key issue at Lloyd's - where the broker is the agent and servant of his principle, the insured. In law, the interests of the principal are paramount to the agent (Taylor, 2006: 3). The broker is meant to act on behalf of the insured (the policyholder) and should deal with conflicts between insured and underwriter in the best interests of the policyholder. This cannot be done however, if the broker has a personal stake in the dealings of the underwriter where he can be inclined to deal in the best interests of the underwriter for his own personal gain. However, it could be argued that this relationship actually provided a benefit for the Names – a broker would not give the underwriter a bad risk since he would have a vested interest in the profits made by that underwriter. In this indirect way Names were protected against bad risks (Luessenhop & Mayer, 1995: 114; Davison, 1987: 48).

Some of the recommendations made by the Cromer Report and implemented by Lloyd's were to lower the financial requirements/minimum standard of wealth needed for entry as a Name; to simplify the deposits; increase the premium income limits and allow for larger amounts to be reinsured (Kelley, 1995: 2; Davison, 1987: 43; Hodgson, 1986: 115). Other implemented recommendations were to allow women for the first time to become Names and the inclusion of foreigners as Names (Luessenhop & Mayer, 1995: 225; Hodgson, 1986: 129). These changes led to a dramatic increase in membership with individuals becoming Names who could not afford to

[33] Bain (2006: 6); Gwilliam, Macve & Meeks (2000: 70); Luessenhop & Mayer (1995: 116); Hodgson (1987: 114); Brown (1973: 185).

be involved in high risks based on their inadequate asset base (Gwilliam, Macve & Meeks, 2000: 70; McClintick, 2000: 45; Davison, 1987: 44). It can be argued that these new Names were exposed to higher risks. The existence and contents of this report were not published and were not public knowledge. The existence of the report was concealed until October 1986, when it became important, since it insinuated that insiders at Lloyd's could profit at the expense of external Names (McClintick, 2000: 41). However, in the 1960s it was still unthinkable that the very existence of Lloyd's would ever be in jeopardy (Luessenhop & Mayer, 1995: 115).

4.2.2. Lloyd's faces increasing difficulties

Despite this report Lloyd's, continued to be successful and profitable and remaned so until the 1980s. Lloyd's had suffered many losses in the past, but always dealt with the problems as they arrived, paid every claim and survived. In the 1980s Lloyd's faced the real possibility that it might not be strong enough to endure and that defaulting on payments could become a real possibility. "The vast expansion of the market in the past two decades hid serious conflicts of interest and declining standards of underwriting, and a terrible legacy from latent asbestos and pollution risks" (Raphael, 1995). As from the 1980s Lloyd's was no longer making profits and some of its Names were facing catastrophic claims that would bankrupt many of them.

One of the main principles of insurance at Lloyd's is that of *Uberrima Fides*[34] which means utmost good faith, a consequence of which was that all parties in an insurance contract, the insured as well as the insurer, are required to disclose all material facts to each other (Wilkie, 1997: 1041) i.e. Lloyd's has a duty to act in utmost good faith with respect to its Names and its members. Allegatinos of dishonest dealings and fraud were rare at Lloyd's before the 1980s and only the odd underwriter defaulted on his payments, as in the case of Harrison. When faced with a loss all underwriters contributed their share of the claim without complaint (Raphael, 1995, 59). However, the principle of *uberrima fides* was shattered by the catastrophic losses that befell Lloyd's during the 1980s.

[34] McClintick (2000: 42); Raphael (1995: 32); Davison (1987: 30); Hodgson (1987: 26); Kuvin (1954: 413).

In the 1980s the chairman of Lloyd's stated that the Lloyd's insurance market followed a *Laissez-faire* attitude which favours the strong and powerful in the marketplace with very few rules or regulations to follow (Samli, 2008: 45; Kelley, 1995: 6) where underwriters used their own judgement in choosing the risks to insure and the level of profit to make (Raphael, 1995: 22). If something went wrong it was left to the underwriter to fix his own mistakes. This attitude was a contributing factor that led to the large amount of losses faced by Lloyd's as the more risky ventures brought in the higher premiums which directly converted into higher profits and therefore were more likely to be chosen by less conservative underwriters. Everyone concerned, underwriters, members and Names, wanted to make large profits. Risky ventures provided lucrative profits if no claims were made and were chosen by many underwriters. If, however, a claim did arise from such an assumed risk then the loss was substantial. There was very little regulatory oversight into the workings at Lloyd's which attributed to the losses suffered by many syndicates (Kelley, 1995: 6).

Certain syndicates at Lloyd's suffered the most losses between 1988 and 1992, completely wiping out profits made over the previous 20 years. Lloyd's suffered an aggregate loss of £510 million in 1988, £2.3 billion in 1990 and £2.3 billion in 1991 (Raphael, 1995: 23). These figures did not taken into account the underwriters who still had open accounts that had not been closed because of the likelihood of future claims being brought against those policies. It was stated that "no British institution has ever taken the losses that Lloyd's has and survived" (Raphael, 1995: 16).

The worst hit Names were the individuals in the lower middle class income bracket (Raphael, 1995: 24). They were not poor, so were able to make the deposits required by Lloyd's, but were not rich enough not to be affected by the additional income brought into their households by the premiums received. These individuals were tempted by the additional money they could earn and became Names. However, in reality, the unlimited liability to which they were exposed to bankrupted many taking all their assets to cover losses. "More than half of the 29 000 members underwriting in 1986 had declared assets of under £150 000" (Raphael, 1995: 24). This is not to say that the rich did not invest in Lloyd's – they did, but they had more cushioning for the large number of claims that hit Lloyd's in the 1980s (Raphael, 1995: 71; McClintick, 2000: 45). Many

of these individuals who barely managed to get enough money together for the deposit found that they were exposed to risks of asbestos, pollution and catastrophic risks without knowing the risks involved (Raphael, 1995: 81). Years later, those lower middle class people were exposed to losses that ran into the millions with no way for many to pay such claims. The "explosive growth in Lloyd's membership in the 1970s and 1980s was the root of future troubles. It led to considerable over-capacity, and set off a cycle of rate-cutting that was to pave the way for the horrendous losses of the 1980s" (Raphael, 1995: 81).

4.2.3. Causes of the disastrous claims at Lloyd's

Three main factors contributed to the catastrophe at Lloyd's: latent asbestos disease claims, long-tail pollution claims and large numbers of natural disaster claims. These factors were largely brought about by unrealistic decisions made by the American courts (Raphael, 1995 & *Cover*, 1991: 24).

4.2.3.1. Latent asbestos disease claims

Many American asbestos manufacturers filed for bankrupcy due to the avalanche of unaffordable liability claims. Asbestos can cause a sickness in the lungs if inhaled for over a period of time. It takes many years for the inhalation of the tiny fibres to scar the lungs sufficiently enough for a recognizable deterioration in health to be noticed. The side effects, including lung cancers, gradually show themselves. The process takes between 20 and 30 years to manifest, so no treatment can be implemented before it is too late (Raphael, 1995: 130; Luessenhop & Mayer, 1995: 165; Bannister, 1995: 12). It takes decades to be revealed but once revealed no treatment is available usually resulting in permanent disability closely followed by death (Luessenhop & Mayer, 1995: 164).

Asbestos was discovered by crushing ore of a mountainous rock and was believed to have valuable commercial uses. It is a mineral ore that, when crushed into flexible fibres, could withstand extreme high temperatures of up to 500 degrees centigrade (Raphael, 1995: 130). This

heat resisting quality made it popular to be used in industrial products such as the manufacturing of cars and mattresses, shipyards or construction work on buildings (Bannister, 1995: 12). However, only many years later were the side effects of asbestos discovered. The sale of asbestos boomed as commercial companies used it in construction or manufacture of goods. As manufacturers of asbestos produced more, they disregarded the health hazards associated with it (Raphael, 1995: 133). It was only in the 1960s that it was discovered that asbestos not only affected individuals who worked with the mineral but could also affect the worker's family and anyone who came into any contact with it.

In 1964, the first shock hit the asbestos industry when a doctor, Dr Irving Selikoff (1915 - 1992), conducted a study examining the health of workers' who came into contact with asbestos and he published his extraordinary results indicating the negative impact it had (Raphael, 1995: 134; *Society of Lloyd's v. Jaffray* (2000), EWHC (Commercial Court) Decision 51 (Comm); Luessenhop & Mayer, 1995: 165). His results showed that 87% of people working with asbestos and inhaling asbestos dust for a 20 year period had "severe and irreversible damage to their lungs" (Raphael, 1995: 135). Workers with asbestos had a seven times higher chance of dying from lung cancer and a 3% higher chance of dying with stomach cancer when compared to other industrial workers. The publication of these results led to a huge jolt and wake-up call for the asbestos industry.

The second shock that hit the insurance industry came from the legal sector which extended the basis of products liability in the US (Cupp, 2006: 512, 526; Herzog, 1990: 541). Before 1960, individuals could only sue manufacturers under products liability for goods used for human consumption only i.e. food and cosmetics. Now this had been extended to anything including the "defective condition of the product making it unreasonably dangerous to the user" (Raphael, 1995: 135). This opened up a new avenue of recourse allowing workers to sue the asbestos manufacturers directly for the damages they suffered leading to those manufacturers claiming from their insurers (Raphael, 1995: 136; Legh-Jones, 1969: 63).

The case of *Borel v Fibreboard Paper Products Corporation*[35] was the first case where a worker, the plaintiff, sued the manufacturing company directly for the damages he sustained from asbestos. The court ruled in favour of the plaintiff opening the floodgates for asbestos claims from workers against the asbestos manufacturers leading to a rush of people filing cases (McCambridge, 2007: 409; Warfel, 2004: 3). Following this case the number of asbestos claims against producers increased dramatically over time (*Society of Lloyd's v. Jaffray* supra).

In addition the social change that occurred around the 1970s led to a drastic increase in personal injury actions. America became a litigious society. This also added to the already increased claims against Lloyd's. "A struggling lawyer had only to find a pollution or latent disease sufferer whose background was parallel to those of thousands of other industrial workers, and he had found a goldmine" (Raphael, 1995: 152). American lawyers were compared to vultures trying to cash in on the asbestos claims by representing the asbestos victim and working on a contingency fee basis. A study undertaken in 1982 showed that £1 billion had been spent on asbestos litigation with the victims only receiving approximately 25% of the money, the rest going to lawyers' pockets (Raphael, 1995: 153). "The flood of asbestos litigation has been fed more by the greed of plaintiffs' lawyers than by the urge to right a public wrong" (Raphael, 1995: 154).

Lloyd's had started insuring asbestos manufacturers around the 1930s and 1940s up until the 1970s when the syndicates involved in insuring the American manufacturers suffered catastrophic losses (McClintick, 2000: 42). A well known and successful underwriter, Ralph Rokeby-Johnson, told a golfing partner as early as 1973 that "asbestos is going to change the wealth of Nations. It will bankrupt Lloyd's of London and there is nothing we can do to stop it" (McClintick, 2000: 38). The first claims started coming against Lloyd's in the middle of the 1970s. Liability underwriters determine their potential future claims based on past claims history and thereby estimating the correct premium. In the case of asbestos this approach was wholly inadequate as asbestos was a new risk and no claims history existed (Raphael, 1995: 183). The risk could not be adequately priced. The claims started coming in slowly and increased exponentially so that by the end of the 1970s close to 5 000 asbestos claims had been reported to

[35] (1973) 493 F2d 1076, No. 72-1492.

Lloyd's. By 1980 the Secretary of Health stated that due to asbestos 67 000 people p.a. were estimated to die for the next 30 years (Luessenhop & Mayer, 1995: 168).

Ralph Rokeby-Johnson was an underwriter on the Sturge 210 syndicate which started in 1920 and became one of the largest syndicates at Lloyd's. His main focus was insuring American industrial risks which included asbestos. Syndicates at Lloyd's protected themselves against run-off claims with reinsurance to close (RITC)[36] cover. Risks prior to 1969 at Lloyd's were reinsured to close with his syndicate and when claims started pouring in his then current Names had to fit the bill because of the reinsurance to close cover he provided. In 1974, acting on the knowledge of the approaching asbestos claims, he reinsured all his risks prior to 1969 with two American reinsurers, one was the Fireman's Fund, at a very high premium which he was more than happy to pay (Luessenhop & Mayer, 1995: 167). In 1976 Fireman's Fund realized the problems that would arise from the risks it had reinsured from the Sturge syndicate and tried to retrocede the risk. There was no domestic market available for such cover and it had to retrocede internationally with different companies around the world. In 1981 it realised that even with the retrocession cover, it did not have enough to cover such losses (Luessenhop & Mayer, 1995: 174). In total Fireman's had to pay between $60-70 million in asbestos claims (Luessenhop & Mayer, 1995: 186).

In August of 1980 it was becoming clear that asbestos claims were going to be a problem and Lloyd's formed the Asbestos Working Party (AWP) to gather information about the large influx of claims and the damaging effect it was having on Lloyd's (Raphael, 1995: 143; Luessenhop & Mayer, 1995: 169). It was given the task to monitor the developments of asbestosis stating that the volume of claims for asbestos damage were rising exponentially with no sense of decrease in the claims being apparent at all (Raphael, 1995: 163). The Asbestos Working Party is still in force today trying to establish the extent of asbestos claims yet to come.

In March 1982 Lloyd's informed its auditors that it was unwilling to specify a minimum IBNR (incurred but not reported) amount for the year 1979.[37] Each syndicate had the discretion to

[36] For a discussion on reinsurance to close (RITC), refer to chapter 5.1.
[37] Lloyd's follows a three year accounting period.

calculate its own IBNR provision and if it constituted a considerable part of the syndicate's total provisions without a specified IBNR or reinsurance to close, the syndicate would have to leave that year of account open (Luessenhop & Mayer, 1995: 172). Many syndicates, however, closed the 1979 year of account without fully understanding the substantial amounts needed for the risks they were involved in. Many syndicates however, somehow managed to find the required RITC the year 1979 while still managing to pay the Names profits for that year, knowing large losses were soon to follow. Since the Names were kept ignorant of the losses for the near future, many Names from 1979 stayed for the 1980 year of account. Names that left Lloyd's in 1979 were extremely lucky to avoid paying losses while new Names who entered Lloyd's in 1980 were not warned about the looming losses (Luessenhop & Mayer, 1995: 173).

4.2.3.2. Long tail pollution claims

The second factor which contributed to the problems at Lloyd's was long tail pollution claims. Petroleum and air related pollution was acknowledged in the 1960s, as a major problem resulting in the Federal government in the US finally getting involved in its regulation (Pratt, 1978: 1, 6). Other forms of pollution also became a problem including where companies manufactured powerful insecticides which would contaminate the surrounding areas with their emissions and waste products. They completely disregarded the disastrous effect their activities would have on the environment (Raphael, 1995: 190).

The first large pollution claim involving Lloyd's occurred in 1978 when a housing development situated in Love Canal, New York, USA was found to have been built on top of chemical waste dump (Raphael 1995: 199). All the families were eventually evacuated but were concerned about higher probabilities of getting cancer, liver disease, suffering miscarriages and if a child was born it had a much higher likelihood of having a birth defect. That land area had been used, from 1942 till approximately 1952, for dumping toxic waste by Hooker Chemical & Plastics Company, which sold the land in 1953. For Lloyd's, the Love Canal episode "was an ominous warning of a torrent of pollution claims to come" (Raphael, 1995: 199; Bannister, 1995: 14).

This led to public awareness of the problem of pollution and as from the 1980 companies had to start taking responsibility for environmental issues because of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA - commonly known as the Superfund) which was later amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Hird, 1993: 324; Tietenberg, 1989: 306; Bannister, 1995: 14). CERCLA required that all polluted sites must be cleaned up regardless of the cost. It retrospectively made companies liable for past pollutant actions (Raphael, 1995: 191). This Act gave government three powers: firstly, it allowed them to clean up their waste and then recover the money spent from the companies responsible for the pollution costs, secondly, to issue orders to the corporate polluters forcing them to immediately begin with corrective measures to remedy the pollution they had caused, with a fine of $25 000 for each day of delay and finally, to apply to the federal courts to force corporate polluters to start remedial action. The corporate polluters were forced by law to clean-up 'toxic' sites or the government would do it for them and send them with the bill. In each scenario the corporation would turn to its insurer to pay under their liability policy. Lloyd's was one of the insurers. It should be noted the clean-up costs are imposed despite the absence of any injured persons.

Cost of clean-ups can run into hundreds of billions of dollars and companies looked to their insurers, including Lloyd's, for payment. Lloyd's became extremely vulnerable at this stage because before 1960 Lloyd's had imposed no aggregate limits on its policy periods (i.e. their liability was on a per claim/occurrence basis with no capping of their liability) and it was one of the main insurers for North American businesses including their liability risks. This led to a sudden rush in claims (Raphael, 1995: 192, 204). The length of time such clean-up projects would take and the enormous costs involved is illustrated by the following scenario. It was estimated that 400 000 sites needed to be rehabilitated, each site requiring $30-40 million and the clean-up would be done over a period of 15 years per site. The approximate costs would be $302 billion (Raphael, 1995: 203, 204). This cost could destroy Lloyd's and other American insurers (Raphael, 1995: 192). It should be understood that in history these claims were unprecedented.

A main problem with polluted sites was the high probability of it contaminating groundwater which is used as a primary source of drinking water for most of the population (Pye & Patrick,

1983: 713) and is constantly moving, thereby spreading the pollution substantial distances in short periods of time. Contaminating groundwater results in contaminating the running water used by people needed for their survival, leading to the costs of clean-up rising even further.

4.2.3.3. Unrealistic decisions made by the American courts

The above factors were not only unprecedented in history; they were also unprecedented in law. The US judicial system for civil liabilities is based on the contingency fee principle. The plaintiff's legal team only gets paid if the case is won, payment coming from the award of damages made by the court. The 'injured' plaintiff runs no financial risk in engaging in litigation. The American jury is also seen to be generous in its attitude towards a plaintiff especially if the injury was allegedly caused by a company or where awards are paid by an insurance company or Lloyd's. Large corporations and insurers are perceived to have deep pockets and can afford to pay damages (Davison, 1987: 17; Bannister, 1995: 7, 11; Hans & Lofquist, 1992: 87). All of this resulted in unprecedented awards being made against insurers including Lloyd's. The aggregated costs were sufficient to cause Lloyd's problems.

4.2.3.3.1. Asbestos

Workers suffering injuries from asbestos would bring claims against a large company insured by a third party general liability policies since these policies included products liability cover which incorporated occupational injury claims (*Society of Lloyd's v. Jaffray*). The first wave of claims, around 1979 onwards,[38] against Lloyd's and make it vulnerable was due to the large numbers of asbestos risks it had underwritten as well as "the loose all-embracing wording of its general liability polices" (Raphael, 1995: 144). A general liability policy covers the insured against all losses that the insured will be legally liable to pay arising from bodily injury or property damage to others at the time without any aggregate limit for coverage (Adler, 2001: 22). General liability policies at Lloyd's were on an occurrence basis, at that time, so that any claim made could be

[38] http://truthaboutlloyds.com/fraud/timeline.html.

taken back to each year in which the policy was taken out.[39] Because of this, no accounting year could, conceptually, be closed. A loss sometimes takes years to manifest itself before a claim is made. Lloyd's only started restricting their general liability cover in 1985 by switching some liability policies from the occurrence to claims-made basis.[40] Therefore, from 1985 the insured had to claim within the year that the policy was taken out otherwise the claim would not be paid. "If this had been done a generation earlier Lloyd's would have saved itself 5 billion pounds" (Raphael, 1995: 150).

Lloyd's suffered billions of pounds as the courts interpreted insurance contracts to be "strictly construed in favour of the injured and promote coverage" (Raphael, 1995: 145). In 1981 the courts extended asbestos cover offered by the insurers to state that "all periods of insurance cover were liable, from inhalation of the first harmful asbestos fibre to outbreak of the disease, often thirty years later" (Raphael, 1995: 146). So a policy issued in 1946 could be liable to pay for asbestos damages that only manifested in 1983 for example. This had serious implications for Lloyd's.

Lloyd's was made even weaker in 1980 by the declaration of the courts that the burden of proof was moved from the plaintiff to the defendant. Originally, the plaintiff i.e. the victim worker, had to prove that the manufacturing company had caused the damages that the victim suffered. If the plaintiff was unable to sufficiently prove his case the manufacturer was not held liable. As from 1980 the burden of proof shifted to the defendant i.e. the manufacturer must prove that he did not cause the damages that the victim was claiming. If he cannot prove that it did not cause of the damage, it would be held liable. This led to another wave of asbestos litigation in the late 1980s (McCambridge, 2007: 411) which again was very detrimental to Lloyd's.

Raphael (1995: 148) is of the view, however, that "Lloyd's may have had rough treatment in the US courts, but it cannot escape responsibility for its cavalier attitude to the known risks of

[39] An example is used to illustrate this point: A loss occurred in 2005 and the claim is only made in 2007. Under a loss occurring policy, the policy that was in force at the time the loss occurred is the policy that will respond to the claim i.e. the policy from 2005 will pay the claim even if it was not renewed for subsequent years.

[40] A claim-made policy will only respond if a claim is first made against the insured within that period of insurance. That policy will cover the claim irrespective of when the loss event actually occurred (Doherty & Dionne, 1993: 198).

asbestos". The risks and lethal side effects of asbestos were known as far back as the 1930s with some insurers refusing to insure asbestos manufacturers in the US and, since Lloyd's was a principal insurer of American liability risks one would expect the underwriters to do their homework on the risks they are underwriting (Raphael, 1995: 149). This was not the case as Lloyd's had not considered the risks associated with asbestos when insuring asbestos manufacturers in the 1940s and 1950s. However, in defence of Lloyd's it is pointed out that historically insurance was priced on actual past claims, not conceptual risks or claims. Until claims actually began, Lloyd's was unprepared.

These continual waves of claims had disastrous effects on the Names of Lloyd's as Lloyd's made calls on Names (Raphael, 1995, 156). One family had to sell their 400-acre farm to pay for claims stating that Lloyd's ruined their lives without explaining the full extent of the risks that they were being exposed to. This is the sentiment of many Names at Lloyd's. By the 1970s it was already known that large numbers of asbestos claims were inevitable yet underwriters were still persuading Names to join Lloyd's without disclosing this vital information. Many Names had no idea about the asbestos and pollution claims their syndicates were involved in (Raphael, 1995, 158). At this stage clearly asymmetry of information between Lloyd's and outside Names was a possibility.

The accountants declared that many syndicates would not survive the increasing number of claims. After this statement the Lloyd's committee told the managing agents that they were responsible for having adequate reserves in place to make sure their syndicate survived and are able to pay all claims regardless of whether the account is opened or closed, and that they should inform the Names of their involvement in the asbestos claims and what steps the syndicates have taken to ensure the payment of their liabilities (Raphael, 1995: 175). "The Names were all blissfully ignorant of the gathering storm" (Raphael, 1995: 177). However, Lloyd's dismissed the allegations of a 'market-wide plot' stating that "No evidence has been provided which supports the suggestion that in placing their contracts the underwriters took advantage of information which was available to the AWP but was not made available to the market" (Raphael, 1995: 177). Lloyd's failure to react to the evidence of the dangers of latent diseases,

the increase in US litigation and the courts desire to make the deepest pockets pay can all be attributed to the mounting problems Lloyd's would face.

4.2.3.3.2. Pollution

The loosely worded general liability policies also make Lloyd's vulnerable to the pollution claims as no mention was made of environmental damage, either in the coverage offered or in the exclusions (Raphael, 1995: 198). In the 1950s some underwriters attempted to exclude non-accidental pollution but the exclusion was not implemented, allowing policyholders to argue that deliberate pollution was covered. Only in 1970 was the general liability policy reworded to cover only 'sudden and accidental' environmental damage. Gradually developing claims, if covered, could be done so in terms of a separate policy. As mentioned above general liability policies issued before 1985 covered property damage that was caused due to 'an occurrence'. Property damage was defined as 'physical injury to property of others' and an occurrence was defined as "an accident which results in damage during the policy period which is neither expected nor intended from the standpoint of the assured" (Raphael, 1995: 207). It can be seen through legal battles involving the interpretation of the general liability wordings that the courts are leaning towards benefiting the insured and making the insurer liable, even going so far as to unrealistically stretching the meanings of the words to cover the insured (Raphael, 1995: 209). The intention of insurers was to exclude deliberate environmental damage, the American courts however, disregarded this intention and construed polices for the benefit of the insured thereby making insurers liable even if the wordings plainly said otherwise. One judge even stated that "public interest overrides contractual language" and since insures are assumed to have deep pockets they should be held liable (Raphael, 1995: 198).

In 1991 Lloyd's appointed the Rowland Task Force to assess the prospects for Lloyd's in future years. The Rowland Task Force concluded that if the courts continue to make judgements in favour of policyholders disregarding the policy wordings, then Lloyd's only needed a fairly small share of the problem to suffer extraordinary and unaffordable losses (Raphael, 1995: 206).

Lloyd's set-up an environmental department to gather information about the advancements in pollution and its litigation and to make this information readily available to the market. Pollution claims take time to settle. It takes 3-5 years for a court to decide on the matter, then another 3-5 years before the issue gets resolved between the policyholder, insurer and reinsurer and Lloyd's was depending on these delays to trade out of its predicament.

4.2.3.4. Natural Disasters

Hurricane Donna passed over the Florida Keys in 1960 and Hurricane Betsy passed over the same area in 1965 destroying and eroding coral reefs in that area (Perkins & Enos, 1968: 711, 717). Hurricane Betsy led to Lloyd's having three loss making years in 1965, 1966 and 1967 leading to a decline in new members as well as an increase in resignations of existing members. The Cromer Report, as mentioned previously, was commissioned in response to this decline in the number of Names. Membership only started increasing again in 1971 (Davison, 1987: 43; Hodgson, 1986: 35).

In addition to the ongoing asbestos and pollution losses, Lloyd's suffered losses between 1987 and 1990 through many natural disasters striking in that period. These natural disasters were: the North European storm in 1987, Piper Alpha oil platform fire in 1988, Hurricane Gilbert also in 1988, San Francisco earthquake in 1989, Hurricane Hugo in 1989, the spilling of crude oil through the Exxon Valdez tanker also in 1989 and more North European storms in 1990 (Bain, 1998: 1; Craighead, 1993: 314). The probability of so many catastrophes occurring in such a short period of time is extremely low and yet it happened. Lloyd's specialised in catastrophe insurance which exposed it to too many large losses in too short a span of time to be dealt with through proper provisions (Bain, 1998: 1). Special mention needs to be made of the Piper Alpha oil platform disaster in 1988 as it was at the time the largest "single-site loss ever suffered by the insurance industry world-wide" (Lyon, Ball & Carroll et al, 1988: 7) estimating losses for property damage, liability to third parties and consequential damages.

Many of these natural disasters occurred at a time when Lloyd's was heavily involved in and was concentrating its risks on the London excess of loss (LMX) market and already struggling with

the asbestos and pollution claims added to the pressures felt by Lloyd's (Luessenhop & Mayer, 1995: 245; *Cover*, 1991: 24; Bannister, 1995: 8). Piper Alpha, for example was mainly concentrated in the LMX market (Lyon, Ball & Carroll et al, 1988: 7; Bannister, 1995: 8).

4.2.4. Spirals and the LMX market

In the 1960s European insurers were eager to increase their presence in the US, the main contributor being Lloyd's, forming subsidiaries and expanding the reinsurance capacity of the US (Werner, 2007: 21). Lloyd's syndicates offered the US excess of loss reinsurance.[41, 42] In the 1960s the US constituted the majority of international business at Lloyd's thereby not spreading the risk effectively as it was mostly concentrated at Lloyd's (Werner, 2007: 25) so that when the natural disasters struck American soil, especially Hurricane Betsy, Lloyd's was badly affected, having to pay out millions in claims (Kelley, 1995: 5). Lloyd's share in the losses from all the catastrophes suffered in the 1980s was a lot higher than the share Lloyd's usually had on catastrophe risks. Lloyd's had exposed itself to a significantly larger portion of the risks than it normally would through excess of loss reinsurance. "The abnormally high share reflected a heightened exposure to risk that was intimately connected with the "spirals" that existed in the London excess of loss (XL) insurance market at the time" (Bain, 1998: 3).

The main aim of reinsurance is to disperse risk and to spread the risk to a wide range of insurers, and not to concentrate it with only a few, which is what occurred in the LMX market

[41] Reinsurance is a form of insurance for primary insurers and is used as a mechanism for primary insurers to spread their risk (Stettler, Eugster & Kuhn, 2005: 21). An insurer can only keep a certain amount of the risk himself depending on the amount of capital resources the insurer has. Those capital resources have to be adequate to support claims. If the risk is in excess of what the capital reserves can support i.e. when a claim arises it will not be sufficient to cover the loss, then reinsurance must be sought. Reinsurance for catastrophe risks usually takes the form of an excess of loss basis where reinsurance is brought in layers. Thereby many insurers have a share in the loss to prevent one insurer from having to pay the entire claim. Excess of loss reinsurance helps spread the risks amongst many insurers, reinsurers and retrocessionaires (Bain, 1995: 2).

[42] Reinsurance on an excess-of-loss basis was started by Cuthbert Heath after the 1906 San Francisco earthquake. After WWI Lloyd's had turned to mainly focusing on reinsurance of high level risks (Raphael, 1995: 219) and by 1960 Lloyd's was known as the "foremost international reinsurance centre" (Werner, 2007: 10). Today Lloyd's is the largest, most important and most specialized reinsurance market (Stewart, 1984: 1; Davison, 1987: 12; Catlin, Harrison, James et al, 1998: 36). By 1987, over 50% of business underwritten at Lloyd's was reinsurance business (Davison, 1987: 12).

(Rasmussen, Owen & Smith, 1997: 4). Lloyd's did not reinsure the risks with other markets but reinsured these inside Lloyd's. Consequently, the risk was in fact not spread leading to the spiral problem (Rasmussen, Owen & Smith, 1997: 9). Lloyd's syndicates purchased and sold reinsurance at the same time resulting in what became known as the LMX spiral.

The London Market is made up of Lloyd's syndicates as well as other London insurance companies which deal mainly with insuring Lloyd's type of business (Lyons, Ball, Carroll *et al*, 1988: 2); however the majority of the London market consists of Lloyd's syndicates (Coutts, Craighead, Duncan *et al*, 1984: 3). Risks are usually spread from the few insurers who take on the risk to the many reinsurers who are willing to take on portions of the risk and have the financial capacity to do so through worldwide reinsurance policies (Bain, 1998: 3). When an insurer reinsures a loss, it normally only pays up to its retention/deductible level and no more since the remainder will be recovered from the reinsurer. However, with claim spirals (also known as claim circles), the risk is not adequately spread leading to reinsurers insuring each other on an excess of loss basis.[43] In an insurance spiral, however, the insurer is liable to pay for his portion of the loss and ends up being the reinsurer on the same loss, thereby having to pay more than what his retention level allows for. If a loss exceeds an LMX insured's retention level the excess loss is then paid by the retrocessionare. However, in a LMX spiral the insured himself has a share in his retrocessionaires cover and has to pay a portion of his own excess loss[44] (*Cover*, 1991b: 54; Stettler, Eugster & Kuhn, 2005). "This situation is likely to occur when reinsurers seek to protect their own positions by purchasing XL reinsurance cover, and at

[43] Craighead (1993: 314); Finger (1996: 18); Kabele (2000: 5); *Sphere Drake Insurance Ltd v Anr v Euro International Underwriting Ltd* [2003] EWHC 1636 (Comm): 167.

[44] An illustrative example of a spiral (*Sphere Drake Insurance Ltd v Anr v Euro International Underwriting Ltd: 175*): Each syndicate accepts 20% of a risk i.e. there are 5 syndicates involved in insuring the same risk. Syndicate A takes 20%, syndicate B takes 20% right through to syndicate E who takes the last 20% of the risk. However, in addition to having 20% of the risk, syndicate B reinsures a portion of A's 20% on an excess of loss reinsurance contract, syndicate C reinsures a portion of B's 20% on an excess of loss reinsurance contract, syndicate D reinsures a portion of C's 20% on an excess of loss reinsurance contract, syndicate E reinsures a portion of D's 20% on an excess of loss reinsurance contract and syndicate A reinsures a portion of E's 20% on an excess of loss reinsurance contract. Each syndicate is another syndicate's reinsurer. When a loss occurs – insurer A has to pay 20% of the loss, but has reinsured a portion of that 20% with B forcing B to pay on his excess of loss policy with A. However, while B is paying on his excess of loss policy for A, he also has his 20% of the risk to pay. He has in turn insured a portion of it with C through an excess of loss policy. C must then pay on this excess of loss policy for B as well as his 20% share of the risk. However, he in turn has an excess of loss policy with D. D must then pay on this excess of loss policy for C as well as his 20% share of the risk. He in turn has an excess of loss policy with E. E must then pay on this excess of loss policy for D as well as his 20% share of the risk. He then turns to his excess of loss policy with A.

the same time write XL reinsurance policies for other reinsurers who [unbeknown] are liable to be affected by the same loss events" (Bain, 1998: 5). In this way the portions of the loss are passed on from insurer to insurer climbing the reinsurance layers of excess of loss policies until one reinsurer runs out of cover. When the top of the spiral is reached the insured's cover has been exhausted and the original loss reverts back to the insured since no more reinsurance is available. On large risks it often takes years for the loss to make its way through the spiral (*Cover*, 1991b: 54; Bain, 1998: 6; Stettler, Eugster & Kuhn, 2005).

Lloyd's syndicates used these reinsurance spirals in the 1980s where they were the primary insurer of the risks as well as the reinsurer for another syndicate who had taken a portion of the same risk. Thereby indirectly being the insurer as well as the reinsurer for the same risk. Lloyd's syndicates provided reinsurance as well as retrocession for each other and when a loss occurred it was passed backwards and forwards between syndicates as to who should pay what portion of the risk. Lloyd's encouraged its syndicates to reinsure with each other and to reinsure only approximately 20% of the risk with international markets (Luessenhop & Mayer, 1995: 194). However, there was an understanding at Lloyd's amongst the syndicates that participated in the spirals that if the loss reaches the higher reinsurance levels, the premium for that risk will be increased in the following year and that increase in the premium would be used to make up for the loss suffered previously (Luessenhop & Mayer, 1995, 199). The spiral in the LMX market led to Lloyd's accepting more exposure than its capital base could support (Craighead, 1993: 314; Cover, 1991b: 54; Stettler, Eugster & Kuhn, 2005).

Initially Lloyd's did not recognize this potential problem and the LMX market was able to make large profits as long as no catastrophe claims were made. These profits, made in the 1980s when no catastrophes occurred, lured Names to join syndicates with the prospect of sharing in these profits. Between 1982 and 1988 Lloyd's capital base had significantly expanded much of it coming from the LMX syndicates who attracted these new Names by advertising their past profits (*Cover*, 1991a: 24). "This hectic expansion of the highest risk syndicates sucked in large numbers of new Names who, when the LMX bubble burst, discovered they had been ruined" (Raphael, 1995: 223). The case of *Society of London v Henderson and others* (2005) EWHC 850 (Comm) QBD alleged that the LMX spiral was created deliberately as a means of transferring

the loss-making business to reinsurers who wrote cover at the higher levels of an excess of loss policy and away from the Lloyd's underwriters. It was held, however, that LMX spirals were not created deliberately or dishonestly. By 1992 LMX spirals had almost ceased to exist (*Cover*, 1992: 53; Alston, 1993b: 16) and by 1994 Alston (1994b: 16) stated with confidence that the LMX spiral was a thing of the past.

Many of the above mentioned natural disasters triggered these excess of loss reinsurance policies for catastrophe cover. A trigger is needed to activate this cover – the primary loss has to occur through a single event that causes widespread damage i.e. windstorm, hurricane or tsunami (Kabele, 2000: 2; Stettler, Eugster & Kuhn, 2005: 124). That is exactly what the natural disasters of the 1980s did.

Bain (1998: 15) lists a number of reasons as to why Lloyd's participated in insurance spirals:

- Lloyd's was the main market at that time for reinsurance as other markets preferred not to participate so the risks had nowhere else to go except to stay in the London market. Reinsurance for an LMX underwriter can be best found in the LMX market itself – LMX on LMX cover (Lyons, *et al*, 1988).
- Underwriters preferred to have small levels of retention and made extensive use of reinsurance.
- Underwriters estimate the PML (probable maximum loss) of their insurance portfolios to determine how much reinsurance they need on their accounts (Bain, 1998: 3). Regarding catastrophe risks the PML will be less than the calculated total aggregated loss as the probability of a catastrophe causing all the policyholders in the underwriters account to claim is small. If the underwriter's portfolio is diversified (i.e. having worldwide risks) then the PML can be made even less since a catastrophe will most likely not affect all policyholders at the same time. There is a possibility that the underwriter has calculated the PML incorrectly and when a loss occurs has insufficient reinsurance cover (Bain, 1998: 4). Some syndicates did in fact miscalculated their PMLs and became involved in the LMX without fully understanding how spiral worked or understood the concept of an insurance spiral but where of the opinion that higher excess of loss layers would be risk

free and accepted to be reinsurers on those layers thinking no claims would really reach them.

- Underwriters calculated their PMLs and then started accepting business that led to an increase in that syndicates PML without getting the corresponding increase in reinsurance that is needed. Leading to the underwriter not having enough reinsurance cover.
- The premium that reinsurers would receive for upper layers were completely inappropriate for the level of risk they were actually taking on. The premium was very low and did not compensate for the level of risk. Many reinsurers would retrocede their risk to the London market which would gladly accept it at the attractive price (low premium but very little possibility of them ever having to pay any losses) thereby exposing the market to catastrophe risks (Bain, 1998: 16). "It was clearly believed by some underwriters that the highest layers of cover were beyond the reach of any likely loss events" (Luessenhop & Mayer, 1995: 200). However, the disasters of Hurricane Alicia (1983) and Piper Alpha cut through to the top layers of the spiral with great speed.

"These features may be regarded as proximate causes of the Lloyd's insurance spirals" (Bain, 1998: 16). Many Lloyd's syndicates would retrocede other syndicates catastrophe risks. "The end result, when the catastrophes occurred, was losses on a scale that threatened the continued existence of Lloyd's" (Bain, 1998: 16).

The formation of the LMX market was sped up by the devastation wrought by Hurricane Betsy in 1965 and by Hurricane Alicia in 1983 (Lyons *et al*, 1988: 49). Underwriters would normally only reinsure specific contracts that were high risk while keeping the lower risks on their own books. They did not reinsure their entire book of business since the probability of everyone on the book claiming at the same time was minimal. Hurricane Betsy changed that way of thinking as it caused widespread damage equating up to $10 billion (this value being calculated in 1995) with many policyholders claiming from Lloyd's all at the same time. This led to Lloyd's reinsuring their entire account and not just certain contracts that seemed risky. "Lloyd's relaxation of its reinsurance rules undoubtedly encouraged the growth of the spiral market" (Raphael, 1995: 221).

In May 1988, a paper was presented at a reinsurance conference in London by John Emney who was the chief underwriter of Charter Re at the time, showing that if a large catastrophe were to occur the spiral at Lloyd's would unwind until the protection of all involved, either through reinsurance or retrocession, would be depleted completely since all the syndicate were each other's reinsurers and retrocessionaires and the spiral would just keep going up until the very top was reached where no more cover was available (Raphael, 1995: 223). Many of the heaviest hit syndicates in a spiral could appear profitable long after a disaster strikes since the loss first goes to the lead underwriter who disperses it amongst the other insurers, then it goes through to the reinsurers and finally to the retrocessionares. This process can take years to complete and will only be realized by the syndicate involved in the retrocession years after the actual disaster (Luessenhop & Mayer, 1995: 201).

This was the first time that the public was informed of the dangers inherent in the LMX market since it was involved in a spiral which could bankrupt many participants if it were ever put into motion by a claim. Two months later the Piper Alpha disaster occurred. Piper Alpha cost Lloyd's £900 million but created claims up to £15 billion from 43 000 policies as the spiral kept going up the layers until the very top was reached (Raphael, 1995: 222).

The bursting of the LMX bubble had devastating consequences on Lloyd's and by July 1992 Lloyd's had suffered losses easily up to £2 billion (Raphael, 1995: 224). Names were not informed about the risks they would be financing but where only told about the glory, prestige and integrity of Lloyd's (Raphael, 1995: 226). Names that asked to be put into conservative syndicates were misled and were put onto high risk spiral syndicates without their consent. Many Names, who were on several spiral syndicates, went insolvent trying to pay for the losses[45] and were not even informed about spirals and the LMX market (Raphael, 1995: 228). One Name states "we have been ruined by their (Lloyd's) failure to regulate the market" (Raphael, 1995, 229).

[45] 4000 Names that were on 5 of the LMX syndicates, suffered losses of hundreds of thousands of pounds each while one couple was liable for over 1 million pounds.

The syndicates at Lloyd's that were involved in the LMX market that suffered huge losses in 1989 boosted the allegations that the Lloyd's market was manipulated in favour of the insiders (i.e. the underwriters, brokers, internal Names and members) at the expense and to the detriment of the external Names who provided Lloyd's with the majority of its capital (Raphael, 1995: 235). This was damaging to the reputation of Lloyd's. Christopher Thomas-Everard, on the brink of insolvency after being placed on a number of LMX syndicates, researched this allegation and found that insiders at Lloyd's were "over-represented on the best syndicates and under-represented on the worst" (Raphael, 1995: 235). Very few Lloyd's Internal Names were placed on spiral syndicates. "More than 90% of the losses on the seven worst affected LMX syndicates in 1989 had fallen on external Names because the professionals had carefully avoided them" (Raphael, 1995: 235).

The explanation for the favouritism shown to internal Names was that some successfully profitable syndicates deliberately chose more internal Names rather than External Names to be on their syndicates. Christopher Thomas-Everard requested to be placed on the more profitable syndicates and was told that they are only open for internal Names indicating that internal Names received preferential treatment at Lloyd's (Raphael, 1995: 236). The newer Names were put onto the more risky and more dangerous syndicates. To be placed on a specialty syndicate or one with a good reputation, a Name has to have good contacts inside Lloyd's. Some syndicates had a 10 year waiting period and working Names were able to get ahead in the queue through the connections they had established over a long period of time (Luessenhop & Mayer, 1995: 22).

When asked why the LMX syndicates contained a majority of external Names, Lloyd's declared that many external Names joined those syndicates on their own volition when the LMX syndicates were making high profits during a brief period and this attracted external Names. Sir Peter Green (1924 - 1996), the Chairman of Lloyd's at the time, stated that "they were all so starry eyed and just waiting for the cheques to roll in. I don't think half the time they listened to what they were being told" (Raphael, 1995: 237).

Sir David Walker, an independent member of the Lloyd's council, was asked to make an inquiry into reinsurance at Lloyd's focusing on the LMX market paying particular attention to the

accusation that internal Names benefited at the expense of the external Names (Bannister, 1995: 9). The report showed that during the period of 1983 – 1990, Names who worked at Lloyd's made a profit of $150 000 while Names from North America made a loss of $50 000 during the same period (Luessenhop & Martin, 1995: 23). Even with these results the Walker committee[46] published its report in 1992 stating that no evidence could be found to support the allegation of a conspiracy at Lloyd's in favour of internal Names to the detriment of external Names. However, the inquiry did mention that insiders were privy to additional information that was not available to the external Names simply because they were directly involved in the business of insurance. It also found that the standards of professionalism, care and fiduciary duties of a couple of members at Lloyd's were below standard. It concludes that the regulatory framework at Lloyd's was not sufficiently adequate to effectively oversee the performance and level of risks undertaken by underwriters and did not make sure that underwriters were able to pay for the losses they might sustain. This was the case with the LMX syndicates (Raphael, 1995: 238).

The Walker committee recommended that annual reports should be published outlining the profits made and the losses incurred by internal Names contrasted with external Names. A further recommendation was that underwriters should explain the full risk that the Names were being exposed to. Also, Lloyd's should start actively regulating the market as opposed to passively watching what happens by paying attention to the risks the Names were being exposed to and making sure not to expose Names to extremely risky situations (Raphael, 1995: 239). Lloyd's as a society had failed to monitor the risk underwriters were exposing their Names to. However, "Sir David succeeded in silencing the most serious accusations of corruption in the market. But for ruined Names his report was scant comfort" (Raphael, 1995: 240).

4.2.5. Personal Stop Loss (PSL) reinsurance

This is another type of reinsurance that was required to pay many losses at Lloyd's. This reinsurance is a measure by which Names can reinsure their own exposure. The reinsurer would pay above a predetermined deductible up to the capped maximum amount of its liability. The

[46] Refer to Chapter 4.3.

Names who wanted to buy PSL reinsurance were mostly those that knew they were on risky portfolios and wanted a measure of protection. The stop-loss insurers indemnify the insured "for the amount by which an ascertained net underwriting loss exceeds the amount stated as excess in the schedule" (Bracher, 1993: 29). Derek Walker is an example of an underwriter who offered this type of cover. This led to many underwriters who offered such cover suffering large losses as the Names on risky syndicates began claiming from their policies (Luessenhop & Mayer, 1995: 215; Newton, 1989a: 6).

4.2.6. Allegations of fraud and negligence at Lloyd's

As it became clear that Lloyd's faced financial difficulties and some Names would be ruined by calls being made, so allegations of fraud, negligence and incompetence intensified. Lloyd's was built on trust. Trust that brokers would provide adequate information to the underwriters of the risk to be insured and in return the underwriter would pay all valid claims (Luessenhop & Mayer, 1995: 120). However, in desperation many Names, underwriters and agents turned to desperate methods to keep their money. It was alleged that some underwriters would defraud their Names by taking their money for personal gain and some agents no longer acted in the best interests of their clients but in their own interest of self preservation. "Lloyd's recent history is an outrageous disgrace with greed, bad management, incompetence and catastrophes bringing the market to its knees" (Raphael, 1995: 14). It was uncertain whether Lloyd's would survive the allegations of fraud in addition to the already detrimental effect of asbestos, pollution and natural disasters all occurring at the same time.

Individuals and syndicates which stand out in the history of Lloyd's with respect to fraud and other allegations include Richard Outhwaite, Stephen Merrett, Tony Gooda, Patrick Fagan, Sasse syndicate, Howden group, PCW syndicate, Sir Peter Green, Christopher Moran, Oakeley Vaughan, Murray Lawrence and Ronald Verrall. Some of the well known underwriters that were alleged to have been involved in the Lloyd's scandal and had allegedly made large profits out of the reinsurance policies in 1989 were David Coleridge, Murray Lawrence, Bryan Kellett, Richard Hazell and Stephen Merrett. Lloyd's firmly denied all accusations (Raphael, 1995: 306).

4.2.6.1. Richard Outhwaite

Richard Henry Moffit Outhwaite was one of the cleverest underwriters at Lloyd's who would insure anything at the right premium and accepted unusual risks at a high premium (Raphael, 1995: 160). He had many Names, many of whom had a high standing in London, in his syndicate and had a reputation for making money for his Names. His syndicate focused on 'run-off' insurance (Raphael, 1995: 161).

By the end of 1981 underwriters who were exposed to asbestos claims were already suffering under the weight of the incoming claims. Underwriters started seeking mechanisms to show the auditors that they had adequate reserves for the asbestos claims, still leaving all external Names ignorant of the fate of their investment. A broker, Winchester Bowring Ltd, formulated a reinsurance package for such underwriters as a means to generate profits for his business (Raphael, 1995: 166). This reinsurance policy took the form of a run-off policy insuring all previous years' losses above the first layer of £25 million. Richard Outhwaite was the underwriter for this policy. Outhwaite knew that the claims were going to be astronomical yet he still offered this type of insurance. The logic behind offering this run-off cover was that these astronomically high claims would only manifest themselves many years into the future, giving him the time to make the required profits needed through returns on investment income. However, the claims proved to be even larger than the profits he was able to make through high premiums and investment income (Raphael, 1995: 167). Outhwaite thought that the business of run-off polices seemed to be a good risk at the time – he was sadly mistaken. Later Outhwaite declared that he was uninformed about asbestos, knowing very little about it when he offered his policies (Raphael, 1995: 170; Finger, 1996: 18). Although, many believed he knew the risks involved but was too arrogant in thinking that they will not affect him. "The policies turned out to be the most disastrous insurance deals ever underwritten at Lloyd's" (Raphael, 1995: 167). Outhwaite's Names had to pay over 100% of the value of their investments for claims made within 5 years of offering the cover and up to 600% by 1994 (Raphael, 1995: 167).

Lloyd's declared that he had been negligent in failing to investigate the risks of the policy he offered and had breached his duty to his Names to always act in their best interests. Some asked themselves the question why would a man as clever as Outhwaite do something so stupid? It did not seem like him (Raphael, 1995: 172). A conspiracy of concealing information was suspected where a few people knew information but did not relay it to the rest of Lloyd's (Raphael, 1995, 173). The AWP was suspected of having additional knowledge about the asbestos crisis and, keeping that knowledge a secret transferred their syndicates' liabilities to Outhwaite as soon as possible.

Another charge levied at Outhwaite and many senior underwriters was the intentional act of not informing Names of the seriousness of asbestos. Many senior underwriters decided to transfer the asbestos claims of 1979 to future years so that they did not have to be accounted for in the correct year, allowing syndicates to appear solvent and stay in operation. This was just a way of delaying the inevitable – syndicates would have to pay the actual claims sooner or later. The disadvantage for the new Names who joined Lloyd's after 1979 was not knowing that many asbestos claims had been transferred to future years and they would be the one's liable for those claims. These claims should have been accounted for before they joined Lloyd's. The principles of duty of disclosure and utmost good faith were completely disregarded. The Names were not advised.

Richard Outhwaite raised the lack of material disclosure defence relating to some run-off policies he had underwritten i.e. that external Names had not been informed of the large asbestos and pollution claims to come, to avoid making payments on some of these run-off policies. In so doing he succeeded in avoiding unlimited liability on those policies, saving his Names millions in claims that they no longer had to pay.

In 1988, 987 Names out of the total of 1 614 Names on his syndicate formed a group, the Outhwaite Action Group, and brought a legal action against Richard Outhwaite (Raphael, 1995: 179). The case went to court in October 1991 with the Outhwaite Action Group suing for $150 million in damages. However since each member's agent is required to have Professional

Indemnity insurance[47] such as an errors and omissions (E&O) policy, indirectly the Outhwaite Action Group was suing and recovering from the E&O insurers. This policy insures a professional for any mistakes that he makes in his workplace and since the member's agents made a mistake in placing the Names on Outhwaite's syndicate that insurer will be liable to pay. The reason why the Outhwaite Action Group targeted the members' agents was that "the members' agents themselves had few capital reserves – the only deep pockets were the E&O insurers" (Raphael, 1995: 180). E&O policies at Lloyd's were on a claims made basis for periods of 12 month at a time. The problem at Lloyd's however was that "E & O cover was provided within the very market it was intended to protect" (*Society of Lloyd's v. Jaffray*, 2000). In 1992 the requirement of compulsory E&O cover for managing agents was changed allowing them to operate without such insurance for it was becoming too expensive (Luessenhop & Mayer, 1995: 91).

The question that the courts had to answer was "were members' agents responsible in law for the actions of an underwriter over whom they had virtually no control?" (Raphael, 1995: 180). The plaintiff's lawyers charged Outhwaite with 3 charges: (1) lack of asbestos knowledge and the lack of research into the dangers, (2) his carelessness in taking on so many dangerous risks and placing such a heavy burden on his Names and, (3) the failure to keep accurate records of the claims, profits and premiums (Raphael, 1995: 181). The E&O insurers, who were the defendants, had the following defence: (1) he had as much knowledge as the market and no one in the market foresaw the astronomical amount of claims and, (2) he wrote business on his run-off polices the same way as reasonable and competent underwriters in the same line of business did at that time (Raphael, 1995: 182). The plaintiff had one expert witness, Heinz Ulrich Von Eicken (former executive manager of Munich Re), that overshadowed anything said by the defence by stating that anyone who insures such risks is assumed to know a great deal about the subject and it is absurd to write such risks without any research.

[47] Professional indemnity insurance is "an insurance which indemnifies the insured professional against pecuniary loss arising out of the professional's negligent act, error or omission which causes loss to be suffered by his or her client or a third party" (Hooker & Pryor, 1987: 38).

After the court adjourned for a week in which to come to a decision, the parties entered into negotiations with each other and a settlement was reached to pay £116 million, a victory for the Names (Raphael, 1995: 185). The settlement implied that negligence had been proven. The message that this case sent to the public and everyone involved with Lloyd's was that anyone who sued had a good chance of recovering a good portion of their losses. This example was followed by many Names suing their syndicates (Raphael, 1995: 186). "A direct consequence of the Outhwaite settlement was the collapse of the professional indemnity market at Lloyd's" (Raphael, 1995: 187) as no E&O insurer would insure underwriters and managers at Lloyd's for fear of the lawsuits against them. Even Lloyd's E&O underwriters had no faith in their fellow members and would not insure them.

This settlement led Richard Outhwaite to lose many Names but he still maintained that he had not acted with negligence by writing run-off policies. After this disaster, Outhwaite was certain that there was no hope for unlimited liability at Lloyd's anymore by stating that "we will never get any significant new capital in Lloyd's unless the basis of membership is a limited one in both time and money" (Raphael, 1995: 187). To a large measure this prediction proved to be correct.

4.2.6.2. Stephen Merrett

Stephen Merrett joined Lloyd's in 1963, became a Name by 1965 and an underwriter by 1971 (Luessenhop & Mayer, 1995: 177). He became one of the most influential underwriters at Lloyd's.

In 1979 he wrote limited reinsurance on general liability policies before the year 1970 for a syndicate that was slightly involved in asbestos risks. He also formed the Syndicate 421 that dealt primarily with excess of loss cover (Luessenhop & Mayer, 1995: 178). He reinsured other syndicates years of account that had been closed for some time usually 1975 and before. He was involved in run off cover together with Outhwaite. He admitted in 1984 that the true possibilities of large claims were never properly considered when signing these reinsurance policies. Retroceding the Fireman's Fund, together with the Outhwaite syndicate, is one such example

(Luessenhop & Mayer, 1995: 179). He withdrew his Names from the Outhwaite syndicates in 1984 (Luessenhop & Mayer, 1995, 181).

In order for his syndicate Merrett 418 to appear profitable Merrett reduced the proportion of the premium carried forward to the next year through the RITC every year thereby reducing the reserve kept for claims each year. This fuelled the allegations of gross negligence against him (Luessenhop & Mayer, 1995, 249). Syndicate 418 started out as a marine syndicate but later branched out into reinsuring asbestos, toxic waste pollution risks and malpractice risks from other syndicates run by Merrett (Luessenhop & Mayer, 1995, 30; Luessenhop & Mayer, 1995, 66). Merrett 418 was unable to close its 1985 year of account at the end of its three year accounting period in 1988 since the auditors were unable to accurately calculate the premium (RITC) that would have to be paid to the 1986 year for taking on the risks of the 1985 year (Luessenhop & Mayer, 1995, 34).

However, he resigned as deputy chairman of Lloyd's in September 1993 after Lloyd's put pressure on him to do so.[48] His managing agency was liquidated and his syndicates passed to another underwriter. One of his syndicates, syndicate 418 for the year of 1985 was seen as one of the biggest losers at Lloyd's (Luessenhop & Mayer, 1995: 27). In 1993 Stephen Merrett attempted to start a new insurance company in Bermuda designed to keep him financially stable while the claims kept hitting his syndicates (Luessenhop & Mayer, 1995: 30).

The Business section of *The Independent*[49] newspaper on November 1, 1995 wrote an article stating that Stephen Merrett, a former deputy chairman at Lloyd's, was found by a court of law to have been negligent in failing to make proper account of the inherent risks of pollution and asbestos liabilities. He was also found to have negligently and deliberately concealed important significant information from the Names on his syndicates. The judge went further to state that the accounts found for the Merrett syndicates were mixed with falsifications of data found amongst half truths with the judge openly declared that Merrett was involved in cover-ups and

[48] http://www.zoominfo.com/people/PersonDetailLimited.aspx?PersonID=36714352&lastName=Merrett&firstName=Stephen&id=36714352&searchSource=page&page=2

[49] http://www.independent.co.uk/news/business/lloyds-names-win-legal-victory-1536790.html

deceitful actions. On February 4, 1996 *The Independent* published an apology to Stephen Merrett pointing out that he had not been criminally convicted of fraud.[50]

Another article states that Stephen Merrett was accused of "negligence, incompetence and dereliction of duty"[51] and fined £1 million in damages to be paid to the members of his syndicate. He had made a deal with Lloyd's in terms of which he would never work at Lloyd's again or any subsidiary or company in the Lloyd's market and in return Lloyd's and its Names will not bring any further legal actions against him.

4.2.6.3. Tony Gooda

A well-known LMX syndicate to have bankrupted the majority of its Names was the Tony Gooda syndicate. Tony Gooda managed the agents, enticed Names to join and was in partnership with Derek Walker as the main underwriter. They managed the syndicates 164 and 290 (*Deeny and others v Gooda Walker Ltd and others and two other appeals*, 1996, 43). The Gooda syndicates were involved in the most tentative risks at Lloyd's – insured hurricanes, shipwrecks as well as the reinsurance of other Gooda syndicates. During profitable years the syndicates would reward their employees with large shares of the profits, only giving the bare minimum to the Names and in loss years they would continue to receive large salaries while at the same time making large cash calls on Names (Luessenhop & Mayer, 1995: 87).

The Gooda Walker syndicates focused on mainly two types of excess of loss policies:

- Excess of loss cover on other reinsurers excess of loss policies (XL on XL) and,
- 'Whole account' excess of loss cover for other syndicates after they have paid their deductible. Gooda did not purchase any of his own excess of loss cover on such risks and exposed himself to limitless claims if the claim was above the deductible. He did not cap this exposure in any way. "The underwriter failed to appreciate that the whole account reinsurance policies that he was accepting could all become total losses in the event of a

[50] http://www.independent.co.uk/news/business/mr-stephen-merrett-1317141.html
[51] http://www.zoominfo.com/people/PersonDetailLimited.aspx?PersonID=36714352&lastName=Merrett&firstName=Stephen&id=36714352&searchSource=page&page=2

moderate catastrophe entering the reinsurance spiral" (Luessenhop & Mayer, 1995: 202). He suffered many large losses on this type of cover he provided.

Gooda was showing a profit on all years of account up to 1989 when that year of account showed a loss of $380m. However, he had been able to keep his syndicates showing a profit by using time and distance policies. A time and distance policy is a mechanism to discount anticipated losses to their present value and that discount was taken as a profit for the current year i.e. a loss that is anticipated to occur in 5 years time of a value of R1m can be discounted back to the present year at a discounted value of R500 000 and not the future value of R1m. Thereby showing a profit of R500 000 for the current year. This tricky form of accounting led people to believe that the syndicates were doing well hiding the troubles soon to surface (Luessenhop & Mayer, 1995: 204).

In 1981 Walker was accused of fraudulent reinsurance transactions but was later acquitted. Peter Green, Chairman of Lloyd's at the time, warned Gooda to stay clear of Walker but was ignored. Walker was able to make profits out of the spiral style of reinsurance (Raphael, 1995: 243). The Names were receiving 23% profit while Walker and Gooda were reaping the rewards of up to £300 000. When the large claims affected this syndicate the majority of Names were liable for up to £1 million each and those without funds to cover these calls faced bankruptcy. Walker was of the view that "one always knew there was a risk in the spiral, but one did not expect all the layers to blow. No-one imagined it going so horribly wrong" (Raphael, 1995: 244; Napier, 2010). Walker took the view that he did warn the Names on his syndicate about the dangers of the risks they were getting involved in. He stated that the number of natural disasters which occurred one after the other, starting with Hurricane Hugo, were the demise of his syndicate. By 1994 each Name on the Gooda syndicates had lost up to $1.5million (Luessenhop & Mayer, 1995: 89).

The Names, however, feel differently stating that Gooda had failed to exercise reasonable skill and care in his function as a underwriter by not informing the Names on his syndicate of the high risk they were involved in and caused many Names to suffer losses due to his negligence. A Gooda Walker Action Group was formed and chaired by Michael Eunon McLarnon Deeny

which consisted of 3000 members who contributed to the legal costs of up to $10 million (Luessenhop & Mayer, 1995: 98). In the case of *Deeny and others v Gooda Walker Ltd and others and two other appeals (1996, 5 Re IR 43)* where it was stated that an unreported case in 1994 held that "Gooda Walker and the members agents were liable for such damages as would place the Names in the same position as if the underwriting carried on their behalf by each syndicate had been competently performed" (*Deeny and others v Gooda Walker Ltd and others and two other appeals, 1996, 5 Re IR 43*) and awarded the Names damages up to £500m (Hotten, 1995).

The Gooda Walker syndicates had an E&O policy that covered the management of those syndicates for any negligence performed by the underwriters thereby causing the insurers on that policy to pay out (Luessenhop & Mayer, 1995: 90).

4.2.6.4. Patrick Fagan

Patrick Fagan started underwriting at Lloyd's in 1956 and became the main underwriter on Syndicate 540, 542 and 847 which specialized in excess of loss reinsurance. Fagan was an underwriter on LMX syndicates (Raphael, 1995: 249) and later stated that "I do not think any of us appreciated the way the spiral would work and how incestuous it had actually become" (Raphael, 1995: 250). He stopped writing on these syndicates in 1990. Some of the losses that these three syndicates suffered include windstorms, Piper Alpha, Hurricane Hugo and Exxon Valdez. The Feltrim underwriters did not predict the large scale of catastrophes and the claims quickly ate through the reinsurance cover that was available. The Names on these syndicates alleged that the underwriters failed to apply established principles of excess of loss underwriting and failed to assess an adequate amount as a provision for catastrophe events and the judgment of *Arbuthnott & Others v Feltrim Underwriting Agencies Limited & Others 1995* QBD Commercial court agreed. That same case also held that the Feltrim underwriting syndicate was negligent in investing the Names' money in highly risky reinsurance portfolios and catastrophe risks in the years of 1987, 1988 and 1989, awarded damages in favour of the Names. The majority of the losses were due to two incompetent underwriters on that syndicate, namely Patrick Fagan and Robert Goften-Salmond (Hotten, 1995).

The biggest problem of underwriters on the LMX market was the incorrect logic that the higher the layer that you offer of an excess-of-loss policy, the less likely you will be hit. This proved to be untrue with major catastrophes which suffered total losses into the billions, Piper Alpha and the majority of the hurricanes being examples, which eroded the lower layers at a breathtaking speed and attacking the higher layers immediately (Raphael, 1995: 250). "A common criticism expressed in many of the LMX loss reports was the failure of managing agents to exercise adequate supervision over syndicate underwriters" (Raphael, 1995: 251). "By any standards Lloyd's failed in its duty to protect Names by neglecting to control the wilder excesses of the spiral" (Raphael, 1995: 252).

4.2.6.5. Sasse Syndicate

The Sasse scandal became public between 1978 and 1980 (Hodgson, 1986: 58). The Sasse syndicate was run by Frederick 'Tim' Sasse and was involved in insurance policies that would pay out if a certain amount of tankers in the same tonnage category collided in a given year – this was referred to as tonner insurance and later became illegal at Lloyd's as it was seen as a pure gambling contract (Hodgson, 1986: 255). He also insured banks and computer companies against the possibility that lessees of computers would return them earlier than the end of the lease term if a competitor had produced a better computer[52] (Luessenhop & Mayer, 1995: 136). Essentially computers were insured against becoming obsolete. IBM produced a cheaper and more powerful computer and many lessees exchanged their computers before the end of their lease agreements. Computer companies then sought to claim on their policies form Lloyd's. These claims nearly used up half of the profits that Lloyd's had made during one year (Hodgson, 1986: 39; Schallheim & McConnel, 1985: 1439, 1440; Stewart, 1984: 3).

The Sasse syndicate wrote risks well above its maximum stamp capacity. Sasse gave an American cover-holder by the name of Dennis Harrison binding authority in 1975 without first making sure that Harrison was a trustworthy and dependable man (Davison, 1987: 46; Hodgson,

[52] http://www.spreadingtherisks.com/Lloyds.asp

1986: 249; Mance, Goldrein & Merkin, 2003). The Sasse syndicate 762 started fraudulent operations in 1976 and Lloyd's suspended Sasse in 1977. The syndicate contained surplus line brokers involved in fraudulent insurance claims on property in New York's South Bronx that had been largely over-insured (Hodgson, 1986: 247). This was organised through Harrison with the binding authority he had received from Sasse (Davison, 1987: 46). The syndicate was working with real estate speculators and the gangsters in New York to fraudulently create losses and then make a profit from the claims that followed (Flower & Jones, 1981: 179). For example: the insurance policies that the Sasse syndicate offered were backdated to cover fires that occurred in previous years and would then immediately and deliberately set the buildings on fire to create a claim (Brady, 1983: 14).

It was also suspected that Sasse had fraudulently falsified his accounts for the years 1974, 1975 and 1976 on syndicate 762 to show a profit instead of an actual loss that was suffered in those years (Hodgson, 1986: 257; Gwilliam, Macve & Meeks, 2000: 74). These fraudulent accounts were submitted to the Lloyd's Policy Signing Office and certain documentation was withheld that showed an understatement of premium on the 1975 and 1977 year of accounts. Lloyd's was kept in the dark about the true financial position of syndicate 762 (Hodgson, 1986: 258).

The Names only learned that their syndicate was in trouble in 1979 when cash calls started arriving and they refused to pay their share of the losses and sued Lloyd's for breaching its duty of care to the Names and its duty to oversee the managing agents. The Names, led by Paddy Davies, an aggrieved Name on the Sasse syndicate, sued the committee of Lloyd's directly (Hodgson, 1986: 276). The Names also alleged that Sasse and his agents were fraudulent and formed an association which manifested into what is known today as the Association of Lloyd's Members. The Names and Lloyd's settled out of court in 1980 with the Names agreeing to pay only a third of the total losses and Lloyd's paying the remainder. Lloyd's did not want the events of the Sasse syndicate to be made public[53] (Luessenhop & Mayer, 1995: 139, Davison, 1987: 46; Hodgson, 1986: 287).

[53] http://www.spreadingtherisks.com/Lloyds.asp

Frederick Sasse pleaded guilty and was permanently suspended from being an active underwriter but was allowed to continue at Lloyd's as a non-working member (Hodgson, 1986: 370).

4.2.6.6. Howden Group

In January 1982 Alexander & Alexander, a well known American broker, purchased a successful Lloyd's broker managing agency by the name of Howden Group for $300m.[54] Howden Group became a subsidiary of Alexander and Alexander by the name of Alexander Howden Group limited. It later changed its Name to Aon Group Limited (Barber, 2000: 2). Howden Group was run by four men known as the Gang of Four– Ken Grob (chairman) also known as the 'Grobfather' for being able to make people offers that they could not refuse,[55] Ronald Comery, Jack Carpenter and Allan Page. In addition there was a very close colleague by the name of Ian Posgate who was the main underwriter at Howden with a nickname of 'Goldfinger' because of the profit he made for his Names by collecting large premiums on large risks and not having to pay a claim very often.[56] He was known as one of the most adventurous underwriters at Lloyd's seeking out the most dangerous business where others do not dare to go (Hodgson, 1986: 79; Luessenhop & Mayer, 1995: 51). He was not one to follow rules, often breaching market regulations and secretly reinsured his syndicates with offshore companies owned by himself and others (Luessenhop & Mayer, 1995: 52). He also accepted premiums above his maximum stamp capacity (Luessenhop & Mayer, 1995: 143; Hodgson, 1986: 314).

In January 1971, the committee of Lloyd's finally decided to bring him to heal after finding out that he had taken money out of one of his syndicates for a house bridging loan and failed to keep a proper record in his underwriting accounts (Hodgson, 1986: 313). The committee declared that he could only continue to work in the insurance market under supervision (Raphael, 1995: 98). He was only allowed to write for one managing agent with prior approval from the committee. The managing agent chosen for him was Ken Grob (Hodgson, 1986: 314).

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[54] http://www.answers.com/topic/alexander-alexander-services-inc; Stewart (1984: 1).
[55] Luessenhop & Mayer (1995: 151); Hodgson (1987: 333).
[56] Hoefle (1996: 28); Hodgson (1987: 78); Davison (1987: 56); Luessenhop & Mayer (1995: 52).

A routine check was being made by accounting firm Deloitte's of Howden Broker after the acquisition of Howden by Alexander & Alexander (Davison, 1987: 56), when the accounting firm discovered that over $55 million were missing from Howden and had been placed from the insurance syndicates at Lloyd's to companies controlled by Grob and his three partners via fake reinsurance contracts (Hoefle, 1996: 28). Ian Posgate was involved in all the dealings between Grob and his three partners, as he used Howden as a broker for 3/4s of his syndicate's reinsurance business. This money was being used for their own benefit – setting up trust funds under pseudo names to buy a Swiss private bank, works of art; to falsify the accounts of Howden making it look like they were extremely profitable on the stock exchange; and to pay Howden employees additional benefits (Raphael, 1995: 100; Hoefle, 1996: 28).

Once Grob and his partners were discovered by Lloyd's they agreed to return some of the money. Alexander and Alexander made the fraud public knowledge which led to a three year investigation by the Department of Trade, and in 1985 Grob, Comery and Carpenter were expelled from Lloyd's. Charges against Page were suspended due to his failing health; and Posgate was suspended for 6 months and found guilty of discreditable conduct (Hoefle, 1996: 28; Hodgson, 1986: 340). Four years later, Posgate and Grob were acquitted of criminal charges brought against them.

4.2.6.7. PCW syndicate

The audit made on the Howden Group exposed another fraud at Lloyd's. While Deloitte's focused on the accounts of Howden Group they noticed some other irregularities in these accounts. Howden Group had placed Quota Share reinsurance for the PCW underwriting syndicates with companies that were secretly owned by PCW and they were making unnaturally high profits (Raphael, 1995: 105).

The syndicate was started by Peter Cameron-Webb in the 1960s along with his partner Peter Dixon. Minet, a leading Lloyd's broker, bought PCW in 1973 with the chairman of Minet, John Wallrock, becoming the director of PCW (Raphael, 1995: 106; Hoefle, 1996: 29). It was found by the audit that PCW was taking profits from its Names via fake reinsurance policies which the

underwriters of PCW secretly owned making personal profits at the expense of the Names (Hoefle, 1996: 29). In November 1982 the reinsurance scheme was made public after an inquiry made by the Committee of Lloyd's. Dixon was immediately suspended and relieved of duties as director of other syndicates and weeks later Wallrock admitted being involved in the scheme arranged by Cameron-Webb and resigned as director of Minet and PCW. Cameron-Webb resigned before any disciplinary action was brought against him (Hoefle, 1996: 29). Three years of investigations by the Department of Trade revealed that Cameron-Webb, Wallrock and Dixon had pocketed over $50 million. None of the men involved were tried in court since they all fled to the US before the warrants of arrest could be issued. The Names of the PWC syndicates were left with losses up to $400m after the scandal (Hoefle, 1996: 29). The PCW syndicate was placed in the care of Richard Beckett – a well known marine underwriter – to attempt to recover the money lost by the Names on this syndicate through fraud (Davison, 1987: 60).

Peter Miller who succeeded Peter Green as chairman of Lloyd's was originally involved in the legal profession, later becoming a broker and finally the chairman. "Miller was lionized by everyone as the brilliant leader for the future who would easily correct any minor flaws that had survived Davison's work" (Luessenhop & Mayer, 1995, 155). He was given the task of taking care of the PCW scandal estimating that the losses suffered by the Names were approximately $60m.

Later a central fund by the name of Lioncover[57] was set up to deal with the PCW run-off claims (Hoefle, 1996: 12; Bannister, 1995: 6) with £100 million set aside for the possibility of unforeseen future claims. It turned out that even this fund was completely inadequate as the PCW syndicates were heavily involved in asbestos and pollution claims (Raphael, 1995: 259). The PCW syndicate finally stopped trading in July 1985 (Davison, 1987: 174).

[57] Refer to 4.3.2.1

4.2.6.8. Sir Peter Green

Sir Peter Green pushed the idea through parliament that Lloyd's should be exempted from the Financial Services Act and self-regulated through the Lloyd's Act. The Act would allow the people who understood the insurance business to run the market as opposed to government officials who lacked such knowledge. He was awarded the Lloyd's Medal for this contribution to Lloyd's. After his discreditable conduct his name was removed from the list of Lloyd's men to receive such a medal (Luessenhop & Mayer, 1995: 31).

The PCW saga was even more disgraceful for Lloyd's than originally thought since the chairman of Lloyd's at the time, Sir Peter Green, was also involved in the scandal. When the allegations of fraud on the PCW syndicate emerged, Sir Peter Green led an inquiry into the accusations on his own stating that no fraud was apparent (Hodgson, 1986). Eight months later a cover up by Sir Peter Green was suspected regarding the PCW syndicate and in July 1986 the Department of Trade and Industry found him guilty of discreditable conduct (by being grossly negligent regarding the treatment of his Names) which led to his suspension from Lloyd's (Hoefle, 1996: 29).

An article was published in 1987 stating that Sir Peter Green failed to inform his Names until 1983 that he and his brother owned shares in the offshore company, Imperial which was used as a reinsurer for Mr. Green's syndicate. Mr. Green was fined £12 500 for this detrimental conduct.[58]

The disgrace brought on by Sir Peter Green was handled by the new chief executive of Lloyd's brought in by the Governor of England, Ian Hay Davison (Davison, 1984: 159; *Frederick Thomas Poole and Others v Her Majesty's Treasury* [2006] EWHC 2731: 10), who, as from 1983, made it a requirement that all members of Lloyd's disclose their financial interests to their Names and the Society of Lloyd's (Hoefle, 1996: 29). This led to Sir Peter Green having to inform his Names regarding the fraudulent reinsurance programmes their money was involved in. This admission led to an inquiry being made by the Inland Revenue followed closely by the

[58] *Business Insurance* Newspaper, May 11 1987, p93

resignation of Sir Peter Green. The Names were repaid $10.6m involved in his syndicates by the Society of Lloyd's.

4.2.6.9. Christopher Moran

Underwriters are permitted by the Council of Lloyd's to have their marine syndicates insure up to a maximum of 70% of non-marine risks if the marine business is unable to sustain the syndicate. Christopher Moran was brought before a disciplinary committee, chaired by Stephen Merrett, for insuring over 70% of non-marine risks through his marine syndicate. Stephen Merrett at the time however was guilty of the same misconduct having insured over 90% of non-marine risks through his marine syndicate (Luessenhop & Mayer, 1995: 66).

Christopher Moran was a wealthy aviation broker who exposed his syndicate to intolerable financial risks and concealed these transactions from the auditor and was accused of but not convicted of fraud (Raphael, 1985: 90). He was the first member of Lloyd's to be expelled for life from the society in 1982, by the Chairman Sir Peter Green, on the grounds of discreditable conduct[59] under the rules of the Lloyd's Act of 1871 where an 80% vote was needed from the Names attending the meeting (Luessenhop & Mayer, 1995: 143; Hodgson, 1986: 256).

The Moran incident brought the realization to the committee of Lloyd's that reform of the old rules and regulations were much needed (Raphael, 1985: 91). This led to another investigation, chaired by Sir Henry Fisher held in 1980, and a proposal was made that Lloyd's was in need of a new Lloyd's Act which needed to change the existing committee to be made up of a wider range of individuals and no longer concentrated to members from Lloyd's, and these new committee members were to be given regulating powers over the market (Raphael, 1985: 92).

4.2.6.10. Oakeley Vaughan

The Oakeley Vaughan syndicate had written aviation insurance in excess of its allowable limit/stamp capacity thereby exposing its Names to heavy losses and had hidden it through the

[59] *Business Insurance* Newspaper, May 11 1987, p94

falsification of numbers on the books and fake filing with the Lloyd's Policy Signing Office during the 1980s (Hoefle, 1996: 30).

The syndicate had under declared the premium they were receiving from this aviation business to the Lloyd's Policy Signing Office as well as delaying the recognition of claims for as many years as possible to make the syndicate appear profitable (Luessenhop & Mayer, 1995: 140; Raphael, 1995: 279). Lloyd's launched an inquiry into the dealings of the syndicate. The syndicate immediately wrote to their Names stating that the inquiry was merely routine and there was nothing to be worried about. However, more allegations of false accounting emerged and it was held that the agency had deliberately withheld valuable information from the auditors as well as the Signing Office, the management of the agency was wholly inept and the syndicate was actually insolvent (Raphael, 1995: 282). Luessenhop & Mayer (1995: 140) state that "everything Oakeley Vaughan touched turned to junk".

The Names knew nothing of these findings as Lloyd's did not publish the findings of the inquiry. The only information given to the Names, in September 1981, was that the directors of the agency were suspended for two years due to discreditable conduct. The agency was liquidated in 1988 (Raphael, 1995: 283). The Names then faced extremely high losses and were angry as to why Lloyd's allowed the agency to continue underwriting if it was so incompetent and why were the Names not informed. The Names sued Lloyd's for burying the knowledge it received about the syndicate without informing the Names. Lloyd's responded that it did not, in law, owe the Names a duty of care. The Names then sued Lloyd's directly and not the managing agents. The Lloyd's Act of 1982 precludes anyone from suing the council of Lloyd's. The case was dismissed in the High Court and in 1993 the House of Lords ruled in favour of Lloyd's that it did not have a duty of care towards the Names (Raphael, 1995: 285; Luessenhop & Mayer, 1995: 141). The members' agents however, do owe a duty of care to their Names and can be sued for negligent underwriting[60] (Luessenhop & Mayer, 1995: 252).

[60] Refer to Appendix 2 for examples of some litigation brought against Lloyd's by aggrieved Names.

4.2.6.11. Murray Lawrence

Walter Nicholas Murray Lawrence was the chairman at Lloyd's in the late 1980s. His public denial of the problems insurers were soon to face regarding asbestos claims and the lawsuits to follow made Names angry. However, privately he reinsured his asbestos syndicate in 1982 while he was the chairman of the Lloyd's audit committee (Luessenhop & Mayer, 1995: 77). Once his own risks were reinsured he advised other underwriting managers to do the same and make arrangements for ample reserves for future asbestos claims. However, he failed to inform any of the Names of the asbestos claims to come.

In 1995 a reporter from the *Financial Times* accused Lawrence of having knowledge about the billion dollar claims to hit Lloyd's as early as the 1980s and not disclosing this information to existing Names. In addition he was desperately recruiting new Names to increase capital at Lloyd's to pay for the coming losses without sharing this information with them (Luessenhop & Mayer, 1995: 248). Lloyd's succeeded in recruiting many new Names as shown by an increase in Names from 7000 in the 1970s, 14 000 in the 1978 and up to 34 000 by the 1980s (McClintick, 2000: 42). None of these Names were informed of the asbestos losses they were being assigned to.

David Coleridge was the chairman of Lloyd's for two years directly after Murray Lawrence and was left the task of informing the public of the large losses hitting Lloyd's. In 1991 he publically predicted that the losses from previous years were not going to be disastrous and stated that the market was becoming profitable again. Later that year he announced that the big fuss made by Names was only due to the fact that they did not like to lose money and by 1994 he still held the same view that the Names entered into a risky business and should not complain if losses were made (Luessenhop & Mayer, 1995: 78).

David Coleridge believed that even with all the large looses flooding Lloyd's, the institution of Lloyd's itself was never in any danger of failure (Luessenhop & Mayer, 1995: 79). However, his actions proved that he did in fact fear for Lloyd's since in 1992 he imposed a levy on all the Names at Lloyd's to be paid over a period of three years as a tax on their premium income. This

money was then placed into the Central Fund used to pay claims when the Names refused to respond to their cash calls (Luessenhop & Mayer, 1995: 254).

4.2.6.12. Ronald Verrall

Ronald Verrall was an underwriter for David Rowland and received information that the leading asbestos manufacturer in America, Johns Manville Corporation, would soon declare bankruptcy due to the damaging effects of the substance. He also knew that claims to hit Johns Manville Corporation would be so huge that even last resort reinsurers like Lloyd's would be heavily affected. Immediately after receiving this information Verrall began reinsuring the asbestos liability on David Rowland's syndicate into other syndicates. He concealed the asbestos problem from the reinsuring syndicate and its Names by falsely stating that he was reinsuring shipping cargo instead of asbestos liabilities. Verrall's syndicate was later found to be liable for non-disclosure of material facts by an arbitration committee (McClintick, 2000: 45).

Ronald Verrall was not the only underwriter to attempt to offload asbestos risks onto other syndicates before the bubble of asbestos claims burst. Many syndicates were doing just that.

4.2.6.13. Baby syndicates

Luessenhop & Mayer (1995: 154) distinguish one type of syndicate at Lloyd's know as the Staff syndicates, baby syndicate or preferred syndicate, where an underwriter would reinsure the safest risks that he had accepted with another syndicate. It is not essential for the syndicate to take out reinsurance on such risks since the probability of a claim is very low. However, this was used as a means to keep the profits of the good risks inside Lloyd's by way of premium payments to another syndicate instead of being paid out as profits to the Names.

Baby syndicates were used to continue the deception at Lloyd's. Baby syndicates were set up for the benefits of the insiders at Lloyd's to move the profits of a syndicate to another parallel syndicate of which only the insiders were involved and in this way discriminating against

external Names (Finger, 1996: 18; Atkinson, 2000). The insiders such as the underwriters, agency directors and their families were able to keep the profits going into the main syndicate for themselves by having the main syndicate reinsured through the baby syndicate (Fisher, Bewsey, Waters *et al*, 2003: 189). When profits were coming into the main syndicate the baby syndicate were taking all the profits and if losses occurred they were paid by the members of the main syndicate and not the baby syndicate. In 1980 there were over 90 baby syndicates (Hansard, 1994). In the case of *Society of Lloyd's v Henderson and others* (2005) EWHC 850 (Comm) QBD it was alleged that Lloyd's failed to prohibit or restrict the use of baby syndicates and did not ensure that managing agents informed the Names of the existence of such syndicates.

Some baby syndicates consisted of only three members which would split the profits amongst themselves for personal gain (Luessenhop & Mayer, 1995: 154). Baby syndicates were banned through the passing of a bye-law in 1985 (Davison, 1987: 99).

4.2.7. Accountants during this period

A valid question asked by Gwilliam, Macve & Meeks (2000: 72): How did the accountants and the audits miss all the fraud that was taking place at Lloyd's? During the 1970s there were two types of audit requirements: The syndicate accounts audit and the solvency audit.[61] The solvency audit was the method most relied upon and it was designed to protect the policyholders and not the Names. The emphasis was on having an accurate RITC (Gwilliam, Macve & Meeks, 2000: 72) therefore not enough attention was paid to the protection of Names.

Another view is that accountants and auditors were in the forefront of the misconduct at Lloyd's, even though they were never in the forefront of allegations. The underwriters took money from insurance accounts for their own personal gain but it was the accountants who failed to detect or report this. Auditors were reliant on Lloyd's for a large portion of their fee income came from Lloyd's. Auditors were the bookkeepers for the syndicates. Panel auditors handled the tax affairs of the Names that were on the syndicates that were audited and also advised managing

[61] Refer to chapter 5.2.3.

agents on ways to minimise the Names' tax liabilities (Gwilliam, Macve & Meeks, 2000: 74). Davison (1987: 5) is of the opinion that the suspicious tax arrangements of the 1970s can only be attributed to the accountants.

Many individuals at Lloyd's did not understand how Lloyd's functioned and would turn to accountants and lawyers for advice. The members at Lloyd's would find accountants who had the same point of view or go to accountants who would then give advice based on their own best interests and not that of Lloyd's. When questioned, the members of Lloyd's would hide behind their faults stating that what they did was acceptable because an accountant or lawyer deemed it so. "These legal and accounting advisers…corrupted Lloyd's" (Luessenhop & Mayer, 1995: 125).

Ian Hay Davison pointed out that it was falsely believed that the auditors performed an independent audit of the syndicates' accounts. This was not the case as the profits of a syndicate were determined by the RITC amount which is calculated by the underwriter. The accountants merely accepted the RITC amount as being correctly calculated and did not challenge the end result. The auditors did not audit Quota Share reinsurance agreements, nor did they aid in the year end adjustments. All of this was left to the underwriter. In this way it became quite easy for auditors to miss the fraud at its earliest stages (Luessenhop & Mayer, 1995: 149; Gwilliam, Macve & Meeks, 2000: 73).

The accounting and audit standards at Lloyd's changed from what was used in the 1970s/1980s to what was used after the crisis period (Gwilliam, Macve & Meeks, 2000: 64). New accounting and audit standards were introduced to diminish agency costs and combat the problem of conflict of interests. Publication of syndicate accounts became mandatory and had to be in accordance with the UK Statements of Standard Accounting Practice (SSAPs) with adaptations made for the unique accounting methods of Lloyd's. The auditors had to give a true and fair opinion on the accounts (Gwilliam, Macve & Meeks, 2000: 76) making it difficult for managing agents to exploit their principles, the Names (Gwilliam, Macve & Meeks, 2000: 81).

4.2.8. Tax avoidance

During the period of 1950-1983 Lloyd's enjoyed what many thought to be generous tax treatment by the government. An individual who was a Name at Lloyd's received tax advantages on their investments at Lloyd's. These higher returns were directly controlled by the agents of the syndicates (Gwilliam, Macve & Meeks, 2000: 79).

The Inland Revenue Service (IRS) was of the opinion that the claims provisions charged to the income statements were too large resulting in excessive provisions being kept by syndicates. These provisions were thus seen as profits. The IRS thus wanted to tax the remainder of the provisions leaving only a small provision to be kept for the payment of claims. Ian Hay Davison noted that syndicates would then, instead of raising provisions, buy reinsurance overseas and thereby avoid paying the tax required. The provisions that were in this fashion built-up abroad would earn investment income and would only be taxed if returned into the country. Popular places to place reinsurance business were the Bermuda and Cayman Islands where interest can be earned tax free. In this way syndicates built-up off-shore, off-balance sheet assets not subject to scrutiny. If managers of syndicates owned the off-shore reinsurer the possibility of fraud is obvious. The syndicates thus walked a fine line between acceptable tax avoidance and criminal tax evasion (Luessenhop & Mayer, 1995: 154; Davison, 1987: 51).

4.2.9. Ian Hay Davison

In 1982, in response to the allegations of fraud and lapses in corporate governance, Sir Peter Green, the chairman of Lloyd's, asked Ian Hay Davison to chair an inquiry into the audit requirements at Lloyd's.[62] Davison had the assistance of an accountant and a lawyer, both from outside of Lloyd's as well as four members from Lloyd's (Hodgson, 1986: 363). At this time he was not yet working for Lloyd's and was an accountant by profession (Davison, 1987: 5). The Bank Governor, after finding out that Davison was heading an inquiry into Lloyd's regarding

[62] In addition to this inquiry there have been various other inquiries and systems into Lloyd's including the Walker inquiry, the Neill Report, the Fisher Report, the Roland Task Force and the Members Hardship Scheme. A summary of each is provided in Appendix 2.

accounting and fraud, offered him the position of Chief Executor of Lloyd's which he accepted. Davison started work at Lloyd's on the 14th February 1983 and was required to provide three things for Lloyd's (Davison, 1987: 68; Davison, 1985):

- Continuity – members elected to be in the committee were changed annually
- Management skills – since underwriters and brokers did not have good management skills
- Impartiality in the application of the Lloyd's rules.

In addition to the three elements mentioned above, Davison was given the task of restoring public faith in Lloyd's, the creation of a rule book by writing down the market rules to be used as a comprehensive legal guide to the regulation of the market (Davison, 1987: 70; Bannister, 1995: 16) and to make sure that Lloyd's was equipped with an adequate regulatory framework needed for the world's largest insurance market (Davison, 1987: 71).

4.2.9.1. Restoring public faith

Journalists were of the opinion that Lloyd's was shrouded in secrecy, only the elite were allowed to join Lloyd's and there was the opinion that Lloyd's would cover up any fraud allegations. Davison was tasked with creating a better relationship with the press to change these misconceptions. He held monthly press conferences and offered as much information as possible about Lloyd's. The interest that the press had in Lloyd's started to dwindle as a result of these conferences but flared up again after the PCW scandal in 1985 (Davison, 1987: 77). To restore public opinion Davison published the annual returns of Lloyd's to the Department of Trade and Industry (DTI) showing that Lloyd's did have financial reserves to deal with the problem. The press was satisfied and interest in Lloyd's waned (Davison, 1987: 78).

A more permanent way to restore public opinion was for Lloyd's to show that is was willingly going to take disciplinary measures against the individuals involved in the scandals and fraud. The new Act allowed for the creation of a Disciplinary Committee made up of members of Lloyd's as well as an Appeal Tribunal made up of outsiders to deal effectively with all

allegations. The committee had the power to expel, reprimand, suspend or fine the delinquent member (Davison, 1987: 79).

4.2.9.2. The rule book

Rules of the market were often only available as letters received from the chairman or the committee. These letters were largely ignored. "Letters are fine for guidance but do not form an effective basis for disciplinary action" (Davison, 1987: 91). Market agreements that govern the operations of underwriters and brokers are also not adequate enough to produce reliable regulation (Davison, 1987: 91).

The rule book included bye-laws, regulations, codes of conduct, guidance and explanatory notes, manuals and market letters all complied into one format. The rule book focused on three critical things that needed to be addressed in the market: regulate the admission of new members, to govern the conduct of all members and to establish a quick and effective disciplinary mechanism (Davison, 1987: 93; Bannister, 1995: 16). Once the rule book was published Davison set out to educate the underwriters to increase their understanding of the legislation through seminars ensuring that the members at Lloyd's knew the duties of an agent, duties of directors and the effect that the legislation will have on their daily routine (Davison, 1987: 98; Davison, 1985: 4-5).

The main achievement made by Davison for Lloyd's was to establish disclosure in the accounts of the syndicates and allowing them to be published to the external Names in an attempt to severely reduce the conflict of interest between Names and their agents (Davison, 1987: 6). Davison resigned from Lloyd's in November 1985 as Deputy Chairman and Chief Executive, leaving Lloyd's free to appoint a successor (Davison, 1987: 1).

4.3. 1990's - current

In addition to the various inquiries and systems discussed in Appendix 4 Lloyd's also took the drastic step of creating Equitas through its Reconstruction and Renewal program.

4.3.1. Reconstruction and Renewal program

4.3.1.1. Lioncover

In 1997 Lloyd's syndicates and members that were involved with the PCW syndicate were reinsured to close with Syndicate 9001. This syndicate retroceded the liabilities it incurred as a result of the PCW scandal to an insurance company by the name of Lioncover Insurance Company limited. This company was set up by Lloyd's as a subsidiary company and was financially supported by Lloyd's (Stevenson, 2009). Its primary purpose was to help in the run-off of PCW and to bailout underwriters at Lloyd's who were involved in the PCW syndicates (Raphael, 1995: 259; Anonymous, 1995: 29; Bannister, 1995: 16). In 1997 Lioncover reinsured its liabilities with Equitas Reinsurance Limited and in 1999 it took over from Syndicate 9001 as the direct reinsurer to close of PCW Names (Stevenson, 2009). By 2005, this subsidiary had to pay out over £525 million because of asbestos, environmental and health-hazard claims that were still coming in on the PCW syndicates (Mayerson, 2006).

4.3.1.2. Centrewrite

Claims flooded into Lloyd's on a daily basis depleting the capital and reserves at an alarming rate. At this rate Lloyd's was running out of capital as the old Names stopped underwriting and not much new capital was entering since people were too scared to become a Name. Lloyd's answer to this crisis was to set up a reinsurance company by the name of Centrewrite.[63] This insurance company provided a way out for Names belonging to open years of accounts by offering to buy their prior years liabilities at very high prices since the uncertainly regarding claims was high.

[63] Raphael (1995: 261); Luessenhop & Mayer (1995: 255); Newton (1992: 5).

Lloyd's decided to split all open years into either the soft group or the hard group. The soft group syndicates which could be closed quite easily allowing Centrewrite to do so immediately, whilst the hard group syndicates (affected by asbestos, pollution and other latent diseases) were to be reinsured into a limited company and receive all those syndicates reserves (Raphael, 1995: 266). This attempt at stabilizing the market was not very successful as many Names could not afford this reinsurance cover (Raphael, 1995: 261).

4.3.1.3. Equitas

To tackle the lack of capacity, as hardly any new Names were joining Lloyd's it was agreed to accept limited liability corporate capital. This clearly was needed to strengthen the Lloyd's existing capital base. However, corporations were not interested in investing capital in Lloyd's as long as the open year accounts were still part of the risk (Raphael, 1995: 322). Also, with the full implications of unlimited liability finally becoming clear it was apparent that the Names investing on high risk syndicates were in trouble. Lloyd's understood that the only way new capital would enter the market was if the asbestos and pollution claims as well as any open year accounts were completely separated from the reconstructed Lloyd's insurance market. Peter Middleton, the Chief Executive of Lloyd's, was of the opinion that for Lloyd's to survive a Reconstruction and Renewal (R&R) program would be required (Middleton, 1995: 16, 18). Lloyd's accordingly implemented the R&R program to reverse the negative impact of the financial problems it faced in the 1980s and the trading losses suffered between 1988 and 1992. In so doing it laid down a strong foundation for the future success of Lloyd's.[64] A break with its past was needed.

It was decided to reinsure all 1992 and prior liabilities into a newly formed company through this R&R program (*Frederick Thomas Poole and Others v Her Majesty's Treasury*, 2006: 59). This included all pre-1985 policies where all the claims and reserves before 1986 where placed on a

[64] Lane (1996: 1); Rasmussen, Owen & Smith (1997: 9); Catlin, Harrison, James et al (1998: 30); Noonan (1996:49); Major (1995: 3, 17).

limited liability basis.[65] The year 1985 was included because that is where the bulk of the exposures such as asbestos and pollution lie at Lloyd's (Hutter, 1995: 1). NewCo, the name given to the newly formed company, was developed through this business plan and formed in 1993 to reinsure all risks prior to 1992 especially those prior to 1985. All liabilities prior to 1985 were reinsured first and once this was complete the 1986 and post liabilities where then only reinsured (Bannister, 1995: 11). This was completed by in 1996 (Anonymous, 1995a: 14; Anonymous, 1995b: 2; Major, 1995: 17; Fields, Klein & Myskowski, 1998: 176).

These risks would all be reinsured with NewCo to shield Names against past liabilities.[66] NewCo had over £4bn in capital that Lloyd's was able to pool together from the different syndicates at Lloyd's. This new company was regulated by the Department of Trade and Industry (Hutter, 1995: 13; Rowland, 1996: 11). The aim of NewCo was to take-over the provisions of syndicates involved in long tailed risks and make calls on Names should additional capital be required and pay off each claim that slowly came into Lloyd's (Luessenhop & Mayer, 1995: 102). It took over all the old year liabilities as a means to reassure new Names that they will not be placed on old year heavy liability losses if becoming a new Name (Alston, 1993c: 15; *Cover*, 1993b: 16). The net result would be to ring-fence the old years and past liabilities.[67] This was done to offer old Names finality.

By the end of 1995 all old year accounts/polices were reinsured by NewCo and all the pollution and asbestos claims were isolated by this company (Raphael, 1995: 326; Hutter, 1995: 7). Lloyd's changed the name of this company in September 1994 to Equitas with a 95% acceptance level of this settlement package[68] by Names in 1996.[69] The remaining 5% of Names who did not accept the settlement offer did not receive any benefits from the formation of Equitas and were pursued vigorously by Lloyd's to pay their share of the claims (Anonymous, 1995: 19). Equitas

[65] Raphael (1995: 323); Hutter (1995: 1); Rowland (1996: 3); Catlin, Harrison, James et al (1998: 79); Anonymous (1995a: 3); Benfield Group Limited (2006: 18).
[66] Cover (1993b: 16); Alston (1994b: 16); Rowland (1996: 3).
[67] Luessenhop & Mayer (1995: 269); Alston (1996: 55); Cover (1996b: 55); Rowland (1996: 3).
[68] This was done with the understanding that in return for the package the Name would give up his rights to litigation regarding any prior 1992 liabilities against the Society and the agents (Anonymous, 1995:6, 18-19, 45). The Name was also given the opportunity to resign once the settlement package was accepted as well as the assertion that no further calls will be made on the Name (Anonymous, 1995: 3, 12).
[69] Raphael (1995: 267); Alston (1995a: 4); Hutter (1995: 2); Catlin, Harrison, James et al (1998: 46); Alston (1995b); *Cover* (1997: 13); Anonymous (1995a:6).

does not constitute as a transfer of liabilities but operates as a reinsurance to close for syndicates that have years left open (Hutter, 1995: 11). It has the same purpose as NewCo to reinsure non-life syndicates' liabilities during and prior to 1992 year of accounts at Lloyd's (Rasmussen, Owen & Smith, 1997: 9; Rowland, 1996: 3). Equitas supplied run off cover on these liabilities (Rasmussen, Owen & Smith, 1997: 9). Equitas was established as a completely separate company from that of Lloyd's (Major, 1995: 29).

The premium received by Equitas was £11.2bn to reinsure all non life liabilities up to and including the 1992 year of account. Equitas received its premium through syndicate assets, assets in the Central Fund of Lloyd's, contributions made by brokers and payments made by Names (Benfield, 2006: 16).

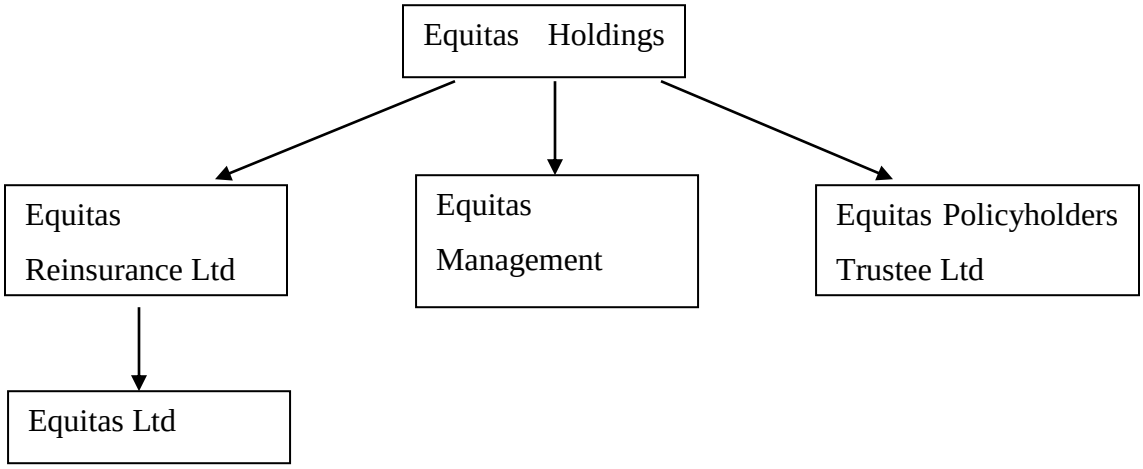
Originally liabilities that were already reinsured with Lioncover were excluded from the cover offered by Equitas however in 1997 Equitas extended its cover to include liabilities previously covered by Lioncover, Centrewrite and the Hardship Scheme i.e. all the society's own 1992 and prior liabilities were also reinsured by Equitas (Benfield Group Limited, 2006: 16; Catlin, *et al*, 1998: 81; Anonymous, 1995: 23-24, 28-29). Through Equitas Lloyd's was able to cut itself off completely from all the liabilities that nearly destroyed it i.e. pollution, natural catastrophes, asbestos and fraud litigation. Equitas took on the entire burden of previous years leaving Lloyd's free to start anew and only focus on the ongoing business (Benfield, 2006: 16). Equitas is governed and regulated by the Financial Services Authority (FSA) and is completely independent of Lloyd's as from 1996. This is viewed with relief by Lloyd's since its track record of never failing to pay a valid claim will be left untarnished even if Equitas fails to pay claims, since Equitas is separate from that of Lloyd's (Luessenhop & Mayer, 1995: 271).

The R&R program was created to build a new Lloyd's completely separate for the 'old' Lloyd's. Equitas can be seen as "a new central fund and a firebreak" to separate the new Lloyd's from the old[70]. In summary Lloyd's focused on the following four main elements while creating Equitas (Anonymous, 1995: 4, 28-36; Major, 1995: 3, 20-21, 30):

[70] Rasmussen, Owen & Smith (1997: 9); Anonymous (1995a, 6, 14); Bannister (1995: 2); Major (1995: 16); Anonymous (1995c: 6).

- Separating the past from the future – offering finality through Equitas,
- Increase the role of corporate capital,
- Create a new central fund – the current fund (CF-1) will be used in the R&R program and the money will be placed into Equitas. A new central fund (CF-2) will then be created at Lloyd's for all 1993 and subsequent years of account.
- Implement a capital raising strategy.

Figure 1: The Structure of Equitas



The parent company is known as Equitas Holding limited as can be seen from the diagram above and it is owned by a flexible trust consisting of 7 trustees who act in the best interests of the 34 000 reinsured Names (Benfield, 2006: 17). The trustees, and not the reinsured Names, are the shareholders of Equitas and they do not receive any dividends on these shares, only having the voting rights carried by each share.

Equitas is not allowed to underwrite any new business (Benfield, 2006: 16). Its sole purpose is to deal with open accounts from Lloyd's. However, two of the companies in the Equitas group are allowed to conduct reinsurance business, namely the Equitas Reinsurance Group and Equitas limited. Equitas Reinsurance Limited reinsured all the business written by Lloyd's syndicates prior to 1992 and this entire reinsurance business was then ceded to Equitas limited (Benfield, 2006: 17; Catlin *et al*, 1998: 81). Equitas limited is the main operating company of Equitas

holdings and when people use the name ‘Equitas’ that is the company they are referring to (Benfield, 2006: 18). Equitas limited deals with the policyholders, reinsurers and brokers directly.

Equitas aimed to settle claims as soon as possible preferring to deal directly with policyholders rather than going through an intermediary. If it is clear that the claim is valid Equitas pays without delay. However, if there is some uncertainly whether the claim is valid, Equitas would ideally prefer to settle the claim with the claimant without any legal intervention (Benfield, 2006: 18).

4.3.1.3.1. Berkshire Hathaway

The Berkshire Hathaway Corporation proposed to acquire Equitas in 2006 (Benfield, 2006: 3). This would end the long-tailed liability of Names reinsured by Equitas and completely eradicate any possibility of Lloyd’s being involved in any run-off problems on the policies (Veysey & Gonzalez, 2006 & Hosken, 2006: 57). A deal was struck between Equitas and the National Indemnity Company, which is a member of the Berkshire Hathaway group, in which the National Indemnity Company reinsures all the liabilities of Equitas providing an additional $7bn to Equitas as reinsurance cover as well as taking on the staff and operations of Equitas and also dealing with any run-off on the Equitas liabilities (Benfield Group Limited, 2006: 4; Veysey & Gonzalez, 2006; Benfield Group Limited, 2007: 21).

There were two phases to this acquisition. Phase one consisted of the National Indemnity Group providing reinsurance cover of $ 5.7bn to Equitas with the staff, operations of Equitas and any run-off being transferred to the subsidiary. Equitas was to transfer all its assets (less $319.2m that Equitas was to use for any miscellaneous expenses) and Lloyd’s was to also pay an amount of $133.6m to Berkshire Hathaway before the acquisition was to take place (Veysey & Gonzalez, 2006). Phase one was to be completed by March 2007 (Benfield Group Limited, 2007: 62) and was reported to be fully completed in December 2007 (*Cover*, 2007b: 6).

The second phase needed approval from the UK High Court for the transfer of all liabilities of the reinsured Names to be made to the National Indemnity Company (Benfield, 2006: 4; Hosken,

2008b: 69). If both phases were completed the Names would have had an additional USD7bn in reinsurance cover. "While Equitas has made significant progress in the last decade the group faced many uncertainties and the USD5.7bn of additional cover significantly improves the financial position of the group" (Benfield, 2006: 4).

For both phases to be completed several points needed to first be completed. Firstly, permission needed to be received from the Financial Services Authority[71] (FSA), the Equitas trustees and the members of Lloyd's prior to 2007.

On the 25 June 2009, Mr. Justice Blackburne in the UK High Court approved the statutory transfer of all 1992 and prior years non-life business from Lloyd's to Equitas and as from the 30th June 2009 Equitas became responsible for all the obligations of the pre-1992 Lloyd's business. Therefore, due to the authorization of this transfer, National indemnity provided reinsurance cover to Equitas of up to $7bn (Lyde & LLP, 2009).

The Rating Agencies perceived Equitas to have a negative influence on Lloyd's (Benfield, 2006, 15), however in 1997 and again in 1998 Standard & Poor's gave Lloyd's a rating of A+ based on "its very strong business position and recent profitability, together with a strong capital base, strong prospective financial flexibility and strong regulatory management" (Catlin *et al*, 1998, 37). In the 21st Century, Equitas is perceived as having a good effect on Lloyd's as it received a rating of A by three rating agencies, A,M Best, Fitch Ratings and Standard & Poor's in 2006 (Benfield, 2006, 5; Veysey & Gonzalez, 2006). Due to these better ratings afforded to Lloyd's by the rating agencies, Lloyd's had a good year in 2006 as confidence slowly returned to Lloyd's (Benfield Group Limited, 2007, 60). By 2010 the past no longer haunted Lloyd's and it received consistent ratings of A+ from Standard & Poor's and Fitch Ratings as well as an A from AM Best (Anonymous, 2010a: 18).

[71] Lyde & LLP (2009).

4.3.2. Further Issues

To tackle the high administrative costs problem Lloyd's moved away from pen and paper, the systems of the previous century, and slowly introduced computers and electronic equipment. Many of the older underwriters did not wholly rely on the new centralised administration and still kept their own records of their transactions. Record keeping of policies is now done electronically. The start up costs for this huge change were large as equipment had to be set up in each underwriters box and connected to the central computer.[72] However, in the long term costs should decrease.

Further issues plaguing Lloyd's was the European Commission in Brussels making an inquiry into whether Lloyd's was compliant with E.U insurance legislation. Also, the Department of Justice in America was doing a criminal investigation into Lloyd's looking at fraud and conspiracy (McClintick, 2000: 41).

4.4. Conclusion

Despite countless inquiries, investigations and lawsuits "Houdini-like, Lloyd's has escaped all substantive accountability for the actions that have ruined thousands of investors" as most of the lawsuits were settled before appearing at court (McClintick, 2000: 54). However, Lloyd's as a society has not remained unscathed. Its reputation has been damaged.

After the implementation of the Lloyd's Act of 1982 Lloyd's began to open up towards the public no longer insisting on being secretive. The old Committee was replaced by a new Council representing internal as well as external Names. Syndicate accounts are now available to the public for scrutiny and are audited to fall in line with generally accepted accounting standards. Reporters are becoming tolerated by Lloyd's and the staff is more helpful in providing information (Hodgson, 1986: 366). Divestment has occurred decreasing the incestuous nature of Lloyd's. Lloyd's was turning over a new leaf.

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[72] Luessenhop & Mayer (1995: 274); Catlin, Harrison, James et al (1998: 78); Hosken (2007b: 66); Anonymous (1995a: 7).

Newton (1993, 6) estimated that by the year 2000 Lloyd's would have only 150 syndicates – 45 marine, 70 non marine, 15 motor, 10 aviation and 10 short-term. In 2005 Lloyd's had 62 syndicates (Hosken, 2005: 61; *Cover*, 2005: 44). By 2010 Lloyd's consisted of 84 syndicates (Anonymous, 2010a: 20).

The introduction of corporate capital was a fundamental change for Lloyd's and by 1998 corporate capital provided 60% of the capacity for Lloyd's with a noticeable decrease in the number of unlimited liability individual Names with many Names having switched to limited liability (*Cover*, 1998a: 5). By 1999 limited liability capital amounted to 73% of the markets capacity (*Cover*, 1999: 3). Individual Names are slowly diminishing at Lloyd's opening the way for corporate capital.

Despite the turmoil Lloyd's could still note that "Lloyd's never has failed and never will fail to pay a valid claim, and whatever the size or nature of the insured losses you have suffered, the wealth of the English countryside will be mobilized to pay you" (Luessenhop & Mayer, 1995: 248). Lloyd's remains proud that in its 300 year history, even with all the hurdles it has faced, it has paid every single valid claim in full.[73]

By 2008 Lloyd's had fully recovered from the scandals, large losses and lawsuits of the 80s and 90s through the help of Equitas, the introduction of corporate capital and the removal of unlimited liability. Lloyd's was able to pay all its claims and remain financially stable during the September 11 attacks at the World Trade Centre in New York as well as the large number of natural disasters (Hurricane Katrina for example) that occurred in 2004/2005.[74] In 2008, during the worldwide financial downturn, Lloyd's competitive position strengthened and Lloyd's benefited from the market instability (Zinkewicz, 2009: 98). "Lloyd's of London competitive position strengthened in 2008, largely because of effective risk management oversight and relatively conservative investment allocation. The capital structure has proved resilient in the

[73] Hazell & Williams (1991a: 4); Williams (1991a: 32); Major (1995: 12); Anonymous (1995c: 4); Kuvin (1954: 411, 416, 420).
[74] Cover (2002a: 83); Cover (2002b: 12); Alston (2006: 20); Cover (2006a: 4); Cover (2006b: 26).

face of the worldwide financial catastrophe and financial strength ratings remain strong and stable. As a result, Lloyd's is well-positioned to benefit from current market dislocation."[75]

According to the Guy Carpenter report[76] Lloyd's reported a pre-tax profit of $3.5bn in 2008 being the third best result in Lloyd's history (Zinkewicz, 2009: 100). By the end of 2009 Lloyd's had made a pre-tax profit of £3.868m (Anonymous, 2010b: 2; Wilson, 2010: 5). By 2010 Lloyd's had 84 syndicates, 181 brokers and was active in 200 countries and territories[77] (Anonymous, 2010b: 18). Lloyd's is active in the protection of businesses against climate change and climate related disasters, is involved in the creation of new technologies and the insurance of such technologies, insurance against terrorism as well as giving cover for satellites and space-related risks. In this way Lloyd's is seen today as an innovator in insuring new, unusual and complex risks (Anonymous, 2010b). A summary of important dates in the history of Lloyd's can be found in Appendix 2.

[75] Lloyd's 2008 Results – Resilience in a Tough Market. http://www.gccapitalideas.com/2009/05/13/lloyds-2008-results-resilience-in-a-tough-market (last accessed 4 November 2009).
[76] Ibid.
[77] 45% in the US and Canada, 6% in other Americas, 20% in the UK, 16% in Europe, 9% in Central Asia and Asia Pacific and 4% in the rest of the world – including South Africa (Anonymous, 2010b, 18).

5. Operation and structure of Lloyd's

Lloyd's is an insurance market and not an insurance company where underwriters form syndicates which operate separately from each other[78] i.e. Lloyd's is an insurance market which acts as a facilitator for members to come together and conduct insurance business. "It is in effect an association made up of a number of independent groups of underwriters actively competitive amongst each other" (S.C, 1943: 3). The Corporation of Lloyd's was created by an Act of Parliament in 1871 and owns the market place but does not take part in any insurance business leaving that solely to the members (Davison, 1987: 23; Kuvin, 1954: 408, 416; Fegan, 1919: 4). The corporation of Lloyd's has some responsibilities that it fulfils for the benefit of the market as a whole. These include the management of the performance of the market and the maintenance and development of the attractiveness of the Lloyd's market (Anonymous, 2010b: 14).

5.1. Reinsurance to Close

At the end of every underwriting year of account Lloyd's has what is known as 'annual ventures' or 'trading ventures' that are wound up (Raphael, 1995: 72; Bannister, 1995: 11). This is unique to Lloyd's. A definition of an annual venture is provided by Hindley *et al* (2000: 6) stating that "the Lloyd's annual venture system means that any Lloyd's member provides capital for one underwriting year of account at a time". After being a Name at Lloyd's for a period of one year the Name can decide whether he wants to continue at Lloyd's for the following year or to discontinue his involvement at Lloyd's. Each new year of account "begins its life as a separate annual venture or 'economic entity', independent of all other years of account" (Hindley *et al*, 2000: 6). At the beginning of each year the syndicate has to get renewed financial backing to continue writing business from the individual Names as well as from recently added corporate Names (Rasmussen, Owen & Smith, 1997: 6).

[78] Rasmussen, Owen & Smith (1997: 6); Brown (1973: 4); Williams (1991: 28); S.C (1943: 5); Havenga (2001: 147); Kuvin (1954: 406); Stewart (1984: 1); *Cover* (1993a: 26).

Lloyd's used an accounting system where the calculations of profits or losses were only made three years after the end of the underwriting year of account[79] and not annually like most corporations (McClintick, 2000: 47; Bannister, 1995: 3, 10). The three year accounting period dates back as far as 1907 when it was first introduced at Lloyd's (Hindley *et al*, 2000: 2). This was done to provide a more accurate calculation of the actual profit/loss, allowing three years for all possible claims to be notified and evaluated.

A definition of RITC is provided in Simpson, Hoffman & Charlwood (2004) where RITC is the "reinsurance effected by a syndicate, normally two years after the end of the relevant year of account, by which all the remaining liabilities of the syndicate are reinsured in exchange for a fixed premium". The Lloyd's South African Trust Deed (LSATD) of 1999 provides another definition where a syndicate, on a future year of account, agrees to indemnify that same syndicate on the current year of account for all its known and unknown liabilities. Once the syndicate has agreed to take on these liabilities (for a prearranged premium) the current year of account can be closed and the syndicate on the now closed year of account is no longer exposed to any liabilities that have or might still arise (LSATD, 1999: 7). An example: policies from 1985, (including the reinsurance from 1984) would be kept open for three years and will only be closed at the end of 1987 because of the three year accounting period used at Lloyd's (Luessenhop & Mayer, 1995: 65). Once the 1985 year of account is reinsured to close in the beginning of the 1988 year of account, it is now closed. The Names who are on risk for the 1985 year of account are no longer liable for any claims that may arise for the 1985 year of account, unless the reinsurer is declared insolvent.

A simplified way of looking at RITC is that at the end of the third year the liability to close is still uncertain and a provision could be raised, or better still, reinsurance purchased. Once this is done the year can be closed and any future claims are paid for in full by future years of account (Hindley *et al*, 2000: 6; Williams, 1991a: 32; Bannister, 1995: 4).

[79] Coutts, Craighead & Duncan (1984: 6); Finger (1996: 18); Brown (1973: 184); Newton (1990: 38); Williams (1991a: 32); S.C (1943: 12); Anonymous (1995a: 3).

In the 1980s, because of the long tailed liability nature of asbestos and pollution, many syndicates did not or could not purchase RITC. They could not correctly estimate future claims which meant they could not correctly estimate the premium to be paid for the RITC and therefore could not close their year of account at the end of the third year and had to leave them open for longer (Hindley *et al*, 2000: 3). If the provision cannot be adequately estimated that year has to remain open until such time as a RITC can be calculated. Initially underwriters calculated the RITC to the best of their ability but today auditors as well as actuaries are used to assist in the calculation of the RITC using their knowledge and expertise to help the underwriter to arrive at the correct RITC.[80]

A Name remains active in a syndicate for the duration of an open account i.e. a Name cannot withdraw or resign as a Name as long as one of his years of account remains open (Kelley, 1995: 5; Bannister, 1995: 11). This liability remains even after death and will be charged to the deceased's estate leaving it impossible to settle the estate until the liability is paid in full to the creditors (Luessenhop & Mayer, 1995: 38; Kelley, 1995: 3). The volume of losses left many Names destitute and some even committed suicide in desperation without realising their families left behind will still be liable (Luessenhop & Mayer, 1995: 17). Over 34 Names had committed suicide in the years 1991 – 1993 because of unlimited liability and the large claims they were expected to pay (Lussenhop & Mayer, 1995: 36).

Hindley *et al* (2000: 29) predicted that Lloyd's would move away from the RITC and the annual venture method of underwriting in the near future stating that keeping each year of account separate from other years will no longer be needed. A move was needed to an accident year basis which is very similar to the loss occurrence basis whereby the year where the accident/loss occurred is the year that will pay the claim irrespective of when the claim was actually made (Hindley *et al*, 2000). Through the formation of Equitas Lloyd's moved to annual accounting with an attempt to address the concerns raised regarding the three year accounting cycle (Anonymous, 1995: 3, 20; Major, 1995: 19). As from the 1st of January 2005 Lloyd's moved away from traditional three year accounting period and changed to the annual accounting method as set up by the UK Generally Accepted Accounting Principles (GAAP) (*Cover*, 2004a: 28;

[80] Society of Lloyd's v. Jaffray (2000); Catlin, Harrison & James (1998: 98); Hindley et al (2000: 1).

Hakong, 2003). Lloyd's is currently considering a move to the International Reporting Standards (IFRS) (Parry, 2007).

5.2. Different aspects of Lloyd's

5.2.1. The Room, the box and the Waiters

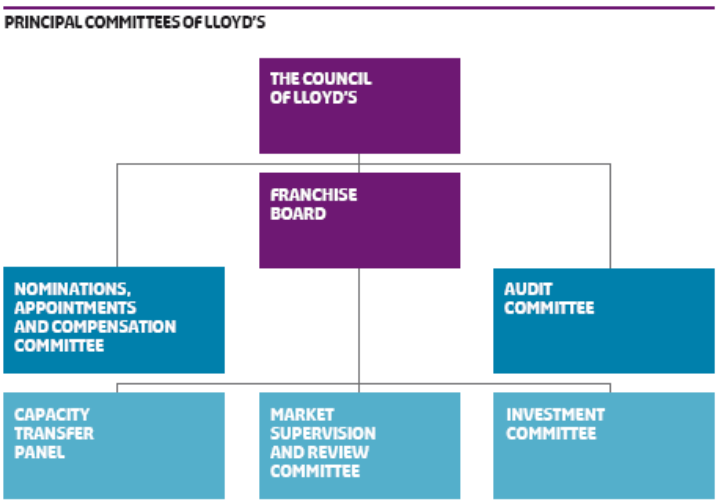
The main activities at Lloyd's occur in the Room. It is the centre of Lloyd's where underwriters sit in rows of boxes conducting business and talking to brokers (Brown, 1973: 4; Havenga, 2001: 148). Active underwriters as well as his deputies (individuals who specialize in electronics or biotechnology who advise the underwriter on risks unknown to the underwriter relating to those subjects) and apprentices sit at a desk where all the underwriting occurs. This is referred to as a 'box'. There are six seats available at one box with three seats on either side of the desk. The boxes run down the middle of the trading floor in pairs built low enough for underwriters to be able to see one another. There is a book shelf that runs along each box containing reference books and loose leaf binders that are accessible to everyone on the floor. A notebook computer connected to central data resources has been added to every seat in the box (Luessenhop & Mayer, 1995: 67; Hodgson, 1986: 25).

Uniformed waiters were used to guard the entrance to Lloyd's as well as to serve coffee in the premises. Today waiters are still used to guard the doors of Lloyd's, only allowing those with passes to enter the Room, and as a source of information. They no longer serve coffee as it is forbidden to eat or drink at the box (Luessenhop & Mayer, 1995: 69). The waiters wear scarlet serge robes with a top hat acting as messengers and receptionists (Hodgson, 1986: 76).

5.2.2. The Council of Lloyd's

The Council is the regulatory/governing body of Lloyd's regulating the underwriters, the syndicates and the managing agents (Finger, 1996: 18; Ferguson, 1983: 60). It is also referred to as the Society of Lloyd's doing business through the Committee of Lloyd's (Jacobson, 1998: 470).

Figure 2: The council of Lloyd's and the various committees of Lloyd's that help the council smoothly run Lloyd's.



(Anonymous, 2009: 13).

The council delegates tasks to these various committees to keep Lloyd's running effectively. The council does not participate in the underwriting of risks and leaves that wholly to the underwriters themselves.

5.2.3. Syndicates

Syndicates were originally formed when a group of merchants came together and selected one member giving him the authority to accept or reject business on the other syndicate members' behalf. Each member was still individually liable, but was not involved in the choosing of the risks to insure (Rasmussen, Owen & Smith, 1997: 10). A syndicate is not a company nor is it a legal entity and has no legal standing (Davison, 1987: 112; LSATD, 1999: 8). It was formed mainly for an administrative convenience only (Gwilliam, Macve & Meeks, 2000: 64) and where all the insurance and reinsurance business is written.

There were substantial barriers to overcome to gain entry to a syndicate and Names could not choose in which syndicate they wanted to be placed on (Gwilliam, Macve & Meeks, 2000: 78). Being placed on the 'best' syndicates which have a high reward at a low level of risk was seen as "a matter of grace and favor" (Luessenhop & Mayer, 1995: 108).

As Lloyd's started accepting more specialised and unique risks the size of the syndicates expanded to make sure that each syndicate had enough Names to cover these uncommon risks (Luessenhop & Mayer, 1995: 62). Syndicates consist of an active underwriter[81] and his Names since the capital needed is supplied by such Names[82] as well as managing agents that make sure the syndicate operates smoothly. Corporate limited liability members joined Lloyd's in 1994 and became involved with syndicates ensuring more capital was available for payment of claims.

Lloyd's divided their risks into four categories: marine, non-marine, motor and aviation with each syndicate specializing in one of the four categories, however, as from the 1st January 1991 this rule was relaxed over time and now syndicates insure risks across all four categories.[83]

5.2.3.1. The solvency test

The implementation of the solvency audit is attributed to Cuthbert Heath in 1908. Each Name has to provide the Committee with a statement signed by an accountant as proof that the Name has sufficient assets to cover his risks. This statement has to be produced annually. The audit focuses on whether a syndicate has sufficient reserves for outstanding claims. If claims have increased in the previous year then more reserves are required for that particular line of business in the following year. The solvency returns for each syndicate are combined to show each Names level of exposure to risk (Davison, 1987: 38). A panel of auditors was created consisting only of Lloyd's approved auditors. In the 1970s the panel was a minor element in the

[81] An active underwriter means " in relation to a syndicate, the person at or deemed by the Council o Committee [of Lloyd's] to be at, the underwriting box with principal authority to accept risks on behalf of the members of the syndicate" (Havenga, 2001: 149).
[82] Kelley (1995: 2); Rasmussen, Owen & Smith (1997: 7).
[83] Raphael (1995: 66); Rasmussen, Owen & Smith (1997: 8); Hodgson (1987: 29); Gwilliam, Macve & Meeks (2000: 66); Hazel & Williams (1990: 6).

functioning of Lloyd's. However, after the crisis discussed above Lloyd's puts a much larger emphasis on the panel of auditors. "The solvency audit requirements continued to dominate the prescribed approach to accounting and audit at Lloyd's at least until the reforms of 1982-86" (Gwilliam, Macve & Meeks, 2000: 67). This solvency audit, however, was not seen as a full and detailed audit and later became known as a mere solvency test.

5.2.3.2. Syndicate accounts

The council of Lloyd's lays out the minimum information that a syndicate has to disclose in their accounts as well as the accounting standards that the syndicate has to follow. Normal accounting principles from the Companies Act of 1967 are used which pay particular attention to the disclosure of information with certain changes made that are unique to Lloyd's alone.

Syndicates must account for each underwriting year which is kept open for three years (the three year accounting period). At the end of year one and year two a balance sheet is drawn up showing the premiums and claims up to date. Only at the end of year three, when the account is to close are any outstanding claims predicted and profits calculated. Once this is done either a provision is raised or RITC is purchased. If profits are made, these are then distributed to the Names and if a loss is made cash calls are sent out to Names. If the underwriter is unable to accurately predict the RITC the account would remain open for another year (Davison, 1987: 100; Gwilliam, Macve & Meeks, 2000: 66). The main reason why syndicate accounts were recorded is to check the syndicate's solvency on a regular basis as a protection mechanism for the Names (Gwilliam, Macve & Meeks, 2000: 67).

The audit of syndicate accounts required the following as a minimum from each syndicate (Gwilliam, Macve & Meeks, 2000: 67): Firstly, a certificate illustrating the adequate keeping of the books, secondly, it must be shown that the balance sheet and the underwriting accounts must match up with the books, and lastly, investments and cash balances must be verified. In addition a syndicate is encouraged to provide additional information that would allow the audit to be more accurate.

As indicated above, in 1984 these syndicate accounts were made available to the public (therefore to the Names) for the first time (Davison, 1987: 104). The accounts have to "give a true and fair view of the results for the closed year" in accordance with the Companies Act of 1967 (Davison, 1987: 110). The Names have no involvement in the appointment of the auditors, which was left entirely to the managing agents (Gwilliam, Macve & Meeks, 2000: 69), subject to the approval of Lloyd's as shown previously.

5.2.4. Lloyd's Name

The investors of syndicates are called Names and provide the risk capital needed for the operations of Lloyd's.[84] All that is required from the Name is to show he is in possession of the capital; (Hodgson, 1986: 106) and sometimes a deposit is required to be paid by the Name as a percentage of his underwriting capacity (Davison, 1987: 28; Finger, 1996: 6). This is the concept of uncalled capital whereby the underwriter only asks the Name to contribute from their capital when a loss occurs and money is needed to pay a claim (Davison, 1987: 182).

An individual could only become a Name with a recommendation from someone already at Lloyd's i.e. an introduction form an insider was needed, and it became known as a privilege to become a Name and to be elected to join this elite membership group of gentlemen in London (Luessenhop & Mayer, 1995: 22; Gwilliam, Macve & Meeks, 2000: 78). The admission process of becoming a Name takes up to a year thereby allowing the Name ample time to be absolutely certain about joining Lloyd's (Davison, 1987: 125).

Up until 1945, Names of Lloyd's were individuals working at Lloyd's, however as from 1945 Lloyd's started accepting people outside of Lloyd's as Names (Davison, 1987: 28). A distinction was made between two types of Names:[85]

(1) Working Names – individuals who also work in the market as brokers, underwriters or agents, and

[84] Hodgson (1987: 26); Finger (1996: 6); Kelley (1995: 2); Havenga (2001: 147).
[85] Raphael (1995: 68); Hodgson (1987: 100); Gwilliam, Macve & Meeks (2000: 65); Bain (2006: 4); Ferguson (1983: 60).

(2) External/ outside Names who are merely silent investors not part of Lloyd's in any other way. Such a Name must carry on business at Lloyd's through an underwriting agent (*Deeny and others v Gooda Walker Ltd and others and two other appeals*, 1996, 46) and this relationship follows the principles of an agency agreement as set out in the Lloyd's by-laws. External Names are not exposed to how Lloyd's functions and must trust their underwriter in his professionalism to protect their interests (Steward, 1984: 2).

Before an individual can become a Name a Means Test has to be passed making sure the individual has the required minimum capital in his personal account (Brown, 1973: 48). Names keep their assets and only pledge them in the case of a risk (Luessenhop & Mayer, 1995: 16). The Names are charged an annual fee as well as a commission on their profits made to be paid to the managing director for participation in a syndicate and they receive a cheque with their premium income in June of each year after the initial three years from date of admission has passed (Luessenhop & Mayer, 1995, 16; Raphael, 1995).

In the past each Name was a natural person i.e. companies or corporations could not become Names, and invested his personal account with Lloyd's. However, because of the crisis corporations can now invest in Lloyd's as shown above. A Name is only responsible for the claims that his personal account suffers and not that of fellow Names i.e. Names had several liability[86] and not joint and several liability.[87] Members of a Lloyd's syndicate, are not joint and severally liable as the policy wording has the following included "each for himself and not for another" (Kuvin, 1954: 416).

The Names place their entire private fortune at risk on the insurance market on an unlimited basis.[88] With limited liability the insured knows the maximum limit they will be asked to pay (Carr & Mathewson, 1988: 769). Once this limit has been reached the Name shall not receive any further calls for money and is only liable to pay up to the limit amount i.e. his personal

[86] S8(1) of the Lloyd's Act of 1982

[87] *Deeny and others v Gooda Walker Ltd and others and two other appeals* (1996: 46); Davison (1987: 126); Luessenhop & Mayer (1995: 19). Joint and several liability has been criticized as being harsh, unfair and inequitable since it does not apportion blame. Contribution is the only measure in place as a means of dealing with this inequality (Tietenberg, 1989: 307; Schmit, Anderson & Oleszczuk, 1991: 399).

[88] Davison (1987: 28); Hodgson (1987: 27); Way (1988: 26); Winton (1993: 506); Kelley (1995: 2).

account is only at risk up to the limit. "Each investor has a guaranteed maximum on the loss he will bear" (Easterbrook & Fischel, 1985: 97). Unlimited liability, on the other hand, has no such limit thereby exposing the Name's entire fortune in the event of a large risk. The Name would be required to pay his share of a loss irrespective of the amount of that loss exposing the Name to bankruptcy if the loss is larger than his personal account and the Name takes the risk of losing his entire wealth (Easterbrook & Fischel, 1985: 101; *Frederick Thomas Poole and Others v Her Majesty's Treasury*, 2006: 5).

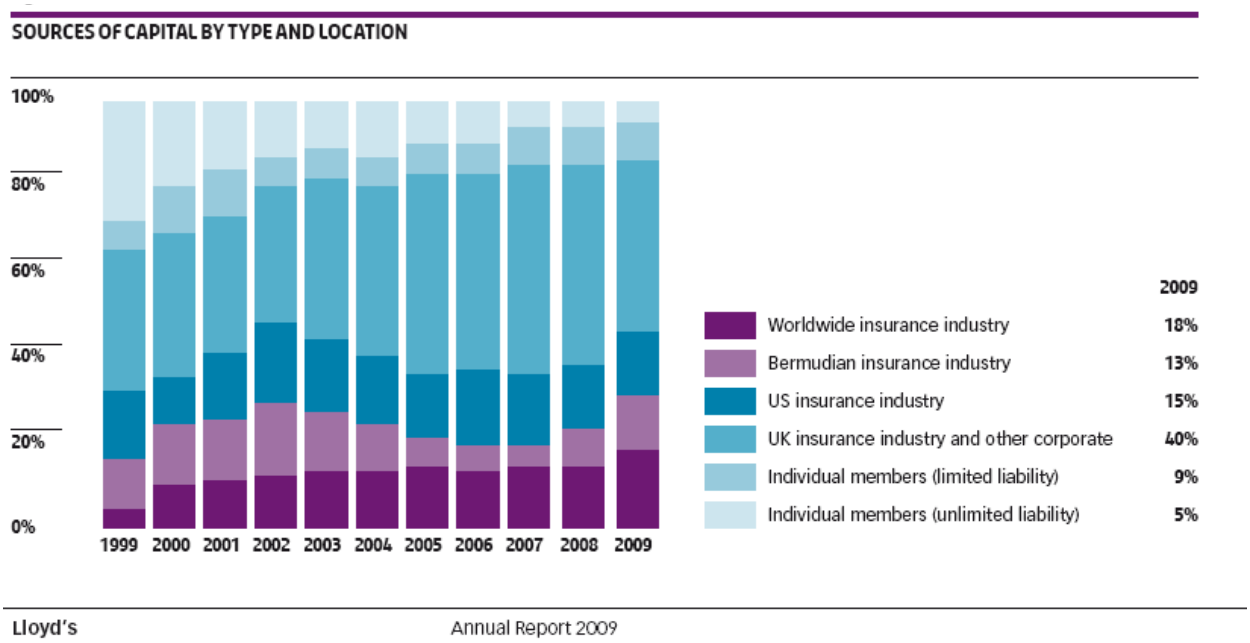
Every individual who wanted to become a Name had to come to London and attend a Rotta Committee and was asked whether they understood the concept of unlimited liability (Raphael, 1995: 63; Alston, 1991b: 7; Bannister, 1995:16). If the Names lacked understanding the concept was explained and they were assured that Lloyd's was financial sound and were required to sign a declaration confirming their understanding of unlimited liability (Luessenhop & Mayer, 1995: 17; Alston, 1991b: 7).

After the fraud and large claims of the 1980s Names were given the option of choosing to have their fortune exposed to limited or unlimited liability (Winton, 1993: 506). In 1992 Lloyd's announced that it was shifting from unlimited liability to limited liability of its Names (Grundfest, 1992: 420; Raphael, 1995:188). Each syndicate has several hundreds if not thousands of Names and in 1987 Lloyd's consisted of just over 32 000 Names (Davison, 1987: 28; Winton, 1993: 506). In 1997 the unlimited Names capacity had fallen by more than 23% with individuals choosing the safer option of limited liability (Hosken, 2007a: 69). Limited liability for corporations, known as corporate members, was introduced into Lloyd's in 1994 in an attempt to receive more capital (HM Treasury, 2008: 4). Lloyd's allowed corporations to become Names at Lloyd's on a limited liability basis only (Rasmussen, Owen & Smith, 1997: 8). They were initially only allowed to participate on 24 spread vehicles and 1 dedicated vehicle. A spread vehicle meant that the corporation was allowed to participate on a number of different syndicates (Anonymous, 2009: 144) while a dedicated vehicle allowed for participation on one or more syndicates however they had to be managed by the same managing agent. The term

dedicated vehicle is also known as an aligned member.[89] In 1997 regulation changed allowing corporations to buy managing agencies which allowed corporate members to be involved in up to 28 dedicated vehicles (Rasmussen, Owen & Smith, 1997: 8). By 2000 the corporation accounted for 80% of Lloyd's capital (McClintick, 2000: 57). Since 2003 Lloyd's no longer admits new individual members (HM Treasury, 2008: 5). By 2004 unlimited liability Names supplied only 12.5% of the market's capacity with the remaining 87.5% being supplied by limited liability corporate vehicles (*Cover*, 2004b: 71). In 2009 there were 773 individual members and 1238 corporate whilst in 2010 the number of individual members had decreased to 700 and the number of corporate members increasing to 1443 members.[90] It is clear from Figure 3 below that as a result of the crisis the character of Lloyd's has changed forever.

[89] http://www.lloyds.com/Common/Help/Glossary?page=5
[90] http://www.lloyds.com/The-Market/Operating-at-Lloyds/Market-Services/Useful-Information/Overview.

Figure 3: Illustration of the decrease in the number of individual members (both limited and unlimited liability) over a period of 10 years.



(Anonymous, 2009: 9).

Unlimited liability as well as individual membership is slowly disappearing (Raphael, 1995: 371).

The Name had complete faith in the underwriter. A small safeguard available to the Name is reinsurance, where the Name can reinsure some of the risks it has invested in with another syndicate or outside insurer (Raphael, 1995: 70). An example would be a personal stop loss policy with an aggregate limit (Davison, 1987: 39; Hodgson, 1986: 109).

A Name can request which syndicate to invest in. However, many choose to rely on the judgement of their members agents for the best syndicate as most external Names do not have knowledge of the market. Once the syndicates have been chosen each Name receives an overview of their syndicates performance from their members agents. The underwriter is the only one with adequate knowledge of the risks that the syndicate is involved in and only keep 'skeleton cards' of what risks they have insured (Luessenhop & Mayer, 1995: 25, 48). However,

it is the broker who has absolutely full knowledge of which risks are insured at which syndicates since the slips, policies signed and records of claims are all kept by the brokers as Lloyd's does not have enough available space for all the paper work. The brokers keep all records on behalf of Lloyd's (Luessenhop & Mayer, 1995: 26).

Once a Name has decided on the syndicate in which he would like to invest in, the managing agent will draw up a contract stating how many lines the Name is willing to invest in. Lloyd's usually divides the risk into lines of £10 000. The underwriter can then accept premiums up to the maximum amount of the lines that the Name has taken. For Example: A Name has decided to accept 3 lines. Therefore he has invested £30 000 of his capital at that particular syndicate. An underwriter can only accept premiums on behalf of that Name up to the £30 000 limit so that the Name is compensated only up to the amount of capital he has invested. The profits that the Name can make are limited by the maximum premium income that Name can receive (Luessenhop & Mayer, 1995: 132; Hodgson, 1986: 106). However, up until 1992 Names were still exposed to unlimited liability and would have to pay their percentage share of the risk regardless of the value of the loss (Davison, 1987: 28).

5.2.5. Lloyd's Underwriters

An underwriter is the core of Lloyd's. He chooses which risks to accept, what percentage of that risk to insure and at what premium (Raphael, 1995: 64; Flower & Jones, 1981: 176). With the acceptance of the premium comes the obligation to pay valid claims (Hodgson, 1986: 100). He has to recognise dangerous risks, have extended knowledge in the risks he insures and be confident in the risks he chooses (Raphael, 1995: 66). An underwriter is only allowed to transact business on the floor of Lloyd's, may only accept business from a Lloyd's broker and has to send each policy he signs to receive the stamp of Lloyd's. However, the underwriter is not concerned with the collection of premiums, the payment of claims or issuing a policy. The underwriter merely assumes the risk and the rest (i.e. the administrative work associated with creating new business – signing by the Lloyd's policy office, delivering policy to insured etc.) is handled by the broker (Hansard, 1966, col. 3088). On the payment of a valid claim the underwriter does not pay the policyholder directly but pays via the Lloyd's broker who then in turn pays the

policyholder. An underwriter has a deputy and clerks who take note of the risks accepted and the claims settled. All that is required from the underwriter is to sign the slip and note what percentage of the risk they are willing to accept. The corporation of Lloyd's then deals with checking the signature and settling claims (Davison, 1987: 24).

The underwriter has three main roles (Davison, 1987: 25): to accept risk – on agreed conditions and premium, to settle claims, and to find appropriate reinsurance for his books. Davison (1987: 25) also states that the underwriter has a secondary role of managing the fund where the premiums are kept to meet claims. However, this function is usually delegated to the underwriting agent.

The underwriter works for the Names on his syndicate and signs polices on their behalf, historically the signature was placed underneath the written description of the risk, hence the name *under*writer (Esquires, 1868: 177; S.C, 1943: 5; Panama-Pacific Exposition, 1915: 14). His signature, usually in the form of a rubber stamp containing his syndicate's logo is known as a 'stamp'. 'Stamp capacity' is known as the maximum amount of risk that any one syndicate can accept in a year, measured as the premium income (Luessenhop & Mayer, 1995: 60). The maximum premium income is measured by the capital of the Names and an underwriter is not allowed to accept any risks above his Names overall premium income limit. Further capital is needed if the limit is exceeded. As indicated above it was a disciplinary offence to exceed allowable limits. An underwriting agent has to keep track of the risks his underwriter is accepting to make sure that it is not above the premium income limit (Davison, 1987: 134). The underwriter must sign all policies unless the policy is overseas and then it is signed by his agents who have been given binding authority by the managing agent (Luessenhop & Mayer, 1995: 68).

The lead underwriter is the first underwriter from Lloyd's to accept a specific portion of the risk and, together with the broker, agrees on the premium for that risk. He is usually an expert in that particular kind of risk, setting the rate for that business and the underwriters who follow the lead usually accept a further portion of that risk at that same rate.[91] The distinct market barriers which separate marine, non-marine, motor and aviation syndicates are no longer maintained.

[91] Kuvin (1954: 410); Brown (1973: 7); Stewart (1984: 2); Havenga (2001: 148).

Lloyd's underwriters can specialise within the different types of insurance e.g. products liability, war risks, excess of loss reinsurance etc. The specialised underwriters will be expected to become the lead underwriters on the risks that they are specialised in, setting terms and premiums with other underwriters only following once the lead underwriter has signed. With his signature, the underwriter has the authority to commit his entire syndicate to the risk (Davison, 1987: 25).

Initially underwriters at Lloyd's did not have any formal training on how to be an underwriter but learned the trade from their predecessors in the Box (Davison, 1987: 25). To become an underwriter at Lloyd's takes many years of practical experience and is achieved through the process of an apprenticeship.[92] The individual starts off as an apprentice and after some years of practical experience and a process of examination is promoted to junior underwriter also known as an assistant or trainee underwriter. This is then followed by more practical experience and further examination to become a class underwriter (also referred to as class or deputy underwriter) as a professional career. Once the individual becomes an expert in their field and earns a market certificate, they become a lead or senior underwriter and in turn train new apprentices joining Lloyd's. Currently Lloyd's has its own training centre. Some of the examinations that the individual would have to take would be: firstly, to qualify as an Associate of the Chartered Insurance Institute (ACII). This qualification is offered only by the Chartered Insurance Institute (CII) of London which is a prerequisite for anyone wanting to advance in the insurance industry.[93] Secondly, once the ACII has been received, the underwriter has 15 months from joining Lloyd's to complete the Lloyd's Introductory Test (LIT) offered by the Lloyd's training centre which is the "basic test of competence and understanding that must be completed by anyone transacting business at Lloyd's" (Catlin *et al*, 1998: 65). In January 1992 Lloyd's introduced a new compulsory market qualification for active underwriters by the name of the Lloyd's Market Certificate (LMC). Each active underwriter must either write this examination or prove that he/she is exempt from the examination. All underwriters that had been active prior

[92] http://www.pcal.info/ap.cfm

[93] In South Africa a similar system is followed by the South African Insurance Institute with examinations offered via the University of South Africa (Unisa).

to 31st December 1991 are exempt from this new examination (*Cover*, 1989b: 28). Other qualifications are offered by the training centre but are not mandatory (Catlin *et al*, 1998: 62).

5.2.6. Lloyd's underwriting agents

In 1904 the underwriting agent was introduced into Lloyd's with each underwriter only being allowed to have one underwriting agent. Until 1914 syndicates consisted of a small number of underwriters and each underwriter handled his own affairs and personally communicated with his Names. By 1930 the underwriting agents' main function was to act as an intermediary between the Names and the underwriter (Davison, 1987: 26). An underwriting agent is also known as a combined agent as he does two things i.e. manage syndicates and looks after members' underwriting portfolios (Newton, 1989b: 16). An underwriting member who is not an underwriting agent himself can only underwrite risks through an underwriting agent.[94]

The underwriting agent has two main duties (Davison, 1987: 26):

- To manage the syndicates, focusing on the following key issues: (i) underwriting of risks, (ii) reinsuring risks, (iii) settling of valid claims and (iv) the management of the premium trust funds.
- The underwriting agent employs the underwriter and entrusts the first three of the above mentioned tasks to them, thereby limiting himself to the management of the premium trust fund and the handling of members' affairs.

The underwriting agent also has to handle the members' affairs at Lloyd's. This duty consists of: firstly, finding capable individuals to become members, secondly, taking them through the admission process of becoming a member, thirdly, helping them choose the most suitable syndicate bearing in mind the individuals interests and experience, fourthly, managing the personal reserve that each new member must give to the agent in the event of an underwriting loss so that funds are available to pay claims, and lastly settle any tax liabilities with respect to the Names membership of Lloyd's.

[94] S8(2) of the Lloyd's Act of 1982.

Underwriting agents are compensated by their Names through a monthly salary as well as a profit commission on any underwriting profits made and on any "earnings performance of the syndicate funds" (Davison, 1987: 27).

There are two types of underwriting agents which are the managing agent and the members' agent. A comparison of the two is set-out in Table 1.

Table 1: Comparison between a managing agent and a members' agent

	Managing agent	**Members agent**
Definition:	"An underwriting agent which has permission from Lloyd's to manage a syndicate and carry on underwriting and other functions for a member."[95]	"An underwriting agent which has permission from Lloyd's to be appointed by a member to provide services and perform duties of the same kind and nature as those set out in the standard members' agent's agreement. These services and duties include advising the member on which syndicates he should participate, the level of participation on such syndicates and liaising with the member's managing agents."[96]
Duties:	To control the syndicates – "manage the operations of one or more syndicates" (Bannister, 1995: 17) and arranges the business written at Lloyd's (Bain, 2006: 4; HM Treasury, 2008: 6).	To advise member on the right portfolio selection of different syndicates based on the individuals approach and attitude to risk. Only looks after a Names portfolio and does not manage syndicates (Newton, 1989b: 16).

[95] http://www.lloyds.com/Common/Help/Glossary?Letter=M
[96] http://www.lloyds.com/Common/Help/Glossary?Letter=M

	Managing agent	**Members agent**
	Employs the active underwriters who are then able to enter into insurance contracts on behalf of the Names.[97] Deals with the accounts including organizing a panel of auditors (Gwilliam, Macve & Meeks, 2000: 78). Arranging the reinsurance of underwriting contracts.[98] The investment of premiums. Making sure there are adequate reserves for the payment of claims.[99] The general administrative tasks of the syndicate (Hodgson, 1986: 28).	To act in the best interest of the member. Any reports received from the managing agent that contain material information as well as any information pertaining to syndicates the member is involved in must be punctually given to the member.[100] Have the responsibility of recruiting Names and handling the relationship between Names and the corporation of Lloyd's (Bain, 2006: 5).
Other:	Through the implementation of Divestment via the Lloyd's Act of 1982, a person who is a managing agent or is associated with a managing	With the introduction of limited corporate liability most Names now continue to trade at Lloyd's through a Members' Agent Pooling Arrangement (MAPA) which acts

[97] Deeny and others v Gooda Walker Ltd and others and two other appeals (1996: 46); Gwilliam, Macve & Meeks (2000: 66); Finger (1996: 6); Kelley (1995: 2).
[98] S12(1)(a)(ii) of the Lloyd's Act of 1982; HM Treasury (2008: 6) *Frederick Thomas Poole and Others v Her Majesty's Treasury* (2006: 29).
[99] S12(1)(a)(iii) of the Lloyd's Act of 1982
[100] http://www.lloyds.com/NR/rdonlyres/E27CDC59-C76A-4772-8CDC-B0DD2D8E71DE/0/C06_Responsibilities_to_members__Code_for_members_agents.pdf#search='members agent'; Catlin, Harrison, James et al (1998: 96):

	Managing agent	Members agent
	agent is not allowed to simultaneously act as a Lloyd's brokers.[101] If a Lloyd's broker is associated with a managing agent at the commencement of the 1982 Act, the Act provides the broker with 5 years in which to divest himself from the managing agent[102] (*Cover*, 2001: 62). Paid through an underwriting commission that is deducted from the Names' accounts for his services (Hodgson, 1986: 104).	as a unit trust where each Name has limited line of business in many different syndicates "whereby a number of members combine pool some or all of their underwriting capacity thus enabling them to participate in a wider range of syndicates than would otherwise be the case[103] (Raphael, 1995: 368; Catlin *et al*, 1998: 100). The advantage of such an agent is that he always had the best interests of the Name when choosing a syndicate as his principle responsibility is his Name (Luessenhop & Mayer, 1995: 25). However, the disadvantage was that the members' agent could not approach a syndicate directly and had to go via a managing agent[104] which meant that his Names would be given lesser priority than the Names from the managing agents. An advantage to this is that the specialist, who is only interested in the best arrangement for his Name, will inform the Name immediately if a syndicate is losing profits and will have no scruples in changing

[101] S10(1) of the Lloyd's Act of 1982; Davison (1985: 7); Ferguson (1983: 63).
[102] S10(3) of the Lloyd's Act of 1982
[103] http://www.lloyds.com/Common/Help/Glossary?Letter=M
[104] S8(2) of the Lloyd's Act of 1982

	Managing agent	Members agent
		syndicates if the need arises, whereas a managing agent will put his Names on his syndicate and will not inform his Names at the optimal time for leaving the syndicate in an attempt to make his syndicate profitable again (Davison, 1987: 27).

5.2.7. An underwriting manager

An underwriting manager is an individual who may underwrite or issue a short term insurance policy through authority he has received from a Lloyd's underwriter and who is authorised to carry on short term insurance business in another country i.e. South Africa. An underwriting manager is then deemed to be an agent of the Lloyd's underwriter. What is today known as an underwriting manager used to be called an underwriting agent, in practice the terms are interchangeable (*Cover,* 2002d: 40). Any acts performed by the underwriting manager will be binding on the Lloyd's underwriter. An underwriting manager may not deal directly with the public and has to make use of a broker to reach the insured (*Cover*, 2002d: 41). The underwriting manager has the authority to do the following on behalf of the Lloyd's underwriter (*Cover*, 2002c: 40):

- Accept, bind and quote terms and conditions,
- Adjust, settle, compromise and agree on claims,
- Provide services that would normally have been provided by the Lloyd's underwriter if the underwriting manager was not there.

The South African Underwriting Managers Association (SAUMA) was introduced in 2002 and welcomed by Lloyd's South Africa (*Cover*, 2002c: 44).

5.2.8. Lloyd's Brokers

The only way to contact a Lloyd's underwriter and to be insured at Lloyd's is through a Lloyd's broker.[105] The public does not have direct access to Lloyd's.[106] A Lloyd's broker is not restricted to placing risks at Lloyd's and is allowed to choose any insurance market in the world. A Lloyd's broker has to know which risks are best insured at Lloyd's or which other markets would be more suitable and exploit that knowledge to give the client the best possible insurance cover (Rasmussen, Owen & Smith, 1997: 4). An underwriter is solely dependent on the broker for business as he does not have his own agents to bring insurance business to him (Luessenhop & Mayer, 1995: 110). Lloyd's brokers play an important role in developing the agency system at Lloyd's.

The duties of a broker can be summarised into four categories (Rasmussen, Owen & Smith (1997: 2) :

- A business producer: He has to find potential insured's, define the insured's needs; seek the best terms, price and financial security from the array of underwriters including those at Lloyd's. The broker must convince the underwriter to accept the risk at the required price (Davison, 1987: 23). The broker is still seen as the "marketing arm of Lloyd's" (Davison, 1987: 24) who brings in business for the underwriter.
- An administrator: Prepare the policy, making sure the correct Lloyd's policy is used to be approved by underwriter and insured. The broker has to act as a go-between when premiums or claims need to be paid between the underwriter and the insured (Davison, 1987: 23). This reduces the administrative burden of the individual syndicates.
- A mediator: The broker must keep the insured informed of any changes or developments in the market and to negotiate appropriate renewal conditions. In the case of a dispute between the underwriter and the insured, the broker can act as a mediator to assist the parties to reach a settlement without having to resort to expensive litigation.

[105] S8(3) of the Lloyd's Act of 1982

[106] Rasmussen, Owen & Smith (1997: 2); Raphael (1995: 67); Flower & Jones (1981: 176); Brown (1973: 74); Gibson (1988: 4); S.C (1943: 5); Havenga (2001: 152); Kuvin (1954: 419); HM Treasury (2008: 35).

- A regulator: Brokers sit on regulatory committees at Lloyd's and are represented on the council of Lloyd's. Brokers are required to conform to their code of conduct.

Before the risk is handed over for the underwriter to either accept or decline the risk, the broker puts all relevant information on a 'slip' containing the nature of the risk, the terms and conditions and the premium to be paid.[107] A broker, on behalf of the insured, approaches an underwriter sitting in his Box in the Room with the risk written on the slip (Steward, 1984: 2). Brokers usually wait in line before the box and approach the underwriter one by one. The broker is in direct contact with the underwriter and they discuss the risk face-to-face allowing the broker to get his intentions clearly across without any misunderstandings or ambiguity (Rasmussen, Owen & Smith, 1997: 3; Kelley, 1995: 2). The risk is then contemporaneously accepted or rejected. As discussed earlier, once the lead underwriter has signed the slip others follow, much quicker, placing confidence in the lead until the slip is filled (Luessenhop & Mayer, 1995: 68). A slip is personally signed by each underwriter; after which it goes to the Lloyd's Policy Signing Office and recorded on a computer (Hodgson, 1986: 11). In the year 2010 Lloyd's attempted, on a trial basis, the use of iPads instead of the traditional slip in an attempt to reduce the large amount of paper being generated.[108]

The lead underwriter will set the premium and often take the largest percentage of the risk, stamping the policy with his syndicate's stamp and initialling the slip. Other underwriters will take smaller portions of the risk until the entire risk is underwritten (Steward, 1984: 2; Hodgson, 1986: 11). Once the entire risk has been placed, the broker leaves Lloyd's with a loose-leaf notebook where he attaches a cover letter as a front page containing the description of the risk and the premium. The rest of the pages contain a number of slips that have been stamped by the underwriters (Luessenhop & Mayer, 1995: 72). He then collects the premium from the insured who is now the policyholder. The broker will deduct a commission from the premium for himself and forward the rest of the premium to the underwriter. It is interesting to note that the

[107] Davison (1987: 24); Hodgson (1986: 11); Flower & Jones (1981: 177); Brown (1973: 8); Way (1988: 26); S.C (1943: 5); Kuvin (1954: 410, 419).
[108] http://www.lloyds.com/Lloyds/Press-Centre/Press-Releases/2010/09/Lloyds-put-the-iPad-into-Insurance

broker, not the insured, is directly liable for the premium to the underwriter (Law Commission & the Scottish Law Commission, 2010: vi).

When a claim is made the broker must notify the lead underwriter on the slip of the claim as well as notifying the Lloyd's claims office. The Lloyd's claim office then notifies the other underwriters of the amounts they are liable for (Luessenhop & Mayer, 1995: 72). There is a complication when it comes to claims. The broker is the agent of the insured; Lloyd's however, may require the broker to appoint a loss adjuster. In so doing the broker becomes the agent of Lloyd's. In law, the broker cannot be the agent of both as it places the broker in a position of conflict (Westgarth, 1984: 45).

The broker also has a further role as a communicator (Rasmussen, Owen & Smith, 1997: 5). In an insurance contract the principle of the duty of disclosure applies whereby both parties to the contract (insured and insurer) have to disclose all material facts regarding the risk being insured (Westgarth, 1984: 37). Many individuals buying insurance are not aware of this principle in insurance law and therefore it becomes the duty of the broker to inform the policyholder to disclose all material facts that may influence the insurer's decision in accepting the risk and setting the premium.

Some of the aspects of the brokers role as communicator include the following: firstly, brokers need to communicate the security offered by Lloyds' to the public in an attempt to bring confidence back to Lloyd's after the crisis discussed above, secondly, the broker should continue the close face-to-face relationship between brokers and underwriters for clear understanding of what is expected from both parties, thirdly, the broker must communicate any information he has on the risk being insured to the underwriter as well as the insured. This can easily be done electronically, and finally, the broker must keep abreast on the changes and developments in the world including politics, competitors and other markets.

A broker is required to be a specialist in the regulation of the insurance market in which he works to be able to quickly adapt to any regulatory changes as they arise (Rasmussen, Owen & Smith, 1997: 6).

All Lloyd's agents are required by law to have errors and omissions (E&O) insurance cover so that in the event of an insured suing his broker, the broker has the means to pay a claim of damages (Davison, 1987: 39; Gibson, 1988: 4). However, the E&O insurance has changed and excludes cover for fraud or dishonesty of directors of insurance brokers (Gibson, 1988: 6).

5.2.8.1. Regulation of Lloyd's brokers

Anyone who is an insurance broker in the UK, including Lloyd's brokers, is subject to the Insurance Brokers (Registration) Act of 1977 (IBRA). To increase the security for policyholders the concept of the Insurance Broking Account (IBA) was introduced in this Act whereby brokers have to keep all the money they received for insurance purposes separate from their private funds. This account has to have an amount equal to at least the predetermined minimum margin of solvency at all times and can never be in deficit (Gibson, 1988: 4).

The Lloyd's Act of 1982 acknowledged and defined a Lloyd's brokers for the first time.[109] Schedule 2 of the Act allows the council of Lloyd's to regulate the admission of a Lloyd's broker into Lloyd's as well as the broking business the broker is allowed to do in the Room (Davison, 1987: 165). A Lloyd's broker signs a contract with the Society of Lloyd's and once the Society is satisfied that the broker has met the minimum standards of solvency, the broker is able to provide audited accounts to Lloyd's and supply any information to the Society when requested to do so (Davison, 1987, 166).

The Lloyd's Council enacted the Lloyd's Brokers By-law No. 5 which came into force on the 1st of August 1988. This regulation was made to improve the standard at which Lloyd's brokers, with binding authority, accepted business on behalf of Lloyd's. According to this By-law all brokers have to be registered if they wish to remain acting as Lloyd's brokers. A three year transitional period was laid down in which to register (Gibson, 1988: 4, 6).

[109] S2(1) Lloyd's Act 1982

5.2.9. Security underpinning the Lloyd's policy

"The security of a Lloyd's policy depends on the ability of each Name who has subscribed to that policy to meet his obligations under the policy as and when they fall due" (Davison, 1987: 36). The Society of Lloyd's signs a policy on behalf of the underwriter and guarantees that lawful claims will be paid. The corporation has certain measures in place to make sure that all claims can be paid.

Firstly, premiums are placed into the premiums trust fund as stated by the Insurance Companies Act 1948 and can only be used in the payment of claims.[110] The premiums paid belong to the Names but are credited to a trust account that has been opened on the behalf of each Name. The total amount of premiums that a Name may accept is dependent on the quantum of the initial deposit paid by the Name into Lloyd's (Luessenhop & Mayer, 1995: 18). Money in the premium trust fund can only be invested in short term investments. After three years the underwriter will subtract a provision from the accumulated premiums (after payment of valid claims) for the first year and, if purchasing reinsurance, will calculate a RITC premium. Any money left in the account is a profit and can be divided amongst the Names. The profit is distributed to each Name in proportion to their share of the syndicate's total premium (Luessenhop & Mayer, 1995: 19). If the syndicate is involved in complex risks or any uncertainties are present regarding future claims, the account is left open until the closing reserve can be calculated accurately in the case of unlimited liability Names (Davison, 1987: 36).

If the premiums are inadequate to pay claims, the second option is calls on the deposits and personal reserves of Names.[111] Each Name is required to place a deposit with Lloyd's on a pro rata basis with his premium income limit. Also, Names are required to leave personal reserves with their agents that have been accumulated from past profits and earnings. A deposit could consist of securities, bank guaranteed securities or a letter of credit from a bank (Luessenhop & Mayer, 1995: 118; Hodgson, 1986: 107). If the deposit or the reserve is used to pay for claims owed by the Name, that Name will be asked to either stop underwriting or reduce his

[110] Catlin, Harrison, James et al (1998: 42); Williams (1991: 32); Anonymous (1995c: 1); Kuvin (1945: 417).
[111] Catlin, Harrison, James et al (1998: 42); Newton (1989c: 24); Williams (1991: 33); Anonymous (1995c: 1); Kuvin (1945: 417); Ferguson (1983: 57).

underwriting until he is able to top up his reserve and deposit amounts back to the original amount.

If the deposits and personal reserves of the Name prove inadequate to pay for all claims, the third option available is the Names certified means. Before becoming a Name, an individual must show a certified accountants certificate stating that he has independent means/ money of at least £100 000. This has to exclude the value of his house (Kelley, 1995: 2). Each Name has to pass this test upon admission into Lloyd's. Once this has been completed a Names net worth is never audited leaving Lloyd's uncertain as to how much the Name will actually be able to pay (Luessenhop & Mayer, 1995: 15). Lloyd's can call a Name to pay his losses up to his entire net worth (Luessenhop & Mayer, 1995: 118). A Name is allowed to accept a premium income of up to 2 ½ times his certified means. Calls on Names are becoming obsolete with the introduction of limited corporate capital.

If the premiums and capital of unlimited liability Names are insufficient then Lloyd's can turn to the Lloyd's Central Reserve Fund.[112] The Harrison scandal in 1923 led to the creation of the Central Fund in 1927 (Luessenhop & Mayer, 1995: 120; Brown, 1973: 43). This fund was originally set up to deal with the event of a member/Name becoming insolvent and being unable to meet his liabilities (Newton, 1992: 4). Each Name would pay an annual subscription of 0.5% of his premium income into this fund (Luessenhop & Mayer, 1995: 118). For this fund to pay a claim the Name must be declared in default and all his resources already having been seized and sold (Luessenhop & Mayer, 1995: 119; Davison, 1987: 37). The Central Fund was put in place as a protection mechanism for policyholders and not as a scapegoat for Names. If a Name does not have the required funds, the Central Fund will pay but the Name will be forced to stop any further underwriting until such time as the Name can pay its claims. The Society of Lloyd's has the right to sue the Name for the cost of the claim that had to be paid out of the Central Fund (Davison, 1987: 182). Through the R&R program a new central fund was established at Lloyd's[113] (Anonymous, 1995, 3).

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[112] Catlin, Harrison, James et al (1998: 42); Williams (1991: 33); Anonymous (1995c: 1); Kuvin (1945: 418); Bain (2006: 5); Ferguson (1983: 57).
[113] Refer to Chapter 4.3.2.

The final resource available to pay a claim is the determination of Lloyd's never to default in the payment of any claim. Lloyd's would bankrupt many Names in order to pay every single claim (Luessenhop & Mayer, 1995: 119). These lines of defence (Davison, 1987) are available to make sure that each claim is paid from every Lloyd's policy.

Further mechanisms in place to make sure each Name remains solvent and able to pay claims include the continuous evaluation of premium income as well as the rigorous annual Lloyd's audit which was referred to as the annual solvency test (Davison, 1987: 38 & *Frederick Thomas Poole and Others v Her Majesty's Treasury*, 2006: 25). An auditor has to sign a solvency certificate for each Name declaring that the Name has sufficient assets to continue underwriting. Names that do not have a solvency certificate are declared to be in default and the central fund is then used to pay for that Name's claims.

As mentioned previously, each Lloyd's policy has to go through the LPSO to receive a rubber stamp of the Lloyd's trademark anchor so that it can be identified as an insurance policy from Lloyd's.[114] Originally, this was often a long and tedious process since each policy was individually drafted and custom made and had to be read through entirely to make sure everything was in accordance with Lloyd's style. This was changed in 1994 with the introduction of standard form policies keeping the policies identical and only changing the variable data such as the details of the policyholder. Each year that policy would be reinstated for a further year to reduce the time spent on making new policies every year (Luessenhop & Mayer, 1995: 49). With technology the underwriting room at Lloyd's is filled with computers in every box with access to the LPSO which acts as the clearinghouse of Lloyd's (Luessenhop & Mayer, 1995: 50).

[114] Kuvin (1954: 411, 420); Flower & Jones (1981: 105); Luessenhop & Mayer (1995: 47)

5.2.9.1. Capacity

This is the term used to describe the total premium that Lloyd's is allowed to accept. Regarding a member capacity, it is the maximum amount of insurance premiums that a particular member can accept. Regarding an entire syndicate, it is the aggregate of every members capacity involved in that particular syndicate (Rasmussen, Owen & Smith, 1997: 7; Anonymous, 2009: 143).

5.3. Regulation of Lloyd's

In the UK insurance business is governed by the Insurance Companies Act of 1982 whereby all regulations of the Act must be followed for an insurance company to be lawfully recognized as such by the Department of Trade and Industry (DTI). The main purpose of the provisions of the Act is to act as a safeguard for policyholders in case an insurance company is unable to pay a claim because of insolvency or fraud (Davison, 1987: 30).

There are three exceptions to the rule that all insurance companies must be authorized by the DTI - Trade Union strike funds, registered friendly societies and Lloyd's. However, Lloyd's is only partially exempt from this legislation. This exemption does allow Lloyd's to be self-governed and self-regulated but the policyholder must still be protected by the regulations in the Act (Daykin & Cresswell, 2000: 6; Ferguson, 1983: 56). The Act provides three requirements that a Lloyd's underwriter must follow in safeguarding a policyholder: firstly, all premiums received must be held in a trust deed and can only be used to pay valid claims, secondly, all underwriters must have their books of accounts audited annually and receive a certificate from the auditor testifying to the underwriter's solvency and lastly, the Council of Lloyd's is also to file an annual return outlining the insurance business that the members at Lloyd's are involved in (Davison, 1987: 30).

Regulation of Lloyd's is used as a mechanism to provide some protection for policyholder and members. If a claim arises, the policyholder is assured that he will get paid, if a dispute arises between two parties a mechanism is in place to settle the problem and disciplinary actions are

available if needed (Catlin *et al*, 1998: 71). Lloyd's is self regulated through its own separate legal provisions envisaged by the Lloyd's Acts. The Trust Deed of 1811 was the first formal set of rules and regulations at Lloyd's and governed the society till 1871. In 1871 Lloyd's received its own private members Act of parliament, the Lloyd's Act of 1871, laying down the fundamental rules at Lloyd's focusing strongly on ensuring the continuous solvency of its members. The provisions of the Lloyd's Act of 1871 were aimed at regulating a small society and were inadequate and too burdensome once Lloyd's had grown into over 20 000 members (Davison, 1987: 31). The Lloyd's Act of 1871 was then later amended in 1888 (later wholly repealed), 1911, 1925 (later wholly repealed), 1952 and finally the Lloyd's Act of 1982. These Acts will be discussed in detail.

5.3.1. Lloyd's Act of 1871

The Committee of Lloyd's applied for an Act of Parliament for incorporation in November 1870 and it was passed into law on the 25th May 1871 (Wright & Fayle, 1929: 379; Raynes, 1950: 325). The Lloyd's Act of 1871 is "an Act for incorporating the members of the Establishment or society formerly held at Lloyd's Coffee House in the Royal Exchange in the City of London, for the effecting of Marine Insurance, and generally known as Lloyd's."[115] The Act of Incorporation was modelled as closely as possible on the old constitution and gave the society the "statutory powers to make its own By-Laws" (Wright & Fayle, 1929: 379). The Lloyd's Act of 1871 is still today the most important document in the history of Lloyd's and "it defined its objective, arranged for a proper system of by-laws, and fixed the election, the authority, and the duties of the Committee" (Gibb, 1957: 139). This Act defined the functions that the society was required to do and gave the society various powers in which to accomplish its tasks.

S10 of the Act outlines the objects of the society:

> *"The carrying on by members of the Society of the business of insurance of every description including guarantee business;*

[115] Lloyd's Act 1871.

The advancement and protection of the interests of Members of the Society in connection with the business carried on by them as Members of the Society and in respect of shipping and cargoes and freight and other insurable property or insurable interests or otherwise;

The collection publication and diffusion of intelligence and information;

The doing of all things incidental or conducive to the fulfilment of the objects of the Society".[116]

The fundamental rules of the society were laid out in the Schedule to the Lloyd's Act of 1871 (Ferguson, 1983: 57). The schedule pointed out that there must be a division between underwriting and non-underwriting members with non-underwriting members having no power to underwrite any risks in their own name nor having any delegative authority to ask someone to write on their behalf. All underwriting must occur in the underwriting Room and an insurance account cannot be opened for anyone who is not a member or subscriber at Lloyd's.

Some main features of the Act are the following (Gibb, 1957: 143): Firstly, it made Lloyd's a legal entity only focusing on marine insurance, secondly, it legalised the by-laws, thirdly, this Act gave the committee proper power to discipline its members i.e. laid down rules for the actions a member can be expelled for i.e. bankruptcy, fraud and discreditable conduct (Raphael, 1995: 48; Ferguson, 1983: 57), but at the same time took great length to make sure that the committee can only deal reasonably and justifiably with the members and never prejudice them unfairly. If a member of the society violates any fundamental rule made by the society or is found guilty of any discreditable conduct, he may be excluded from membership via a 4/5ths majority vote in favour of such exclusion in a meeting specifically convened by the society for the disciplinary purpose (Ferguson, 1983: 57). However, two arbitrators are needed to take into account all circumstances before declaring a member guilty of violating any rules or of discreditable conduct.[117] Fourthly, the Act emphasized that one of the objectives of Lloyd's was to collect, publish and spread shipping intelligence and lastly, the Act stated that only Lloyd's underwriting members could sign the Lloyd's policy (no outsider's signature will be valid) and

[116] S10 of the Lloyd's Act 1871.
[117] S20 of the Lloyd's Act 1871.

not any individual who was not part of the society to use or copy any policy of Lloyds bearing the mark of an anchor or to replicate such mark. The anchor was used as a sign of the validity of the policy that it was in fact a Lloyd's policy (Hodgson, 1986: 60).

The incorporation of Lloyd's did not make the society of Lloyd's responsible for the underwriters' losses in any way and individual underwriters were still liable for the losses in their personal capacity with the deposit system acting as a cushion for heavy losses[118] (Raynes, 1950: 325).

Other aspects of the Act include: this Act annuls all previous deeds of association making this Act the only applicable statute.[119] However, it allows for any agreements, bonds and contracts made for the management of Lloyd's by the Committee to remain in force after the passing of this Act.[120] Property and any other rights belonging to the Committee were legally transferred and vested in the society.[121] Any legal action brought against or started by the Committee to be continued by the society.[122] All debts owed to the Committee to be paid directly to the society.[123] All employees were to remain and work for the society.[124] The society retained the power to undertake the recovery of any wreckage of a marine vessel.[125]

5.3.2. Lloyd's Act of 1911

This Act extended and amended the Lloyd's Act of 1871 and conferred additional powers onto the society of Lloyd's. The Act of 1871 only referred to marine insurance at Lloyd's, this Act took into account that Lloyd's is also involved in non-marine insurance and extended the Act to incorporate such insurance and extended the powers of the society to encompass non-marine insurance (Anonymous, 1912a: 645). "The objects of the society are extended to include the

[118] S40 of the Lloyd's Act 1871.
[119] S2 of the Lloyd's Act 1871.
[120] S5 of the Lloyd's Act 1871.
[121] S4 of the Lloyd's Act 1871.
[122] S6 of the Lloyd's Act 1871.
[123] S7 of the Lloyd's Act 1871.
[124] S8 of the Lloyd's Act 1871.
[125] S34 of the Lloyd's Act 1871.

carrying on the business of every description including guarantee business by Members of the society.[126]" The word 'marine' shall be replaced with the word 'insurance' throughout the Lloyd's Act of 1871.[127] The society was also given the statutory authority to act as a Trustee over any moneys deposited or any guarantee furnished by a member to act as a security for their liabilities regarding the risks that member has underwritten.[128] The society has control over the capital of Lloyd's to be used for the daily runnings of Lloyd's.[129] The Committee must publish the effect of any resolution passed by them in the Room at Lloyd's.[130]

Regarding disciplinary issues with members the Committees powers were further extended by this Act. The Committee has power to temporarily suspend members if they have been found to be guilty of discreditable conduct and they must immediately cease underwriting. The member then has 7 days in which to appeal the suspension at a General Meeting of the society. The decision made at the meeting is final.[131] The committee of Lloyd's was given the power to expel a member up to a period of 2 years for discreditable conduct in the scope and course of being an underwriter. This section was however repealed by the Lloyd's Act of 1982 allowing the provision to be in force only until such time as a disciplinary committee was established to take over all disciplinary issues at Lloyd's.[132]

5.3.3. Lloyd's Act of 1951

Lloyd's had expanded over the years with additional members entering Lloyd's leading to the increase in the society's activities. This Act conferred even more powers onto the society. Lloyd's needed to build or find new premises for the accommodation of its members as it had outgrown its current location. This Act gave the Committee the power to borrow money and secure any interest on any property in order to acquire new land or to further develop currently

[126] S3 of the Lloyd's Act of 1911.
[127] S5 of the Lloyd's Act of 1911.
[128] S8 of the Lloyd's Act of 1911.
[129] S6 of the Lloyd's Act of 1911.
[130] S12(4) of the Lloyd's Act of 1911.
[131] S12(1) of the Lloyd's Act of 1911.
[132] Schedule 4, Part II, S11 of the Lloyd's Act of 1982.

owned land. Money could also be borrowed for decorative furniture, maintaining, altering and improving buildings.[133]

5.3.4. Lloyd's Act of 1982

All the fraud, negligence and corruption mentioned in earlier chapters, led to the formation of the Lloyd's Act of 1982 (Hoefle, 1996: 30). The Lloyd's Bill was introduced into parliament in November 1980 (Luessenhop & Mayer, 1995: 147). Sir Peter Green lobbied hard for the bill to be accepted but it was a Name, Lord Marcus Kimball, who knew the influential people in parliament and the passing of the bill can be attributed to his involvement (Luessenhop & Mayer, 1995: 148; Hodgson, 1986).

The Lloyd's Act was passed in 1982 and established brand new rules and regulations revamping the organization of Lloyd's. This Act codified the practice of self regulation (Kelley, 1995: 3). The Act gave the council the power to regulate the market but not the obligation to do so:

"*The Council shall have the management and superintendence of the affairs of the Society and the power to regulate and direct the business of insurance at Lloyd's and it may lawfully exercise all the powers of the Society."*[134]

The only body that the council of Lloyd's is answerable to is the DTI (Catlin *et al*, 1973: 71; Major, 1995: 10) "thus was the first rule of effective self-regulation – that the self-regulator must be forced to justify its actions to a governmental body on demand – was violated from the beginning" (Luessenhop & Mayer, 1995: 149). Also, another rule of self regulation was violated by allowing the "panel of auditors chosen by Lloyd's to work under codes and conditions set by the council, not by their own self-regulatory association of accountants" (Luessenhop & Mayer, 1995: 149).

This new Act has five main provisions:[135]

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[133] S3(1) & S(2) Lloyd's Act of 1951
[134] S6(1) of the Lloyd's Act of 1982

1. A new council of Lloyd's was established consisting of 27 members – 16 working members of Lloyd's,[136] 8 external inactive members of Lloyd's[137] and 3 nominated members which cannot be members of Lloyd's appointed by the council with the approval of the Governor of the Bank of England.[138] The power of regulating the market was to be placed with this council. The council was given the power to create by-laws for the management of the society as well as for the discipline of its members.[139] Ian Hay Davison, as Deputy Chairman and Chief Executive, increased the external nominated members to four individuals, on the 14th February 1983. The old committee of 16 working members of Lloyd's is still present but their power has diminished as the new council has taken over most of their duties. The council delegates tasks to the old committee giving them authority over certain specific areas (e.g. the authority of admitting members, brokers and agents into Lloyd's and the annual solvency test) at Lloyd's as opposed to the blanket authority they once enjoyed over Lloyd's as a whole (Davison, 1987: 66). The old committee focuses on the day-to-day affairs and has no control over the finances of Lloyd's or any investigations made into Lloyd's. The new committee's focus is on long term planning (Ferguson, 1983: 62).

2. The new council solely retains the power to create by-laws without having to call a general meeting of all members as in the 1871 Act. An example of a new by-law to be implemented would be the requirement that all agents and brokers reregister with Lloyd's and become subject to stricter standards (Davison, 1987: 47). The council also has the power to amend or revoke any by-laws already in force.[140]

3. The creation of a disciplinary committee which can consist of any members at Lloyd's and not only those on the council.[141] This committee has the power to expel, suspend,

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[135] Davison (1987: 32); Hodgson (1987: 293); Catlin *et al* (1973: 71).
[136] S3(2)(a) of the Lloyd's Act of 1982.
[137] S3(2)(b) of the Lloyd's Act of 1982.
[138] S3(2)(c) of the Lloyd's Act of 1982; Ferguson (1983: 60).
[139] S6(2)(a) of the Lloyd's Act of 1982.
[140] S6(2)(b) of the Lloyd's Act of 1982; Ferguson (1983: 61); HM Treasury (2008: 7); *Frederick Thomas Poole and Others v Her Majesty's Treasury* (2006: 20).
[141] S7(1)(a)(i) of the Lloyd's Act of 1982; Ferguson (1983: 62).

fine, punish or criticize any member of Lloyd's. The reports of this committee may be published. The council has to form an Appeal Tribunal to hear any appeals[142] where the member can appeal the decision and the council does have the right of leniency and is able to alter the choice in punishment.

4. The Act requires divestments. Divestment was strongly looked at as well as the separation of the Names agents and the managing agents to reduce the conflicts of interests even further. A person who is a managing agent [Lloyd's broker] or is associated with a managing agent [Lloyd's broker] is not allowed to simultaneously act as a Lloyd's broker [managing agent].[143] If a Lloyd's broker [managing agent] is associated with a managing agent [Lloyd's broker] at the commencement of the 1982 Act, the Act provides the Lloyd's broker [managing agent] with 5 years in which to divest himself from the managing agent [Lloyd's broker].[144] The associations between brokers and underwriters came to an end in July 1987. Divestment forced managing agents to be independently managed (Taylor, 2006). If a Lloyd's broker [managing agent] becomes associated with a managing agent [Lloyd's broker] after the commencement of the 1982 Act he is given a period of six months where he can simultaneously be a broker and a managing agent after which he must chose one or the other.[145]

5. As a result of the number of lawsuits being brought against Lloyd's after the fraud and natural disasters of the 1980s this Act created a provision where any individual wishing to sue Lloyd's has to sue the entity responsible for the damages personally (i.e. the underwriter, Lloyd's broker or the member directly) as the society itself is exempt from any liability in damages caused by any underwriting business done at Lloyd's.[146] Lloyd's does not owe its Names a duty of good faith or fair dealing (Luessenhop & Mayer, 1995: 42). This section was put in place to stop Names suing Lloyd's as an organization. The

[142] S7(1)(b)(i) of the Lloyd's Act of 1982.
[143] S10(1) & S11(1) of the Lloyd's Act of 1982; Ferguson (1983: 63).
[144] S10(3) & S11(4) of the Lloyd's Act of 1982; Ferguson (1983: 64).
[145] S10(4) & S11(5) of the Lloyd's Act of 1982; Davison (1987: 28); Rasmussen, Owen & Smith (1997: 11).
[146] S14(3) of the Lloyd's Act of 1982.

> Act also protects the society from lawsuits brought by insiders against the society itself.[147]

Other relevant sections in the final Lloyd's Act: the Council must elect from the working members a Chairman and two deputy Chairmen of Lloyd's on an annual basis,[148] and the Council does have the authority to delegate certain duties to the Committee except for the creation of certain regulations and the carrying out of duties laid down in the Lloyd's Acts.[149]

Lloyd's has two vital relationships that it deals with. The first relationship is between Lloyd's and its policyholders which is directly supervised by the Board of Trade, later known as the DTI. The DTI pays particular attention to the solvency test set out in the Insurance Companies Act of 1982. The Bank of England also plays a supervisory role regarding city markets and therefore Lloyd's. The second relationship is between Lloyd's members and their agents which is self-regulated by Lloyd's. However, the DTI and the Bank of England still have an interest to make sure that Lloyd's is efficient and prompt in excising these self regulatory powers (Davison, 1987: 33).

Lloyd's Brokers are covered by the Lloyd's Act of 1982 as well as the Insurance Brokers Registration Council (IBRC) formed by the Insurance Brokers (Registration) Act of 1977. This Act limits the use of the term 'Insurance Broker' to only cover registered organizations and the Act is only applicable to such organizations. Lloyd's brokers comprise the biggest share of brokers in the British Insurance Brokers Association (BIBA) which is the body of brokers registered under the Insurance Brokers (Registration) Act of 1977 (Davison, 1987: 32).

The Insurance Brokers (Registration) Act of 1977 lays down the minimum standards that an organization has to comply with to be seen as an insurance broker regarding its size and financial strength. Lloyd's brokers are however exempt from the more stringent rules of this Act since

[147] S14(1) of the Lloyd's Act of 1982.
[148] S4 of the Lloyd's Act of 1982.
[149] S6(6)(a) of the Lloyd's Act of 1982.

they are already governed in those areas by the Lloyd's Act of 1982 (Davison, 1987: 32; Catlin *et al*, 1998: 72).

Substantial deregulation occurred in London during the 1980s known as the 'Big Bang' which was a move from restrictive practices to become more competitive in the London securities market. This deregulation was followed by re-regulation of the financial services industry through the Financial Services Act of 1986 which moved away from self-regulation (Kelley, 1995: 3). Lloyd's was exempt from the Financial Services Act and continued to be regulated by the Lloyd's Act of 1982.

5.3.4.1. LRO to amend the Lloyd's Act of 1982

A Legislative Reform Order (LRO) was published in 2008 by the Treasury which proposed certain amendments to the Lloyd's Act of 1982. Of the proposed reforms,[150] two will be examined (McGovern, 2008: 2; HM Treasury, 2008):

1. Section 8(3) Lloyd's Act 1982 which states that underwriters can only accept insurance business from an accredited Lloyd's broker is to be repealed as it is outdated (HM Treasury, 2008: 9, 13, 35). It is a statutory restriction that no other insurance markets or insurers face. Lloyd's will have the power to make by-laws as to how managing agents are to deal with other brokers, making sure such brokers comply with appropriate standards. A broker can continue to refer to itself as a Lloyd's broker to indicate its familiarity and specialist knowledge of Lloyd's operations as it will now receive competition from other insurance intermediaries (HM Treasury, 2008: 36, 38, 40-42, 65).
2. The repeal of the divestment provisions (S10-12 of the Act) since these are statutory provisions that no other competitor has to deal with. Other regulation has emerged since 1982 that deals with the conflict of interests between managing agents and brokers and it

[150] There were eight proposed reforms in total - relaxing the rules on appointing a Chairman or election of a council member; removal of the requirement of the Governor of England to approve council members since this is already being done by the FSA; removal of the Committee (the council of Lloyd's and already present alternative boards i.e. the Franchise Board and the Regulatory Board, being sufficient to manage the markets needs); reform delegation rules; relax rules imposed on the disciplinary committee; restriction of accessing Lloyd's only via a Lloyd's broker to be removed and the repeal of the divestment provision (HM Treasury, 2008: 13, 24, 25). All were accepted by Lloyd's.

no longer has to form part of the Lloyd's Act. However it was proposed that a disclosure method be used, applying to managing agents to disclose any association with brokers, to monitor potential conflict of interests (HM Treasury, 2008: 9, 13, 45, 65).

Lloyd's was willing to accept all reforms (McGovern, 2008: 4) and the LRO was approved in November 2008.[151]

5.3.5. Financial Services Authority (FSA)

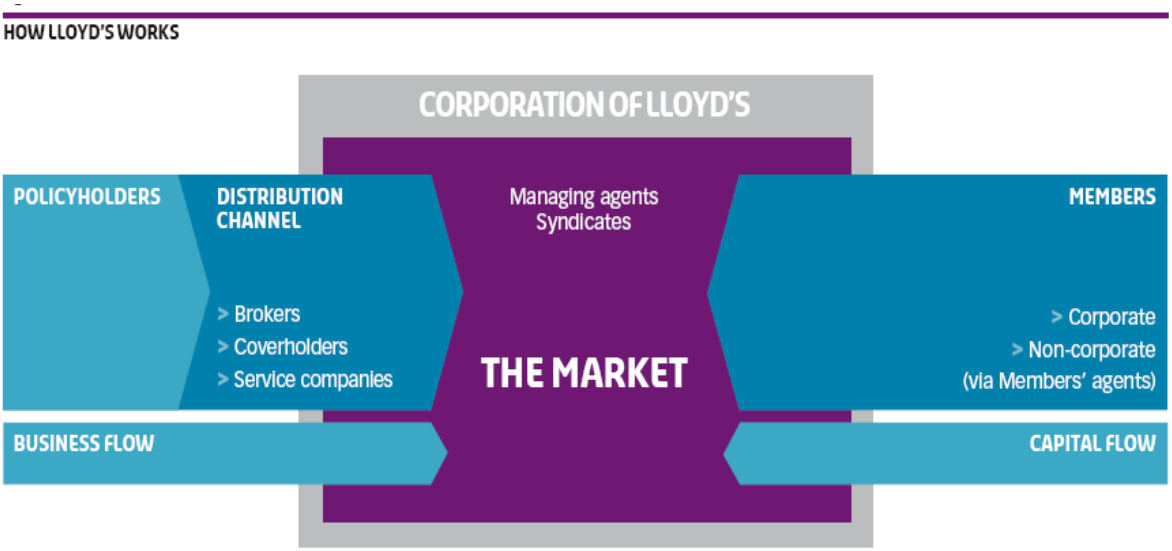
In 1997 the government felt that the insurance market required a wide reform of its regulatory structure and included Lloyd's in this reform. The DTI's responsibilities were thus transferred to Her Majesty's Treasury and later, in the year 2000, to the FSA (Catlin *et al*, 1998: 72).

5.4. Conclusion

Lloyd's consists of the following groups of individuals (Davison, 1987: 28): the brokers who bring policyholders to insure their risks at Lloyd's, the active underwriters who write the risk and price it accordingly, the underwriting agents who manage the underwriters and bring the Names to invest in the syndicates, the Names themselves who expose their personal fortune on an unlimited basis to provide Lloyd's with capital to insure risks, the staff employed by the society of Lloyd's who provide support services and the Council who govern the Society of Lloyd's. The support services include: collecting shipping intelligence, running the agency system abroad, running the signing policy office, running the claims handling office, and lastly self regulation of the market by monitoring the underwriting agents and brokers, admitting new members and looking after reserve funds and deposits.

[151] http://www.lloyds.com/News-and-Insight/News-and-Features/Archive/2008/11/Lloyds_legislative_reform_order

Figure 4: A graphical representation to summarise the structure of Lloyd's



(Anonymous, 2009: 8; Anonymous, 2010b: 7).

6. Lloyd's in South Africa

6.1. An overview of the South African insurance market

The development of the insurance market is naturally tied to the development of the country. During the period when the insurance market was forming, South Africa experienced a number of important events in its history. Employees of the Dutch East India Company (VOC) arrived at the Cape in April 1652 to establish a victualing as well as a medical station for its passing fleets to India and the East (Hagedorn-Hansen, 2011; Pakenham, 1979: xxi). The VOC granted freedom to some of its employees to farm and settle at the Cape, providing the genesis of the white population, the Afrikaner, at the Cape. Early in 1713 Dutch ships brought the small pox virus to the Cape which wiped out much of the indigenous Hottentot population. The Dutch were replaced by the British government in 1795 when a fleet was sent to take the Cape into protective custody in the face of the growing European wars. From 1662 till 1795 the Cape was largely rural and agricultural which had very little need for insurance and it is not surprising that there was no South African insurance market. Things began to change with the arrival of the British in 1795 who left for a short period after a measure of peace prevailed in Europe, in terms of the treaty of Amiens, and for a short while the Cape was handed back to the Dutch. During this period an extensive survey was carried out to assess the economic potential of the Cape. The report was negative about the prospects. The survey noted that no indigenous insurance market existed and generally was not very optimistic about the economic future of the Cape. The British returned expelling the Dutch from the Cape and the Cape was slowly placed on a more secure commercial foundation aided by the arrival of the 1820 settlers from the UK. Shortly thereafter on the 14th March 1831 the first indigenous insurance company the South African Fire and Life Assurance Company was established at the instigation of Thomas Le Breton (Le Breton, 1832) a British immigrant.

A significant upheaval occurred from 1838 onwards with *Die Groot Trek* (The Great Migration) when the indigenous Cape Afrikaans speaking white people migrated away from the Cape and from the English Government rule by moving eastwards and inland away from the Cape. In the

process they formed other Republics in the Orange Free State, Natal and Transvaal. Thereby, in their view, eliminating the British control over themselves, however this was not to be. The discovery firstly of diamonds in the Northern Cape and Orange Free State resulting in the development of the diamond fields and secondly the discovery of gold and the development of the gold fields in the Transvaal ensured the intensified British involvement. The diamonds and gold resulted in a massive influx of foreigners (Pakenham, 1979: xxi - xxii).

The British accordingly followed the Afrikaners inland and claimed right of government over them which resulted in a series of skirmishes and wars between the British and the Afrikaners. The first Anglo-Boer War ended with the Battle of Majuba in 1880 which was a resounding victory for the Afrikaners. The first war made the Second Boer war inevitable. In the end the British simply could not be defeated by what were essentially farmers and very much part-time soldiers. The second Anglo-Boer war took place between 1899 and 1902 with a decisive victory for the British (Vivian, 2007: 680). The defeat and victory as it turned out was short-lived for both parties. With a massive influx of English people, a consequence of the gold rush, it was generally thought at the time that if the popular vote was granted exclusively to whites, the English would outnumber the Afrikaners and thus dominate South Africa. The Second Anglo-Boer War was fought ostensibly to grant the vote of the foreigners, referred to as the Uitlanders. However, numerically the new arrivals, the English, never outnumbered the Afrikaners and the popular vote placed the Afrikaners and not the English in the dominate position. The dominate position of the Afrikaner was achieved with the 1948 general election which was won by the National Party (NP), a position they would hold until the vote was extended to all in 1994. The English won the war but lost effective control through the ballot box. The converse is equally true; the Afrikaners lost the war but won control through numbers of votes.

In 1910 the different colonies united to form the Union between the Cape, Orange Free State, Natal and Transvaal (Vivian, 1995: 36). By then South Africa was the largest Gold producer in the world with growing secondary industries springing up to support the mining industry which formed the mainstay of the economy. In 1961 the Union gained its independence from the British and became known as the Republic of South Africa. The Afrikaner Nationalist Party

remained in power until 1994 when it lost the election to the ANC, the first black majority government, and the ANC is still today the ruling party (Vivian, 2007: 681).

The Afrikaners trekking from the Cape in 1838 were mainly farmers and remained such when they settled in Natal, Orange Free State and the Transvaal. As farmers they were largely rural. Commerce, an urban activity was mainly carried out by persons of English origin, the influx from the diamond and gold rush. In 1900 Afrikaners controlled a significant portion of commerce. The rural area is synonymous with poverty. As the white Afrikaner farming population expanded, the population exceeded the numbers which could be supported on the farms resulting in migration of unskilled Afrikaners to towns and cities. This manifested itself into what was called the poor white problem. Fortunately with the passing of time the economy expanded sufficiently to absorb the slowly increasing white Afrikaner population which became increasingly skilled. The economy never expanded sufficiently to be able to absorb the rapidly increasing black population. Similarly, matching economic growth and population did not take place in the rest of Africa and Africa as a whole descended increasingly into poverty.

Insurance played a particularly important role in the upliftment of Afrikaners. The Afrikaners, aware of their disadvantaged position, formed two of South Africa's now largest insurance companies, Santam and Sanlam with the specific purpose of mobilizing Afrikaner savings to promote economic growth out of which they would be lifted out of poverty.

With the expansion of the economy so commerce grew including the insurance market. Towards the end of the 20th century the South African life insurance market accounted for 95% of the premiums received in the whole of Africa. The South African property and casualty market accounted for 57% of premiums in Africa. Looking more broadly, South Africans spend more per GDP purchasing life insurance when compared to any other country in the world. It must be noted that contractual savings are included in South African life insurance (Vivian, 2007: 679).

6.2. Development of the insurance industry

The early history of South Africa's insurance market is not well documented nevertheless attempts have been made to do so.[152] The first record of insurance being made available in South Africa occurred on the 6th August 1806 when a UK company, the Phoenix, granted power of attorney to two agents in South Africa to transact business on its behalf (Spyrou, 1995: 325; Vivian, 2007). In the first instance, as in the case of the Phoenix, the insurance market developed via overseas companies being represented by agents in South Africa. The first agents of the Phoenix were John Houghton and Alexander MacDonald. The company advertised in South Africa on the 18th October 1808.[153] This advent of the Phoenix, offering insurance in SA, can be referred to as the birth of the South African insurance market.[154]

In 1826 another two overseas insurance companies offered insurance in South Africa. On the 1st February 1826, the *South African Commercial Advertiser*, published in Cape Town advertised that the United Empire and Continental Life Assurance Association based in London had opened a branch at the Cape of Good Hope. Two weeks later, 15th February 1826, another advertisement appeared that yet another English company, The Alliance British and Foreign Life and Fire Assurance Co was offering its business in South Africa.[155]

There were not only companies from the UK but also from various parts of the world and as time progressed these companies sent full time representatives to South Africa to look after their businesses. The next step in the developmental process was when the foreign companies established branch offices in South Africa. As will be seen Lloyd's of London followed a similar pattern, although, it only opened an office in South Africa in 1998.

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[152] Hirsch (1909 & 1962); Spyrou (1995); Vivian (1995 & 2007).
[153] Mellish (1956: 6); Vivian (1995: 17); Vivian (1996: 148); Vivian (2006: 44).
[154] The Phoenix in South Africa became the Protea, which was taken over by the Mutual & Federal (http://www.iiec.co.za/newsletter/IIEC_Newsletter_February_2011.pdf).
[155] Hirsch (1962: 25); Vivian (1995: 17); Vivian (1996: 148); Spyrou (1955: 325).

6.3. Indigenous companies

The first insurance company native to South Africa was only established on the 14th March 1831 in Cape Town by the name of the South African Fire and Life Assurance Company[156,157]. An English gentleman by the name of Thomas Le Breton came to South Africa in September 1830. While staying in his lodgings in the Cape of Good Hope he regularly dined with an unnamed colonial gentleman, an Indian mathematician and an Indian with an immense knowledge of daily events. One of the conversations held at the table was the creation of a new establishment by the name of The Civil Servants' Fund. The Fund, however, was soon dissolved ruining many families who had placed money into the Fund as a means to provide personal security. This led Thomas Le Breton to establish the Life Assurance Company[158] which would replace the Civil Servant' Fund (Le Breton, 1832: 4; Vivian, 1996: 149). Le Breton trusted the information he received regarding longevity from medical professionals and that the age of 42 at the Cape was regarded as being a very long life. Le Breton, however, had many friends who were older than 42 and still healthy and strong. He spent 3 months visiting surrounding cemeteries calculating the age at which the individuals had died (Le Breton, 1832: 6). Afterwards, in March 1831, he held a meeting with his Dutch and English friends at his home to discuss the formation of the Life Assurance Company. A General Meeting was held on the 14th of March where the capital required to begin the venture as well as the deposits needed were discussed. It was agreed to form the company and the Directors were nominated as well as the medical inspectors, auditors and a secretary. After an unfortunate misunderstanding Thomas Le Breton was appointed as the first secretary.[159]

Fire insurance was also included in the coverage offered by the South African Life Assurance Company. The first policy was issued on the 20th April 1831 (Le Breton, 1832: 8). The company became known as the South African Fire and Life Assurance Company (Le Breton, 1832: 10; Hirsch, 1962: 25). Le Breton later resigned as Secretary and became a Director (Le

[156] The South African Fire and Life Assurance Company is the full name of the company. However, it is sometimes abbreviated to the South African Assurance Company (Vivian, 1995: 29; Vivian, 1996: 146).
[157] Spyrou (1955: 325); Vivian (1995: 11); Vivian (1996: 148); Vivian (2007: 698); Vivian (2006: 44); Anonymous (1929a: 25).
[158] It should be noted that this 'company' was not the modern limited liability company.
[159] Le Breton (1832: 7); Hirsch (1962: 27); Vivian (1996: 149).

Breton, 1832: 14; Vivian, 1996: 151). The company only insured people below the age of 50. Anyone older than 50 had a much higher probability of dying much sooner and was therefore uninsurable. This rule was not set in stone as there is record of a gentleman being insured at the age of 51 (Le Breton, 1832: 16). However, when Le Breton tried to insure his own life with his company his proposal was declined given the reason that he was above the cut-off age of 50 years (Le Breton, 1832: 17). This decision caused ill-feelings between Le Breton and other directors as Le Breton felt that this was a "hasty, injudicious and ill-timed" decision as he was the founder of the company and should not be refused (Le Breton, 1832: 18). The Assurance Company was willing to give Le Breton a pension that would be paid to his wife upon his death. However, he declined the pension offer as it showed that his wife would have to be dependent on the company for her support (Le Breton, 1832: 20).

Le Breton retired from the South African Assurance Company soon after his declined proposal on the 30th May 1832.[160] Le Breton approached Messrs, Nisbet and Dickson who were the agents for the Alliance Insurance Company to insure his life for £500 (Hirsch, 1962: 25; Vivian, 1996: 152; Le Breton, 1832: 23). After a conclusive medical examination his life was insured for one year (Le Breton, 1832: 25). Thomas Le Breton died insolvent two years later on 10 June 1834 (Vivian, 1996: 153). The original grave stone has been located but no longer reflects his name.

The two main Life Assurance companies during the 1830s were the Alliance and the South African Fire and Life Assurance Company and healthy competition was evident between the two. By March 1832 the South African Fire and Life Assurance Company was expanding with the inclusion of three agents to bring business into the company. The South African Fire and Life Assurance Company held its 5th annual general meeting in May 1835 showing that the business was still doing well (Hirsch, 1962: 39). In December 1835 yet another insurance company began trading in South Africa, the Cape of Good Hope Fire Insurance Co, providing even more competition for the established two insurance companies by offering lower fire rates (Hirsch, 1962: 41; Vivian, 1995: 19). These three Insurance companies were the main insurers up until 1838.

[160] Le Breton (1832: 23); Vivian (1995: 29); Vivian (1996: 152).

The insurance industry started with life and fire insurance in South Africa. Other forms of insurance such as accident and marine were slower to develop. Marine insurance started in the Cape as early as the 1800s by the British settlers. In August 1838 the Cape of Good Hope Fire Insurance Co formed a branch of their business to focus solely on marine insurance, the Cape of Good Hope Marine Insurance Company. "It was the first purely South African Office to transact marine business" (Hirsch, 1962: 43). Another local company was established in 1844, the Equitable Fire and Life Assurance Trust Co (Hirsch, 1963, 19) which then branched into marine insurance in 1849 through the Equitable Marine Co (Spyrou, 1955: 328). In 1853 ships began to make regular journeys between South Africa, England, Australia and India improving communication and allowing for more businesses to extend their reach to overseas countries. This led to more insurance companies starting up in the Cape providing more competition for the already existing handful of insurers (Hirsch, 1963: 22). Local marine companies faced severe competition from foreign marine insurance companies (Spyrou, 1955: 328). In this same year, 1853, the Guardian Assurance and Trust Co. of Port Elizabeth was formed. This company only branched into marine insurance in 1857. In 1856 another insurance company, the Commercial Marine and Fire Assurance Co, appeared in the Cape.

Table 2: A summary of the slow establishment of marine insurance companies in South Africa.

Arrival in SA	Name of Company	Line of Business	Foreign/local
1808	Phoenix Fire insurance Company	Fire	Foreign
1826	United Empire and Continental Life Assurance Association	Life	Foreign
1826	The Alliance British and Foreign Life and Fire Assurance Company	Fire and Life	Foreign
1831	South African Fire and Life Assurance Company	Fire and Life	Local
1835	Cape of Good Hope Fire Insurance Company	Fire	Local
1838	Cape of Good Hope Marine Insurance	Marine	Local

Arrival in SA	Name of Company	Line of Business	Foreign/local
	Company		
1844	Equitable Fire and Life Assurance Trust Company	Fire and Life	Local
1849	Equitable Marine	Marine	Local
1856	The Commercial Marine and Fire Assurance Co	Marine and Fire	Foreign
1857	Guardian Assurance and Trust Co branched into Marine	Marine	Foreign
1874	Colonial Assurance Co	Marine	Local

The discovery of diamonds in 1869 as well as the opening of the Witwatersrand gold fields in 1886 created an influx of foreign insurance companies into South Africa from Australia, America and Britain.[161]

Accident insurance developed much later after life and fire insurance was already popular. No accident insurance can be found to date further back than 1848 worldwide (Macintyre, 1898: 15). By the 1890s there was still no insurer focused on accident insurance in South Africa. Accident insurance only came to South Africa around the mid-late 1890s. The Commercial Assurance Company in Cape Town can be accredited with being the first South African insurer to offer accident insurance (Vivian, 1995: 21). Other insurers which followed suit were the Southern, African United, Ocean and Imperial (Macintyre, 1898: 20). Sickness insurance and Fidelity Guarantee insurance were regarded as recent developments in 1898. The Southern was the only insurance company transacting in Sickness insurance while the African United held the monopoly for Fidelity Guarantee insurance (Macintyre, 1898: 25).

Over time some insurance companies left and new ones where formed. There were 8 insurance companies by 1898 that offered marine insurance over and above fire and life. These were the Alliance Marine, the British and Foreign, the Maritime, the Commercial Union, the South

[161] Mellish (1956: 15, 16); Spyrou (1955: 325); Vivian (1995: 60, 63); Wenban (1911: 633).

British, the New Zealand, the Colonial and the Equitable. Only the Colonial and the Equitable were native to South Africa (Macintyre, 1898: 25; Spyrou, 1955: 328).

6.4. Lloyd's in South Africa

6.4.1. Early Beginnings

As noted above Hirsch (1909 & 1962) attempted to set-out the history of the South African insurance market but makes no mention of Lloyd's. If the first foreign insurer to transact business in South Africa was in 1808 one can accept that Lloyd's had not yet appointed insurance agents with binding authority in South Africa prior to that year. If Lloyd's was represented in South Africa, Hirsch, who was involved in the industry and well connected, would have included Lloyd's in his survey of the market.

Initially, as discussed above, when Lloyd's was first formed it only dealt with marine insurance. The UK Lloyd's Act of 1871 focused on marine insurance with no mention of non-marine insurance. Lloyd's was involved only in marine insurance until 1885 where the first non-marine syndicate was introduced in Lloyd's visionary, Cuthbert Heath.[162] It is thus unlikely that Lloyd's would have been involved in the South African market before this date and if it was it would have been in marine insurance. The South African market on the other hand started with life and fire insurance and only began offering marine insurance in 1838 when the Cape of Good Hope Marine Insurance Company, the first marine company, was formed. Given that Lloyd's only offered marine insurance up until 1885 it could be assumed that Lloyd's would not have been involved in the South African insurance market prior to the introduction of marine insurance in South Africa in 1838, since it did not deal with life or fire insurance. No record of a South African marine (shipping) company could be found. It can be assumed that the demand for marine (hull) insurance in South Africa was low.

[162] For a discussion on Cuthbert Heath refer to 4.1.13.

The detailed record of the South African insurance, banking market and shipping and commercial affairs was published in 1898 as *The South African Red Book* (Macintyre, 1898: 31). This book provides a list of the number of insurance companies in South Africa, with emphasis being in the Cape. In 1898 there were approximately 53 insurance companies with only 6 being indigenous South African companies. The others were foreign insurers which extended their business of insurance from abroad to operate in South Africa. However, the native South African insurers secured more business than all the foreign insurers which were competing against them (Macintyre, 1898, 27). As in the case of Hirsch, no mention is made of Lloyd's in the *South African Red Book*. South African, Australian, Scottish and English insurance companies are all mentioned but not Lloyd's of London. This could be that since Lloyd's is not a company but operates via agents or brokers it accordingly would not have been included in the list of companies. The business was simply placed via agents or brokers directly to London, a matter which was of concern for authorities' right up to the 1970s.

The first record of communication between Lloyd's and South Africa dates to 20 January 1823[163] where Commodore Nourse, the Commander-in-Chief at the Cape, wrote a letter to the Committee of Lloyd's regarding the possible erection of a Lighthouse upon the rock called "Noah's Ark" at the entrance to Simon's bay (McCall, 1903: 245). Commodore Nourse had initially approached the governor of the Cape Colony, Lord Charles Somerset, with a proposal to erect the Lighthouse. Lord Charles Somerset favoured the idea, however did not have sufficient funds to pay engineers to build the Lighthouse and sent a letter recommending the construction to Lord William Lennox Bathurst, Vicutalling Commissioner for the Royal Navy. Commodore Nourse felt that the British government would, even with the recommendation from Lord Charles Somerset and Lord Bathurst, refuse to fund the construction of the Lighthouse and then approached Lloyd's of London to provide the money needed. After consulting an engineer it was established the estimated cost would be roughly £500. According to an extract from *Lloyd's List* from 1819 to November 1822, 16 ships had either been lost or suffered damage around the Cape Colony (McCall, 1903: 255). The building of the Lighthouse was in the best interest of Lloyd's, reducing the number of accidents and losses suffered at the hands of "Noah's Ark" (McCall, 1903: 246, 247). Commodore Nourse communicated with Lloyd's asking for help in

[163] The full communication can be seen in Appendix 2.

protecting further ships using Simon's Bay port. This is evidence of an interaction between South Africa and Lloyd's. There is, however, no evidence of him being a Lloyd's Agent or supplying information to Lloyd's on ship movements.[164]

The first record of Lloyd's operation in South Africa dates to the 17 July 1850 when George Christopher Cato was appointed as a Lloyd's Agent for Lloyd's of London in Natal (Russell, 1899: 83; Goetzsche, 1967: 89; Krüger: 1972, 126). George Cato was born in 1814 in London and moved to the Cape with his family in 1826 and then to Algoa Bay where he worked in the salt beef export trade and soon became the manager while still in his teens. In 1838, the same year in which the great trek started, his employer extended his trading activities to Natal sending Cato South to Port Natal with a cargo of merchandise. Port Natal (now Durban) held a great appeal to Cato and after winding up his affairs in Algoa Bay he moved there with his family in March 1839. He opened the first trading establishment in Durban, a general trading business, which became the centre of the settlement's civilization as he built up a good trade with the hunters and farmers. He was given the task of laying out the original plan of a town along the north-east beach of an estuary forming the port of Natal. He had slowly begun to strengthen his standing in the then small community. The Boers had arrived and declared Natal to be a Boer Republic, however, in May 1842 Captain T.C. Smith arrived at the port of Natal and replaced the flag of the Republic of Natalia with the British Flag essentially annexing the Republic for the British Crown. This led to a clash between the British and the Boers. The Boers were led by Commandant-General Pretorius. Cato fought for the British and was captured and taken prisoner by the Boers. He was finally released in June and he re-established himself in Port Natal still under the control of Major Smith by extending his business interests (Goetzsche, 1967: 13, 14, 17, 20, 27, 31, 43, 50).

Cato was held in high esteem for his heroic deeds during the war and was regarded as a leading figure in the growing European community. On May 12 1843 a proclamation was issued and the British annexed the port of Natal. The Honourable H. Cloete was appointed as Her Majesty's Commissioner to Natal and an uneasy peace emerged between the British and the Boers. Cato was appointed a Justice of the Peace in 1846. Harbour facilities were still primitive at this stage

[164] For a discussion on Lloyd's agents refer to 4.1.7 above.

and improvements where only made in 1848. Cato was active at the port serving as a landing agent by helping cargo get to the port from ships anchored at sea. On 19 March 1847 Cato was appointed Consular Agent for the USA at Port Natal. His high standing in society and involvement in the Port of Natal led to him being appointed as an agent for Lloyd's on July 17 1850 which office he held till 1890 after which he could no longer perform his duties due to ill-health.

His duties as a Lloyd's Agent included hoisting the Lloyd's flag (a large blue and white banner bearing the words 'Lloyd's'). This was a signal to the occupants of the town that their mail had arrived. In his capacity as a Lloyd's Agent he was appointed to the Harbour Board of Commissioners in 1852 (Russell, 1899: 83; Goetzsche, 1967: 53, 56, 58, 60, 89, 90, 97; Krüger, 1972: 126). In September 1863 strong winds brought tragedy as a number of ships where shipwrecked trying to enter the Port of Natal. As a Lloyd's Agent Cato was instrumental in the building of a lighthouse, in January 1867, at Port Natal to make it easier for vessels to enter the port (Goetzsche, 1967: 173 - 175). He remained a member of the Harbour Commissioners Board until 1890 and "it was the Board which laid the foundation of the harbour as it is known today, and no small measure of its progress is due to George Cato who, throughout his long association with Durban, devoted himself assiduously to the affairs of the port" (Goetzsche, 1967: 201).

In addition to being a Lloyd's Agent Cato was also one of the original directors of the Natal Bank established on April 1, 1854 and later, August 5, 1854, became the first Mayor of Durban which he served for two years till 1856. His wife passed away in 1886 and with such a grievous loss his health started to deteriorate rapidly and he passed away on July 9, 1893 at the age of 79 (Goetzsche, 1967: 105, 143, 206 - 207).

A communication dated the 14th December 1868 was found where the Colonial Office of Natal wrote a letter to G.C. Cato, Lloyd's Agent in Durban, regarding the news that the largest ship, the Sultana, had entered the Durban harbour successfully. The letter is reproduced hereunder.

"Colonial Office Natal

14th December 1868

Sir,

I have the honor (*sic*) to acknowledge the receipt of your letter of the 12th instant in which you state that the "Sultana" of 1000 tons burden the largest ship which had ever entered our harbor (*sic*) and crossed the far three days before the spring tides. His Excellency feels much gratification at the receipt of this intelligence and thinks it would be advisable that it should be published both here and in England.

Lloyd's Agent

Durban

With reference to your observations regarding the "Tug" his Excellency has appointed a commission consisting of yourself, the port captain and the civil engineer to examine and report upon the state of the vessel.

The honorable…

Your obedient servant,

The Colonial Secretary" (Erskine, 1868).

It can thus be accepted that Lloyd's had at least one Lloyd's Agent in South Africa by the year 1850. It is possible an agent was appointed for the Cape port but no record has been found. This agent may not have sold insurance as there is no evidence of George Cato having the authority to accept insurance business. He was an agent appointed to look after Lloyd's interests and keep it informed about ship movements and any other shipping intelligence.

With the discovery of diamonds and gold and the development of the economy it can be accepted that insurance became a more integral part of the country's commercial activity.

After Colonel Sir Henry Hozier[165] pioneered wireless telegraphy at Lloyd's in 1851 it was only a matter of time before Lloyd's would get involved in wireless technology abroad. This led to Lloyd's having an involvement in the early establishment of wireless technology in South Africa (Baker, 1998: 5). Edward Alfred Jennings, born in London, worked in the post office in the Cape Colony and later moved to Port Elizabeth, discovered wireless technology independently from others in the UK or USA. In 1898 Jennings made experimental transmissions between the Bird Island Lighthouse and the mainland. In the same year, Marquis of Graham visited South Africa for this experiment on behalf of Lloyd's looking into how it could benefit safe travel at sea and "an agreement was reached between the Cape Government and Lloyd's of London to establish wireless technology between Dassen Island and Robben Island, as well as between Bird Island and Port Elizabeth" (Baker, 1998: 6). This wireless technology was used in the second Anglo-Boer war.

By the year 1900 the Lloyd's Patriotic Fund[166] had established a Transvaal War Relief Fund for disabled men in South Africa indicating that Lloyd's was indeed active and had grown in influence by 1900. The number of men assisted in South Africa by this fund was 2199 in 1900, 1854 in 1901, 2963 in 1902 and 1584 in 1903, many of the men being helped were also helped in subsequent years so some overlapping did occur (*De Rougemont*, 1904).

An article published on the 15th June 1904 recognises Lloyd's technical expertise when it noted that: "Amongst the proposals to be brought before the present Congress of Chambers of Commerce are the recommendations for the general adoption of Lloyd's form of Average Bond" (Anonymous, 1904a: 2). Lloyd's was clearly a significant force by the 1900s since efforts were made to bring it within the tax net, something which had long before befallen other foreign insurance companies operating in South Africa. An article was written regarding governmental influence over the fire insurance industry noting that, in 1887, an Act was passed that all fire insurance companies who do not have an office in the Cape Colony were to make a deposit of £10 000. Only foreign insurance companies were required to make this deposit and nothing was

[165] For a discussion on signal stations and wireless telegraphy refer to 4.1.12 above.
[166] This Fund was formed by Lloyd's in 1803 to provide monetary relief for sufferers from the War against Napoleon. This fund was then extended to provide grants to soldiers, officers, sailors, wounded or disabled men, widowers etc from any war (*De Rougemont*, 1994).

required from local companies assuming that these had assets in the country. In addition to the deposit foreign companies were obligated to pay a tax on their premium income. The article then goes on to complain that "this taxation of fire business is now being placed at Lloyd's in London, these underwriters paying nothing to the Cape Government for license or income tax, making no deposit, and requiring no stamps on their policies" (Anonymous, 1905: 106). By 1905 the Lloyd's business in South Africa was sufficiently significant to trouble local companies as Lloyd's was not liable for taxation, or needed to be licensed for the making of the deposit. Clearly this state of affairs could not endure forever.

In January 1907, two years later, an article asserting that Lloyd's covers many strange risks and will insure nearly everything at an appropriate premium (Anonymous, 1907: 8). Many other articles exist in South African insurance magazines with discussions on Lloyd's activities in London and the US[167] however very few exist regarding its activities in South Africa.[168]

No specific documentary evidence has been found indicating when Lloyd's in fact first started transacting insurance business in South Africa but from the snippets of information discussed above it can be seen that South Africa did have open communication channels with Lloyd's as early as 1823 in Simon's Bay as well as a Lloyd's Agent, for gathering shipping intelligence, if nothing else, appointed in Port Natal was already present in South Africa as early as 1850. Since the Cape Port was inexistence long before the Natal Port, having been established in 1652, it is more than possible that an agent had been appointed for the Cape Town port but this documentary evidence has not been found.

[167] Anonymous, (1904b: 14); Anonymous (1909a: 32); Anonymous (1909b: 101); Anonymous (1909c: 120); Anonymous (1910a: 172); Anonymous (1910b: 184); Anonymous (1910c: 241); Anonymous (1910d: 321); Anonymous (1910e: 354); Anonymous (1911a: 388); Anonymous (1911b: 389); Anonymous (1911c: 412); Anonymous (1911d: 414); Anonymous (1911e: 450); Anonymous (1911f: 474); Anonymous (1911g: 496); Anonymous (1911h: 520); Anonymous (1911i: 529); Anonymous (1911j: 582); Anonymous (1911k: 584); Anonymous (1911l: 624); Anonymous (1911m: 626); Anonymous (1912a: 645); Anonymous (1912c: 742); Anonymous (1912d: 745); Anonymous (1912e: 768); Anonymous (1912f: 863); Anonymous (1912g: 880). Anonymous (1913a: 947); Anonymous (1913b: 990); Anonymous (1913c: 1068); Anonymous (1913e: 1116); Anonymous (1913f: 1160); Anonymous (1914a: 1235); Anonymous (1914c: 1247); Anonymous (1914d: 1320); Anonymous (1914f: 1428); Anonymous (1914g: 1468); Anonymous (1914h: 1490); Anonymous (1914i: 1534).
[168] Anonymous (1913d: 1094); Anonymous (1914b: 1236); Anonymous (1914c: 1247); Anonymous (1912b: 648).

It is also clear that Lloyd's as an insurer was well established in South Africa by the 1900s sufficiently so to trouble other companies who did not necessarily understand the modus operandi of Lloyd's. However, looking at the tone of the various articles, a sense of familiarity is portrayed about Lloyd's as if Lloyd's was not a new concept to the insurance industry. This infers that Lloyd's was present and active in South Africa certainly by 1850 and by 1900 was well-known throughout the South African industry as an acceptor of insurance risks.

The first detailed mention of South African property actually being insured by Lloyd's appears on the 4th July 1913 where it was noted that Park Station as well as the *Star* offices in Johannesburg were insured against civil commotion risk at 10:30am for £17 000 at a premium of 12s. 6d (Anonymous, 1913d: 1094). Johannesburg was subject to considerable civil unrest during that period, which became known as the Rand Revolt, with marshal law being declared several times and the army being deployed to put down the unrest. Judging by a further article insurance companies were unwilling to offer cover for civil commotion and due to an increase in civil unrest in South Africa around 1914 many turned to Lloyd's for such cover (Anonymous, 1914e: 1346). Lloyd's continues to provide cover against riots, mainly political riot risks, and it remains a significant source of their business (*One Lime Street*, 1993: 27; *One Lime Street*, 1996: 12). In February 1914 a Mr. Arthur Bray, Chairman of Bray, Gibbs and Co. Ltd, and representing Lloyd's of London, was expected to visit South Africa (Anonymous, 1914b: 1236). Lloyd's was sufficiently prominent by 1914 so that visits by Lloyd's individuals to South Africa were noteworthy enough to justify a public announcement.

6.4.2. Insurance Act of 1923

As indicated Lloyd's did not fall under legislation governing foreign insurers operating in South Africa, especially with respect to taxation, and this exclusion was a matter of debate with the other insurers operating in South Africa. Lloyd's was perceived as having an unfair advantage especially by commentators that may not have had a good understanding of Lloyd's. It is not surprising thus that the legislature showed an interest in Lloyd's.

Before the Insurance Act of 1923 each province in South Africa had their own legislation regarding insurance. Insurance companies had to be registered and licensed to carry on insurance business in every province and deposit money with the provincial treasury in each province. All the various Acts[169] were mainly focused on life insurance with very little being said about the then modern developments such as accident or marine insurance (Hansard, 1923: 207). It was realised that having different laws focusing only on life insurance was a very cumbersome process. A Bill was introduced in 1915, published in the Gazette in 1918 and the Insurance Act No. 37 of 1923 was passed to consolidate the legislation of the individual provinces into one single Act encompassing all types of insurance business. The Insurance Act of 1923 was modelled on the English Act of 1909 which applies to Life, accident, fire, employer's liability and bond investment business (Hansard, 1923: 207; Spyrou, 1955: 330; Benfield, 1997: 574).

Prior to the passing of the Insurance Act of 1923 Lloyd's in South Africa was not regulated in terms of local legislation. Unlike other foreign insurers they did not lodge a deposit or require a licence to operate and all premiums received went straight to London (Anonymous, 1905: 106). This situation did not sit well with other insurers who felt the playing field was not level. As a consequence of not being part of the South African regulatory framework very little was known about the activities of Lloyd's in the market.

Lloyd's is mentioned in the South African Hansard Parliamentary debates in April and June of 1923. The provisions of the Insurance Act of 1923 did not apply to Lloyd's except for section 44 and section 45 of the 1923 Act. Intermediaries on behalf of or producing business into Lloyd's

[169] The Cape colony followed the Act for Incorporating the Union Fire and Marine Insurance and Trust Company Act 32 of 1861, the Life Assurance Act 13 of 1891 and the Accident Insurance Act 1893. Natal followed the Assurance and Insurance Companies Act 47 of 1904. The Transvaal followed the Wet tot Regeling van de Bezigheid van Assurantie-Maatschappijen in de Zuid-Afrikaanse Republiek No 12 van 1891 and the Wet tot Regeling van de Bezigheid van Assurantie-Maatschappijen in de Zuid-Afrikaanse Republiek No 8 van 1989. The Orange Free State followed ch CIII of the Statute Law, Regulating the Admission of Insurance Companies and the Law to Regulate Rights under Polices of Life Assurance, Law 12 of 1894 and the Ordinance No. 10 of 1891 – The Regulation of the Admission of Assurance Companies into the Free State (Macintyre, 1898; Benfield, 1997: 570-575; Burdette, 2002: 194). No mention is made of Lloyd's in the Life Assurance Act of 1891, the Accident Insurance Act of 1893, the South African Republic Act No 12 of 1893 or the Ordinance No. 10 of 1891 – The Regulation of the Admission of Assurance Companies into the Free State (Macintyre, 1898).

were therefore not included in the Insurance Act of 1923 except for these two sections if they chose to operate in South Africa (Hansard, 1923: col. 208).

The Insurance Bill was on its way to being passed but for the Lloyd's provisions which created a difference in opinions (Hansard, 1923: col. 395; Mills & Linton, 1923b: 1). Not everyone was in favour of Section 44 as some individuals moved for the deletion of the clause while others lobbied for alterations. Some members were against the operation of Lloyd's in South Africa as it was felt that insurance should be placed with local insurance companies through local agents and in the event of a dispute could be sued under South African law. Lloyd's could not be sued in South Africa since all policies were issued by the members of Lloyd's and not the corporation itself and members were under the jurisdiction of the English courts only. Further arguments were that Lloyd's members can conduct any line of business in South Africa without being subjected to other requirements of the Bill (Mills & Linton, 1923b: 24) and the inclusion of this section would allow Lloyd's to compete with all other insurance companies in South Africa (foreign or local) which would be against the intended purpose of the Bill to protect policyholders and to provide an equitable framework for all companies.

Counter arguments for the section to remain included: firstly, that without this specific provision Lloyd's would not be able to trade in South Africa and the local market would lose expertise, capacity and competition that the market needed. Freedom of trade is very important and allowing people to insure with Lloyd's is part of that freedom. Secondly, Lloyd's can insure many large risks that other insurers would not (Mills & Linton, 1923b: 24; Anonymous, 1924b: 15; Hansard, 1943, col. 4533).

A decision had to be made based on what was most convenient for the country. Lloyd's offers insurance for many risks which no other insurance company offered and it would be convenient for the country to have Lloyd's in South Africa where these difficult risks could be placed. It was a benefit to have a world-renowned institution like Lloyd's choosing to do business in South Africa as it was, and still is, an icon of absolute reliability. All arguments had merit and serious consideration had to be given to both sides. The prevalent opinion, however, was that the deletion of section 44 would rule out Lloyd's, its agents and underwriters who now lived in

South Africa and this would not be good for the insurance industry (Hansard, 1923, col. 396; Mills & Linton, 1923b: 24).

Initially Lloyd's underwriters may not have been too worried about foreign legislation however they soon realised that this could be a matter of concern as many countries passed legislation requiring foreign insurance companies to provide a deposit.[170] South Africa was one such country. The first perceived problem, in South Africa, was that Lloyd's could offer business without any clear security to pay claims should they arise, which would be covered if these agents lodged a deposit. To solve this problem, s44 of the 1923 Insurance Act required each Lloyd's Agent to lodge with the Treasury a deposit of £2000 (R4000). A distinction was made in the Bill allowing the Lloyd's underwriters to only pay a deposit of £2000 while insurance companies had to pay a deposit of £10 000. This was criticized by some during the Hansard debates. A prevalent view was that policyholders should receive as much protection as possible and an actuarial evaluation should be used to determine the amount of deposit required. Some thought that Lloyd's should be treated in a harsher manner when compared to local companies (Mills & Linton, 1923b: 24). Other opinions ranged from Lloyd's not receiving any preferential treatment (Hansard, 1923, col. 209), if Lloyd's was allowed to remain in South Africa it would have to be on the same conditions as any other concern as well as the same requirements and restrictions to create fair competition (Hansard, 1923, col. 396).

The second problem, the lack of financial disclosure from insurers, was solved by the requirement to lodge annual financial information with the Treasury. Safeguards were put in place that all insurance companies must comply with i.e. giving full information about their financial position to the public. It was important to have the same safeguards in the case of Lloyd's of London (Hansard, 1923: col. 208).

Looking at the Insurance Act of 1923 the Lloyd's provisions did survive the scrutiny and debate they received in parliament. After the Hansard discussions the following remained:

[170] For a more detailed discussion on foreign legislation refer to 4.1.17 above.

Chapter 2 Part (d) of the Act is for Insurances by Members of Lloyd's and of similar Associations of Individual Underwriters.[171] Section 44 sets out the requirements that have to be complied with by all Lloyd's agents:

- Within 6 months of commencing business, the insurer must deposit and keep depositing (as long as he transacts business) money or approved securities or both to the value of £2000 (R4000). S8 – S12 of this Act shall apply to such deposits.[172] The proposal of reducing the deposit from £5000 to £2000 was implemented (S.C, 1943, 2).
- Person carrying out insurance business in the Union has to be licensed as provided by law and made the deposit in accordance with the point above.[173]
- Must have an office in the Union with the address of such office to be provided to the Treasury. If any legal proceedings were to take place involving the insurer this address will be used for communication purposes.[174]
- Provide the Treasury, within 6 months after the expiry of each calendar year, a statement for each year in a prescribed format. The insurer has to show premiums received for the year and the claims paid.[175] Thus forcing Lloyd's to make financial disclosure.
- Failure to comply with these requirements shall lead to the insurer being guilty of an offence and liable on conviction to a fine not exceeding £50 in respect of each transaction.[176]

Section 45 of the Act was the supplementary provision which stated that: any company or individual transacting insurance business in the Union on behalf of Lloyd's must obtain a license for each and every year from the receiver of revenue on the production of a certificate from the Treasury that the issue of license is authorized. A payment of £50 was required for the license. If the company or individual only started transacting insurance business in August then a payment of £25 is required for that initial year followed by £50 in subsequent years. The license expired on the 31st of December of each year. Section 45 also required Lloyd's to have domicilium citandi (have to be domiciled in South Africa with a permanent address) in the

[171] Insurance Act No. 37 of 1923.
[172] S44(2) of Insurance Act No. 37 of 1923.
[173] S44(1).
[174] S44(3).
[175] S44(4).
[176] S44(5).

Union. Statements of premiums that Lloyd's receives from South African policyholders, any statements of claim payments made to South African policyholders and any statements of commissions paid out by Lloyd's to South Africans must be lodged with the Treasury (Hansard, 1923, col. 208).

The passing of this specific legislation regulating Lloyd's is a clear indication that Lloyd's played a significantly important role in South Africa by the year 1923 to warrant the attention of the authorities including discussions in parliament and government expressing concern as to how Lloyd's would affects the local insurance market.

After the passing of the Insurance Act of 1923 more articles appeared about Lloyd's in various South African insurance magazines the majority of the articles however, were regarding Lloyd's in the US, Europe and the UK[177] with very few on Lloyd's in South Africa,[178] Nairobi[179]and a singular article on Dar-Es-Salaam, Tanzania.[180]

In 1923 Lloyd's insured all of the buildings of the Johannesburg municipality. They were able to secure these insurance contracts as they were able to quote lower rates than other insurers (Hansard, 1923: 396; Mills & Linton, 1923b: 24). The local market was of the opinion that they could do so because of the uneven playing fields however new legislation had already levelled the playing fields.

One article worth mentioning was published in September 1925 in the *African Insurance Record* stating that Mr A Hunter, a well known insurance expert in Cape Town had just secured agency for a group of underwriters at Lloyd's and was transacting business for those underwriters (Anonymous, 1925c: 21). By 1926 Lloyd's was present in South Africa but did not dominate the market. Life insurance had the highest premium annual income in the Union at £3 663 000, followed by fire at £605 000, Workmen's compensation at £289 000, motor at £265 000,

[177] Anonymous (1924a: 32); Anonymous (1924c: 23); Anonymous (1925a: 30); Anonymous (1925d: 23); Anonymous (1925e: 31); Anonymous (1926a: 19); Anonymous (1928a: 7); Anonymous (1928c: 34); Anonymous (1930a: 40); Anonymous (1930c: 33); Mills & Linton (1922: 4); Mills & Linton (1923a: 2).
[178] Anonymous (1926b: 4).
[179] Anonymous (1928d: 11); Anonymous (1930b: 24); Anonymous (1930d: 4).
[180] Anonymous (1929b: 21).

personal accident at £102 000 with the representatives of a group of underwriters at Lloyd's only receiving £15 000 (Anonymous, 1927: 1).

6.4.3. Insurance Act of 1943

Further changes were proposed which were contained in the 1943 Insurance Act. This time the matter was referred to a Select Parliamentary Committee. Lloyd's thought the legislative proposals were sufficiently important to send a delegation to South Africa to appear before the Select Committee established to review the legislation. The matter was discussed in Parliament and is reported in the Hansard. The debate ended in the passing of the Lloyd's provisions in the 1943 Insurance Act. Lloyd's was licensed by the 1943 Insurance Act to carry on short term business in South Africa. This was a unique position for Lloyd's as it was, and still is, the only non-domiciled insurer to hold such a position (*One Lime Street*, 1993: 27; *One Lime Street*, 1996: 12) and have its own provisions in South African legislation.

A Bill was introduced in 1941 and the Insurance Act of 1923 was amended in 1943 (Hansard, 1943: 4542; Spyrou, 1955: 331). This Bill was as a consequence of the public which felt that the insurance industry needed to be better regulated and better controlled (Hansard, 1943: 4548). As mentioned above, the Insurance Act of 1923 was based on the English principles of 1909 but had not taken into account the amendments done by England in Acts passed in 1933 or in 1935 which have adapted the laws of 1909. The South African Insurance Act did not take into account any of these changes. "The underlying principle of (our insurance law) is that of the minimum of interference with the maximum of publicity" (Hansard, 1943: 4518) or freedom with publicity (Benfield, 1997: 568). The insurance companies had complete freedom in return for submitting annual returns to the Treasury as well as having actuarial investigations at least every 5 years. However, this did not offer adequate protection for the policyholder as many did not read the annual financial reports and they were not easy to understand. If an insurer does fall into financial distress there is nothing the Treasury can do unless the insurer has failed to comply with one of the requirements of the Act. The Bill of 1943 was an attempt to correct these shortcomings and provide better protection for the policyholder (Hansard, 1943: 4519).

This Bill can be "described as the Bill of the two R's, the Registrar and the Regulations" (Hansard, 1943: col. 4529). It was suggested that an office of the Registrar of Insurance be created giving him the power to investigate the affairs of a registered insurer if the need should arise (Hansard, 1943: col. 4522). The Registrar would have supreme power over matters under the Bill, one of which would be the power to appoint officials. Since the government does not have the time or manpower to watch over the insurance industry, the formation of a Registrar is essential to oversee the regulation and smooth running of the industry. The powers given to the Registrar have to be wide to allow him to efficiently fulfil his duties with a safeguard in place requiring the Registrar to have the approval of the minister for any action to be taken. Some members agreed with the necessity for the creation of a Registrar but were uncomfortable with the wide scope of powers given therefore the decisions made by the Registrar must have the possibility of appeal to the Minister (Hansard, 1943: col. 4553, 4537).

Consideration was given to the idea of creating two separate Acts i.e. one for short term insurance such as fire, accident marine etc and one for life insurance. It was decided that it was too soon for such drastic changes as many provisions overlap between the two types of insurance. It was recommended that such a decision be postponed for two or three years giving companies the opportunity to be properly domiciled in South Africa under this Bill and an experiment be conducted to see if the Bill is adequate for both short term and life insurance before any changes are made (Hansard, 1943: col. 4536). Agreement was reached that now was not the time to do anything except bring in one comprehensive Bill to deal with insurance business as a whole (Hansard, 1943: col. 4545).

In February 1943 the Select Committee (S.C.) naturally discussed the Insurance Bill before it was presented to parliament. Lloyd's sent two representatives from the UK to represent Lloyd's views. These were Messrs. T.L. Forbes and C.S. Hutchinson and their testimony was scrutinized by the Select Committee which recognised them as representatives of the Committee of Lloyd's (S.C, 1943: viii). This is the first evidence of Lloyd's sending individuals to represent their views. The following requirements were imposed: Firstly, the deposit made by each agent was

increased from £2 000 (R4 000) to £5 000 (R10 000).[181] Secondly, in addition to the deposits made by the agents Lloyd's as a society made a lump sum deposit of £30 000 (R60 000)[182] which was unusual since the institution of Lloyd's did not at that stage stand surety for individual syndicates. It is specifically this problem which the Society of Lloyd's tried to solve[183]. Thirdly, s60 would impose a tax on Lloyd's since up until this point Lloyd's paid no tax in South Africa. The proposal was that Lloyd's agents would to pay 2.5% of the aggregate premium income due to Lloyd's to the Treasury.[184]

During this meeting of the S.C. the Lloyd's representatives conceded that Lloyd's policies would be subject to South African jurisdiction with respect to payments under any South African Lloyd's policies (S.C, 1943: 13). A provision was inserted into the 1943 Bill allowing Lloyd's to be sued in South Africa without the plaintiff having to go to England in the case of a dispute

[181] The two representatives sent by Lloyd's had the following comment for the increase from R4000 to R10 000. Since, in 1943, there were already 8 Lloyd's agents/brokers in South Africa (S.C, 1943: 3, 9), each broker would be paying a deposit of £10 000 leaving the Government with £80 000 as security. However, the amount of £80 000 is not global and the whole amount could not be used if one underwriter defaults on his payment. Each £10 000 belongs to each broker working on behalf of one underwriter; if that underwriter defaults on payment only £10 000 would be available for that particular underwriter. In addition this requirement would make it difficult to increase the number of agents coming to South Africa if they were required to immediately pay £10 000 upon arrival (Hansard, 1943: col. 4526). Asking each broker to deposit £10 000 would be discriminating against Lloyd's brokers seeing as a local insurance company only had to pay one lump sum deposit of £30 000 irrespective of the number of agents or branches that company might have whereas Lloyd's would be required to pay per agent (S.C, 1943: 4, 9, 11). The Lloyd's representatives also pointed out that if there were to be only 2 brokers in South Africa accepting all of Lloyd's business, Lloyd's would still get the same amount of business as with 8 brokers but South Africa would only receive a deposit of £20 000. This would be a disadvantage for South Africa (S.C, 1943: 2, 9).

[182] A further amendment was proposed to change the once off deposit paid by Lloyd's of £30 000 to £200 000. Lloyd's should continue to exist in South Africa but must not be allowed to expand too much in detriment to local companies. Lloyd's should be allowed to offer specialised insurance that is not offered locally but should be restrained from directly competing in other areas of insurance that are offered by other companies. The economic situation would be very uncertain after WWII and as much protection as possible should be given to policyholders. Local companies would be put on a more equal footing if Lloyd's was required to keep as much security as they were (Hansard, 1943, col. 5322). The Minister of Finance was of a different opinion as he felt that the current legislation was already making it substantially more difficult for Lloyd's to exist in South Africa compared to local companies. Lloyd's Agents have to pay deposits of £2000 and the Society of Lloyd's a deposit of £30 000. More obstacles were not needed. The amendment was put to a vote with a result of 57 votes against the amendment with 32 votes for the amendment. The amendment of increasing the deposit to £200 000 was therefore not enforced.

[183] Refer to 4.1.17 above.

[184] The idea of a premium tax was not new to South Africa as the Cape imposed a tax on foreign companies 63 years previously (Spyrou, 1955: 327). Around 1880 foreign companies began expanding into fire insurance in South Africa. In the beginning the foreign companies increased their premiums in order to make a profit and wanted the local companies to do the same. Local companies refused and a "rate war" began (Spyrou, 1955: 327; MacIntyre, 1898: 9). Local government, to put a stop to this, imposed a tax on foreign companies' premium income of 6d in the pound.

(Hansard, 1943: col. 4532). These were matters that the Society of Lloyd's had understood would be needed when transacting business in a foreign country.

Section 60 allowed Lloyd's underwriters to accept insurance business in South Africa (Gibson, 1988: 4). South African registered brokers approved by Lloyd's were also required to comply with section 60 (Napier, 1988: 14). Thereby through the Insurance Act of 1943 Lloyd's was licensed to do business in South Africa (*Cover*, 1996c: 14).

In 1943 the South African insurance market needed an additional outlet for some of the insurance risks it was facing. Lloyd's was needed to provide such insurance cover. Insurance is an international business and South Africa is unable to keep all of its risks within its borders so the presence of Lloyd's is still needed for reinsurance, large risks and the placing of special risks. Lloyd's is able to provide healthy competition for South African insurers (Hansard, 1966: col. 3086-3088).

6.4.4. 1966 Amendments to the Short Term Insurance Act

An objective behind the 1966 amendment were the events that followed after Rhodesia (now known as Zimbabwe) had unilaterally declared independence (UDI). Because of this declaration of independence, as part of the economic sanctions levied against Rhodesia by the United Kingdom, Lloyd's was prohibited from paying claims in Rhodesia despite having collected premiums and having a contractual obligation to do so. This left Rhodesian policyholders with unpaid claims.[185] Short- term insurance is exposed to political intervention as shown through Rhodesia and Lloyd's (Dielmann, 1989: 12). The South African government did not want to

[185] Southern Rhodesia, through the Rhodesian Front (RF) led by Ian Smith, wanted independence after the collapse of the Federation between Southern Rhodesia, Northern Rhodesia and Nyasaland. The British government, led by Mr. Wilson, refused to give Rhodesia independence until certain conditions were met. Rhodesia had to show that the views freely supported by the population where that of the RF i.e. that the majority of the population wanted independence. This was to be done through the implementation of majority rule (one man one vote). Ian Smith opposed this policy as it was not the custom of the tribal rulers in Rhodesia. Britain refused to grant Rhodesia independence nevertheless Rhodesia declared independence on the 11th November 1965. This was followed by sanctions imposed by Britain. Mr. Wilson instructed the Bank of England to seize Rhodesian funds and Lloyd's to refuse payment on Rhodesian claims. Six months after the declaration of UDI talks began between London and Rhodesia. Only on the 2nd of March 1970 was Rhodesia declared a Republic and finally severed all connections with Britain (Reed, 1967: 41, 53; Smith, 2001: 112).

face the same difficulties in South Africa and revised the legislation dealing with the operation of Lloyd's in South Africa. Several fundamental changes were introduced. As an aside it is pointed out, as emphasised by the former Lloyd's representative in South Africa, that in the end all Rhodesian claims were eventually paid. This took place as soon as the British government lifted the sanctions (Napier, 2009; Hansard, 1966: col. 3092).

The aim of the 1966 amendment to the Insurance Act of 1943 was to introduce a new basis for Lloyd's underwriters to carry on insurance business in South Africa. The 1943 Act had permitted Lloyd's to do business in South Africa without the need to hold any assets in the country except for the lump sum deposit of R60 000 and the deposit of R10 000 made by each Lloyd's agent.[186] In 1966 Lloyd's had 25 agents in South Africa providing the Treasury with R250 000 in total deposits.

Through the 1966 Amendment Act the deposit of R10 000 was increased to R20 000 for each agent trading in South Africa, doubling the total deposits to R500 000 (Hansard, 1966: col. 3088-3091). The deposit of R20 000 either in money or approved securities needed to be made within 6 months of commencing business in South Africa by any person authorized by the Committee of Lloyd's to act on behalf of Lloyd's in South Africa[187] (Napier, 1988: 14; Alston, 1992b: 15). If the value of that deposit drops below R20 000 for any reason that person has to immediately discontinue issuing Lloyd's policies and collecting premiums until such time the deposit is increased back to R20 000.[188] If the person transacting insurance business on behalf of Lloyd's ceases to transact business in South Africa the Treasury shall return the deposit of R20 000.[189]

Two fundamental changes were implemented, firstly the government wanted someone in South Africa to represent Lloyd's and the position of the General Lloyd's Representative was mandated and secondly, to ensure that current claims could be paid the South African Deposit[190] was created into which Lloyd's premiums had to be deposited and from which claims and expenses

[186] 23rd annual report of the Registrar of Insurance, 30th June 1967.
[187] S60(1)(b) of the Insurance Act No 27 of 1943.
[188] S60(1)(c).
[189] S60(1)(r).
[190] S60(1)(*i*) of the Insurance Act.

paid. The operation of the deposit ensured that henceforth, sufficient funds were kept in South Africa to pay claims. The Lloyd's representative and the deposit are discussed below.

6.4.4.1. Lloyd's General Representative and Lloyd's Offices

Depending on the market and the size of the business Lloyd's determines what type of representation is required in the respective market. Lloyd's has four categories of representative offices. A category 4 office is one where the representative is an independent third party; a well respected individual in the country which provides basic services to Lloyd's. These services include discharging Lloyd's obligations under the Insurance Act i.e. to adjust any deposits when notified and to send in annual returns, usually operating from their usual place of business. A category 3 representative office performs more functions depending on the size of the market and how much business Lloyd's underwriters' transact in that market. This is followed by a category 2 office and Lloyd's South Africa falls into this category. Lloyd's licence in South Africa offers a variable distribution model and it is a key market for Lloyd's which has been established for many years. However, there is no trading platform on the ground where insurance business can be transacted with Lloyd's underwriters directly other than through Lloyd's service companies such as Kiln SA. The final category is a category 1 type of operation such as Lloyd's Asia based in Singapore. This can be viewed as a mini Lloyd's of London in the country with Lloyd's managing agents co-locating with Lloyd's and Lloyd'sunderwriters sitting in one location where local brokers bring their risks to be underwritten (Khilosia, 2010).

S57 of the Short Term Insurance Act of 1998 requires that Lloyd's appoint a natural person as a representative of Lloyd's and a deputy representative to act on behalf of the representative if he is unavailable.[191] Both individuals have to be fit and proper to hold the positions of representative and deputy representative.[192] The appointment has to be approved by the Registrar[193] subject to any conditions he may have.[194]

[191] S57(1) of the Short Term Insurance Act No 53 of 1998; Havenga (2001: 161).
[192] S57(4).
[193] S57(2).
[194] S57(3).

The first South African general representative of Lloyd's was appointed on the 15th March 1966 who was Michael Barry, from the leading legal firm WWB.[195] From the letter dated 9th March 1966 from the Chairman of Lloyd's addressed to Michael Barry with a proviso that he could not also accept a seat on the board of any insurance company or act as an insurance broker (Chairman of Lloyd's, 1966; Barry, 1966). His duties were, inter alia, to liaise between Lloyd's and the South African government, supervise the financial arrangements made by Lloyd's in South Africa, to assist in safeguarding Lloyd's business in the republic and to inform Lloyd's of any issues that arise which might affect Lloyd's underwriting interests. The remuneration would be the form of an annual retainer to be reviewed after one year (Chairman of Lloyd's, 1966).

Ronnie Napier, senior partner of WWB, became the deputy to Michael Barry from 1970 when South Africa required for a deputy to be appointed (Ronnie, 2010; *Financial Mail*, 1986: 67). In June 1984 Michael Barry entered into negotiations with Lloyd's as to who should be the general representative to succeed him. During discussions with Ken Goddard (Michael Barry's superior in WBB) it was decided that the person who was to be chosen would unlikely be from the insurance industry as it would be difficult to get someone in an important position to take on additional responsibilities. No regard to race or religion but the individual would have to be a professional person with an international perspective. It was decided to recommend to Lloyd's that a partner from WWB would be appointed. Ronnie Napier was considered as he was the deputy at that time and was familiar with the duties to be performed (Barry, 1984). Ronnie Napier was appointed the General Representative of Lloyd's in South Africa in July 1986 on the tragic death of Michael Barry (Cockell, 1986).

S60 of the Insurance Act of 1943 as well as the terms of reference given to Ronnie Napier laid down the statutory obligations that applied to the South African general representative of Lloyd's (Napier, 1986; Napier: 1988: 14-16). The committee of Lloyd's has to appoint a natural person authorized to act on behalf of the committee as well as the underwriters of Lloyd's and the general representative has to report to the Council of Lloyd's. Any legal proceedings against an underwriter of Lloyd's may be served to the address of the general representative in South

[195] Webber Wentzel Bowens.

Africa; the general representative is to sue or be sued on behalf of Lloyd's underwriters in their capacity as licensed South African insurers[196] (Napier, 1988: 14). The representative's name is to be cited as the defendant or respondent on behalf of Lloyd's and any summons may be served on him.[197] The representative may conduct any proceedings on behalf of Lloyd's in his name as the plaintiff or applicant regarding any short term insurance policies in South Africa.[198] The summons is sent to the office of the general representative who in turn sends it to London where further instructions would be received as to how the matter should be handled (Napier, 2009; Sibanda, 2010; McGovern, Levene, Sibanda, 2008). A Lloyd's representative must have an office in South Africa,[199] notify the registrar of the principal address of business[200] and any changes in address that may occur.[201]

The general representative on behalf of the committee of Lloyd's is required to open up a trust account with a banking institution in South Africa and has to deposit 130% of all premiums received from South African business less certain deductions; supervise the operation of bank accounts in the name of Lloyd's underwriters; has to deal with any complaints from policyholders, brokers or any other parties involved with Lloyd's underwriters. Such complaints are then referred to Lloyd's in London; has to act in the best interests of South African Names, provide assistance to such members and liaise with the Lloyd's South African Members Association; is required to issue Sasria and Nasria coupon policies on a daily basis on the instruction from brokers; liaise with the South African Insurance Association (Saia) and the South African Insurance Brokers Association (Saiba) regarding matters of common interest between Lloyd's and the South African insurance market; liaise with the Registrar of Insurance on a regular basis to keep the Registrar informed of any developments at Lloyd's; advise Lloyd's of any legislative changes in the South African market that may affect the position of Lloyd's in South Africa; maintain contact with South African authorities to promote and further Lloyd's in South Africa; to liaise with the London Market Associations when required; maintain records required to be kept in compliance with insurance legislation; protect and service the Lloyd's

[196] S60(1)(d); S60(1)(g) & S60(1)(h).
[197] S59(2) of the Short Term Insurance Act of 1998; Havenga (2001: 151).
[198] S59(3) of the Short Term Insurance Act of 1998.
[199] S57(7)(a) of the Short Term Insurance Act of 1998.
[200] S57(7)(b) of the Short Term Insurance Act of 1998.
[201] S57(7)(c) of the Short Term Insurance Act of 1998.

Underwriters' Licence in South Africa; further develop Lloyd's underwriters interests in South Africa; and have annual visits to Lloyd's to keep up to date with any changes made by Lloyd's that will affect the South African insurance market. These duties are subject to annual review by the Committee of Lloyd's (Havenga, 2001: 162 - 164).

Ronnie Napier retired in 2007 after 21 years of being the South African representative of Lloyd's and his successor, Litha Mveliso Nyhonyha was appointed for a period of only three months (*Cover*, 2007a: 67; Napier, 2010; Sutherland, 2007: 1). The current general representative of Lloyd's is John Sibanda who was appointed as such on the 7th of August 2008 (McGovern, Levene & Sibanda, 2008: 1).

John Sibanda's duties and responsibilities overlap with that of Ronnie Napier's to some extent but also differ in some regards. Napier was only responsible for regulatory delegatory issues within South Africa (Sibanda, 2010). Napier dealt heavily with South African Names whereas Sibanda has no responsibility to the Names. He represents the Names to the underwriters but the contract is between himself, the Society of Lloyd's, the underwriters and the Lloyd's office in South Africa and not with Names (McGovern, Levene & Sibanda, 2008: 1). This is a part time non-executive role allowing John Sibanda to have other interests[202] (McGovern, Levene & Sibanda, 2008: 8; Sibanda, 2010).

The main duty of John Sibanda as the general representative is to represent Lloyd's and underwriters at Lloyd's with all dealings with South African authorities and third parties. Other functions include: Ensure compliance with all legal regulations and requirements regarding Lloyd's i.e. the Short Term Insurance Act No. 53 of 1998.[203] Ensure that the trustees of the Lloyd's South African Transitional Trust (LSATT) and the Lloyd's South African Trust Deed (LSATD) comply with these trust deeds.[204] Carry out instructions from Lloyd's and if no

[202] John Sibanda formed his own Company before being approached by Lloyd's, Sisonkerisksolutions, which is now over 7 years old and focuses on management introducing alternative risk solutions to clients. Sisonkerisksolutions formed the first captive insurance company in Zimbabwe. The company also has dealings in Botswana coming up with alternative risk solutions for them. Since his role at Lloyd's is non executive in nature he continues to be involved in Sisonkerisksolutions (Sibanda, 2010).
[203] S57(6)(a) of the Short Term Insurance Act No. 53 of 1998.
[204] S57(6)(b) of the Short Term Insurance Act No. 53 of 1998.

instruction is forthcoming to act in a way that is reasonable, loyal and most beneficial to Lloyd's. The general representative also reports to the Lloyd's Director of International Markets and keep in daily contact with the Lloyd's office in South Africa. From time to time the representative has to manage the relationship between South African government officials and Lloyd's, the relationship between South African businesses and Lloyd's, as well as representing Lloyd's and speaking on their behalf at agreed events (McGovern, Levene & Sibanda, 2008: 7-8). The role profile is "to support, enhance and promote the interests of Lloyd's in South Africa and to ensure that Lloyd's is, and is perceived to be, a positive and dynamic corporate citizen and a strong contributor to the South African economy" (McGovern, Levene & Sibanda, 2008: 8).

6.4.4.2. The South African Deposit

A Trust account was set-up in South Africa in the name of the General Representative.[205] Underwriters at Lloyd's, acting through the South African representative, had to maintain a deposit with a banking institution or invest in other South African assets up to 70% of net premiums[206,207] (less return premiums, the 2.5% required tax on aggregate premiums of each agent and any commissions received from policies). These assets, together with the deposit given to the Treasury by Lloyd's agents (R20 000 deposited by each agent) and premiums still held by agents before payment of such premiums is made to Lloyd's (such premiums held in South Africa are equal to 3 months net premiums at any one time) are used as collateral for any outstanding liabilities incurred in South Africa by Lloyd's underwriters[208] as well as to satisfy any judgements made in South Africa.[209] These assets and deposits must be held under the control of the South African Representative of Lloyd's.[210]. Withdrawals from these funds may only take place after the expiry of a 12 month period allowing the funds to build-up for Lloyd's to have enough assets in South Africa for outstanding claims (Hansard, 1966, col. 3089).

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[205] S60(1)(*i*) of the 1943 Insurance Act.
[206] Shaw (1988: 21); Williams (1991: 32); Alston (1992b: 15); Havenga (2001: 150).
[207] Registrar of insurance, Twenty third Annual report 1967.
[208] S60(1)(o)(i).
[209] S60(1)(o)(ii).
[210] S60(1)(l) & S60(1)(m).

This percentage was later changed to 130% [211] of all premiums (Shaw, 1988: 21; Williams, 1991: 32; Alston, 1992b: 15). Underwriters at Lloyd's, had to deposit 130% of all premiums into the trust account in South Africa[212] (Napier, 1988: 14). This deposit had to be made on the first day of every month from the commencement of the Insurance Amendment Act 1966.[213] The amount of money held in the trust fund was recently changed from a premium based calculation (130% of all premiums) to an outstanding claims basis. Since 1999 the funds have been be maintained based on known outstanding claims, allowing a substantial amount of funds being released. This forgoes the problem of a sudden drop in funds if Lloyd's was to ever stop writing insurance business in South Africa (*One Lime Street*, 1997: 4; *One Lime Street*, 1998: 20; Khilosia, 2010).

If an asset in the trust account is sold, the proceeds of the sale must be placed into the trust account.[214] Any information regarding the trust fund and any assets held must be disclosed to the Registrar of Insurance.[215] The amount that can be withdrawn from the account cannot exceed the money originally deposited in that month plus any investment gains.[216] In 1988 there was approximately R300 million in the trust account (Napier, 1988: 14).

The trust account which was set up by the 1966 Insurance Amendment Act was replaced, by the Short Term Insurance Act No. 53 of 1998 by the creation of two trust funds.[217] Lloyd's was required to create the Lloyd's South African Transitional Trust as well as the Lloyd's South African Trust to be used as such security.[218] The Lloyd's South African Trust fund is where all securities are to be placed for any policies that commence cover from 1 January 1999 onwards, and the Lloyd's South African Transitional Trust where all securities are to be placed for any polices that commenced prior to and including 31 December 1998. If, however, a policy is reinsured through the RITC process into the 1999 year it will be placed in the Lloyd's South

[211] s60(j)(i) of the Insurance Act of 1943.
[212] S60(1)(j)(i) of the Insurance Act of 1943.
[213] S60(1)(j)(ii) of the Insurance Act of 1943.
[214] S60(1)(o)(iii) of the Insurance Act of 1943.
[215] S60(1)(p) of the Insurance Act of 1943.
[216] S60(1)(n) of the Short Term Insurance Act 53 of 1998.
[217] First Annual Report of the Registrar of Short Term Insurance, 1998.
[218] S60(2)(a) & S60(2)(b) of the Short Term Insurance Act 53 of 1998.

African Trust. Lloyd's correspondents no longer submit individual returns to the FSB but to the Lloyd's South Africa directly.

The underwriter involved in South African short term insurance policies is exposed to several and not joint and several liability. Therefore any contributions made into the fund by an underwriter can only be used to pay for the liabilities of that individual underwriter and not for the liabilities of other underwriter's part of this fund (Lloyd's South African Trust Deed, 1999, D).

Therefore the South African trust fund is an additional form of security on a Lloyd's policy. If a South African policyholder has a claim against a Lloyd's policy there are many levels of security: firstly the premium trust fund, secondly deposits and personal reserves, thirdly the Names certified means, fourthly the Lloyd's central reserve fund and finally, if none of the above avenues are able to pay the claim then only does Lloyd's turn to the South African trust fund (Williams, 1991a, 32; Havenga, 2001: 152).

Table 3: Assets held in the trust fund(s) from the year 1968 till 2009

Year	Nominal Value (R)	Rounded Nominal Value (R'000)	Extrapolated Nominal Value (R'000)	Inflation Rate Coefficient	Real Value (R'000)
2009	1,759,000,000	1,759,000	1,759,000	0.58	1,020,220
2008	1,561,000,000	1,561,000	1,561,000	0.63	975,625
2007	1,381,000,000	1,381,000	1,381,000	0.70	962,369
2006	1,438,000,000	1,438,000	1,438,000	0.75	1,073,134
2005	1,401,000,000	1,401,000	1,401,000	0.78	1,094,531
2004	1,355,000,000	1,355,000	1,355,000	0.81	1,094,507
2003	1,266,000,000	1,266,000	1,266,000	0.82	1,036,855
2002	1,123,000,000	1,123,000	1,123,000	0.87	973,137
2001	1,322,000,000	1,322,000	1,322,000	0.95	1,250,710
2000	1,130,000,000	1,130,000	1,130,000	1.00	1,130,000
1999	971,000,000	971,000	971,000	1.05	1,023,182
1998	828,000,000	828,000	828,000	1.18	981,043
1997	592,709,000	592,709	592,709	1.11	657,105

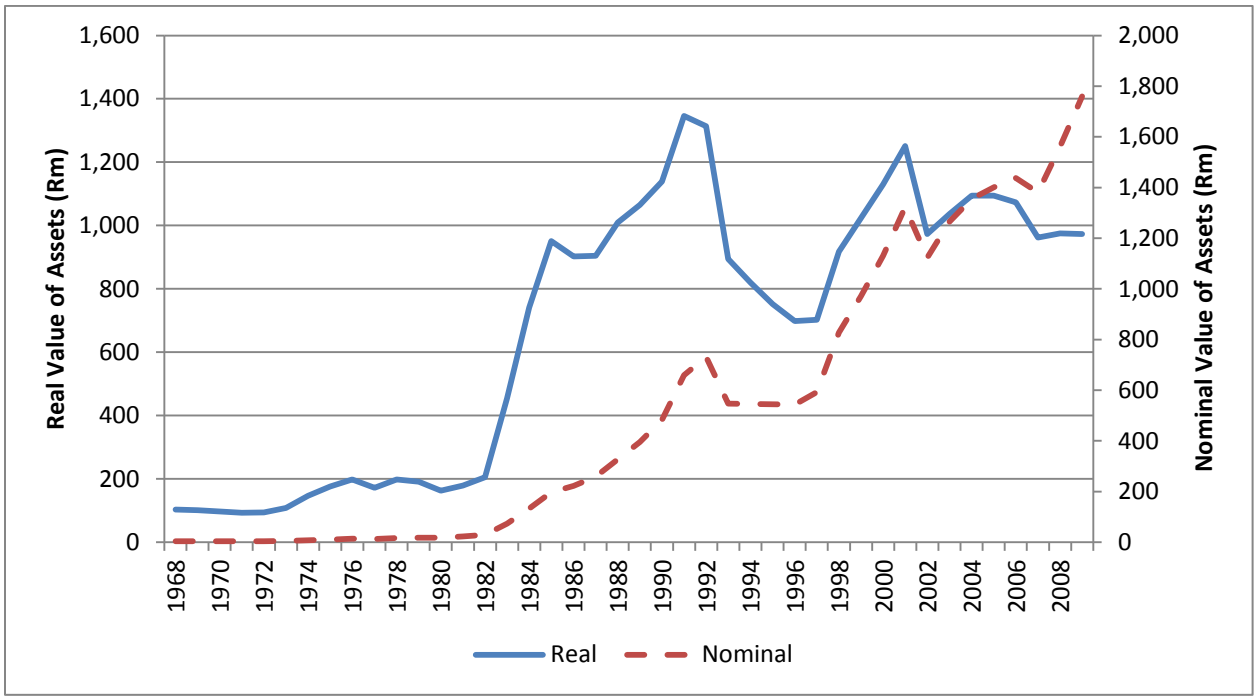
Year	Nominal Value (R)	Rounded Nominal Value (R'000)	Extrapolated Nominal Value (R'000)	Inflation Rate Coefficient	Real Value (R'000)
1996	542,681,000	542,681	542,681	1.29	698,431
1995			***544,187***	1.38	***751,640***
1994			***545,694***	1.50	***819,360***
1993	547,200,000	547,200	547,200	1.63	894,118
1992	731,551,000	731,551	731,551	1.80	1,313,377
1991	659,651,000	659,651	659,651	2.04	1,346,227
1990	482,647,585	482,648	482,648	2.36	1,138,321
1989	394,952,766	394,953	394,953	2.70	1,064,563
1988	327,024,951	327,025	327,025	3.09	1,009,336
1987	259,431,156	259,432	259,432	3.48	903,944
1986	222,901,196	222,902	222,902	4.05	902,437
1985	197,720,964	197,721	197,721	4.81	950,582
1984	132,507,557	132,508	132,508	5.59	740,268
1983	73,144,695	73,145	73,145	6.21	454,317
1982	29,321,693	29,322	29,322	6.99	205,049
1981	22,336,031	22,337	22,337	8.00	178,696
1980	17,594,417	17,595	17,595	9.26	162,917
1979	18,187,075	18,188	18,188	10.53	191,453
1978	16,648,665	16,649	16,649	11.90	198,202
1977	13,043,921	13,044	13,044	13.16	171,632
1976	13,509,262	13,510	13,510	14.71	198,676
1975	10,753,262	10,754	10,754	16.39	176,295
1974	7,926,545	7,927	7,927	18.52	146,796
1973	5,213,166	5,214	5,214	20.83	108,625
1972	4,143,749	4,144	4,144	22.73	94,182
1971	3,902,094	3,903	3,903	23.81	92,929
1970	3,782,916	3,783	3,783	25.64	97,000
1969	3,727,403	3,728	3,728	27.03	100,757
1968	3,727,000	3,727	3,727	27.78	103,528

Source: Summaries of Returns Deposited with the Treasury 1925 – 1940; Annual Reports of the Registrar of Insurance 1950 – 1997 & FSB Annual Reports of the Registrar of Short Term Insurance 1998 – 2007.

Note: The total of the two new trust funds is shown above from the year 1998 till 2009.[219]

The amount of assets held by Lloyd's in South Africa has grown from a real value of R103 528 000 in 1968 to R1 020 220 000 in 2009.

Graph 1: Assets held in the Trust Fund(s) from 1968 to 2009



Another issue targeted in the Hansard Parliamentary debates was the 2.5% of its gross premium income Lloyd's had to pay in South Africa as decided in 1943. Since 1943 taxes in South Africa had undergone considerable changes and have increased forcing local companies to pay higher taxes. However, the separate provision for Lloyd's of 2.5% of gross premiums had never been changed in line with the increasing tax rates. An increase from the 2.5% was proposed (Hansard, 1966: col. 3093) but it was not increased and remained at 2.5%[220] until it was repealed in January 2002.[221]

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[219] 1998 FSB reports, p9.
[220] S60(1)(f) of the Insurance Act of 1943.
[221] Refer to 7.6 below.

Any person authorised to transact insurance business on behalf of Lloyd's has to have an office in the Republic of South Africa where any legal process can be served. The policy issued to policyholders must clearly state the currency in which premiums and claims are to be paid[222] as well as the name and address of the where the premiums and claims are to be paid.[223] No person shall offer or renew insurance business through a broker which is not underwritten by a Lloyd's underwriter.[224]

6.4.5. Short Term Insurance Act 53 of 1998

As Lloyd's became more dominant in South Africa, legislation changed to embrace and accept Lloyd's as part of the South African insurance market. The Short Term Insurance Act summarises how Lloyd's is regulated in South Africa encompassing all the changes through the years as discussed above. It also outlines under which circumstances the Registrar has the power to impose prohibitions on the activities of a Lloyd's underwriter. The Registrar has the power to prohibit Lloyd's underwriters from continuing in short term insurance business in South Africa in the following circumstances:

- If any bye laws are amended where the rights and obligations of Lloyd's underwriters are materially changed.[225] If Lloyd's changes or enacts a new law or bye-law the Lloyd's Council must notify the Registrar within 21 days of such change.[226]
- Should Lloyd's, the Lloyd's representative or a Lloyd's underwriter fail to comply with their duties[227] as set out in section 57, section 60, schedule 3 and the Trust Deed.

The Registrar must give written notice to Lloyd's as well as to the Lloyd's representative of his intention to prohibit its activities giving reasons for his decisions. Lloyd's or the Lloyd's representative then have 30 days in which to respond.[228] If the Registrar chooses to continue

[222] S60(1)(q)(i) of the Insurance Act of 1943.
[223] S60(1)(q)(ii) of the Insurance Act of 1943.
[224] S60(2) of the Insurance Act of 1943.
[225] S56(2)(a) & S56(2)(b) of the Short Term Insurance Act 53 of 1998.
[226] S56(3) of the Short Term Insurance Act 53 of 1998.
[227] S62(b)(i) & S62(b)(ii) of the Short Term Insurance Act 53 of 1998.
[228] S62(2) of the Short Term Insurance Act 53 of 1998.

with the prohibition after representation made by Lloyd's, he has to publish a notice in the Government Gazette stating the date when the prohibition is to come into effect.[229] If the trustees of the two trust funds fail to comply with any provisions in Schedule 3 the Registrar may exercise the powers of the trustees under the trust deed.[230] If Lloyd's is unable to pay its liabilities the Registrar may request Lloyd's to provide any information needed regarding the liabilities[231] in which case Lloyd's has up to a maximum period of 60 days to pay the money that is owed into the Lloyd's South African Transitional Fund or the Lloyd's South African Trust Fund.[232]

S61 of the Short Term Insurance Act 53 of 1998 shows that if a Lloyd's underwriter fails to pay its liabilities under a South African short term insurance policy, the Lloyd's South African Transitional Fund or the portion of the Lloyd's South African Trust Fund held for such liabilities shall be used to pay the liability. These two trust funds can be used where the claimant has a final judgement for the payment of the liability or the Lloyd's South African Transitional Fund is being wound up or Lloyd's agrees to make such payment from the Trust funds.[233]

The carrying on of Lloyd's business in South Africa is dependent on its compliance with the Short Term Insurance Act 53 of 1998. If the requirements of the Act are not met Lloyd's shall be guilty of an offence and, on conviction, shall be liable for a fine.[234]

6.4.6. Lloyd's acceptance into the SA insurance market as a fair competitor

In the 1980s local insurance companies felt that Lloyd's was providing unfair competition to their detriment by offering premiums below the rates in the South African insurance market. South African insurers found that Lloyd's competition was hard to beat (Duigan, 1988b: 11; Alston, 1989a: 25; Alston, 1989b: 8; *One Lime Street*, 1993: 27). To resolve these issues the South African Insurance Association (SAIA) meets annually with Lloyd's underwriters through

[229] S62(3) of the Short Term Insurance Act 53 of 1998.
[230] S62(4) of the Short Term Insurance Act 53 of 1998.
[231] S62(5)(a) of the Short Term Insurance Act 53 of 1998.
[232] S62(6) of the Short Term Insurance Act 53 of 1998.
[233] S61 of the Short Term Insurance Act of 1998.
[234] S65 of the Short Term Insurance Act of 1998.

South African sub-committees referring complaints to Lloyd's in London (Napier, 1988: 14, 15). However, many of the complaints were found to be unfounded as Lloyd's underwriters focus on offering insurance that is not easily available in the South African insurance market (Napier, 1988: 15; *One Lime Street*, 1993: 27). If however, Lloyd's does offer insurance in direct competition with the local market the rates represent fair competition and should not intimidate local insurers. Competition is healthy for the purchasers of insurance and should be allowed (Way, 1988: 26; Duigan, 1988b: 11). "Lloyd's is a valued part of the South African market. It introduces competition but, because of its different nature and treatment, care must be taken to ensure that the playing field stays level" (Duigan, 1988a: 12). Lloyd's has a role to play in South Africa particularly regarding mega-risks and providing an international business link (Alston, 1988: 7; Alston, 1989a: 25). By the early 1990's the local market was finally accepting Lloyd's as fair competition (Hazel & Williams, 1991: 4; *One Lime Street*, 1996: 12). Lloyd's insures big risks such as SAA and Sasol which the South African Market is unable to insure on its own and has to look to the international market for the necessary capacity (*One Lime Street*, 1993: 27).

By 1963 Lloyd's was well on its way making profits in South Africa as its correspondents received a total of R5 023 000 in premiums and paid a total of R2 396 000 in claims (Hansard, 1966: col. 3093). On the 30th of June 1964 there were a total of 93 domestic and 79 foreign insurance companies in South Africa. Of these 79 foreign insurers 28 were empowered to do business as Lloyd's correspondents. This was a relatively high number showing the significant influence Lloyd's already had by the year 1964. By December of 1995, 31 years later, the number of Lloyd's correspondents registered with the FSB in South Africa increased to 92 (Gallimore, 1995: 10).

The South African representative of Lloyd's is in continual contact with SAIA and the South African brokers association (Saiba), which was replaced by the Financial Intermediaries Association of Southern Africa (FIA),[235] on matters involving Lloyd's and the South African insurance market (Napier, 1988, 15). In 1990 Lloyd's received approximately 5% of the South African insurance market (+/- R280 million) per annum and this percentage has remained the same over the last 15 years which consists mainly of risks that the local market is not able to

[235] http://www.fiaweb.biz/wp-content/uploads/2011/02/Cover-August-2011-pg-85.pdf

retain (Hazel & Williams, 1990: 6). By 1994 Lloyd's share of the South African short term insurance market was still 5% (*Cover*, 1996c: 14).

In the year 1988 Lloyd's, was admitted as a registered South African insurer (Alston, 1989b: 8) through Section 60 of the Insurance Act of 1943, applied to SAIA for membership. This membership cemented the presence of Lloyd's in South Africa (Napier, 1988: 14; Way, 1988: 26). A month later Lloyd's received de facto membership with certain requirements for Lloyd's to make a few changes to its constitution. As noted in the February edition of *Cover* 1989 Lloyd's was accepted as a member of SAIA at their AGM meeting in May (*Cover*, 1989a: 32; *Cover*, 1996c: 14; *Cover*, 1997: 13). This membership gave rise to benefits for both Lloyd's and the South African insurance market through increased communication between both parties; the local market is able to receive information about Lloyd's; the removal of the uncertainty that Lloyd's receives an unfair competitive advantage and Lloyd's involvement in South African industry decisions (*Cover*, 1989a: 32). Through Lloyd's being admitted as a registered South African insurer and its acceptance as a SAIA member Lloyd's is now for all purposes a domestic insurer as opposed to a foreign one (Shaw, 1989: 20; *Cover*, 1993b: 16) and this membership provides confirmation that Lloyd's is an integral part of the South African market. The former Lloyd's representative, Mr. Ronnie Napier, subsequently became the chairman of SAIA (Napier, 2010).

Since Lloyd's is part of the South African insurance market it was also part of the South African Special Risks Insurance Association (Sasria)[236] which is limited to South Africa, as well as the National Special Risks Insurance Association (Nasria) which is limited to Namibia (Napier, 1988: 15).

The problems which Lloyd's experienced in the 1980s in the UK (discussed previously) also had an impact on South African Names as many where Names on the syndicates involved in the troubles. Overall Lloyd's made losses of R2.6 billion in 1988, R11 billion in 1989 and an anticipated loss of approximately R5 billion for the year 1990 (Newton, 1992: 4). The extent of

[236] SASRIA was subsequently nationalised and is currently owned by the government (http://www.leader.co.za/article.aspx?s=6&f=1&a=2002).

the catastrophically high losses faced by South African Names were illustrated by Newton (1992: 4) whereby in 1989 a member with a £20 000 (approx R100 000) share in a syndicate involved in the losses, suffered a loss close to R1.5m. In an attempt to diminish the huge losses that would have to be borne by Names Lloyd's raised £500m by increasing members' contributions for the years 1990, 1991 and 1992 (Alston, 1994a: 14).

Two of Lloyd's leading underwriters, Michael Williams and Dick Hazell, who made up the Lloyd's SA liaison committee, visited South Africa on an annual basis during the time of the Lloyd's troubles between 1989 and 1992 (Alston, 1992a: 56; *One Lime Street*, 1993: 27). The liaison committee was established at Lloyd's to enable Lloyd's, centrally, to have a link with the general representatives world-wide and with the Names. That liaison committee came to South Africa once or twice a year and talked to Names. The South African representative at the time, Mr. Ronnie Napier, organised meetings of Names throughout South Africa in Johannesburg, Cape Town, Port Elizabeth and Durban so that the liaison committee could talk directly to the South African Names about the troubles at Lloyd's as well as to deal with the allegations of fraud at Lloyd's. A better relationship was established between Lloyd's and the South African insurance market through these annual visits (Hazel & Williams, 1990: 6). After the problems at Lloyd's were resolved the liaison committee was disbanded and thus the South African liaison committee no longer exists (Napier, 2010).

In October 1991 the Chairman of Lloyd's, David Coleridge, visited South Africa for the same reasons as the South African liaison committee - to talk to the Names to reassure them that things were not as bad at Lloyd's as the media was making it out to be. This was the first time that a chairman of Lloyd's had made an official visit to South Africa.[237] He met with SA Names, local brokers, any clients whose business was insured at Lloyd's and with senior finance and government officials. "In this way he will be officially cementing the many relationships built up over many years between SA and Lloyd's" (Williams, 1991b: 28). On the 18th October 1993, the then chairman of Lloyd's David Rowland delivered an opening address on 'Lloyd's and the International Market' at the South African Risk & Insurance Management Association (Sarima) in Pretoria (*Cover*, 1993c: 57). Peter Lane, the Director, Marketing and Public Affairs at Lloyd's

[237] Alston (1991a: 2); Alston (1991b: 7); Napier (2010); Williams (1991b: 28); *One Lime Street* (1993: 27).

also came to South Africa in 1994 discussing his anticipation for Lloyd's to experience profits for 1993 (*Cover*, 1994b: 51).

The formation of Equitas through the Reconstruction and Renewal program was not isolated to the UK but had a major impact for all Lloyd's Names including the South African Names. Ms Heidi Hutter, the Director of the Equitas project (Major, 1995: 3), came to South Africa in April 1995 to make an address to the South African Names to portray the benefits and the importance of Equitas, to answer any questions and to minimise any doubts and uncertainties that Names might have about the program. Heidi Hutter was appointed the Project Director of Equitas in October 1993 with 20 actuaries as well as additional staff of 185 people to work with her on the project of Equitas (Hutter, 1995: 1). Heidi Hutter addressed South African Names in Johannesburg, Durban and Cape Town (Hutter, 1995: 16).

David Rowland, chairman of Lloyd's at the time, visited South Africa in 1996 to speak to Names regarding Equitas. This was his third visit to South Africa to talk to Names (Rowland, 1996: 1). Lloyd's needed to get approximately 98.4% acceptance from South African Names in order for Equitas to go ahead (Napier, 2010). The Names had to vote whether they wanted to be part of Equitas or not (Roland, 1996: 1; Cover, 1996b: 55). David Rowland made it quite clear that Names who do not accept this settlement offer proposed through Equitas will receive no benefits from it at all (Rowland, 1996: 10). The liability for each Name would be capped at £100 000 above the funds already available at Lloyd's which would be the maximum that any Name would be required to pay if the offer of Equitas was accepted (Rowland, 1996: 19). Equitas did manage to get 95% acceptance by Names.

As an indication of the position that Lloyd's holds in South Africa, David Rowland was asked to speak at an African Insurance Organisation conference hosted by the Insurance Institute of South Africa (IISA) on the 28th May 1996 at Sun City (*One Lime Street*, 1996: 12). Mr Amit Khilosia, now the Managing Director of Lloyd's South Africa, accompanied David Rowland on his visit to South Africa. At the conference they took the opportunity to speak to the people attending the conference on what Lloyd's should do next in South Africa. The overwhelming response was why does Lloyd's not have a presence in South Africa? Lloyd's plays a large role in the South

African insurance market but is represented by one individual. Amit Khilosia then came back to South Africa for three months to put together a business plan for a Lloyd's representative office to be opened in South Africa. The aim was not to take over the role and responsibilities from the general representative but to support the role and take over the onerous administrative duties involved in executing such responsibilities (Khilosia, 2010).

Mr. Amit Khilosia came to South Africa to set up the operations of Lloyd's South Africa and a milestone was reached in 1998 when Lloyd's opened an office in SA to oversee the South African activities. Mr. Ron Sandler, then the CEO of Lloyd's, came to South Africa to open the new offices in Sandton, Johannesburg on the 23rd June 1998 to support the already existing business in SA (Catlin *et al*, 1998: 30 & 124; Alston, 1998: 30). This demonstrated the commitment of Lloyd's to the South African insurance market (*One Lime Street*, 1998: 20). The primary functions of the office is to handle all the administrative duties, forge and maintain strong relationships with brokers and coverholders and the relevant government bodies (*Cover*, 1998b, 43; *One Lime Street*, 1998: 20). The role of the general representative is a statutory one and cannot be done away with therefore the post of general representative continues in parallel to that of the new representative. In practice the staff of the Lloyd's office discharges the responsibilities and functions of the general representative (Sibanda, 2010; McGovern, Levene & Sibanda, 2008: 8). "Our role here is to be the custodian for the Lloyd's platform in South Africa" (Khilosia, 2010).

Kiln South Africa, a subsidiary of Lloyd's Managing Agents R.J. Kiln and Co Limited, opened an office in South Africa on the 1st September 1999 after underwriting risks in South Africa for over 35 years. It is the first wholly-owned overseas subsidiary operating as a service company holding a binding authority for syndicates managed by R.J. Kiln & Co (Morgan, 1999: 23). Kiln SA operates as an underwriting manager and is authorized as an intermediary by the FSB. It started off with three staff members and after trading for 10 years it had grown to 50 staff members with branches in Johannesburg and Cape Town (*Cover*, 2009: 70). South Africa received its own site added to www.lloyds.com which was launched in 2000 (*Cover*, 2000a: 66).

John Sibanda was approached by Amit Khilosia on behalf of Lloyd's at a time when Lloyd's was looking to improve its footprint in South and Southern Africa. John Sibanda had such contacts and assisted Lloyd's in developing an initial strategy for Sub-sahara Africa (Sibanda, 2010; Khilosia, 2010).

7. Certain Aspects of Lloyd's in South Africa

Lloyd's is well established and successful in South Africa having a Lloyd's office in Johannesburg. This chapter will focus on some of the dynamics of the Lloyd's office with a brief look at binding authorities, binder agreements, intermediaries of Lloyd's, tribunalisation and taxation of Lloyd's in South Africa.

7.1. Binding authority

As discussed above, an underwriter at Lloyd's only accepts risks through a Lloyd's accredited broker and the risk has to be underwritten in the Room at Lloyd's. However, there is one exception to this rule; where binding authority is given to individuals in other countries allowing them to write Lloyd's policies (Luessenhop & Mayer, 1995: 121). Binding authority occurs where an underwriter grants authority to a third party allowing that third party to bind the underwriter including the Names as set-out in the contract (Hodgson, 1986: 249; Havenga, 2001: 157). The third party is referred to as a 'coverholder' and is usually a broker working abroad. Lloyd's uses this method to access overseas risks for its accounts (Davison, 1987: 46; Mance, Goldrein & Merkin, 2003). Such broker is allowed to accept certain clearly defined classes of insurance at rates predetermine by the underwriter (S.C, 1943: 8; Grundlingh & Meyburgh, 2002: 6).

A bye law was passed in 1985 stating that every binding authority has to be put into writing and presented to the LPSO. No binding authority can be given to an individual until that individual has been approved by a tribunal setup by the Lloyd's Non-marine Underwriting Association (Hodgson, 1986: 267). Once the coverholder has been approved by a panel of underwriters he can receive binding authority and was known as 'tribunilised'[238] (Davison, 1987: 137). Binding authority is mostly used in non-marine business (Davison, 1987: 136).

[238] As indicated in 7.3 below, the word 'tribunalised' is no longer used at Lloyd's.

7.2. Lineslip

A lineslip is similar to that of binding authority but is mostly used in marine business. However, there is one difference: A binding authority gives an individual outside Lloyd's the authority to accept insurance business on behalf of a Lloyd's underwriter (Flower & Jones, 1981: 179) whereas a lineslip needs the signature of the lead underwriter for each risk binding all other underwriters on that slip to that risk (Davison, 1987: 136). Brokers make use of lineslips to ensure that they will be able to get adequate underwriting capacity for risks they introduce into Lloyd's. Lineslips are commonly used for risks that have similar features and the underwriters frequently accept risks falling within those characteristics (Mance, Goldrein & Merkin, 2003).

7.3. Tribunalisation process

As shown above, all business underwritten by Lloyd's has to be brought to Lloyd's via accredited Lloyd's brokers (Gibson, 1988: 4). Any South African broker or underwriting manager that wants to become a Lloyd's correspondent has to be tribunalised at Lloyd's (Alston, 1991b: 8 & Gallimore, 1995: 10). The following procedure is followed if a South African broker wants to become a Lloyd's correspondent (*Cover*, 1996d: 6): Firstly, the applicant has to have a registered office in South Africa. Secondly, the applicant has to find a Lloyd's broker through whom the insurance business will be placed in the Lloyd's market. This broker is known as the sponsoring broker and does his own investigation into the commercial ability of the applicant. Thirdly, the applicant must then fill out an application form which is lodged with the Correspondents department at Lloyd's. Fourthly, the general representative of Lloyd's is informed of the application and conducts his own independent investigation into the financial status and reputation of the applicant. Once satisfied the general representative of Lloyd's makes a recommendation to the Brokers Department at Lloyd's. Finally, the tribunalisation of the applicant is then approved. The tribunalisation process often takes between 3 to 4 months to complete.

Once tribunalised, the FSB is informed and the applicant is required to deposit the statutory R20 000 with the FSB as mentioned previously. The applicant must make annual statutory returns to

the FSB as well as to Lloyd's. Once a broker/agent has been tribunalised it does not mean that the broker has received binding authority. He still has to receive the actual binding authority in writing. He is only able to transact business as an open market correspondent via a Lloyd's broker. The applicant has to make a further application involving further investigation to Lloyd's to receive binding authority. This can only be done after some time has passed to prove that the broker has a suitable track record. If this application is approved then the broker is allowed to "hold a pen" on behalf of Lloyd's (*Cover*, 1996d: 6). The word tribunalisation is a very old Lloyd's term that is no longer used today (Khilosia, 2010).

7.4. Binder agreements

As soon as the policy is signed by a coverholder with binding authority the policy becomes effective even before the premium is received. For a small period of time after the contract has been accepted claims can be brought against the policy even if no premium has yet been paid (Luessenhop & Mayer, 1995, 50).

7.5. Lloyd's Intermediaries

There are two types of intermediaries in South Africa, a Lloyd's coverholder and a Lloyd's open market correspondent (Khilosia, 2010).

7.5.1. Lloyd's Coverholder

A coverholder is a broker or underwriting manager who has been given binding authority by a Lloyd's syndicate to accept and underwrite business on their behalf. "A 'Coverholder' means a company or partnership authorised by a managing agent to enter into a contract or contracts of insurance to be underwritten by the members of a syndicate managed by it in accordance with the terms of a binding authority."[239] Essentially the coverholder allows Lloyd's syndicates to operate in foreign countries as if they were a local insurer. The document setting out the terms

[239] http://www.lloyds.com/The-Market/I-am-a/Coverholder/Information-for-Brokers-and-Agents/What-is-a-coverholder.

and conditions of the delegated authority given to the coverholder by a Lloyd's underwriter is referred to as a binding authority.[240] Coverholders are, as explained, individually considered and approved by Lloyd's (HM Treasury, 2008: 37). Coverholders can conclude insurance contracts, pay claims and collect premiums on behalf of Lloyd's (Grundlingh & Meyburgh, 2002: 6; Havenga, 2001: 166). Coverholders are seen as financial services providers and are subject to the Financial Advisory and Intermediary Services Act 2002 (Speight, 2000).

7.5.1.1. Nuclear Pool

As an aside, Lloyd's is very much involved with the South African nuclear pool (*One Lime Street*, 1998: 21). An interesting development occurred in 2010 where the nuclear pool, administered by SAIA, created a new company, which had become a Lloyd's coverholder and must adhere to all of Lloyd's regulations and VAT requirements. The nuclear pools have been changed from being a loose association of people administrating the pools to becoming a legal entity[241,242] and obtaining Lloyd's coverholder status (Hitchcock, 2010).

7.5.2. Local (Open) Market Correspondents (OMC)

An open market correspondent is a South African broker that has been accredited and approved by Lloyd's to produce business into London via a Lloyd's broker. They do not have binding authority to accept business on behalf of Lloyd's and are seen as independent intermediaries and not representatives, and must therefore go through a Lloyd's broker (Grundlingh & Meyburgh, 2002: 6; Havenga, 2001: 165, 167). A local market correspondent does not have the same status as a Lloyd's approved coverholder and, to be approved by the Lloyd's office, faces a less onerous process for accreditation (Khilosia, 2010). Table 4 below shows the number of Lloyd's approved correspondents in South Africa between 1999 and 2007.

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[240] http://www.lloyds.com/The-Market/I-am-a/Coverholder/Prospective-Coverholder/Tell-me-more-about-coverholders

[241] www.insurancegateway.co.za/4.8.45.Irn=2303

[242] http://www.docstoc.com/docs/83549214/SAIA_Annual_Review_2007_2008

Table 4: Number of Lloyd's approved correspondents in South Africa between 1999 and 2007

Year	Number of correspondents in SA
June 1999	115
June 2000	116
June 2001	110
June 2002	95
June 2003	83
June 2004	72
Dec 2004	72
Dec 2007	75

Lloyd's South Africa has reduced the number of correspondents over the years as seen from the above Table. Not all approved intermediaries were producing business. Amit Khilosia investigated focusing on who was trading with Lloyd's and how, and who was not trading at all. Lloyd's then decided to lapse approval of those firms not producing business to Lloyd's. This resulted in a smaller number of firms producing more and, better quality business, into Lloyd's (Khilosia, 2010). Approved open market correspondents are seen as financial services providers and are subject to the Financial Advisory and Intermediary Services Act 2002 (Speight, 2000).

7.6. Taxation of Lloyd's in South Africa

The taxation of profits made by Lloyd's Names as well as Lloyd's syndicates is governed by the provisions in the Double Taxation Convention between South Africa and the UK (Louw, 1997). Residents of South Africa who are Names or members of a syndicate, according to the convention, have permanent establishment situated in the UK and are accordingly taxed in the UK. The Double Taxation Treaty[243] was signed in London on the 4th July 2002 and came into force from the 17th of December 2002.

[243] UK/South Africa Double Taxation Convention signed 4 July 2003 entered into force 17 December 2002

Through s60 of the Insurance Act of 1943 Lloyd's agents were required to pay a premium tax of 2.5% of their aggregate premium income to the Treasury. The South African Minister of Finance announced that the tax would be withdrawn from 1 January 2002 regardless of the date of the policy inception. As from 1 January 2002 Lloyd's no longer pays the 2.5% tax and instead is subject to the payment of VAT[244] (McLeod, 2002: 1; Grundlingh & Meyburgh, 2002: 9; Manuel, 2002: 22).

7.6.1. Value Added Tax (VAT)

VAT was introduced into South Africa from 30 September 1991 replacing the general sales tax (Delfin, Kearney, Robinson *et al*, 2005: 2). As pointed out, initially Lloyd's was treated as a foreign insurer and was not charged VAT on premiums received in South Africa[245] (*Cover*, 1991c: 73; *One Lime Street*, 1993: 27). As from 1 January 2001 the position changed and Lloyd's underwriters are no longer exempt from paying VAT. This change in the law had different effects on open market correspondents (OMC) and coverholders. OMC will not be subject to VAT and Lloyd's underwriters will not have to register for VAT or be charged VAT on premiums received since South African authorities do not see OMC as supplying insurance business in South Africa as they do not fall under the definition of a South African enterprise as per the Value-Added Tax Act[246] since the business is concluded outside of South Africa.

Coverholders, on the other hand, write business under a binding authority and the South African authorities view the role of a coverholder to be supplying insurance business in South Africa and therefore those underwriters are subject to VAT. However, contracts concluded in London are not subject to VAT i.e. if a South African coverholder refers business to Lloyd's in London and an underwriter, after going over the details of the risk, accepts the business, the contract is deemed to be concluded in London and VAT is not charged. Contracts concluded in South Africa are subject to VAT i.e. where a coverholder merely asks the underwriter in London for general advice on the risk but actually binds the risk on behalf of the underwriter himself, the

[244] http://www.treasury.gov.za/documents/national%20budget/2002/review/Chapter%204.pdf
[245] Conceptually it is doubtful if VAT should be paid on premiums paid but rather should be paid on claims.
[246] No. 89 of 1991 as amended 1992 and 1999.

contract is deemed to be concluded in South Africa and therefore subject to VAT. Where there is uncertainty as to whether the contract was concluded in London or in South Africa, it is assumed to be concluded in South Africa. Coverholders must maintain separate accounting records with respect to the VAT charged on Lloyd's transactions (Manager, 2000a; 2000b; Mail & Guardian, 2000; Grundlingh & Meyburgh, 2002: 9, 20, 22, 23, 26, 35).

John Sibanda, current general representative of Lloyd's, has the authority to act as fiscal representative of the underwriters in South Africa (McGovern, Levene, Khilosia & Sibanda, 2008: 1). Duties include: representing underwriters to the South African tax authorities in conjunction with the Lloyd's office of South Africa and Lloyd's London; signing and reviewing all tax documentation that is to be lodged with the South African tax authorities and to provide Lloyd's with copies of such documentation; inform Lloyd's of any request made by the South African tax authorities for further documentation; and lastly, to direct any inquiries from members directly to Lloyd's (McGovern, Levene, Khilosia & Sibanda, 2008: 7). The Lloyd's representative must work in conjunction with the Lloyd's office regarding fiscal duties.

Considering the administration of Lloyd's VAT, South African coverholders are required to provide a bordereaux to Lloyd's South Africa at the end of every month providing their records, as an invoice, on VAT on premiums, claims, commissions and expenses. Lloyd's South Africa, on behalf of Lloyd's underwriters, uses a central system to account for VAT paid consolidated into one VAT return (McLeod, 2002: 1; Manager, 2000b; Grundlingh & Meyburgh, 2002: 14, 16, 19, 35).

In summary the Lloyd's office in South Africa is involved in the preparation and submission of any tax documentation required under South African law, and the submission to the tax authorities of any money received from Lloyd's/Lloyd's coverholders in South Africa for the payment of taxes due in South Africa (McGovern, Levene, Khilosia & Sibanda, 2008: 8).

8. Graphical representation of the growth of Lloyd's in South Africa

Data[247] was derived from the South African Treasury, Registrar of Insurance Annual Reports and the Financial Services Board (FSB) Reports. This data was used to construct Tables 6 to 10 and Graphs 2 to 7. These Tables and Graphs show how Lloyd's has grown in South Africa through the increase in premium income, claims paid and commissions paid. The analysis also shows Lloyd's growth compared to the growth of the South African insurance market.

8.1. Methodology: Adjusting the data

Data showing the premiums and commissions received as well as the claims paid by Lloyd's from the year 1925 through to 2000 was used to construct the following Tables and Graphs. The results are shown as Nominal and Real values.

Data for the years 1941 – 1949, 1960, 1994 – 1996 and 1998 – 2000 is missing and results have been linearly extrapolated for these periods using averages. The extrapolated results are shown in bold and italics in the relevant Tables. Table 5 shows an example of how the data was extrapolated. In this example a period of 5 years is used with only the years 1993 and 1997 having original data. The data for the remaining years (1994 - 1996) is extrapolated. The missing data is determined by establishing what the average increase (or decrease) is year on year, and then adding this increase (or decrease) to the missing years as illustrated below.

[247] The data is taken from Summaries of Returns Deposited with the Treasury 1925 – 1940; *Annual Reports of the Registrar of Insurance* 1950 – 1997; FSB Annual Reports of the Registrar of Short Term Insurance 1998 – 2007.

Table 5: Example of data extrapolation

Year	Original Value (R)	STEP 1 (total increase over 4 years - R)	STEP 2 (incremental increase per year - R)	STEP 3 (Year 1 + each increment - R)
1997	758,149	116,667	+ 29,166	758,149
1996			+ 29,166	***728,982***
1995			+ 29,166	***699,816***
1994			+ 29,166	***670,649***
1993	641,482	641,482	641,482	641,482

The extrapolation equation can be represented as follows:

$$Y_n = Y_{n+1} + (Y_{n+1} - Y_{n-1}) \left[\frac{X_n - X_{n+1}}{X_{n+1} - X_{n-1}} \right]$$

Where:

Y_{n-1} = Rand value of base year

Y_{n+1} = Rand value of top year

Y_n = Missing Rand value

X_{n-1} = Year of base year

X_{n+1} = Year of top year

X_n = Year of missing value

Therefore, in Table 5, to calculate the missing value of Year 1996:

Y_{n-1} = Rand Value of Base Year = R641,482

Y_{n+1} = Rand Value of Top Year = R758,149

X_{n-1} = Year of base year = 1993

X_{n+1} = Year of top year = 1997

X_n = Year of missing value = 1996

$$Y_n = Y_{n+1} + (Y_{n+1} - Y_{n-1}) \left[\frac{X_n - X_{n+1}}{X_{n+1} - X_{n-1}} \right]$$

$$Y_n = 758{,}149 + (758{,}149 - 641{,}482) \left[\frac{1996 - 1997}{1997 - 1993} \right]$$

$$Y_n = 758{,}149 + (116{,}667)\left[\frac{-1}{4}\right]$$

$$Y_n = 758{,}149 - 29{,}166.75$$

$$Y_n = 728.982$$

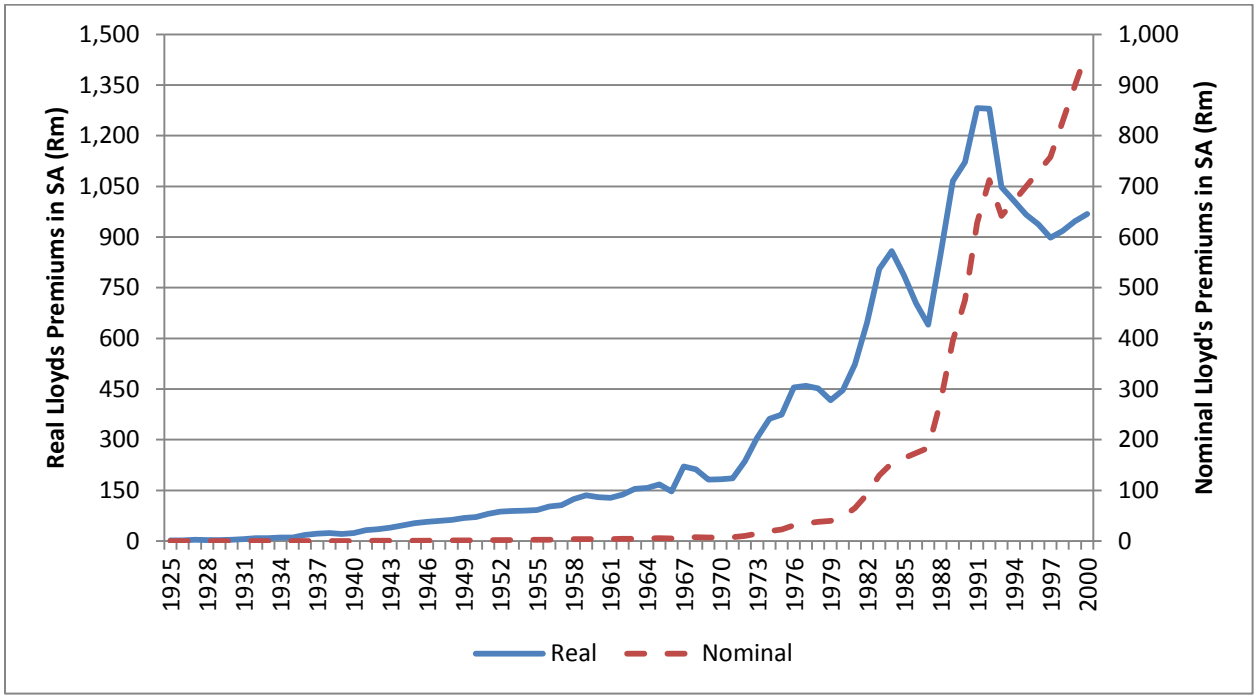
The currency used in South Africa up until 14 February 1961, when South Africa became a Republic, was the British Pound (£), thereafter the South African Rand (R) was used introduced at a value of 2 to 1. Due to this a conversion was necessary for the period of 1925 – 1961 to convert the £ into R. This conversion was taken as a constant factor of 1 £ to 2 R (Liebenberg, 2011). This factor was applied to all £ data pre-1961, thus providing Nominal R data from 1925 through to 2000. The Nominal R data was then adjusted using the CPI inflation rate to show the Real values as at 2000 in South African Rand (Lehohla, 2010). After all adjustments the final Real data consists of South African Rand values as at 2000 for the period 1925 – 2000.

8.2. Historical figures of Lloyd's

8.2.1. Premiums received

Table 8 and Graph 2 show how Lloyd's premiums have increased. The Table contains the methodology explained above and can be seen in Appendix 6.

Graph 2: Lloyd's Premiums in South Africa (1925 - 2000)

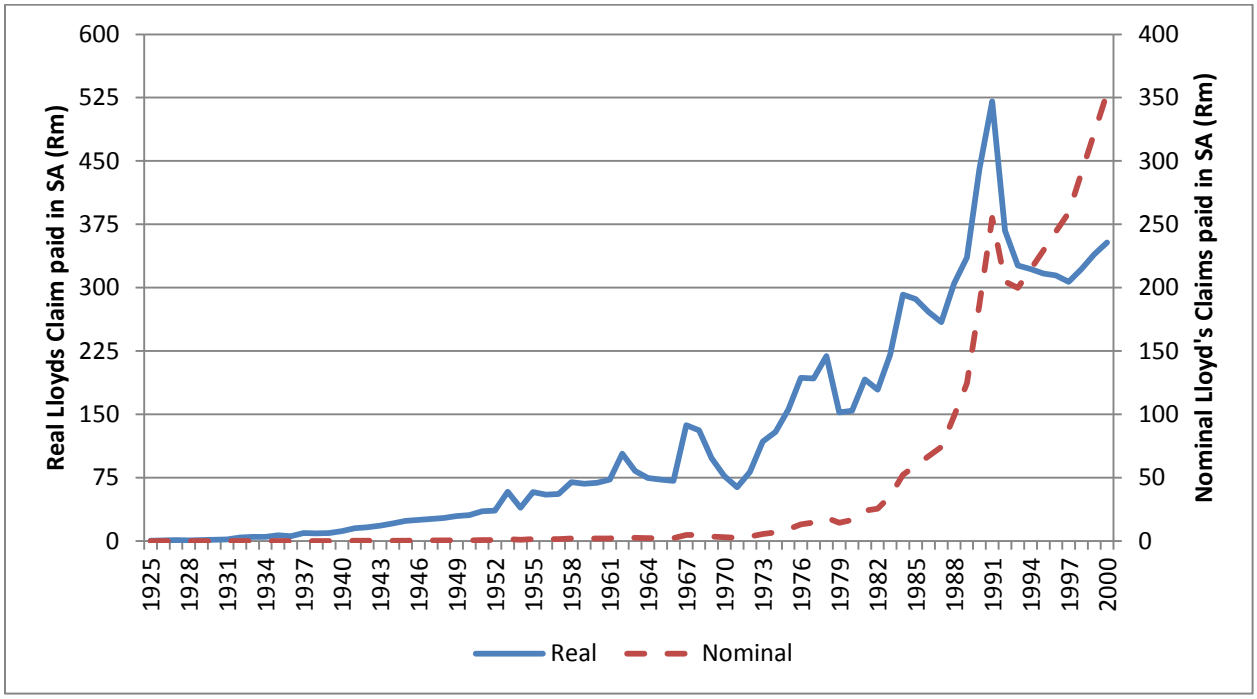


Lloyd's premium income has steadily increased from R2, 000,000 in 1925 to R1, 006,980,000 in 1994 thereafter it decreased slightly to R967, 984,000 in 2000. Overall Lloyd's has been very successful in South Africa.

8.2.2. Claims Paid

Table 9 (Appendix 7) and Graph 4 show the claims that Lloyd's has paid to South African policyholders.

Graph 3: Lloyd's claims paid in South Africa (1925 - 2000)

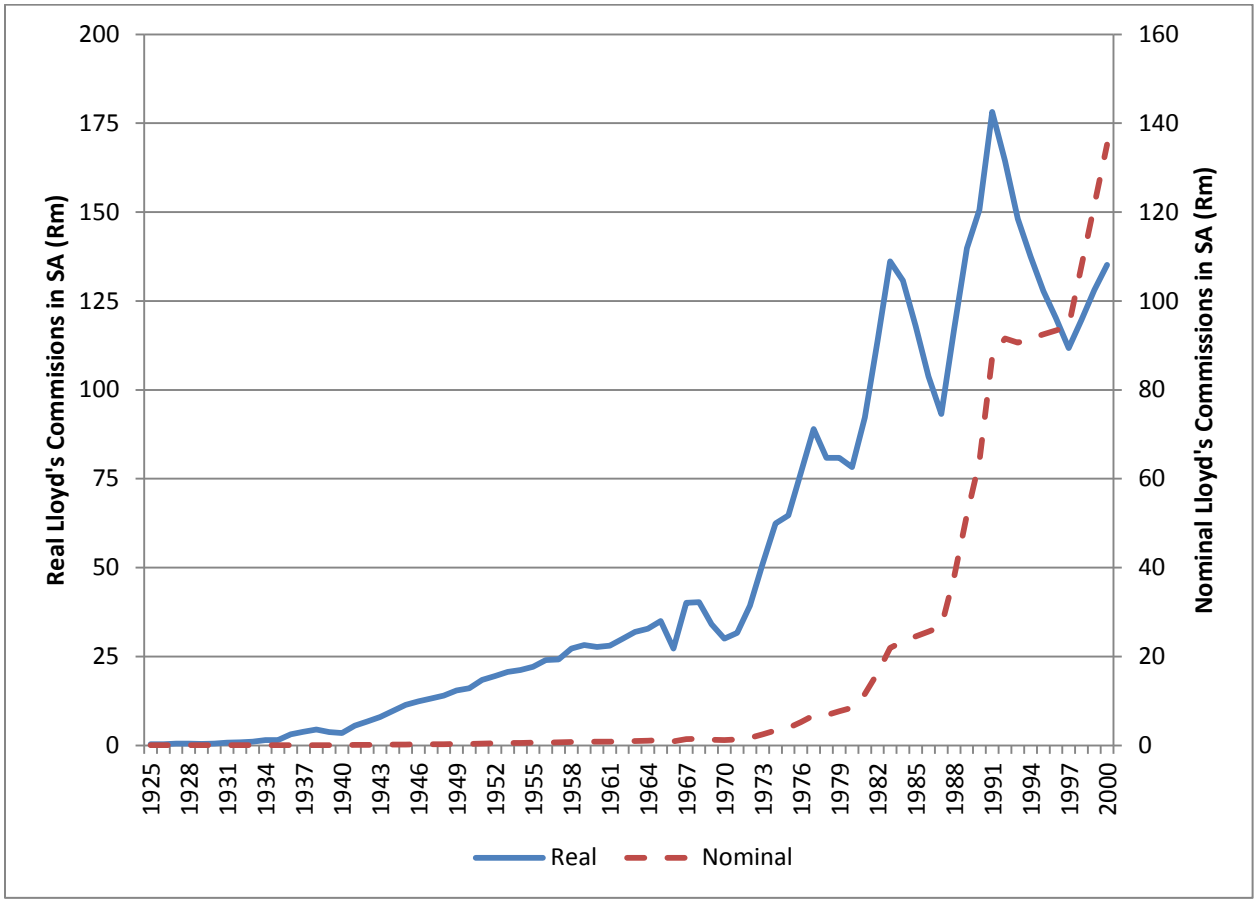


Lloyd's has never failed to pay a claim and with rising premium income so too did the claims paid increase. This graph follows a similar pattern to that of premiums received – as premium income increases, the number of claims increases.

8.2.3. Commission Paid

Table 10 (Appendix 8) and Graph 5 show the commissions that Lloyd's has paid to intermediaries for business secured by them on behalf of Lloyd's in South Africa.

Graph 4: Lloyd's commission paid in South Africa (1925 - 2000)



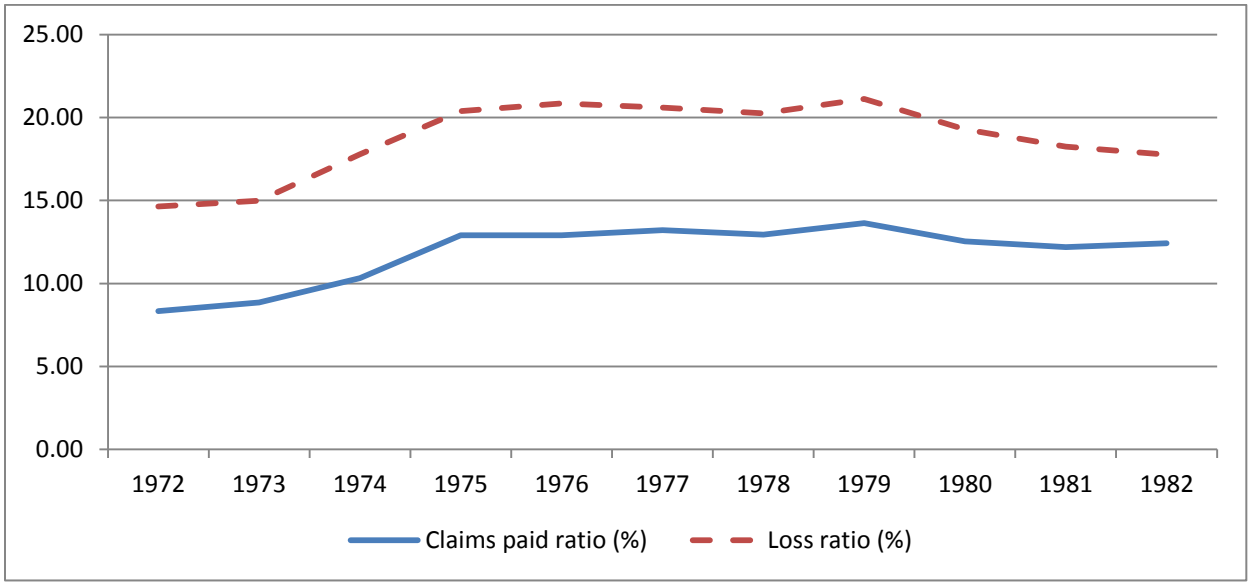
8.2.4. Paid Claims Ratio, Combined Paid Claims Ratio and Commission Ratio

It must be noted that the claims paid data used in this Table and Graph only includes the claims paid by Lloyd's and does not include outstanding claims still to be paid. Using only claims paid can be misleading especially when looking at the loss ratio and combined loss ratio. Table 7 and Graph 3 are an illustrative example of how a claims paid ratio differs from a loss ratio. The data used for this illustrative example is the South African insurance market information found in the FSB reports.

Table 6: Illustrative example of the difference between the claims paid ratio and the loss ratio

Year	Premiums Received (R'000)	Claims paid (R'000)	Claims outstanding (R'000)	Claims paid & outstanding (R'000)	Claims paid ratio (%)	Loss ratio (%)
1972	273,965	22,851	17,267	40,118	8.34	14.64
1973	314,760	27,868	19,273	47,141	8.85	14.98
1974	350,083	36,133	26,131	62,264	10.32	17.79
1975	404,726	52,207	30,318	82,525	12.90	20.39
1976	473,499	61,056	37,625	98,681	12.89	20.84
1977	583,871	77,194	43,111	120,305	13.22	20.60
1978	664,956	86,106	48,510	134,616	12.95	20.24
1979	745,550	***101,617***	***55,823***	***157,441***	13.63	21.12
1980	934,816	117,129	63,137	180,266	12.53	19.28
1981	1,154,560	140,747	69,943	210,690	12.19	18.25
1982	1,385,379	171,969	74,202	246,171	12.41	17.77

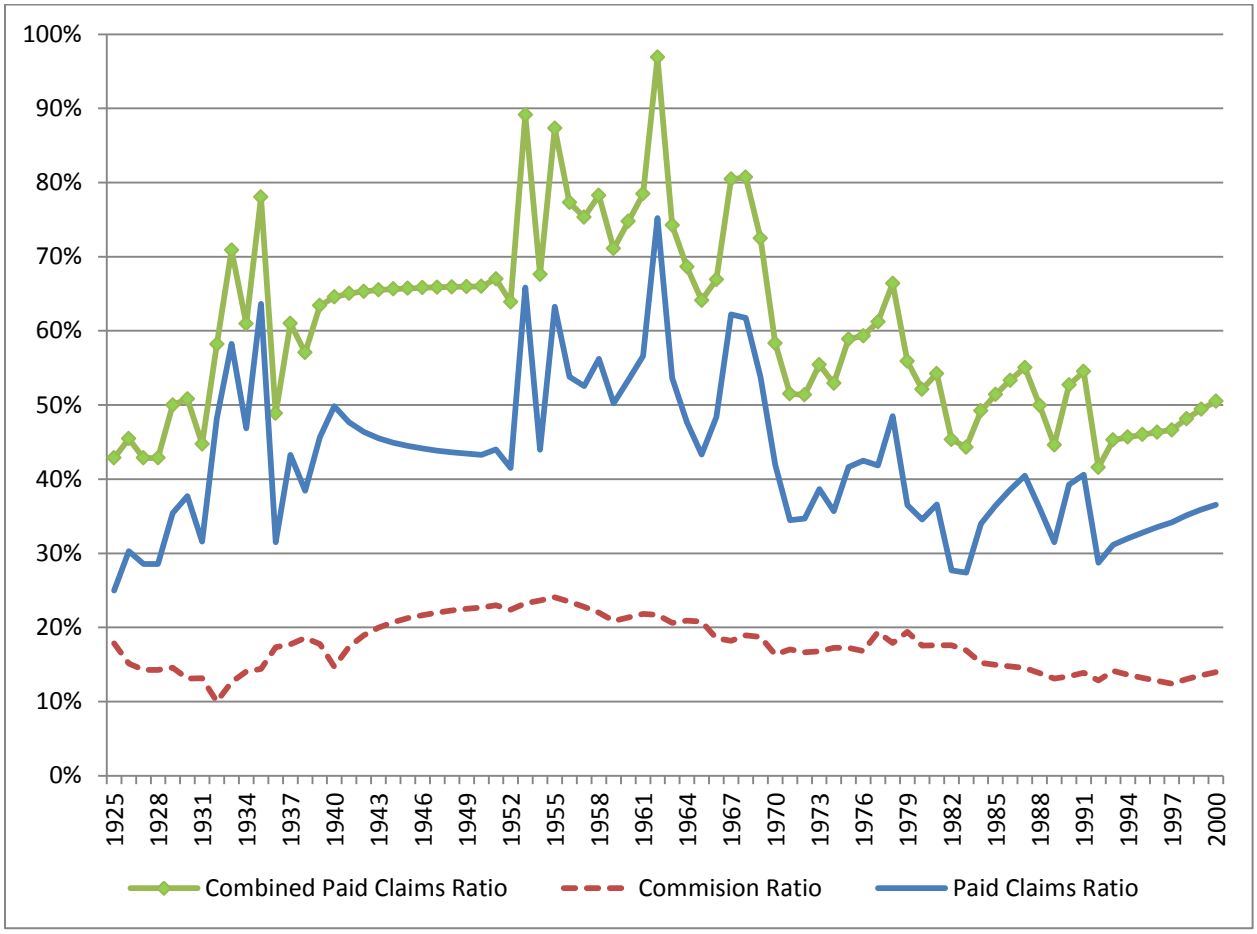
Graph 5: Illustrative example of the difference between the claims paid ratio and the loss ratio



The loss ratio is a more accurate depiction of the claims that are payable by Lloyd's as it includes outstanding claims that still need to be paid and as such is higher that the claims paid ratio.

However the data used often did not provide information on outstanding claims therefore only paid claims were used. Table 11 (Appendix 9) and Graph 6 show Lloyd's South African paid clams ratio, combined claims paid ratio and commission ratio (1925 - 2000).

Graph 6: Lloyd's South African paid claims ratio, combined paid claims ratio and commission ratio (1925 - 2000).

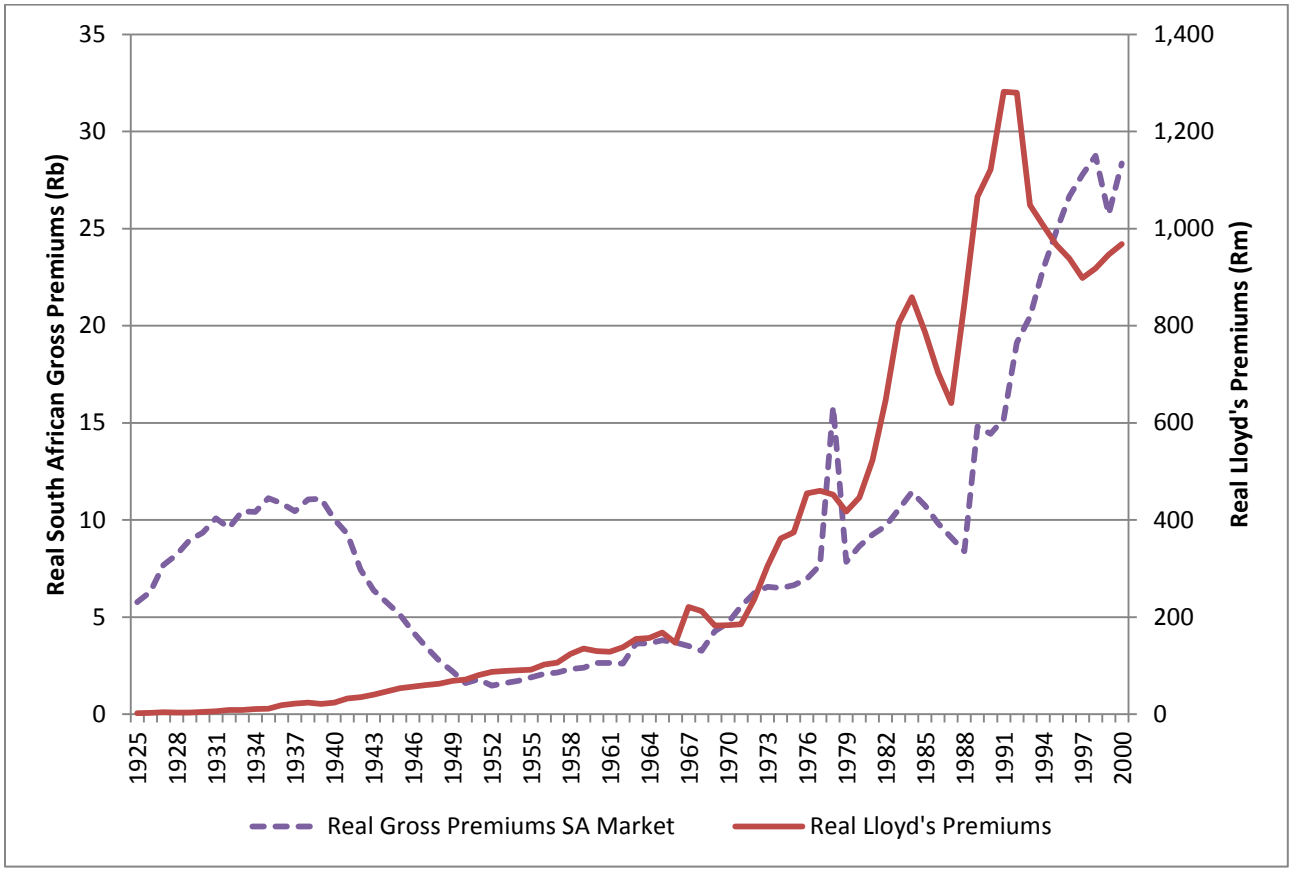


In the above graph it can be seen that for the majority of Lloyd's operation in South Africa the loss ratio has been low, and the solvency high, except for brief periods in 1950 and 1960.

8.3. Lloyd's and the South African insurance market (1925 - 2000)

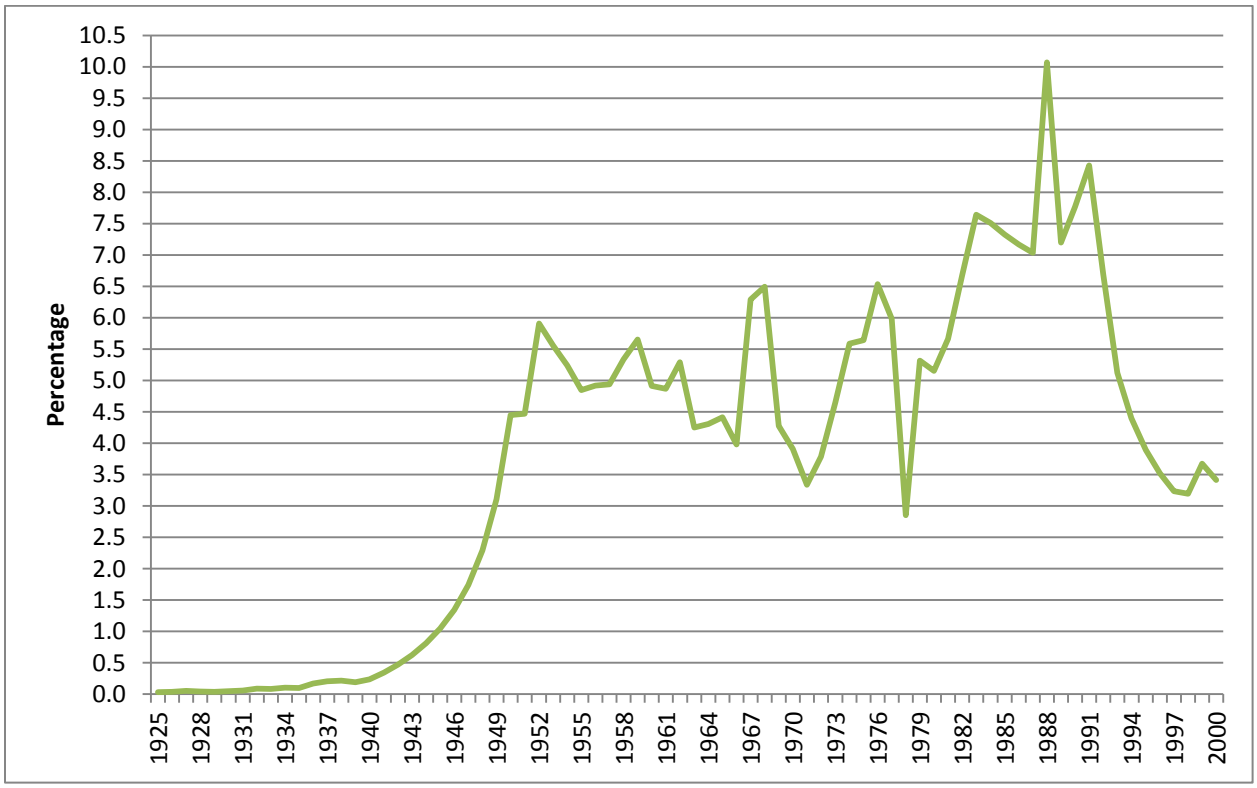
The data to construct these Tables and Graphs is used as it is shown in the financial reports. Gross premiums figures have been used except where the financial report has only provided net premiums. The data comprises of figures from South Africa for domestic insurers and foreign insurers operating in South Africa. The lines of business included in these figures are of the short term insurance market i.e. fire, marine, motor, personal accident, guarantee and miscellaneous. Life insurance has been excluded. Table 12 (Appendix 10) shows the Gross premium received in the South African insurance market excluding Lloyd's and Table 13 (Appendix 11) shows the Gross premiums of the South African insurance market and Lloyd's premiums in South Africa. Graph 7 contrasts the South African premiums received and the Lloyd's premiums received and Graph 8 shows Lloyd's percentage market share in South Africa.

Graph 7: Total gross premiums received by the South African market and total gross premiums received by Lloyd's in South Africa.



Lloyd's premium income in South Africa is increasing steadily. It must be noted that the increase in Lloyd's premiums when compared to the whole South African insurance market is very small due to the highly concentrated nature of the market i.e. two insurers, Santam and Mutual & Federal (Table 7) dominate the insurance market with 20% and 14% respectively with a cumulative total of 34% of the whole South African insurance market. However, the South African insurance market has grown very rapidly and has outpaced Lloyd's.

Graph 8: Percentage of Lloyd's market share regarding Gross Premium written in comparison to the total South African insurance market



The above graph shows Lloyd's premiums as a percentage of the South African insurance market. Lloyd's started off slowly and expanded during the war years followed by relatively continual growth until 1988. Thereafter Lloyd's percentage of the market dropped from 10.07% in 1988 to 3.41% in 2000.

Table 7: Market Share (%) of Short Term Insurers by Gross Premiums Written, 1998 – 2003

	Company	Segment	1998	1999	2000	2002	2003	Cumulative Total
1	Santam	General	13.2	12.1	16.9	20.7	20.0	20.0
2	Mutual & Federal	General	12.0	11.6	11.2	13.3	14.0	34.0
3	Hollard	General	4.6	4.6	4.1	6.5	7.7	41.7
4	SA Eagle (renamed Zurich)	General	6.6	6.4	6.1	7.4	7.4	49.1
5	AIG (SA) (renamed Chartis)	General	1.8	1.8	1.9	3.9	4.0	53.1
6	Guardrisk	Captive	4.1		4.2	3.1	3.7	56.8
7	***Lloyd's***	***General***		***4.4***	***5.2***	***3.5***	***3.4***	***60.2***
8	Outsurance	General	0.0	0.3	0.4	0.8	2.7	62.9
9	RMB Structured (previously Quantum)	Captive	2.3	4.6	1.8	3.7	2.5	65.4
10	Auto & General	General		2.2	1.8	2.0	2.3	67.7

(Vivian, 2007: 722).

From the year 1998 onwards Lloyd's has been in the top 10 insurers in South Africa (*One Lime Street*, 1993: 27; *One Lime Street*, 1996: 12; *One Lime Street*, 1998: 20). From the year 1998 to 2003 Lloyd's has consecutively been the 7th largest insurer in South Africa with Santam and Mutual & Federal dominating the market by a wide margin.

8.4. Conclusion

When looking at the above graphs a similar trend can be seen. Around the year 1988 Lloyd's premiums, claims paid, commissions paid and percentage of the South African market drop substantially. However, as can be seen from the South African market it too drops around the same time period. Lloyd's is merely following the South African market.

Lloyd's has grown in South Africa through increased premiums received from the period 1925 to 2000. Lloyd's has made a significant contribution to the South African insurance market as it provides insurance cover that South Africa cannot insure on its own and is a benefit to the continued growth of the industry. It is therefore important to document the history of such a substantial participant in the South African insurance market.

9. Conclusion

Lloyd's originated as a coffeehouse where men would meet to insure their ships against perils of the sea, men-of-war, fire, enemies, pirates and thieves. Over time and under the care and guidance of many influential individuals Lloyd's coffee house grew to be known as the world's largest insurance market. It had a turbulent history in the 1980s but despite countless inquiries, investigations and lawsuits Lloyd's as a society remained unscathed. Through Equitas Lloyd's was able to break away from the bad publicity of the 1980s and rebuild its good reputation.

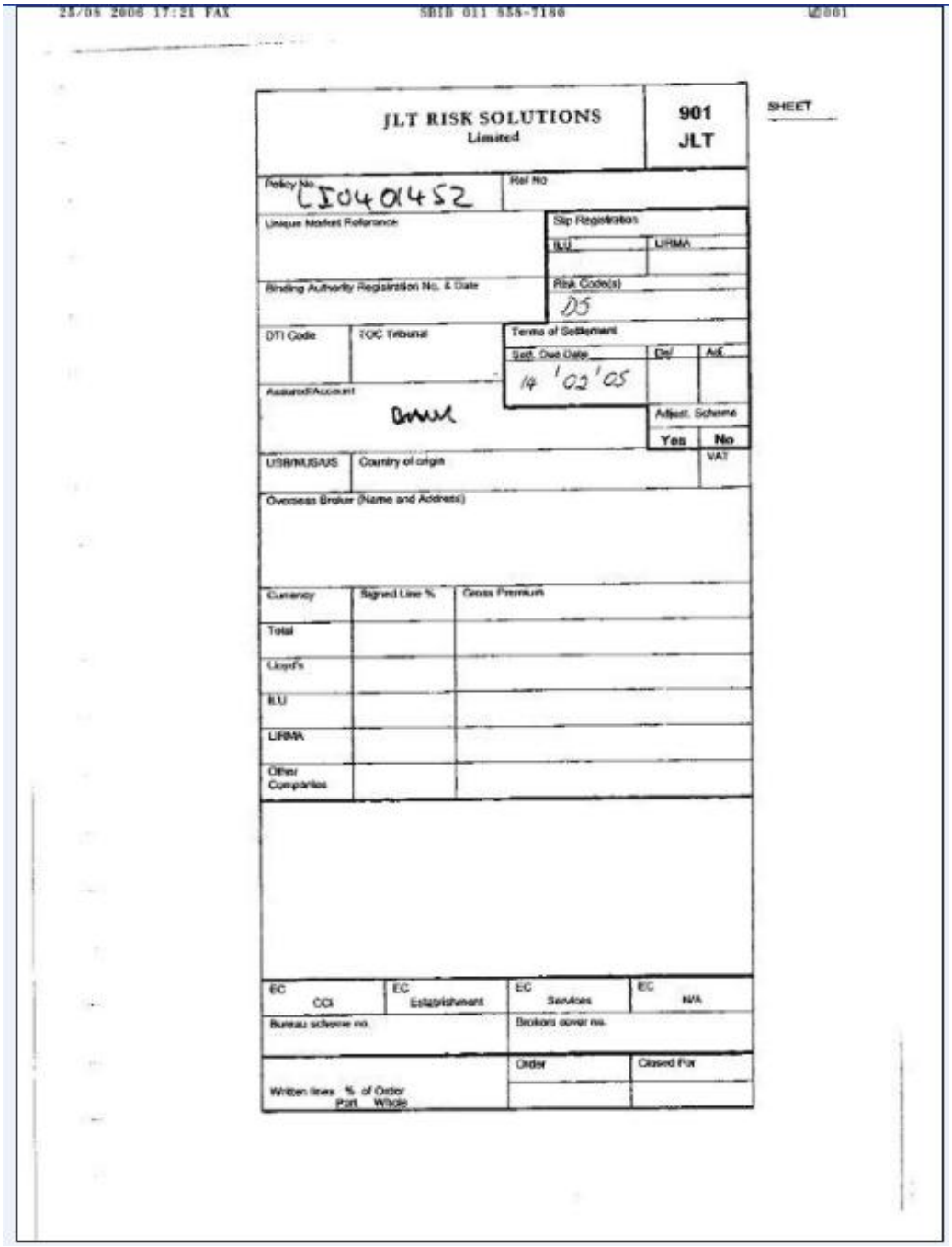
Lloyd's is present in many countries, one of which is South Africa. The first record of communication between Lloyd's and South Africa dates to 20 January 1823 regarding the creation of a Lighthouse. This is evidence of an interaction between South African business and Lloyd's. There is, however, not a sign of South Africa having a Lloyd's agent. The first record of Lloyd's operation in South Africa dates to the 17 July 1850 when George Christopher Cato was appointed as an agent for Lloyd's of London in Natal. His duties as a Lloyd's agent included hoisting the Lloyd's flag. It can thus be accepted that Lloyd's had at least one agent in South Africa by the year 1850. This agent may not have sold insurance as there is no evidence of George Cato having the authority to accept insurance business. He was an agent appointed to look after Lloyd's interests and keep it informed about ship movements and any other shipping intelligence. The first detailed mention of South African property actually being insured by Lloyd's appears on the 4th July 1913 where it was noted that Park Station as well as the *Star* offices in Johannesburg were insured against civil commotion risk. By the early 1900s Lloyd's definitely had a strong presense in South Africa.

The passing of the Insurance Act of 1923 regulated Lloyd's in South Africa. Lloyd's agents were, for the first time, required to deposit £2000 with the Treasury. The Insurance Act of 1943 regulated that the deposit made by each agent was increased from £2000 (R4000) to £5000 (R10 000) and in addition to the deposits made by the agents Lloyd's as a society made a lump sum deposit of £30 000 (R60 000). S60 imposed a tax on Lloyd's since up until this point Lloyd's paid no tax in South Africa. Lloyd's agents, for the first time, had to pay 2.5% of their aggregate

premium income to the Treasury. After the unfortunate situation of Rhodesia, the South African government did not want to face the same difficulties in South Africa and revised the legislation dealing with the operation of Lloyd's with the introduction of the South African general representative of Lloyd's and the South African trust fund. As Lloyd's became more dominant in South Africa, legislation changed to embrace and accept Lloyd's into the South African insurance market. The Short Term Insurance Act 53 of 1998 summarises how Lloyd's is regulated in South Africa encompassing all the changes through the years. A milestone was reached in 1998 when Lloyd's opened an office in SA to oversee the South African activities. This demonstrated the commitment that Lloyd's has to the South African insurance market. As well as being licenced in Namibia, Zimbabwe, Malawi and Mauritius. Lloyd's is now working on improving its licence footprint in Sub-sahara Africa.

In addition to the documented history of Lloyd's in South Africa, this dissertation graphically shows how Lloyd's has grown in South Africa through increased premiums received from the period 1925 to 2000. Lloyd's has made a significant contribution to the South African insurance market and will continue to do so due to the nature of the risks that Lloyd's is willing to insure.

10. Appendix 1



25/05 2006 17:21 FAX SBIB 011 555-7150 001

JLT RISK SOLUTIONS Limited

901 JLT

SHEET

Policy No. CI04014S2

Ref No

Unique Market Reference

Slip Registration

ILU | LIRMA

Binding Authority Registration No. & Date

Risk Code(s) 05

DTI Code | TOC Tribunal

Terms of Settlement

Sett. Due Date 14/02/05 | Dy/ | Adj.

Assured/Account

Adjust. Scheme Yes | No

USB/MUSA/S | Country of origin | VAT

Overseas Broker (Name and Address)

Currency	Signed Line %	Gross Premium
Total		
Lloyd's		
ILU		
LIRMA		
Other Companies		

EC CCI | EC Establishment | EC Services | EC N/A

Bureau scheme no. | Brokers cover no.

Written lines % of Order Part Whole | Order | Closed For

(Liebenberg, 2011).

11. Appendix 2[248]

Fact sheet 1

Key dates
History & Chronology



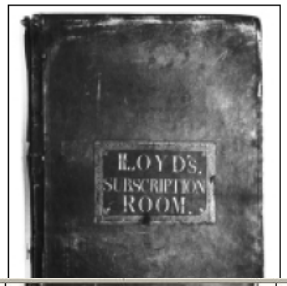
Business deals in the informal surroundings of Edward Lloyd's Coffee House

1688 First known reference to Edward Lloyd's coffee house in Tower Street (London Gazette 18-21 February 1688).

1691 Edward Lloyd moves his business to Lombard Street.

1713 Edward Lloyd dies.

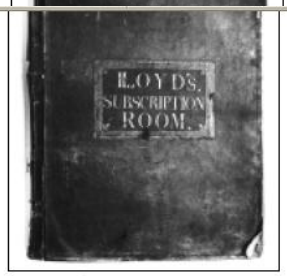
1769 A breakaway group of professional underwriters establish New Lloyd's Coffee House in Popes Head Alley.



1771 79 underwriters and brokers subscribe £100 towards new premises. Lloyd's ceases to be a coffee house and becomes the property of the subscribers. First Committee of Lloyd's elected, comprising nine subscribers.

1774 Subscribers rent rooms in the Royal Exchange.

1796 The Committee resolves that two ordinary general meetings should be held each year and an annual report and accounts should be presented.



1774 Subscribers rent rooms in the Royal Exchange.

1796 The Committee resolves that two ordinary general meetings should be held each year and an annual report and accounts should be presented.

Lloyd's Subscription Fund Loss Ledger

1811 A general meeting of subscribers adopts a trust deed, giving Lloyd's a constitution. This regulates admission to Lloyd's more strictly.



Fire rages at the Royal Exchange

1824 Parliament allows the existence of insurance companies other than Royal Exchange and London Assurance.

1838 Royal Exchange, and many early Lloyd's records, destroyed by fire on 10th January.

1844 Lloyd's market returns to rebuilt Royal Exchange.

1857 First deposit for security made with Committee by an underwriting member.

[248] http://www.lloyds.com/~/media/4f577394904a462dbd011791389e2447.ashx



Cuthbert Heath – reinsurance pioneer

1871 Lloyd's incorporated by a private Act of Parliament.

1873 Lloyd's seal affixed to every Lloyd's policy.

mid 1870s Development of business written by syndicate.

1880s Cuthbert Heath, a prominent Lloyd's underwriter, writes first Lloyd's reinsurance policy on American risks for a British company doing business in the US.


The Call–Chronicle–Examiner

EARTHQUAKE AND FIRE: SAN FRANCISCO IN RUINS

San Frandsco disaster is front page news

1887 First non-marine policies written at Lloyd's by Cuthbert Heath.

1903 Committee accepts first non-marine deposit, establishing non-marine market alongside marine business.

1904 First Lloyd's motor policy issued.

1906 San Francisco earthquake claims met by Lloyd's underwriters establishing Lloyd's reputation in the US.

1906-7 Cuthbert Heath devises excess loss reinsurance following San Francisco claims.



Inside the Lloyd's Underwriting Room

1908 Annual audit and premiums trust fund introduced. Made compulsory by law under Assurance Companies Acts 1909-1946.

1911 First Lloyd's aviation policy issued.

1925 Creation of Central Guarantee Fund.

1928 HM King George V and HM Queen Mary open new Lloyd's building in Leadenhall Street.



The Queen Mother opens One Lime Street

1939 Lloyd's American Trust Fund established for US dollar premiums.

1958 Lloyd's transfers to new Lime Street building. Officially opened by HM Queen Elizabeth The Queen Mother on 14th November 1957.

1968 Committee admits non-UK or Commonwealth members.

1978 General meeting of members agrees establishment of working party to examine self-regulation at Lloyd's.



Lloyd's Chatham building

1979 Sir Henry Fisher appointed chairman of working party. HM Queen Elizabeth The Queen Mother opens Lloyd's Chatham building.

1980 Draft Lloyd's Bill based on Fisher proposals approved at EGM.

1982 Bill Receives Royal Assent to become Lloyd's Act 1982. Election of first Council of Lloyd's.

1983 First meeting of Council of Lloyd's appoints first Chief Executive.



Lloyd's today, designed by renowned architect Lord Rogers

1986 New Lloyd's building at One Lime Street, designed by Richard Rogers is officially opened by HM The Queen.

1988 Lloyd's Tercentenary.

1993 David Rowland appointed first full-time remunerated Chairman of Lloyd's.

1994 First corporate members commence underwriting with £1,595 million capacity.

1997 Conclusion of 'Reconstruction and Renewal' Lloyd's Settlement proposals are accepted by 95 per cent of Members.



Lutine Bell rung to mark successful completion of Lloyd's reconstruction and renewal programme (Lloyds Chairman David Rowland and Minister of State at the Department of Trade & Industry Anthony Nelson)



The Lloyd's Underwriting Room today

1998 21 January Government announces independent regulation of Lloyd's by the Financial Services Authority, effective from Midnight on 30 November 2001.

2002 Lloyd's Members approve the proposals of the Chairman's Strategy Group. These outline major changes that will transform Lloyd's into a modern, dynamic marketplace attractive to capital providers and policyholders.

2003 Introduction of a Franchise Board and appointment of the first ever Franchise Performance Director - two crucial developments in the Lloyd's modernisation programme.

Visit to Lloyd's by UK Chancellor of the Exchequer Gordon Brown and US Treasury Secretary John Snow, in recognition of the important role of the market in the UK and US economies.

12. Appendix 3

Examples of some litigation brought against Lloyd's by aggrieved Names.

The Lloyd's Act of 1982 protects the Society of Lloyd's from any litigation brought against it by any insiders of Lloyd's for an action of damages (Ferguson, 1983: 64). Lloyd's as a society does not owe its members any duty of good faith. However, the managing agents and underwriters of the syndicates are not protected by the Lloyd's Act 1982 and were exposed to possible insider litigation (Luessenhop & Mayer, 1995: 43). Lloyd's Names had a choice to either pay the amounts that Lloyd's was demanding of them or fight in court. Many chose to sue (Raphael, 1995: 269). After the huge scale of losses suffered by the Names during the end of the 1980s, a large wave of litigation was brought against the underwriters at Lloyd's by the angry Names (Lane, 1996: 1). Names were of the opinion that they were recruited with malicious intent as Lloyd's knew the claims from long-tailed risks were imminent and they needed the capital to pay for such claims (Kelley, 1995: 6).

The only exception to the protection the Act offers the society of Lloyd's is that Lloyd's can be held liable for damages only if it can be proved that the society acted in bad faith. To prove bad faith is difficult under the English legal system as it follows the insurance principle of 'let the buyer beware' (McClintick, 2000: 50).

One of the first cases of litigation brought against Lloyd's underwriters was made by the Names of the syndicate Outhwaite 317 but was resolved with a settlement agreement (Luessenhop & Mayer, 1995: 28) whereby Outhwaite's E&O insurer (which was Stephen Merrett) settled the claim for 2/3rds of the losses suffered by the Names before 1989 (Luessenhop & Mayer, 1995: 93). However, most E&O policies had been placed inside the Lloyd's market which led to Names suing other Names in attempts to get their own money back and in certain cases would even be suing themselves. This led to a surge of lawsuits within Lloyd's as the market was at war with itself (Raphael, 1995: 271). The Outhwaite Action Group also showed Names that it was possible to successfully sue Lloyd's managing agents and that Lloyd's was subject to

commercial tests of prudence and competence just like all companies and corporations (Raphael, 1995: 270).

Another example of a large lawsuit was the Names that banded together to sue the Merrett 418 syndicate. The Merrett 418 Action Group consisted of over 2000 Names and cost up to $8m in legal fees (Luessenhop & Mayer, 1995: 94). By 1994 law suits were flowing into the courts on a daily basis alleging that negligent agents were liable for the losses suffered by the Names (Luessenhop & Mayer, 1995: 42).

Another well known case was brought against Gooda Walker and was described as the largest lawsuit in English history with 3000 plaintiffs claiming over $1.3bn in April 1994 (Luessenhop & Mayer, 1995: 286). Lloyd's lost this case to the joy of the Names (Kelley, 1995: 8). However, this joy was short lived as Lloyd's declared its intention to seize the winnings of the court case for the Central Fund. This led to all the Chairman of all the action groups to come together and form a united action group to stop Lloyd's from seizing the winnings of the Gooda case (Luessenhop & Mayer, 1995: 298).

American, Canadian as well as English Names initially took legal action against the long tailed asbestos and pollution syndicates claiming that underwriters were negligent in not finding out all the details on the risks they chose to underwrite and breached their duty of disclosure by not informing the Names of how risky the risks were (Raphael, 1995: 272). The second wave of litigation hit Lloyd's through Names on spiral syndicates suing Lloyd's for the amount of large losses they suffered due to the spiral on the grounds that the underwriters did not calculate their PML accurately regarding catastrophe claims and did not take out adequate reinsurance. A couple of the Names and underwriters' E&O insurers settled without going to court (Raphael. 1995: 273). Some US courts rejected to hear any cases brought by Names against Lloyd's on the grounds that they do not have jurisdiction of the London market and the Names must sue in the UK courts (Raphael, 1995: 276).

Names brought a lawsuit against Lloyd's alleging fraud throughout the whole of Lloyd's including at the highest level of the hierarchy of Lloyd's in the case of *Society of Lloyd's v.*

Jaffray (2000) England and Wales High Court (Commercial Court) Decision 51 (Comm). Other allegations in the trial include suppressing vital information regarding asbestos, misrepresenting the books to show profits which in truth did not exist and trying to get as many new Names into Lloyd's as possible to increase their capital base (McClintick, 2000: 39). An aggrieved Name involved in the lawsuit stated that "Lloyd's perpetrated one of the greatest commercial and political crimes of the 20th Century" (McClintick, 2000: 39). The allegations of fraud against Lloyd's in this case were rejected by the courts stating that the Committee of Lloyd's had acted honestly at all times (*Cover*, 2000b, 42). There was much at stake with this lawsuit. If the Names had lost this case they would have been ruined since Lloyd's would have demanded all the money they owed on their syndicates as well as the legal costs attributed to the trial. However, if they had provde that the Lloyd's was aware of the fraud and did nothing to stop it, Lloyd's would have been in trouble (McClintick, 2000, 39) with public opinion of Lloyd's being severely damaged. A question that needed to be considered was whether it was merely a coincidence that most of the new Names at Lloyd's were put onto the syndicates deeply involved in the long tailed asbestos and pollution claims. Lloyd's firmly denied all the allegations brought against it (McClintick, 2000, 41). There were 220 Names involved in the *Society of Lloyd's v Jaffray* case and they are all part of the approximate 6% minority that did not accept the settlement offer made by Lloyd's in 1996 through the formation of Equitas (Alston, 2000: 28).

Lloyd's fought against the litigation brought against its managing agents by trying to bury the case before it even got to trial claiming that procedural requirements were not met or constantly appealing against actions being brought against them based on trivial technicalities. Lawyers would then have to do extra work over a longer period of time thereby increasing the legal expenses for the Names causing some of them to stop their legal actions due to a lack of funds (Luessenhop & Mayer, 1995: 252). However, not all action groups gave up and once the procedural delays were over evidence was presented to court and the news of the fraud at Lloyd's was finally made public. By 1995 when the R&R program was about to be implemented various action groups started working with Lloyd's to find suitable solutions to the problems faced by Lloyd's and supported the R&R program (*Cover*, 1995: 16). Despite the number of Names turning to litigation against their agents it was acknowledged by all that an overall

negotiated settlement was the best likely outcome for all Names concerned (Anonymous, 1995: 9; Major, 1995: 18).

By 2000 it was safe to say that Lloyd's had avoided bankruptcy. However, there were still Names that refuse to pay their share of asbestos related losses stating that they were fooled into becoming Names on losing syndicates without being told the severe losses they were being exposed to. The Names are adamant that Lloyd's misrepresented the profits the syndicates were making for them to seen more appealing (McClintick, 2000: 38).

13. Appendix 4

Inquiries into the lack of capacity problem, open year problem and large losses.

The public was not sympathetic about the crisis at Lloyd's and did not want the government to assist Lloyd's making their feelings public knowledge through newspaper articles. Their view was that the taxpayers should not be made to pay for the mistakes of Lloyd's (Raphael, 1995: 293). A Society of Names (SON) was formed around 1991 to represent the Names who suffered the worst losses since it was felt by many that the Association of Lloyd's Members (ALM) – a voluntary organization consisting of external members previously set up to represent the Names of Lloyd's[249] - inadequately represented the worst affected Names. This society wanted to expose to the public the full information on fraudulent syndicates, spirals, the true value of the losses incurred including the dishonesty of managing directors and misrepresentations made in attracting new capital to Lloyd's. This society then gave birth to a new representative body known as the Lloyd's Names Associations' Working Party (LNAWP), called the Super Group for short (Raphael, 1995: 295).

The new chairman and team at Lloyd's chose a different approach than its predecessors during the 1980s and instead of denying that problems existed they admitted to mismanagement at Lloyd's (Raphael, 1995: 331; Ferguson, 1983: 59). Many Names had the following view: "since last year we have moved from no admission of guilt to a bizarre situation in which both the chairman and the chief executive freely admit massive mismanagement including deception, misregulation, incompetence and lack of professionalism. We don't want sympathy – confession and contrition are not enough – we require restitution" (Raphael, 1995: 333). Names were angry at the way they had been treated for the benefit of the insiders at Lloyd's.

Three problems had to be tackled by Lloyd's – lack of capacity that it now faced after the admission of the problems in the 1980s, open year of accounts that could not be closed due to the

[249] http://www.lloyds.com/Lloyds_Market/Market_participants/Committees_and_associations/Association_of_Lloyds_Members.htm

unknown extent of future claims and the high administrative costs involved in righting the wrongs of the past (Raphael, 1995). A number of inquiries and systems were set-up to deal with these problems, often mentioning similar recommendations, these included the Fisher Report, the Neill Report, the Walker Inquiry, the Roland Task Force and the Members Hardship scheme.

The Fisher Report (1980)

The fraud that was exposed in the Sasse, Moran, Posgate and Vaughan syndicates in the 1980s led to Lloyd's looking into updating the regulation at Lloyd's as it was realised that the Lloyd's Act of 1871 was outdated and needed to be modernised (Luessenhop & Mayer, 1995: 144; Flower & Jones, 1981: 183). Sir Henry Fisher, a former high court judge, was appointed by the Lloyd's chairman, Ian Findlay, in 1979 to perform a review of Lloyd's after some people requested Lloyd's to be subjected to external regulation and "his report modernized the market" (Rasmussen, Owen & Smith, 1997: 11; Raphael, 1995: 91).

The committee consisted of four people from inside the market – a broker, a Name's agent, two underwriters (one marine and one non-marine), as well as a banker and a journalist from outside of Lloyd's (Hodgson, 1986: 289). They were to focus on the self- regulation at Lloyd's without any governmental intrusion (Gwilliam, Macve & Meeks, 2000: 71). They published a report by the name of Self-Regulation at Lloyd's in 1980 which was freely available to the public. The report found the main problem at Lloyd's was the power to make rules and regulations as well as take disciplinary measures lay in the hands of the members at General Meetings and not with the Committee. This was no longer practical as the number of members had grown exponentially over time and very few members actually attend the general meetings. General meetings had become unsuitable for the creation of legislation, adjudication or discipline (Hodgson, 1986: 293). The task fell to the Committee who had no official power to do so. The Fisher Report suggested the creation of a Council of Lloyd's to be formed and be given the power to legislate, adjudicate and discipline.

In 1983 this working party also looked into the allegation of a serious conflict of interests. Before the 1980s Lloyd's was governed by a Committee of sixteen members, the majority of

which were comprised of leading underwriters at Lloyd's as well as brokers and members' agents. By the 1980s it was realised that this was a serious conflict of interests since it could be said that underwriters could favour themselves with the authority they held as committee members. Sir Henry Fisher combated these conflicts of interest (to make the interests of the external Names more represented in the committee of Lloyd's) by exchanging nine of the current committee members with six external Names and three outsiders that were approved by the Bank of England. In 1989 the committee was changed again to further combat the still existing problem of conflicts of interest, by replacing four committee members with four professionals that had nothing to do with Lloyd's, thereby making the insiders of Lloyd's only a small minority on the committee. A third change was made in 1993, through a newly formed Business Plan,[250] whereby the duties of the committee were split into two categories (1) a board focusing on the business of the market composed of professionals - a market board and, (2) a regulatory board to regulate the market composed of outsiders (Kelley, 1995: 7; Alston, 1993b: 16; Major, 1995: 16). Raphael (1995: 74) comments that all these changes show that "Lloyd's is a place where individualism flourishes and where suspicion of authority runs deep". By 1995 Lloyd's had six working members, five external members and five members nominated by the Bank of England (Bannister, 1995: 17).

The Business Plan was put together by Lloyd's "to maintain the confidence that is vital to our business, we must reconstruct our finances, maintain our solvency and deal with the problems of the past. This will involve compromise by all sections of our Society. The market and our on-going Members will be asked to contribute towards a fair settlement of the liabilities of the Names who are unable to pay all their past losses" (Anonymous, 1995: 1).

Further recommendations made by the Business Plan report were:[251] (1) a bye-law should be made to make sure that an agent cannot include a clause in the agency agreement to limit his legal liability or to include a clause that would give an agent unilateral power to alter terms in the

[250] The first business plan was published in 1991 and the second one was published in 1993 showing the substantial progress already made by Lloyd's in the implementation of the 1991 plan (Anonymous, 1995: 2). The Reconstruction and Renewal (R&R) program then took the business plan even further through the development of Equitas (Major, 1995: 8).
[251] Luessenhop & Mayer (1995: 145); Flower & Jones (1981: 183).

agency agreement; (2) underwriting agents should have professional indemnity insurance; (3) if an active underwriter can no longer perform his duties accurately the committee should be given the power to intervene; (4) underwriters should be discouraged from relying on the services provided by the brokers regarding the settling of claims; (5) a scheme has to be devised that can detect syndicates who exceed their premium income limit; (6) the council should control what can be included as a syndicate expense and what has to be borne by the agent from the agency fee; (7) the council of Lloyd's should be made up of insiders as well as outsiders from the public to be the new policy-making body at Lloyd's. However, a committee made up of only insiders should still remain to handle the daily affairs at Lloyd's; (8) Names agents were required to have Errors and omissions (E&O) insurance. However, in 1991 this requirement was deleted as E&O insurers were no longer willing to cover Lloyd's professionals after the extent of the exposure became clear at Lloyd's; and lastly (9) the Fisher Report also mentioned another conflict of interest problem between brokers who owned underwriters as stated in the Cromer Report of 1969. The Fisher Report saw the danger that an underwriter may accept a risk contrary to his better judgement for the benefit of the broker or the broker may give certain risks to the syndicates owned by him without looking at the best interests of the policyholder. To tackle this conflict of interest the report recommended that brokers were no longer allowed to acquire any underwriting agents and had five years in which to divest themselves of the managing agents they already owned (Hodgson, 1986: 296; Davison, 1987:48).

Concerns of the Fisher Report included (1) underwriters would place the interests of Lloyd's above the interests of the Names; (2) Names did not receive enough information on the syndicates they were about to be placed on by their managing agents; and (3) agents did not understand the obligations they had towards the Name which was to always act in the best interests of the Name and to exercise due care, reasonable skill and diligence in performing business for the Name (Luessenhop & Mayer, 1995: 145; Raphael, 1995: 93).

"The Fisher Report was used as the lever to prod Parliament to deliver a new Lloyd's Act" to implement the recommendations and to alleviate the concerns (Luessenhop & Mayer, 1995: 146). The Report concluded that a new Lloyd's Act is definitely needed at Lloyd's and the report reaffirmed that Lloyd's was to stay a self regulated organization (Davison, 1987: 47).

Parliament accepted the recommendations made by the Fisher Report and a new Lloyd's Act was formed (Davison, 1987: 48).

The Neill Report (1987)

After Davison resigned the government decided to appoint an inquiry into the defects of the existing constitution of Lloyd's. The Government starting taking notice of Lloyd's problems in April 1985 when the members of Lloyd's were suffering large losses due to the PCW syndicate and by August/September of that same year the use of baby syndicates to the detriment of Names became known, adding fuel to the suspicion of negligence, fraud and dishonesty at Lloyd's (Davison, 1987: 2). Lloyd's had a major flaw – its current constitution was unable to effectively regulate the market. Lloyd's did not share the view of Davison for the need of more reform and reconstruction and took offence to his resignation at the weakest point in Lloyd's history. Davison was of the opinion that "change would not have occurred without the outside pressures caused by my resignation and the resulting Neill Inquiry" (Davison, 1987:2).

A government inquiry into Lloyd's, led by Sir Patrick Neill, the vice-chancellor of Oxford University (Raphael, 1985: 125) started in January 1986 to inquire into the regulation of Lloyd's and whether it was correctly structured to look after the needs of its investors i.e. its Names. The inquiry looked at the scandals at Lloyd's from 1982 onwards and the conflict of interests at Lloyd's. The Neill Report was published in February 1987 which would bring to an end the control of the market by a few professionals at Lloyd's. The Report stated that many underwriters completely disregarded their legal obligation to always act in the best interest of their Names, with full disclosure of what is happening with the investors' money and had secretly made profits at their Names expense. An example of how this was done was thorough baby syndicates, not all of them were corrupt (Raphael, 1985: 126). "Baby syndicates were too often a way of putting additional profits in the pockets of the professional underwriters and their friends at the expense of external Names" (Raphael, 1995, 126). This led to the Report recommending that baby syndicates should not be allowed at Lloyd's. This recommendation was implemented two years later, in 1989.

Another comment contained in the Neill's Report was that "standard underwriting agreements failed to protect the interests of the Names" (Raphael, 1995: 127). A further criticism was Lloyd's refusal to publish agents' charges to stop agents from charging high commission rates.

The Neill Report brought attention to the fact that over the previous 20 years Lloyd's had been accepting outsiders as investors at Lloyd's in addition to the internal Names. The insiders were not happy with the collapse of the exclusive club of Lloyd's and looked at the new outsiders with contempt. From 1982 things started to go horribly wrong with the creation of the Howden, PCW and Brooks & Dooley where some exclusive insiders took advantage of their superior knowledge of the market and dishonestly took millions from their external investors for their own personal gain (Davison, 1987: 2). This problem at Lloyd's could not simply be solved by expelling the bad apples as the problem was much more deeply rooted in that many members at Lloyd's, including senior members, were completely ignorant of their duty to always act in the best interest of their Names without making any secret personal profits and had no knowledge of their duty to disclose material facts to their investors (Davison, 1987: 3).

Another issue that the Neill Report dealt with was the close relationship between the delinquent members and the Society of Lloyd's. Only a handful of the members at Lloyd's were negligent and made personal profits at the expense of others. The rest of the members were innocent of any wrongdoings, but the public held the perception that all members at Lloyd's were alike. The wrongdoings of a few seriously tarnished the reputation of the whole of Lloyd's. This perception needed to be dealt with.

In summary: The recommendations of the Neill Report (Davison, 1987; Raphael, 1995)

- The Neill Report put forward the idea that the market should be self regulated and that market practitioners in investment markets should be independently scrutinized. It also recommended that adequate supervision should be made of self regulating markets.
- Auditors and accountants should be used to check the accounts of the market and approve them if they are correct. This procedure will decrease the possibility of any negligence, fraud or dishonestly being concealed (Davison, 1987: 4).

- The Council at Lloyd's should consist of a majority of independent nominated members leaving the working members in the minority. This would diminish the power given to the insiders at Lloyd's to control the market, thereby diminishing the attempts made by insiders to benefit themselves at the expense of investors. This was the "end of a shameful era at Lloyd's which, more than anything else, buried the myth that 'utmost good faith' still held sway" (Raphael, 1995: 127). The Names no longer trusted the underwriters and their confidence in Lloyd's was fading (Raphael, 1995: 128).

The Walker Inquiry (1992)

Lloyd's realised that the damaging accusations would not merely disappear with time. David Coleridge, the chairman at Lloyd's, asked Sir David Walker to carry out an independent inquiry into the allegations of a rigged market through the placing of only external Names on the more risky syndicates. This led to Lloyd's releasing records of which members were part of which syndicates which demonstrated that fewer internal working Names were part of the syndicates which suffered the majority of the losses while they were over-represented on the most profitable syndicates. However, there was also some evidence that some syndicates which made substantial losses had a fair number of internal Names. Newspapers were of the view that since internal Names had inside knowledge at Lloyd's therefore they stayed clear of the spiral syndicates and were putting external Names on such syndicates (Raphael, 1995: 305).

Roland Task Force (1992)

An attempt to deal with the problem of open years was made by David Roland, a broker, who headed the Lloyd's task force in the 1990s named the Roland Task Force. The idea of investigating the capital needs at Lloyd's was first put into motion by Murray Lawrence and was chaired by David Rowland (Luessenhop & Mayer, 1995: 79), who took over from David Coleridge as the chairman of Lloyd's in 1993.[252] He reassured the Names that the future would hold many profits for Lloyd's (Luessenhop & Mayer, 1995: 19). Lloyd's published a report for

[252] He become the first paid chairman at Lloyd's with a starting salary of £450 000 pounds a year (Alston, 1993a: 33; *Cover*, 1995: 16).

the future and it was focused on making profits (Luessenhop & Mayer, 1995: 77). "The overall aim of the Lloyd's task force is to achieve, through evolution, steady real growth in capacity and income" (Alston, 1992a: 57). The Rowland Task Force published a report entitled 'Lloyd's: A route forward' in 1992 revealing the real reason for the sudden increase in Names. New Names were being placed on syndicates that were reinsuring the risks of older syndicates. By 1995 Lloyd's had lost up to $14 billion to claims (Luessenhop & Mayer, 1995: 29).

The Roland Task Force document can be divided into two sections. The first section contains recommendations which do not require a change in the law governing Lloyd's and can be implemented as soon as the Lloyd's council makes a decision. The second section recommended changes to be made to the Lloyd's Act and took much longer to implement (Alston, 1992a: 56).

The Task Force stated that the main cause of the crisis was the failure of inadequate market regulations to keep Lloyd's in line (Raphael, 1995: 297). Underwriters were able to take on way too much risk (were allowed too much capacity) and the number of Names increased dramatically to provide capital for the increased amount of risk. The report went further to say that during this time of increased capital flow the price of insurance was decreasing while the cost of administration of such risks was increasing i.e. costs were rising while premiums were decreasing (Raphael, 1995: 298).

The findings were published on the 15th January 1992 with the Task Force proposing that the following issues need to be considered at Lloyd's (Raphael, 1995):

- Open years on asbestos and pollution needed to be dealt with – it was suggested that Names try to trade through their losses[253] (Alston, 1992a: 50). The old year losses that Lloyd's had accumulated over the period 1985 – 1988 amounted to £1.6billion as a result of the under-reserving done by Lloyd's. The Task Force stated that there was not really a way to fix the problem of open years, they should just be accepted and recommended that

[253] Trading through a loss means that if a company makes a loss in one year, it is allowed to continue working in the next year in an attempt to make up for the loss suffered in the previous year. Over the years, as the company starts making a profit it can be used to cancel out previous loss years. A Name was able to defer the payment of a loss to the following year, accept a 5% credit given to them by Lloyd's as an advanced payment on the assumed profits made in that following year which allowed Names to meet their deposit requirements and be allowed to underwrite in that following year (Luessenhop & Mayer, 1995: 85).

Lloyd's focus on a better reserving method for the future (Raphael, 1995: 299). Centrewrite[254] was to continue to offer quotes to interested Names after amending its approach to the open year problem (Alston, 1992a: 57).

- The Capital base needed to be kept at Lloyd's through the introduction of corporate capital. This was a departure from the tradition of using individuals on an unlimited liability basis only. Lloyd's must be able to offer capacity for risks to its clients; the task force recommended that Lloyd's introduce corporate capital on limited liability only.[255] This was done with 25 corporate firms joining Lloyd's in 1994.[256] By 1996 there were 165 corporate members that had joined the Lloyd's market (*Cover*, 1996a: 35). Continuing Names had the choice to either convert to limited liability or to stay with unlimited liability (Major, 1995: 16).
- Change the administration of the market to reduce admin costs. The Task Force suggested that Lloyd's be split into two sections (the same suggestion that was made by the Fisher Report). The first dealing with the executive functions and the daily running's of Lloyd's where a board was to be set up that would prescribe the trading policy at Lloyd's i.e. the Market Board, and the second focusing solely on regulation of the market i.e. the Regulatory Board (Alston, 1993b: 16). This particular recommendation was initially not accepted by the Lloyd's council but eventually Lloyd's conceded to review the idea via a working group set up for this purpose (Alston, 1992a: 57). The Market board and Regulatory Board were later replaced by the formation of the Franchise Board as from January 2003 (*Cover*, 2002e: 57; HM Treasury, 2008: 7).
- Changing the underlying principle of Lloyd's from unlimited liability to limited liability in an attempt to restore the faith of the public in Lloyd's (Fields, Klein & Myskowski, 1998: 175). All losses were recommended to be capped as from 1993. However, the report was silent on the Names that had already suffered looses based on the old regime of unlimited liability. The Task Force was of the opinion that "the losses of the worst hit were so concentrated that it made neither commercial nor political sense to bail them out"

[254] For a discussion on Centrewrite refer to 4.4.1.2.
[255] Alston (1992a: 57); Alston (1993c: 14); Bailey (1994: 40); Noonan (1996: 48).
[256] Catlin, Harrison, James et al (1998: 54); Cover (1993d: 4); Cover (1994a: 4); Cover (1997: 13); Bannister (1995: 17).

(Raphael, 1995: 300). The introduction of limited liability is a fundamental change to the structure of Lloyd's.

- Retention of the three year method of accounting (Alston, 1992a: 57).
- Strengthening of Names rights (Alston, 1992a: 57).
- Introduction of Members' Agents'' Pooling Arrangements (MAPA) as from January 1993 (Alston, 1992a: 57).

Two main recommendations from the Rowland Report needed urgent attention by Lloyd's: Firstly, the diversification of the risks taken on by Names. This was done through the creation of the Members' Agents Pooling Arrangements (MAPAs). Diversification was needed for the Names to spread their risks and not suffer major looses all at the same time. Secondly, the capital received from current and new Names was not enough to boost the capacity at Lloyd's. The Roland Task Force recommended allowing corporate capital to be introduced on a limited basis (Luessenhop & Mayer, 1995: 258; Kelley, 1995: 7). Corporations however would have to be completely isolated from all previous losses suffered by Lloyd's otherwise no corporation would join (Luessenhop & Mayer, 1995: 259). This clearly called for a fundamental restructuring of Lloyd's.

Following the restructuring Lloyd's was split into four separate divisions i.e. Regulatory services, Marketing services, Systems & operations and Finance & operations (Alston, 1993a: 36).

Members Hardship Scheme

In 1989,[257] Lloyd's started a Hardship scheme where Names who were in serious financial difficulties stopped further underwriting and were allowed to use some of their deposited money

[257] http://www.hmrc.gov.uk/manuals/llmanual/llm5030.htm

at Lloyd's to cover basic living expenses. This stopped the cash calls coming in, however this scheme required the Name to sign over all possessions (house and cars) and wealth (including any inheritance received or profitable sideline ventures) to be able to receive a small monthly payment. Once the Name died Lloyd's would be able to sell the possessions to pay for that Name's debts.

For many Names to ask for help from the very institution which caused them the trouble was a testament to the strength of their character. Not many Names chose these hardship offers (Raphael, 1995: 278). However, there were still enough Names to enter the program to force Lloyd's to close the scheme in 1994 as the number of Names applying to this scheme grew unmanageable and Lloyd's was unable to sustain so many people (Luessenhop & Mayer, 1995: 86; Raphael, 1995: 352).

14. Appendix 5

Letter from Commondore Nourse

free as requested. I have &c.

(Signed) GEO. HARRISON.

[Original.]

Letter from COMMODORE NOURSE *to the* COMMITTEE OF LLOYD'S, ROYAL EXCHANGE, LONDON.

HIS MAJESTY'S SHIP *Andromache*,
IN SIMON'S BAY, *January 20th* 1823.

GENTLEMEN,—I take the liberty to send you a copy of my Letter to the Secretary of the Admiralty, and also of a correspondence with His Excellency Lord Charles Somerset, upon the importance of erecting a Light-House upon the Rock called "Noah's Ark," at the entrance of Simon's Bay.

As my reasons for suggesting this measure are detailed in this correspondence, I shall only here beg to observe, upon its importance; and my desire to draw your serious consideration to a measure, which, had it been undertaken some years since, would have saved large sums to the Underwriters.

Your Committee will most probably have these losses in your recollection.

And to be further satisfied of the importance of the measure I propose, will only have to call before you any intelligent Master of a Ship, who may be well acquainted with this Anchorage, and more particularly, have happened to enter False Bay in the Night, of which I have no doubt, many may be found.

His Excellency Lord Charles Somerset is so satisfied of the utility of what I propose that, (altho' it seems the Colony is not able to go to the expence) he writes by this opportunity to my Lord Bathurst, to recommend it strongly.

I feel satisfied that my Lords Commissioners of the Admiralty, as well as my Lord Bathurst, will be convinced of its importance, yet, as the Government, particularly in these times, are extremely

cautious of incurring expense, those considerations may operate against its adoption; it is for these reasons that I have thought proper to address your committee, to whom it cannot but be a matter of interest, and I feel satisfied the expense would be small.

I believe Sir J. Brenton will be found in London: your Committee may perhaps be acquainted with the high Professional Character of this Gentleman, and as it will appear by an extract of his Letter to the Navy Board, which I enclose, that he had taken up the Subject, I have no doubt, if called upon, he would very readily give you his opinion upon it.

The Estimate I consider much too low, but I cannot conceive it ought, particularly with the Public aid that might be afforded, to exceed £1000. I shall however endeavour to obtain an estimate in time to forward with this letter. I have &c.

(Signed) JOSEPH NOURSE, Commodore.

P.S. *Barrosa*, Captain Hutchinson, arriving in Simons Bay, July 1822 and nearly lost on Seal Island, not having any light to guide her.

The Dutch Ship *Ida Allida*, Captain Sykes, came into False Bay in 1818, and for want of a Light to guide her into Simon's Bay, ran on shore at the bottom of the Bay in the Night, and was totally wrecked, with a Cargo worth £80,000.

The *Medusa* came into the Bay with a Cargo of Naval Stores, went on shore at the same place, starting her keel and Stem-Post, but got off and repaired.

Emu, Government Brig from New Holland, went on shore at the same place, got off with loss of keel, and was hove down and repaired by the Naval Yard.

The above cases happening in the Night, and are but a few of the casualties, that occur in a few years.

J. N.

P.S. It will be seen by Lord C. Somerset's letter that Major Holloway had imagined the expense to be £5,000 or upwards, and by his own letter not more than £500. To account for this difference, the Major had totally misconceived the situation and size of the rock, until he came to Simon's Bay and went upon it with me.

(McCall, 1903).

15. Appendix 6

Table 8: Lloyd's premiums received in South Africa (1925 - 2000)

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
2000				***967,984***	1.00	***967,984***
1999				***898,039***	1.05	***946,300***
1998		828,094,000	828,094	828,094	1.11	918,064
1997		758,149,000	758,149	758,149	1.18	898,281
1996				***728,982***	1.29	***938,201***
1995				***699,816***	1.38	***966,596***
1994				***670,649***	1.50	***1,006,980***
1993		641,482,000	641,482	641,482	1.63	1,048,173
1992		712,685,000	712,685	712,685	1.80	1,279,506
1991		628,181,000	628,181	628,181	2.04	1,282,002
1990		475,600,000	475,600	475,600	2.36	1,121,698
1989		395,382,000	395,382	395,382	2.70	1,065,720
1988		273,779,000	273,779	273,779	3.09	844,997
1987		183,789,000	183,789	183,789	3.48	640,380
1986				***173,751***	4.05	***703,445***
1985				***163,713***	4.81	***787,082***
1984		153,675,000	153,675	153,675	5.59	858,520
1983		129,627,000	129,627	129,627	6.21	805,137
1982		92,467,000	92,467	92,467	6.99	646,622
1981		65,411,000	65,411	65,411	8.00	523,288
1980		48,163,000	48,163	48,163	9.26	445,954
1979		39,626,000	39,626	39,626	10.53	417,116
1978		37,960,000	37,960	37,960	11.90	451,905
1977		34,940,000	34,940	34,940	13.16	459,737
1976		30,941,000	30,941	30,941	14.71	455,015
1975		22,833,000	22,833	22,833	16.39	374,311
1974		19,550,000	19,550	19,550	18.52	362,037
1973		14,644,000	14,644	14,644	20.83	305,083
1972		10,373,000	10,373	10,373	22.73	235,750
1971		7,786,000	7,786	7,786	23.81	185,381
1970		7,153,000	7,153	7,153	25.64	183,410
1969		6,746,000	6,746	6,746	27.03	182,324

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
1968		7,648,000	7,648	7,648	27.78	212,444
1967		7,716,000	7,716	7,716	28.57	220,457
1966		4,999,000	4,999	4,999	29.41	147,029
1965		5,542,000	5,542	5,542	30.30	167,939
1964		5,023,000	5,023	5,023	31.25	156,969
1963		4,800,000	4,800	4,800	32.26	154,839
1962		4,273,444	4,274	4,274	32.26	137,871
1961	1,924,940	3,849,880	3,850	3,850	33.33	128,333
1960				***3,886***	33.33	***129,533***
1959	1,960,855	3,921,710	3,922	3,922	34.48	135,241
1958	1,795,903	3,591,806	3,592	3,592	34.48	123,862
1957	1,483,547	2,967,094	2,968	2,968	35.71	106,000
1956	1,379,597	2,759,194	2,760	2,760	37.04	102,222
1955	1,238,413	2,476,826	2,477	2,477	37.04	91,741
1954	1,170,302	2,340,604	2,341	2,341	38.46	90,038
1953	1,110,698	2,221,396	2,222	2,222	40.00	88,880
1952	1,086,761	2,173,522	2,174	2,174	40.00	86,960
1951	883,163	1,766,326	1,767	1,767	45.45	80,318
1950	743,691	1,487,382	1,488	1,488	47.62	70,857
1949				***1,373***	50.00	***68,625***
1948				***1,257***	50.00	***62,850***
1947				***1,142***	52.63	***60,079***
1946				***1,026***	55.56	***57,000***
1945				***911***	58.82	***53,559***
1944				***795***	58.82	***46,765***
1943				***680***	58.82	***39,971***
1942				***564***	62.50	***35,250***
1941				***449***	71.43	***32,036***
1940	166,065	332,130	333	333	71.43	23,786
1939	137,890	275,780	276	276	76.92	21,231
1938	155,991	311,982	312	312	76.92	24,000
1937	140,685	281,370	282	282	76.92	21,692
1936	109,296	218,592	219	219	83.33	18,250
1935	65,669	131,338	132	132	83.33	11,000
1934	63,614	127,228	128	128	83.33	10,667
1933	51,287	102,574	103	103	83.33	8,583
1932	54,871	109,742	110	110	76.92	8,462
1931	37,522	75,044	76	76	76.92	5,846

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
1930	30,259	60,518	61	61	71.43	4,357
1929	23,908	47,816	48	48	71.43	3,429
1928	24,342	48,684	49	49	71.43	3,500
1927	27,808	55,616	56	56	71.43	4,000
1926	16,360	32,720	33	33	71.43	2,357
1925	13,793	27,586	28	28	71.43	2,000

16. Appendix 7

Table 9: Claims paid by Lloyd's in South Africa (1925 - 2000)

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
2000				***353,722***	1.00	***353,722***
1999				***322,201***	1.05	***339,516***
1998		290,680,000	290,680	290,680	1.11	322,262
1997		259,159,000	259,159	259,159	1.18	307,060
1996				***244,309***	1.29	***314,426***
1995				***229,459***	1.38	***316,932***
1994				***214,609***	1.50	***322,236***
1993		199,759,000	199,759	199,759	1.63	326,404
1992		204,778,000	204,778	204,778	1.80	367,645
1991		255,101,000	255,101	255,101	2.04	520,614
1990		186,752,000	186,752	186,752	2.36	440,453
1989		124,538,000	124,538	124,538	2.70	335,682
1988		98,858,000	98,858	98,858	3.09	305,117
1987		74,415,000	74,415	74,415	3.48	259,286
1986				***67,020***	4.05	***271,335***
1985				***59,624***	4.81	***286,655***
1984		52,229,000	52,229	52,229	5.59	291,782
1983		35,501,000	35,501	35,501	6.21	220,503
1982		25,631,000	25,631	25,631	6.99	179,238
1981		23,945,000	23,945	23,945	8.00	191,560
1980		16,647,000	16,647	16,647	9.26	154,139
1979		14,462,000	14,462	14,462	10.53	152,232
1978		18,413,000	18,413	18,413	11.90	219,202
1977		14,626,000	14,626	14,626	13.16	192,447
1976		13,145,000	13,145	13,145	14.71	193,309
1975		9,503,000	9,503	9,503	16.39	155,787
1974		6,974,000	6,974	6,974	18.52	129,148
1973		5,661,000	5,661	5,661	20.83	117,938
1972		3,600,000	3,600	3,600	22.73	81,818
1971		2,683,000	2,683	2,683	23.81	63,881
1970		3,001,000	3,001	3,001	25.64	76,949
1969		3,627,000	3,627	3,627	27.03	98,027

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
1968		4,723,000	4,723	4,723	27.78	131,194
1967		4,802,000	4,802	4,802	28.57	137,200
1966		2,418,000	2,418	2,418	29.41	71,118
1965		2,400,000	2,400	2,400	30.30	72,727
1964		2,396,000	2,396	2,396	31.25	74,875
1963		2,574,000	2,574	2,574	32.26	83,032
1962		3,213,123	3,214	3,214	32.26	103,677
1961	1,089,859	2,179,718	2,180	2,180	33.33	72,667
1960				***2,075***	33.33	***69,150***
1959	984,356	1,968,712	1,969	1,969	34.48	67,897
1958	1,009,530	2,019,060	2,020	2,020	34.48	69,655
1957	779,502	1,559,004	1,560	1,560	35.71	55,714
1956	742,237	1,484,474	1,485	1,485	37.04	55,000
1955	783,140	1,566,280	1,567	1,567	37.04	58,037
1954	514,221	1,028,442	1,029	1,029	38.46	39,577
1953	731,453	1,462,906	1,463	1,463	40.00	58,520
1952	450,891	901,782	902	902	40.00	36,080
1951	388,811	777,622	778	778	45.45	35,364
1950	321,875	643,750	644	644	47.62	30,667
1949				***596***	50.00	***29,810***
1948				***548***	50.00	***27,420***
1947				***501***	52.63	***26,347***
1946				***453***	55.56	***25,156***
1945				***405***	58.82	***23,824***
1944				***357***	58.82	***21,012***
1943				***309***	58.82	***18,200***
1942				***262***	62.50	***16,350***
1941				***214***	71.43	***15,271***
1940	82,771	165,542	166	166	71.43	11,857
1939	62,979	125,958	126	126	76.92	9,692
1938	59,712	119,424	120	120	76.92	9,231
1937	60,915	121,830	122	122	76.92	9,385
1936	34,090	68,180	69	69	83.33	5,750
1935	41,682	83,364	84	84	83.33	7,000
1934	29,517	59,034	60	60	83.33	5,000
1933	29,763	59,526	60	60	83.33	5,000
1932	26,358	52,716	53	53	76.92	4,077
1931	11,982	23,964	24	24	76.92	1,846

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
1930	11,379	22,758	23	23	71.43	1,643
1929	8,240	16,480	17	17	71.43	1,214
1928	6,585	13,170	14	14	71.43	1,000
1927	7,975	15,950	16	16	71.43	1,143
1926	4,838	9,676	10	10	71.43	714
1925	3,103	6,206	7	7	71.43	500

17. Appendix 8

Table 10: Lloyd's commission paid in South Africa (1925 - 2000)

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
2000				***135,161***	1.00	***135,161***
1999				***121,544***	1.05	***128,076***
1998		107,927,000	107,927	107,927	1.11	119,653
1997		94,310,000	94,310	94,310	1.18	111,742
1996				***93,392***	1.29	***120,196***
1995				***92,474***	1.38	***127,727***
1994				***91,556***	1.50	***137,471***
1993		90,638,000	90,638	90,638	1.63	148,101
1992		91,551,000	91,551	91,551	1.80	164,364
1991		87,319,000	87,319	87,319	2.04	178,202
1990		63,878,000	63,878	63,878	2.36	150,656
1989		51,862,000	51,862	51,862	2.70	139,790
1988		37,937,000	37,937	37,937	3.09	117,090
1987		26,740,000	26,740	26,740	3.48	93,171
1986				***25,625***	4.05	***103,745***
1985				***24,510***	4.81	***117,837***
1984		23,395,000	23,395	23,395	5.59	130,698
1983		21,924,000	21,924	21,924	6.21	136,174
1982		16,287,000	16,287	16,287	6.99	113,895
1981		11,527,000	11,527	11,527	8.00	92,216
1980		8,455,000	8,455	8,455	9.26	78,287
1979		7,687,000	7,687	7,687	10.53	80,916
1978		6,792,000	6,792	6,792	11.90	80,857
1977		6,762,000	6,762	6,762	13.16	88,974
1976		5,210,000	5,210	5,210	14.71	76,618
1975		3,945,000	3,945	3,945	16.39	64,672
1974		3,371,000	3,371	3,371	18.52	62,426
1973		2,458,000	2,458	2,458	20.83	51,208
1972		1,727,000	1,727	1,727	22.73	39,250
1971		1,327,000	1,327	1,327	23.81	31,595
1970		1,171,000	1,171	1,171	25.64	30,026
1969		1,262,000	1,262	1,262	27.03	34,108

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
1968		1,449,000	1,449	1,449	27.78	40,250
1967		1,405,000	1,405	1,405	28.57	40,143
1966		927,000	927	927	29.41	27,265
1965		1,153,000	1,153	1,153	30.30	34,939
1964		1,051,000	1,051	1,051	31.25	32,844
1963		989,000	989	989	32.26	31,903
1962		926,489	927	927	32.26	29,903
1961	420,361	840,722	841	841	33.33	28,033
1960				***830***	33.33	***27,667***
1959	409,467	818,934	819	819	34.48	28,241
1958	395,386	790,772	791	791	34.48	27,276
1957	338,000	676,000	676	676	35.71	24,143
1956	323,851	647,702	648	648	37.04	24,000
1955	297,912	595,824	596	596	37.04	22,074
1954	276,095	552,190	553	553	38.46	21,269
1953	258,480	516,960	517	517	40.00	20,680
1952	243,223	486,446	487	487	40.00	19,480
1951	202,921	405,842	406	406	45.45	18,455
1950	168,739	337,478	338	338	47.62	16,095
1949				***309***	50.00	***15,455***
1948				***280***	50.00	***14,010***
1947				***251***	52.63	***13,226***
1946				***222***	55.56	***12,356***
1945				***194***	58.82	***11,382***
1944				***165***	58.82	***9,682***
1943				***136***	58.82	***7,982***
1942				***107***	62.50	***6,675***
1941				***78***	71.43	***5,564***
1940	24,464	48,928	49	49	71.43	3,500
1939	24,203	48,406	49	49	76.92	3,769
1938	28,951	57,902	58	58	76.92	4,462
1937	24,731	49,462	50	50	76.92	3,846
1936	18,875	37,750	38	38	83.33	3,167
1935	9,080	18,160	19	19	83.33	1,583
1934	8,706	17,412	18	18	83.33	1,500
1933	6,292	12,584	13	13	83.33	1,083
1932	5,395	10,790	11	11	76.92	846
1931	4,832	9,664	10	10	76.92	769

Year	Nominal Value (£)	Nominal Value (R)	Rounded Nominal R Value (R'000)	Extrapolated Nominal R Value (R'000)	Inflation Rate	Real R Value (R'000)
1930	3,770	7,540	8	8	71.43	571
1929	3,057	6,114	7	7	71.43	500
1928	3,159	6,318	7	7	71.43	500
1927	3,620	7,240	8	8	71.43	571
1926	2,128	4,256	5	5	71.43	357
1925	2,160	4,320	5	5	71.43	357

18. Appendix 9

Table 11: Lloyd's South African paid claims ratio, combined paid claims ratio and commission ratio (1925 - 2000).

Year	Paid Claims Ratio (%)	Commission Ratio (%)	Combined Paid Claims Ratio (%)
2000	37	14	51
1999	36	14	49
1998	35	13	48
1997	34	12	47
1996	34	13	46
1995	33	13	46
1994	32	14	46
1993	31	14	45
1992	29	13	42
1991	41	14	55
1990	39	13	53
1989	31	13	45
1988	36	14	50
1987	40	15	55
1986	39	15	53
1985	36	15	51
1984	34	15	49
1983	27	17	44
1982	28	18	45
1981	37	18	54
1980	35	18	52
1979	36	19	56
1978	49	18	66
1977	42	19	61
1976	42	17	59
1975	42	17	59
1974	36	17	53
1973	39	17	55
1972	35	17	51
1971	34	17	52
1970	42	16	58
1969	54	19	72

Year	Paid Claims Ratio (%)	Commission Ratio (%)	Combined Paid Claims Ratio (%)
1968	62	19	81
1967	62	18	80
1966	48	19	67
1965	43	21	64
1964	48	21	69
1963	54	21	74
1962	75	22	97
1961	57	22	78
1960	53	21	75
1959	50	21	71
1958	56	22	78
1957	53	23	75
1956	54	23	77
1955	63	24	87
1954	44	24	68
1953	66	23	89
1952	41	22	64
1951	44	23	67
1950	43	23	66
1949	43	23	66
1948	44	22	66
1947	44	22	66
1946	44	22	66
1945	44	21	66
1944	45	21	66
1943	46	20	66
1942	46	19	65
1941	48	17	65
1940	50	15	65
1939	46	18	63
1938	38	19	57
1937	43	18	61
1936	32	17	49
1935	64	14	78
1934	47	14	61
1933	58	13	71
1932	48	10	58
1931	32	13	45
1930	38	13	51

Year	Paid Claims Ratio (%)	Commission Ratio (%)	Combined Paid Claims Ratio (%)
1929	35	15	50
1928	29	14	43
1927	29	14	43
1926	30	15	45
1925	25	18	43

19. Appendix 10

Table 12: Gross premiums received in the South African insurance market excluding Lloyd's (1925 - 2000)

Year	Nominal £ Value	Nominal R Value	Rounded Nominal R Value ('000)	Extrapolated Nominal R Value ('000)	Inflation Rate	Real R Value ('000)
2000		R 28,359,258,000	R 28,359,258	R 28,359,258	1.00	R 28,359,258
1999		R 24,428,316,000	R 24,428,316	R 24,428,316	1.05	R 25,741,113
1998		R 25,933,572,000	R 25,933,572	R 25,933,572	1.11	R 28,751,188
1997		R 23,445,933,000	R 23,445,933	R 23,445,933	1.18	R 27,779,541
1996				***R 20,714,817***	1.29	***R 26,659,996***
1995				***R 17,983,702***	1.38	***R 24,839,367***
1994				***R 15,252,586***	1.50	***R 22,901,780***
1993		R 12,521,470,000	R 12,521,470	R 12,521,470	1.63	R 20,459,918
1992		R 10,650,375,000	R 10,650,375	R 10,650,375	1.80	R 19,120,961
1991		R 7,452,228,000	R 7,452,228	R 7,452,228	2.04	R 15,208,629
1990		R 6,121,995,000	R 6,121,995	R 6,121,995	2.36	R 14,438,667
1989		R 5,493,717,000	R 5,493,717	R 5,493,717	2.70	R 14,807,863
1988		R 2,719,174,902	R 2,719,175	R 2,719,175	3.09	R 8,392,515
1987		R 2,611,729,000	R 2,611,729	R 2,611,729	3.48	R 9,100,101
1986				***R 2,423,339***	4.05	***R 9,811,088***
1985				***R 2,234,948***	4.81	***R 10,744,944***
1984		R 2,046,558,000	R 2,046,558	R 2,046,558	5.59	R 11,433,285
1983		R 1,696,777,562	R 1,696,778	R 1,696,778	6.21	R 10,538,994
1982		R 1,385,379,000	R 1,385,379	R 1,385,379	6.99	R 9,687,965
1981		R 1,154,560,000	R 1,154,560	R 1,154,560	8.00	R 9,236,480
1980		R 934,816,000	R 934,816	R 934,816	9.26	R 8,655,704
1979		R 745,550,000	R 745,550	R 745,550	10.53	R 7,847,895
1978		R 1,329,912,000	R 1,329,912	R 1,329,912	11.90	R 15,832,286
1977		R 583,871,000	R 583,871	R 583,871	13.16	R 7,682,513
1976		R 473,499,000	R 473,499	R 473,499	14.71	R 6,963,221
1975		R 404,726,000	R 404,726	R 404,726	16.39	R 6,634,852
1974		R 350,083,000	R 350,083	R 350,083	18.52	R 6,483,019
1973		R 314,760,000	R 314,760	R 314,760	20.83	R 6,557,500
1972		R 273,965,000	R 273,965	R 273,965	22.73	R 6,226,477
1971		R 233,428,000	R 233,428	R 233,428	23.81	R 5,557,810
1970		R 183,100,000	R 183,100	R 183,100	25.64	R 4,694,872

Year	Nominal £ Value	Nominal R Value	Rounded Nominal R Value ('000)	Extrapolated Nominal R Value ('000)	Inflation Rate	Real R Value ('000)
1969		R 157,822,000	R 157,822	R 157,822	27.03	R 4,265,459
1968		R 117,726,000	R 117,726	R 117,726	27.78	R 3,270,167
1967		R 122,631,000	R 122,631	R 122,631	28.57	R 3,503,743
1966		R 125,589,000	R 125,589	R 125,589	29.41	R 3,693,794
1965		R 125,589,000	R 125,589	R 125,589	30.30	R 3,805,727
1964		R 116,598,000	R 116,598	R 116,598	31.25	R 3,643,688
1963		R 112,939,000	R 112,939	R 112,939	32.26	R 3,643,194
1962		R 80,763,645	R 80,764	R 80,764	32.26	R 2,605,290
1961	£39,534,396	R 79,068,792	R 79,069	R 79,069	33.33	R 2,635,633
1960	£39,534,396	R 79,068,792	R 79,069	R 79,069	33.33	R 2,635,633
1959	£34,675,245	R 69,350,490	R 69,351	R 69,351	34.48	R 2,391,414
1958	£33,665,822	R 67,331,644	R 67,332	R 67,332	34.48	R 2,321,793
1957	£30,059,678	R 60,119,356	R 60,120	R 60,120	35.71	R 2,147,143
1956	£28,046,414	R 56,092,828	R 56,093	R 56,093	37.04	R 2,077,519
1955	£25,551,146	R 51,102,292	R 51,103	R 51,103	37.04	R 1,892,704
1954	£22,341,845	R 44,683,690	R 44,684	R 44,684	38.46	R 1,718,615
1953	£20,002,717	R 40,005,434	R 40,006	R 40,006	40.00	R 1,600,240
1952	£18,392,197	R 36,784,394	R 36,785	R 36,785	40.00	R 1,471,400
1951	£19,775,876	R 39,551,752	R 39,552	R 39,552	45.45	R 1,797,818
1950	£16,722,587	R 33,445,174	R 33,446	R 33,446	47.62	R 1,592,667
1949				***R 44,159***	50.00	***R 2,207,930***
1948				***R 54,871***	50.00	***R 2,743,560***
1947				***R 65,584***	52.63	***R 3,451,779***
1946				***R 76,296***	55.56	***R 4,238,689***
1945				***R 87,009***	58.82	***R 5,118,176***
1944				***R 97,722***	58.82	***R 5,748,329***
1943				***R 108,434***	58.82	***R 6,378,482***
1942				***R 119,147***	62.50	***R 7,446,675***
1941				***R 129,859***	71.43	***R 9,275,671***
1940	£70,285,937	R 140,571,874	R 140,572	R 140,572	71.43	R 10,040,857
1939	£72,095,752	R 144,191,504	R 144,192	R 144,192	76.92	R 11,091,692
1938	£71,813,047	R 143,626,094	R 143,627	R 143,627	76.92	R 11,048,231
1937	£67,876,236	R 135,752,472	R 135,753	R 135,753	76.92	R 10,442,538
1936	£65,121,526	R 130,243,052	R 130,244	R 130,244	83.33	R 10,853,667
1935	£66,696,334	R 133,392,668	R 133,393	R 133,393	83.33	R 11,116,083
1934	£62,485,839	R 124,971,678	R 124,972	R 124,972	83.33	R 10,414,333
1933	£62,628,429	R 125,256,858	R 125,257	R 125,257	83.33	R 10,438,083

Year	Nominal £ Value	Nominal R Value	Rounded Nominal R Value ('000)	Extrapolated Nominal R Value ('000)	Inflation Rate	Real R Value ('000)
1932	£62,301,766	R 124,603,532	R 124,604	R 124,604	76.92	R 9,584,923
1931	£65,563,333	R 131,126,666	R 131,127	R 131,127	76.92	R 10,086,692
1930	£65,349,418	R 130,698,836	R 130,699	R 130,699	71.43	R 9,335,643
1929	£62,763,758	R 125,527,516	R 125,528	R 125,528	71.43	R 8,966,286
1928	£57,394,665	R 114,789,330	R 114,790	R 114,790	71.43	R 8,199,286
1927	£53,705,330	R 107,410,660	R 107,411	R 107,411	71.43	R 7,672,214
1926	£44,107,632	R 88,215,264	R 88,216	R 88,216	71.43	R 6,301,143
1925	£40,341,977	R 80,683,954	R 80,684	R 80,684	71.43	R 5,763,143

20. Appendix 11

Table 13: Lloyd's as a percentage of the South African insurance market

Year	SA Market Real Premium (R'000)	Lloyds Real Premium (R'000)	Lloyd's market share (%)
2000	28,359,258	***R 967,984***	3.41
1999	25,741,113	***R 946,300***	3.68
1998	28,751,188	R 918,064	3.19
1997	27,779,541	R 898,281	3.23
1996	***26,659,996***	***R 938,201***	3.52
1995	***24,839,367***	***R 966,596***	3.89
1994	***22,901,780***	***R 1,006,980***	4.40
1993	20,459,918	R 1,048,173	5.12
1992	R 19,120,961	R 1,279,506	6.69
1991	R 15,208,629	R 1,282,002	8.43
1990	R 14,438,667	R 1,121,698	7.77
1989	R 14,807,863	R 1,065,720	7.20
1988	R 8,392,515	R 844,997	10.07
1987	R 9,100,101	R 640,380	7.04
1986	***R 9,811,088***	***R 703,445***	7.17
1985	***R 10,744,944***	***R 787,082***	7.33
1984	R 11,433,285	R 858,520	7.51
1983	R 10,538,994	R 805,137	7.64
1982	R 9,687,965	R 646,622	6.67
1981	R 9,236,480	R 523,288	5.67
1980	R 8,655,704	R 445,954	5.15
1979	R 7,847,895	R 417,116	5.32
1978	R 15,832,286	R 451,905	2.85
1977	R 7,682,513	R 459,737	5.98
1976	R 6,963,221	R 455,015	6.53
1975	R 6,634,852	R 374,311	5.64
1974	R 6,483,019	R 362,037	5.58
1973	R 6,557,500	R 305,083	4.65
1972	R 6,226,477	R 235,750	3.79
1971	R 5,557,810	R 185,381	3.34
1970	R 4,694,872	R 183,410	3.91

Year	SA Market Real Premium (R'000)	Lloyds Real Premium (R'000)	Lloyd's market share (%)
1969	R 4,265,459	R 182,324	4.27
1968	R 3,270,167	R 212,444	6.50
1967	R 3,503,743	R 220,457	6.29
1966	R 3,693,794	R 147,029	3.98
1965	R 3,805,727	R 167,939	4.41
1964	R 3,643,688	R 156,969	4.31
1963	R 3,643,194	R 154,839	4.25
1962	R 2,605,290	R 137,871	5.29
1961	R 2,635,633	R 128,333	4.87
1960	R 2,635,633	***R 129,533***	4.91
1959	R 2,391,414	R 135,241	5.66
1958	R 2,321,793	R 123,862	5.33
1957	R 2,147,143	R 106,000	4.94
1956	R 2,077,519	R 102,222	4.92
1955	R 1,892,704	R 91,741	4.85
1954	R 1,718,615	R 90,038	5.24
1953	R 1,600,240	R 88,880	5.55
1952	R 1,471,400	R 86,960	5.91
1951	R 1,797,818	R 80,318	4.47
1950	R 1,592,667	R 70,857	4.45
1949	***R 2,207,930***	***R 68,625***	3.11
1948	***R 2,743,560***	***R 62,850***	2.29
1947	***R 3,451,779***	***R 60,079***	1.74
1946	***R 4,238,689***	***R 57,000***	1.34
1945	***R 5,118,176***	***R 53,559***	1.05
1944	***R 5,748,329***	***R 46,765***	0.81
1943	***R 6,378,482***	***R 39,971***	0.63
1942	***R 7,446,675***	***R 35,250***	0.47
1941	***R 9,275,671***	***R 32,036***	0.35
1940	R 10,040,857	R 23,786	0.24
1939	R 11,091,692	R 21,231	0.19
1938	R 11,048,231	R 24,000	0.22
1937	R 10,442,538	R 21,692	0.21
1936	R 10,853,667	R 18,250	0.17
1935	R 11,116,083	R 11,000	0.10
1934	R 10,414,333	R 10,667	0.10
1933	R 10,438,083	R 8,583	0.08

Year	SA Market Real Premium (R'000)	Lloyds Real Premium (R'000)	Lloyd's market share (%)
1932	R 9,584,923	R 8,462	0.09
1931	R 10,086,692	R 5,846	0.06
1930	R 9,335,643	R 4,357	0.05
1929	R 8,966,286	R 3,429	0.04
1928	R 8,199,286	R 3,500	0.04
1927	R 7,672,214	R 4,000	0.05
1926	R 6,301,143	R 2,357	0.04
1925	R 5,763,143	R 2,000	0.03

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