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Managing broker tenders EXPLAINED Guide

MANAGING BROKER TENDERS

In association with

Mactavish

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Mactavish

Mactavish is the UK's leading independent outsourced insurance buyer and claims resolution expert. They support their clients by designing insurance programmes that are appropriate for their risk, to drive down cost and resolve large claims. Mactavish combines technical and legal knowledge alongside commercial know-how and buying power, to assist all aspects of an organisation's insurance procurement process. Mactavish exists with the aim of providing certainty to every policyholder; simply, that those policies purchased should respond in the expected way in the event of a claim. According to research by Airmic around 45% of large claims are disputed by insurers, which then on average take c.3 years to reach settlement, with only 60% of the limit being paid out. Mactavish have suite of insurance services, but primarily work with policyholders in 2 key ways, placement and claims. Firstly, working with policyholders to assess whether policy wordings are fit for purpose and to negotiate wording and premium improvements, leveraging the markets, often through competitive tenders.

Secondly, the Mactavish claims practice is built on three principles: Independence, Expertise, Flexibility. Mactavish have no affiliation to any insurer and only represent their clients' best interests to ensure they explore all avenues to resolution. David Hertzell is the Chairman of the Mactavish Dispute Resolution practice. He has a distinguished background, having served as a Law Commissioner and been involved in significant reforms of insurance contract law, including the Insurance Act 2015. The Mactavish plural expertise in claim resolution, insurance analysis and placement operated under a Licenced Access model is critical when it comes to resolving clients' claims. They ensure an outcome that holds insurers to account for the critical role they play in supporting businesses. Mactavish take a multi-disciplinary approach to claims resolution, meaning they can access the most appropriate legal, financial or technical specialists, depending on the circumstances of a client's claim.

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SECTION 1: BROKER TENDER

1. INTRODUCTION

Choosing an insurance broker is an important decision in the purchase of insurance. This guide is designed to offer advice on the process of running a tender for services and negotiating a contract with a broker. The advice contained in the guide is relevant to most organisations, but with a particular focus on larger or more sophisticated risks, where typically more complex cover is in place. For the smaller organisation, the principles and activities remain the same, although less detail may be required to complete a review of current and required solutions.

The role of the insurance broker includes advising the insurance buyer on the necessary disclosure of material information to insurers, the negotiation of policy price, coverage levels, wordings, as well as providing value-added services, such as the provision of advice and assistance throughout the duration of the relationship, and assistance in the event of a claim. Yet, the level of advice, scope of renewal activity and additional services provided by an insurance broker can vary greatly – often reflecting the scope agreed within the Terms of Business Agreement or Service Level Agreement. With insurance brokers acting as the buyer's gateway to the insurance market, the success of the buyer's insurance purchase strategy therefore hinges on:

1. The broker's ability to understand the client, its risk profile and risk tolerance, and set to up a strategy to advise, based on data and analytics.
2. Clarity around the roles and expectations required of the chosen insurance broker – as codified in the Terms of Business Agreement and Service Level Agreement.

A good broker will become the trusted partner of the insurance buyer, and should be able to offer advice on the buyer's existing programme and challenge the buyer around new coverage, value-added solutions, programme design and innovation. A good broker will therefore require a detailed understanding of the buyer's organisation, risk universe, current business performance and strategic plans, to ensure that appropriate cover is in place and the relevant disclosures are made.

Given this importance, a periodic tender is an effective tool to assess the strength of a broker's relationships, both within the insurance buyer's organisation and with the insurance market. The exercise presents an opportunity for the buyer to consider potential changes to its current programme, as well as providing the incumbent broker with the opportunity to demonstrate its skills, market leverage and commitment to retaining the buyer's business.

Whilst the structure of a tender can vary, the tender is an opportunity to bring in fresh ideas and new thinking. The role of procurement can also be a key part of a tender process, or even obligatory for some organisations, including for those involved in the public sector. This can add value in driving a well-managed, clear and fair process but may require some adaptations to ensure sufficient focus on coverage and quality given the complexity of some insurance products and how essential the contract detail is to the value of what is being purchased.

Market Fluctuations

Most sectors experience cycles of expansion or contraction. Insurance cycles can involve expansion or contraction of access to the scope of cover, deductible levels, cover limits and capacity of cover, often accompanied by changes in insurance and reinsurance premium rate pricing. The peaks and troughs are often referred to as 'hard' and 'soft' markets.

Soft Market

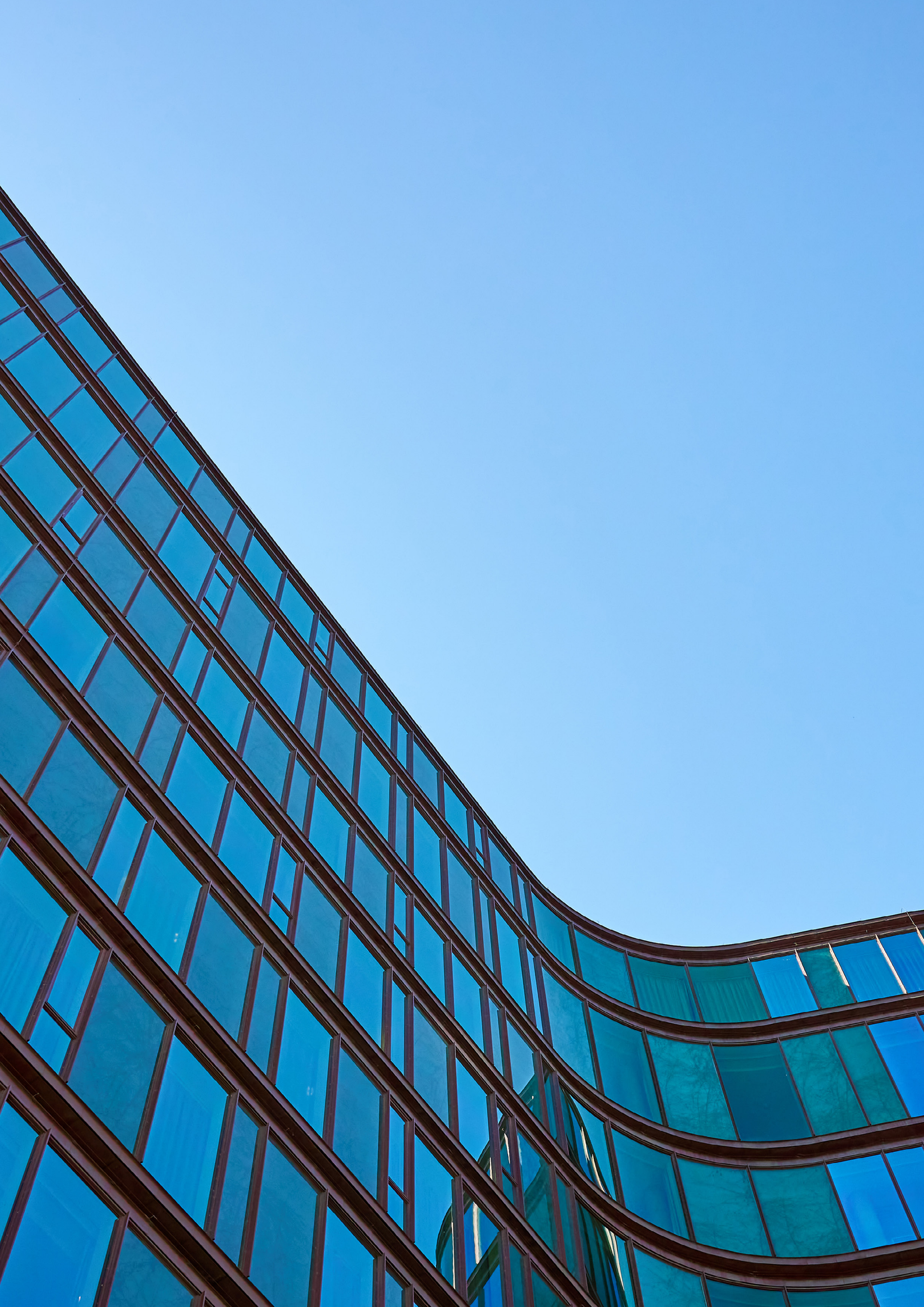
This is a period of intense competition when reinsurers and insurers are profitable and want to grow their market share. This drives down reinsurance and insurance premium rates and increases the capacity for some covers, often accompanied by less stringent underwriting standards.

Hard Market

This is a period when obtaining cover becomes more challenging as reinsurers and insurers tighten their underwriting standards, reduce or even remove participation in some classes of cover, and increase premium rates. This scenario is driven by factors including higher claims, regulatory changes or reduced returns on investments.

Essentially, the different market scenarios are driven by the laws of supply and demand.

When a market is 'hard', the renewal process should start earlier.



2. DECIDING TO TENDER

Whilst there have been major external factors at play, tough insurance market conditions create more scope for good brokers to demonstrate their value. Placing a broker under competitive tension during the challenges of the harsh market can therefore be an effective tool to provide the client with confidence in its choice of broker (and its ability to secure the best possible outcome) and for the broker to demonstrate good insurance-buying practice at a time of severe cost and cover pressures across many industries.

There are many reasons for making the decision to tender, including:

- **Change in Circumstances**
  If the organisation takes a material change in direction, creates, merges or acquires other businesses, changes its portfolio or business model, or moves into new global markets, this could prompt a broker tender to ensure that the correct specialists are engaged.
- **Innovation**
  A broker tender can lead to considerable changes to programme design or servicing style than might be seen at a typical renewal. If the organisation's insurance purchase strategy changes, a broker tender can offer a wider range of responses about how best to manage the current insurances. It can also confirm that the organisation already has the best programme and team in place, and bring out the best in them.
- **Performance Issues**
  If a broker is suspected of complacency or underperformance, the client may choose to tender to ensure it receives the required level of service.
- **Audit and Governance**
  As risk increases in importance to Boards, so does the level of transparency required in all related transactions. For this reason, it is important to be able to demonstrate that a sound broker choice has been made and that the broker is delivering on as many of the defined criteria as possible. It is also important to provide shareholders and external stakeholders with evidence of efficient processes and spending controls via periodic review.

Whilst making the decision to tender, an organisation should also consider the desired outcome of the exercise, as this will ultimately direct the decision over which broker wins (or retains) the business (and also the format the tender takes – see Types of Tender below). The increased competitive tension of a broker tender can be used to drive three areas of enhancement to an organisation's insurance programme:

- **Cost and value**
  Besides incentivising brokers to deliver the most competitive terms, broker tenders can also help organisations find an insurance programme that brings them the best value, such as in terms of the quality of partnerships.
- **Cover**
  As with cost, broker tenders can be used to secure enhancements to cover or limit the cover erosion common in a harsh market. Brokers can be challenged to secure key enhancements and leverage more of the market to find the broadest possible wording.
- **Broker and Insurer Service**
  If an organisation is concerned with the level of service or interaction it has with both its broker and insurers, a broker tender is a good opportunity for competing brokers to demonstrate the level of service and interaction they will provide the organisation moving forward, above all around handling claims.

The desired outcomes of a tender should therefore be considered up front and articulated to the tender participants so that they can use the exercise to address the organisation's identified priorities as well as provide a more tailored 'pitch'.

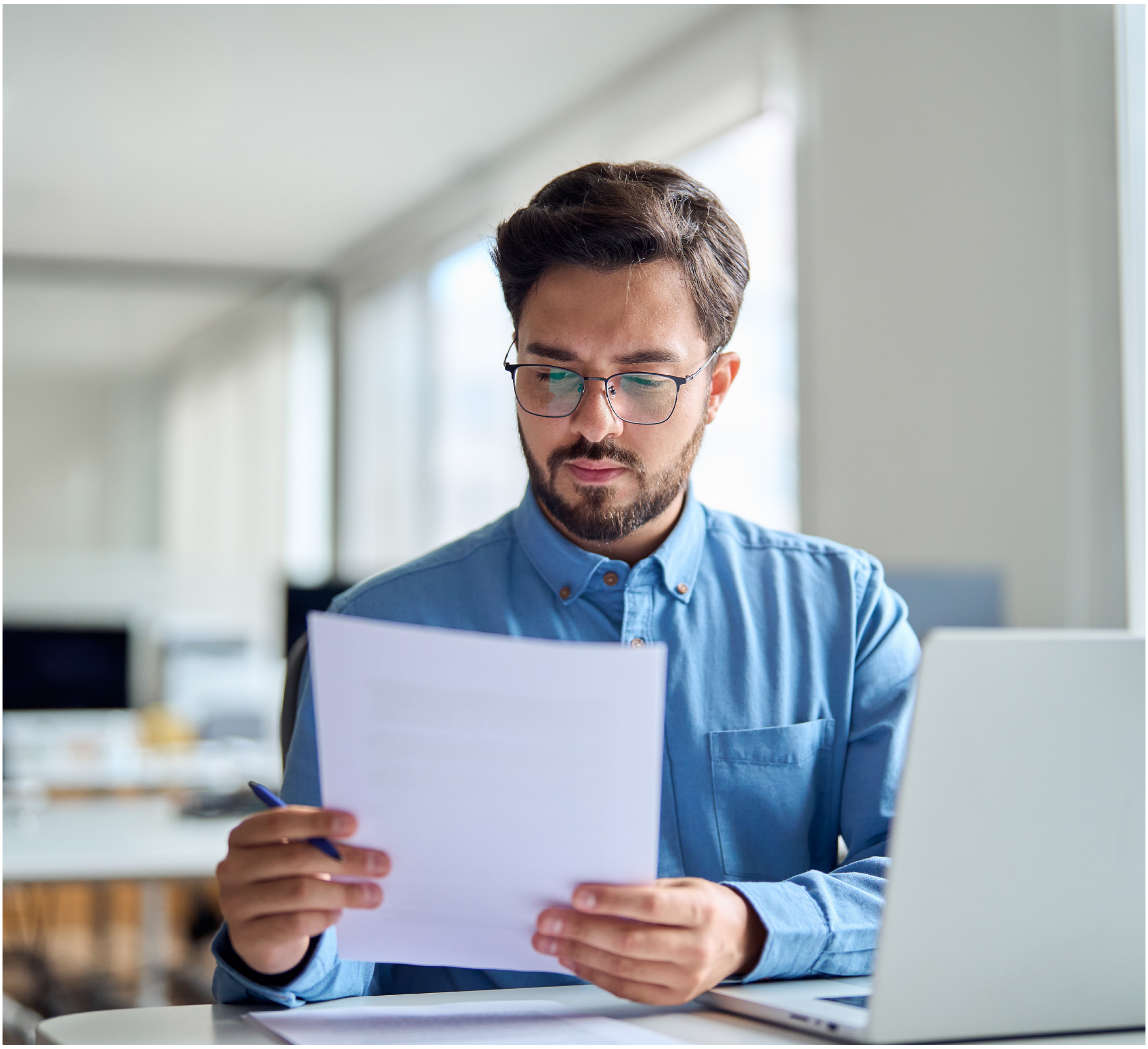
Nonetheless, tenders for the services of a broker can be a time-consuming process for all involved, so the decision to run a tender is never one to be taken lightly. Insurance service tenders are equally time-consuming and costly for the participants, and so entering a tender without the authority or willingness to move the account is discouraged. All participants should enter the process with the understanding that a genuine opportunity is present. However, if an organisation has experienced service issues with its incumbent broker but lacks the time or appetite for a tender, it may be worth beginning with a review of its agreements with the incumbent broker.

A Terms of Business Agreement and Service Level Agreement usually make up the contract between an organisation and its broker, with these defining the services, standards and obligations both parties should comply with. If the performance of its broker is in question, the organisation should consider:

i. whether this performance is reflective of the current Terms of Business and Service Level Agreements

ii. how these contract components, including service standard commitments, timelines and Key Performance Indicators, could be amended to better align the expectations between the two parties.

An organisation may want to consider the use of an independent third party to advise on potential enhancements to its broker Terms of Business Agreement and Service Level Agreement, and the broker should be amenable to reflecting the client's requirements in order to strengthen its relationship with the client.



3. TYPES OF TENDER

Having made the decision to tender and having decided on the intended outcomes and priorities to be addressed through the exercise, the organisation needs to decide on the format of the tender.

There are two main types of tender to be considered, with each having advantages and disadvantages:

- **Conceptual Tender**

Participating brokers are asked to present a proposal covering how they believe they could improve the competitiveness of the organisation's current insurance programme and address its priority areas of concern. Brokers often use benchmarking data and models to demonstrate how they believe they could deliver a better result than the incumbent.

Those committed to winning the business may also negotiate Key Performance Indicators to be met, and promise some element of performance-dependent fee, in order to deliver the outcome they forecast.

Desk-top benchmarking of an incumbent broker can be good practice to ensure effectiveness and efficiency, and to examine its performance relative to the market expectations promised by other brokers, and it can be less resource intensive than a costed tender (see below).

Nonetheless, this tender format is sometimes criticised for its appointing a broker before it has delivered tangible results to a client, risking a situation in which a new broker fails to deliver on its initial proposal, and leaving the client with little or no recourse. Particularly in market segments where each broker has preferred insurer relationships, this approach can serve to limit competition at the sharp end of the process approaching renewal.

- **Costed Tender (Written Lines Tender)**

Participating brokers are asked to approach the market and seek certain quotes. The broker that proposes the best cover and most competitive offer wins the business. Different brokers will have stronger relationships with particular markets, supported by a sometimes complex mix of services and remuneration. A costed tender puts the strength of these relationships to the test and rewards the broker that can push for the best offer in terms of cost and quality.

Nonetheless, a costed exercise can be resource intensive to orchestrate, in particular in market segments where there are a small number of viable insurers. In order to achieve a fair and optimal result, brokers should be asked to market the risk using the same disclosure materials, and each broker should be allocated exclusive access to its preferred markets (with any overlap between brokers' preferred markets split fairly).

There are of course tender models that combine aspects of both approaches in order to reflect an organisation's priorities. Both processes should be considered in order to design and carry out a fair and effective tender process.

4. INTERNAL TENDER PANEL

The first requirement is to put together a tender panel, made up of the key stakeholders in the decision. This should involve those with a day-to-day relationship with insurance management and the senior stakeholders with ultimate responsibility for insurance and risk. These senior stakeholders may not be involved in all stages of the tender, but should, at minimum, be involved in the final decision-making. It is important that any decision taken is taken as a group, and if the insurance functions, e.g. purchase, management and claims, are split between various teams and/or people, all of these should be represented on the tender panel.

Increasingly, many organisations are involving specialist procurement professionals from within their organisation in the tender process. Procurement professionals are well positioned to provide advice and to manage the most appropriate procurement process to meet the needs and contracting requirements of the organisation. Procurement can give an objective view and constructively challenge the current arrangements, especially where these are based on long-standing relationships. Procurement professionals will have been involved in tender processes, but perhaps not insurance services tenders. For this reason, it is important that the organisation ensures that any procurement professional, or any panel member without insurance experience, included in the tender panel understands how broker relationships work, what is important in the insurance purchase process and that the insurance buyer ultimately retains responsibility for the process.

All members of the tender panel must be made aware of the nuances of insurance and its procurement. Buying insurance, especially in a harsh market, can be extremely complex. Insurance is not a tangible 'commodity' that should be purchased on the consideration of cost alone. Insurance is an often complex contract that codifies a promise that the insurer will indemnify the insured in the event of a loss, subject to extensive conditions and definitions. It is therefore critical that due attention is paid to the contract purchased. Put simply, anyone can reduce the cost of insurance by buying less or lower-quality cover. All members of the tender panel must therefore be alive as to the importance of securing cover that is fit for purpose and that achieves a sensible balance between cost and breadth of cover.

In order to compare which broker's proposal best addresses the organisation's priorities, the tender panel should decide on the process by which a winning broker will be selected. It can be helpful to develop a scorecard system in which the amount, quality and cost of cover (as well as the servicing capabilities with each broker) are assessed objectively. This ensures that each proposal is fully considered.

Developing such a system, however, can prove complex and consideration should be given to the inclusion of external consultants in the process. There are a number of companies with specific knowledge of and skills in running insurance tenders. These companies work with the insurance buyers throughout the tender process and provide their expertise in running a successful tender, as well as lending their knowledge of the insurance market. Ahead of any such appointment, due attention should be given to the mix of cost and quality of cover objectives to secure the right technical and advisory support.

5. STRUCTURING THE TENDER

The tender should have a clear timeline, which brokers can accept as part of their Invitation to Tender; however, it will depend on the agreed format and objectives of the exercise.

The timing of the tender is critical. Any changes to the broker should be made with consideration to policy renewal dates and automatic/tacit renewals. The tender panel must ensure that any new broker appointed will have time to fully understand the account, stress test the cover and consider the structure prior to renewal.

As well as providing all applicable deadlines, the structure of the tender should include decision-making points. Brokers will want to understand when critical decisions will be made, including at what stage participants could be eliminated from the tender.

If a pre-qualification stage is in place, it will take around three weeks between invitation, completion and review. The tender itself will also be time-consuming, and organisations should strive as far as possible to stick to the timeline agreed with brokers at the beginning of the exercise.

The timelines below illustrate how running a tender may look and what deadlines will need to be in place. The timelines are equally challenging for the client and the broker. Both parties must be clear on their responsibilities and their commitment prior to the process beginning.

Whilst the timelines below may seem long, current market conditions have seen the time required to market risks protracted – as tougher underwriting guidelines have seen underwriters paying greater attention to risk information, whilst simultaneously being inundated with submissions from brokers seeking to mitigate rising premiums as far as possible. It is therefore key that sufficient time is allocated to each stage of the tender timeline and that a level of redundancy is built into the process in case of unexpected issues or delays.

Following the appointment of the broker, the relationship and commitments of the winning broker should be codified in the Terms of Business Agreement and Service Level Agreement, and renewal activities should be commenced. This final part of the process, appointing a broker and negotiating contracts, can be time-consuming, particularly if the organisation's requirements deviate from standard contract wordings.

Conceptual Tender

The renewal processes should begin at least six months in advance of the renewal date. This is the minimum time that should be available to the broker following appointment after a conceptual exercise. In view of the harsh market, some risk professionals would even recommend that larger organisations with more complex accounts engage with their broker eight or nine months prior to renewal. The renewal process may take even longer if the organisation changes broker.

The conceptual tender process itself could take as long as 10 weeks (as below), meaning that the tender process should begin nine months before the renewal date.

A 'Pre-Qualification Questionnaire' can be a useful way to narrow down the variety of potential tender participants and identify which brokers to request a formal conceptual proposal from. Whilst a conceptual tender can accommodate several different competing brokers, the number of brokers involved will naturally determine the time and resource required to appoint a winning broker, so proposals from four brokers is often a good balance.

Once formal requests for proposals have been issued to those that have progressed beyond the pre-qualification stage, the organisation should issue an information pack to allow the brokers to prepare a proposal. This should include information about the organisation and specify very clearly what the brokers should include in their response.

Following receipt of this information, the brokers should be given the opportunity to put forward any questions that will assist with the preparation and tailoring of their proposal.

Each broker should subsequently issue a formal proposal, which should be reviewed and discussed by the tender panel, ahead of the broker providing the organisation with a presentation and fielding any follow-up questions.

Following presentations by each broker, the tender panel should be in a position to decide which broker it wishes to appoint.

Costed Tender (Written Lines Tender)

Planning for the tender – including development of a Request for Proposal document, wording specifications and disclosure packs – should again begin at least six months in advance of the renewal date. In the case of complex programmes with multiple renewing lines, it may be best to have brokers compete against each other on a limited number of (the more complex) lines in the first instance, before the winning broker completes the placement of all lines of business. The structure of the tender, and the lines, limits and covers required, should be set out clearly in a Request for Proposal and wording specification. Timelines for the tender process will depend on the complexity of the programme, and the complexity of the proposals of the competing brokers.

Whilst a costed tender exercise could be carried out between multiple competing brokers, it is usually best to limit the exercise to two brokers in order to incentivise both brokers and maximise their ability to leverage different market relationships.

The key milestones in the process are:

- Pre-qualification and selection of brokers to tender
  - Given the typically limited number of brokers in a costed exercise, it can be worthwhile performing a pre-qualification exercise in order to decide which broker will present the best alternative to the incumbent. Considerations should include sector experience, additional services offered and proposed approach.

    Rather than perform a pre-qualification exercise, an organisation's insurance team sometimes goes out and develops relationships with other brokers, if they believe they will need to have a tenderin a couple of years. They can do this through meetings and through small-scale commissioned work such as benchmarking or consulting services during this time.
- Request for Proposal issued, including a wording specification
  - Once the competing brokers have been selected, a Request for Proposal and wording requirements specification document should be issued to each broker. The Request for Proposal should set out the timelines, process and objectives of the exercise and any non-standard service expectations. The wording specification should set out the lines, limits, covers and contractual requirements that the brokers are being asked to source from the market, and these should ultimately be used to decide which broker wins the account.
- Market preferences received
  - Each broker should nominate the markets it would like to approach during the exercise in priority order.
- Market allocations confirmed
  - Each broker should be allocated exclusive access to its preferred the market, and any overlap in requested markets should be split fairly between each broker.
- Information requests received
  - Following the allocation of markets and initial conversations with their allocated markets, brokers should provide a list of information requests required in order to secure terms.
- Broker marketing/initiatives
  - Both brokers will then be free to enter the market and seek terms from their allocated markets. Brokers may have requests for initiatives that they think will drive the best possible outcome, for instance, a meeting between the organisation and an underwriter, and these should be facilitated where possible.
- Review and winning broker selected
  - The terms secured by both brokers should subsequently be reviewed against the wording specification and objectives of the exercise, and a winning broker appointed.

- Enhancements and negotiations completed, follow-market capacity and minor lines placed
  - Following the appointment of the winning broker, the broker should be challenged to secure final enhancements to the quoted terms (both in terms of price and cover). Furthermore, as required, the winning broker should also facilitate placement of follow-market capacity and additional minor lines that were not part of the initial tender decision.

What to do if we have problematic claims?

During the tender process it is easy to overlook claims history until policies are in the process of being placed. However, this piece of the puzzle is often fundamental to the information brokers provide as part of their marketing exercise and if the history is "difficult" – either through large claims or any systematic risk concern of insurer misperception then the tender process must face this issue head-on and should form part of the tender discussion with potential brokers.

A common misconception is that notifying insurers of claims always impacts premium. In fact, a positive claims history and evidence of learnings/mitigations that have been implemented post claims can improve underwriter understanding of the risk, avoid worst-case assumptions and lead to premium improvements instead of policy exclusions. Leaving the provision of claims history to the 11th hour can lead to unexpected fluctuations in quotes sourced by the brokers and last-minute exclusions being applied, which are then much more difficult to negotiate.

Selecting a broker panel

"In the current insurance market, at least one line of insurance, if not more, will be challenged at most renewals. This means it is even more important to have the right broker working for you that understands your business, and exactly what you want and need from your insurance programme and renewal outcomes. For that reason, the approach to a broker tender is critical.

Start early so you can allow sufficient time after appointment for the broker to understand the programme ahead of the renewal process – give the appointed broker the best chance to succeed.

'Broker proposals and promotional materials can be highly standardised or simply not targeted in the areas that matter to you. This means you have to review (and they spend time creating) a lot of less relevant information before you can find the key criteria relevant to your business. To minimise this, try and set out your requirements and the service differentiators that matter to you and ask each broker to concentrate on these as part of their submission. Use these points to structure your assessment criteria, making no secret of this with the broker panel. If the competing brokers understand what good looks like for you, then they can put forward a proposal that engages with that, and ideally makes commitments to delivering it. If the proposal is still vague and does not address your points of concern, then maybe this is not the broker for you.'

'Whilst most submissions will be led by an experienced sales team at the initial stages, insist on meeting the account team who will be dealing with you on a day-to-day basis early in the process; can they answer questions on the complex or unique aspects of your programme, do they have any innovative ideas about how to run your programme, are they a cultural fit for you and your insurance requirements? Have Q&A sessions to give you the opportunity to raise these points, and don't hesitate to raise questions that you think of after a pitch meeting.'

"In a hard market especially, there are challenging information requirements and long queues for underwriter attention, so you will want to have a firm timescale to give yourself enough time to appoint the broker and complete the programme."

Kevin Maguire, former General Counsel & Company Secretary, Crest Nicholson

6. SELECTING PARTICIPANTS

Although the market for insurance brokers is reducing in size, largely due to broker consolidation, there remains a wealth of options for insurance buyers when it comes to insurance services.

Traditionally, brokers that are asked to tender are usually chosen on the following criteria:

- Quality of the partnership and thinking they can bring to the organisation, in terms of the strategic value of the insurance and risk management activities – for instance, through the data and informed decision-making that results from it
- Knowledge of the appropriate business sector
- Negotiating strength in the insurance markets
- Existing relationships and previous experience.

However, brokers are increasingly selective about the tenders in which they will participate, given the high cost of producing written responses, attending presentations, etc. and the increased workload from existing clients, given current market conditions. Some of the large brokers will only go for clients they already know or have some connection with, or go for parts of the tender and not all services that are on offer. The overriding criterion to assess is whether the broker is hungry to deliver for the organisation and will pull together the full range of expertise available to deliver a solution. To that end, there are several considerations to include when selecting tender participants:

- Existing contacts – brokers will likely be more amenable to participating if they have already invested time in building the relationship and will feel like they have a genuine chance of success. It is essential to meet client servicing teams as well as pure business development or senior personnel.
- Genuine process – brokers need to know that there is a genuine chance of success: clarity of criteria and transparency are key to achieving this. Running a tender merely to benchmark or drive incumbent performance can cause lasting damage. The organisation should have prior knowledge of the broker – whether at the personal or organisational level – and perhaps give them small projects in the years leading up to a tender.
- Materiality – to ensure the hunger of participating brokers, it is important for the organisation to consider the broker size and client base, and whether it will be a material account for the broker or team concerned. Size is not the only consideration, depending on relative sector expertise, etc., but it is worth also considering the increasing range of specialist brokers that are generally very keen for new clients and will work hard to secure new appointments.

As part of the tender structure, the organisation should have a clear idea of how many brokers will take part in each stage of the tender, with the number decreasing as the tender progresses. If a large number are invited, it may be wise to have a pre-qualification stage. The number of brokers will be determined by the time and resources available within the organisation, but as an indication, there could be as many as five brokers participating in a pre-qualification or written tender stage, but not more than three in the final presentation stage, and usually a maximum of two if the costed approach is taken, to ensure adequate competition.

Selection Criteria

Before starting a tender, the selection criteria should be agreed by the organisation's internal stakeholders. This not only includes those with day-to-day accountability for insurance, but also those with accountability for risk, including the Board and Non-Executive Directors. It is of vital importance that all the stakeholders are involved in the decision to appoint a broker, so individual scoring should be completed to improve objectivity and the scores accumulated to give a final outcome.

The criteria used to assess tender participants will change depending on the nature of the business, the tender's objectives, the organisation's priorities and the insurance purchase strategy, but areas to consider include:

	Areas to consider
Access to expertise	• Broker skills and experience • Quality of the service team • Access to a wider array of expertise • Claims and crisis response
Ability to supply	• Ability to service all areas of the business • Placement of niche or specialist covers • Service available in geographical locations as required
New ideas and innovation	• Recommended cover enhancements • Broker's ability to challenge the status quo • Innovation and effective programme design
Remuneration	• Broker remuneration • Disclosures of commission(s) • Required level of transparency over all income
Approach to service	• Appropriate service structure, including day-to-day management and overall stewardship of the account • Clear TOBA commitments to advice provided • Ability to meet any reporting requirements
Cultural fit	• Team fit between broker and client team • Working culture
Coverage pricing	• Broker placing skills • Achieving maximum value for money in programme design, including breadth of cover and limits/deductibles • Access to unique broker coverage options or facilities

For a costed tender, consideration needs to be given to the above criteria, such that the organisation is confident that all brokers participating in the tender can service the account appropriately.

The assessment criteria used by the organisation should be specific about what is required in each area, so that appropriate scores can be given. The scores can then be weighed towards higher priority elements, if necessary.

If appropriate for the organisation, it may consider appointing multiple brokers. For particular specialist lines, it may find one broker more appropriate for niche cover and another for wider placements. In this case, a very clear structure must be in place to ensure there are no gaps or overlaps in coverage. If multiple brokers would be considered or are preferred, this must be clear in the tender to ensure that the participating brokers fully understand what they are competing for.

Non-Disclosure Agreements

Depending on the nature of the business, a non-disclosure agreement (NDA) may be required to be completed by tender participants. Over the course of the tender, various information will be provided to the participants, including information on the current programme structures and limits. In many cases, it is wise to seek an NDA from all involved as early as possible to limit use of information to the agreed purpose, and this would be done prior to the issuing the tender documents.

Pre-Qualification

Pre-qualification can be used to collect standard information from all tender participants. It allows for basic corporate information to be gathered, ensuring that a participant meets all requirements before moving on to the more detailed stages, which are more time-consuming for both broker and the organisation. It will also help confirm that all participants meet the selection criteria and can commit to any essential contracting requirements.

Pre-qualification is not a required stage of a tender, and in many cases where the number of tender participants is small or based on existing relationships, this stage may not be required. This type of information could instead be requested at the full tender stage. Doing this would speed up the tender process, as it removes a stage in the process.

As this may be the broker's first formal introduction to the buying organisation, it could be useful for the organisation to include some basic company information. This would also allow the broker to begin understanding the organisation's business and where it would fit within the organisation's servicing structure.

A pre-qualification survey will gather information about the broker and could include:

	Areas to consider
Financials and ongoing viability	Annual accounts will provide details of the size, structure and ongoing financial viability of the company.
Sub-contractors	Would any part of the contract be fulfilled by a sub-contractor? If so, how would it be selected and managed?
Insurance	Evidence of relevant insurances, e.g. Professional Indemnity, Public and Employee Liabilities.
Data handling	Information on the handling of confidential information, including access, storage and deletion, including evidence of certification to applicable standards, where relevant
Terms of Business Agreement	Contractual commitments detailing broker services, liability caps/ exclusions, remuneration transparency, etc.
Global spread	Is the broker capable of servicing the global footprint of the organisation using an appropriate method?

Many organisations will have minimum standards for contracting companies to meet, which may also apply to an insurance broker. Collecting this information at this stage will ensure that only brokers that are able to meet these standards will be invited to tender. The organisation's procurement professional, or legal professional, should be able to give a full list of these requirements, but these may include:

- Quality assurance
  - Details of the quality assurance process, including evidence of certification to standards, if applicable
  - Details of any industry-specific certifications, e.g. CII Chartered status
- Good working practices
  - Evidence of good working practice policies, including Conflicts of Interest, Health and Safety, Diversity, Environmental and Sustainability, Ethics policies, etc.
  - Evidence of certification to applicable standards, if required
- Business history
  - Are there any court actions, liquidations or tribunals in company history that may impact on the buyer's reputation

Request for Proposal

Following either pre-qualification or selection of the tender participants, a full Invitation to Tender (ITT) or Request for Proposal (RFP) should be issued. This document will form the basis of the tender for all participants, setting out the guidelines for the participants, relevant information about the tendering organisation and the form of proposal required from the participants.

This document should provide key dates, deadlines and submission rules, as well as clear criteria stating how the response will be assessed, to ensure objectivity and consistency of approach across brokers.

Request for Proposal – Information Provided

The Invitation to Tender should include comprehensive information about the tendering organisation and any specific questions or tasks the tender participants are requested to complete.

The participating brokers will probably have some questions following receipt of the information. In the interest of impartiality, there should be a clear communication process for the submission of and response to these questions. Typically, there will be a deadline provided for the submission of questions and these will be answered in writing by a set date. It is the organisation's choice whether all answers are provided to all brokers or whether the answers to specific questions are only provided to the participant who asked the question. It is more common to provide all answers to all participants.

The information requested from the tender participants should relate directly to the stated objectives and could include:

	Areas to consider
Contacts	Contact details for submissions, questions, issues arising.
Timeline	Reiteration of all key response dates and milestones.
Response format	Clear instructions on the particular style or response required, e.g. hard copies, headings or sections, limit to size of response/number of pages. This can be important to avoid overly standardised, generic responses and to maintain broker focus on the organisation's key requirements.
General conditions	Any legal statements around non-disclosure and compliance, as well as any terms that the new provider would be expected to accept, such as payment terms.
Selection criteria	It is useful for the organisation to give the tender participants an indication of the selection criteria, although this does not mean that the full scoring criteria should be revealed. This gives the broker a better understanding of the key priorities so that its proposal can be made more relevant to the organisation. It is important that this information stresses the objectivity of the process, such that competing brokers are aware that the process will be fair and is worth their time.
Terms of Business Agreement information	Basic details of the contract proposal, including length of contract, any key review procedures, contract entity and required services. In light of legislative developments and subsequent best practice improvements, it is important to be specific on the services required from the broker, and, in particular, to address and assign responsibility around key processes such as gathering information to disclose to insurers, checking policy wordings following placement, disclosing remuneration, etc.
Programme information	The information provided should include details of the current insurance programme, including limits, layers and deductibles, as well as the information that would be included in an underwriting submission. This gives the participant broker a full view of the programme and allows it to consider where it could make an improvement in programme design or secure any premium savings.
Claims history	To ensure that tender participants have a full view of the programme, including potential costing or cover issues and frequency of claims, the organisation should provide some information to show any recent loss history across all lines subject to the tender. At this early stage, any confidential personal data can be omitted. Some clients might worry that claims information presents a "negative" picture, but is important to raise for discussion with potential brokers. Professional presentation of even a "difficult" claims history can help to evidence learnings/mitigations, or avoid even more negative insurer presumptions. Grasping this nettle proactively and ahead of time can help achieve premium improvements and avoid policy exclusions.

7. REQUEST FOR PROPOSAL – RESPONSE REQUIRED

The format of the expected response should be made clear in the Invitation to Tender (ITT) or Request for Proposal (RFP) document. This includes whether hard or soft copies of the response are required, the maximum number of pages and any other specified layout. To facilitate the scoring of tenders, the tender panel may wish to consider prescribing the headings the tender should follow so that information is easy to find and compare when it comes to rating.

The information required from participating brokers will depend on a number of things, including the objectives of the tender and the selection criteria. Specific questions or requirements can be included, for example, global servicing propositions, response to new business, M&A activities, or specific coverage or pricing challenges.

In particular, if adopting a costed tender approach, the RFP is likely to require specific instructions as to which markets can be approached, the process for reporting factual queries to ensure all responses are provided to all markets, and how programme completion is intended to work if the costed tender focuses on key classes or lead markets only. This detail and timeline should all be agreed with the brokers as a condition of tender participation.

More general requirements will include:

Service proposal	How the account will be serviced on all levels from day-to-day queries to stewardship of the account, including details of the personnel involved. In particular, it is worth at this stage gaining specific commitment on key servicing criteria relating to policy reliability (e.g. reviewing issued policies for errors, providing reasonable advice on necessary disclosure, etc.), as well as commitment to reflect these in TOBA documentation on appointment.
Programme design and innovation	Anticipated structure of the insurance placement, including any changes and the logic for these. Details of how the programme structure would be tested and ongoing plans to innovate to ensure that the programme remains sound, relevant and best in market. How efficacy of policies will be achieved, for example, by wording review, stress testing and review of policy terms. This section is a key benefit of a well-run tender. Whilst one broker will ultimately likely be successful, the process allows for innovation to be gathered from multiple brokers, which can then be utilised by the client going forward to implement the broadest possible range of programme improvements according to the organisation's prioritisation.
Remuneration	Any annual fees, commissions and details of how these would be disclosed on an ongoing basis, and penalties for non-performance.
KPIs	An indication of how KPIs would operate and what these may look like, for further discussion on selection. In particular, these should not focus purely on day-to-day servicing issues (e.g. response times) but also key outcomes: cost, cover adequacy, timely issuance, etc. Typically, this will include a mix of objective and somewhat more client-subjective criteria.
Claims management	Details of how and by whom claims would be managed. In particular, for liability programmes with sizeable deductibles, this detail is important to agree in order to align the approach between the insurer, broker and insured to avoid disputes over appointed lawyers, loss adjustors or experts, or either party incurring cost without the other's consent.

Market relationships	Description of market relationships and how these would benefit clients, as well as any relevant unique market propositions.
Additional services	Any services that would be provided outside of the insurance purchase.
Transition plan	For non-incumbent brokers, a plan of how they would ensure that the account would be transitioned efficiency and effectively, to ensure the organisation understands the process and to give insight into the broker's ways of working. This would also apply to incumbent brokers in the case of new servicing teams.

8. BROKER REFERENCES

References can give the organisation an opportunity to understand existing client views on the broker. This would allow a broader view of a typical day-to-day relationship with the broker and its practical expertise, which is often overlooked during the tender pitch. References could be collected as part of a pre-qualification questionnaire or as part of the tender document.

A good candidate for a reference should be a client whose risk profile has something in common with that of the tendering organisation. This could include industry sector, size or scale of business or geographical spread.

The broker should contact its clients to ask permission before naming them as a referee, but it may be worth requesting more referees than needed to ensure that sufficient references are received within the timescales.

References can be collected either by call, email or face-to-face meeting. It is worthwhile for the organisation to prepare questions in advance to ensure that comparable feedback is gathered via the references. The reference should provide insight into how the relationship works, what the particular strengths of the broker are, and any issues that occurred and how these were resolved. This should give a more balanced view of the broker's working practices and, critically, how the individuals who the organisation would be interacting with would bring the broker's wider experience into play in serving their clients.

9. WRITTEN RESPONSE

In general, the first response to an ITT or RFP will be a written report. When outlining the requirements, the tendering organisation should give consideration to the key elements of the purchase to guide the tender participants to these areas, while allowing enough scope for them to bring forward ideas.

Remember that all written responses will need to be scored by the tender panel, so the more direction that is given, the easier the process will be. This includes providing a report structure for ease of comparison and limiting the page length of the tender. This will also encourage more tailoring of the report to the needs of the organisation and less generic sales material.

Depending on the number of participants and the quality of the responses gathered, the consideration of written responses may lead to some brokers being removed from the process. Any participant with a response that does not meet the minimum requirements, whether on service levels, global supply or projected costing, should be informed that it will not be taken forward to the final presentation stage.

Similarly, if a longer list of brokers remains in the process than can be taken forward to the presentation stage, some participants should also be eliminated at this stage. The scoring criteria put in place prior to the tender will provide a method of rating the responses.

It can also be very beneficial at this stage for the organisation to provide the tender participants with areas to focus on at the presentation stage. This will allow for any incomplete responses from participants to be probed, as well as any doubts or key reservations in the written response provided to be tested. It can also give the organisation the opportunity to get multiple perspectives on particular issues, to further demonstrate differentiation between participants and give a clear idea of the different offerings.

10. PRESENTATIONS

In most cases, the final stage of a tender will be a presentation. Following the written responses, the list of participants may be objectively reduced to a final short-list, using the defined criteria. Thinning the herd at the written response stage reduces the time commitment required for the presentations stage, and allows for more of a focus on the frontrunners. Participants that have failed to engage with the RFP can be screened out of this process, so it is important to ensure that the RFP focuses on pertinent key criteria that are also objective and measurable during that part of the process. If the incumbent broker is still a part of the process, it may be worthwhile to have it present first, as it will provide the benchmark for current services.

Sometimes brokers will want to send their senior management and, unless it is for a large complex account, sales representatives to the presentations. However, these will not be the individuals that you will be working with on a day-to-day basis. It is essential that the team responsible for actually servicing the account is part of the presentation. This allows the internal and broker teams to start, or continue, developing a relationship. These relationships will be critical to the success of the partnership and so should be encouraged from as early as possible.

The presentation could take a number of forms. It could directly correlate to the written response or it could focus on selected elements of the tender. It is important that comparable scoring can be achieved. Outlining distinct presentation criteria for each participant could prove challenging but is not impossible. Another option is to use some common themes to expand upon from the tender to get around this problem.

As mentioned, this is also the time to more closely examine the broker's service team, so this would be the time to ask service-related questions, such as how issues would be resolved, as well as technical questions, for example, about the programme design.

It is also a valuable opportunity to probe vaguer components of the written response, so it is worth investing some time in preparing targeted questions in advance of the presentation.

Most of all, it is important for the organisation to be upfront about what it needs to know, including posing potentially challenging questions, for example, in respect of remuneration structure and transparency. It should also keep a record of any key commitments discussed and agreed during the presentation so that these can be accurately reflected in the TOBA/broker contract (see section 2 below).

At the end of each presentation, the organisation should allow for a question and answer session to cover any points that have arisen from the tender or from the presentation itself. This can also provide the broker with a chance to ask any further questions it might have about the buying organisation, the team or the account in general.

Objective broker evaluation

With the complexities of managing the insurance market cycle, it is often difficult for an organisation to know when the most appropriate time is to tender its insurance arrangements, with whom and in what format.

Whilst insurance buyers are becoming more and more sophisticated, the vagaries of the insurance market continue to change, and it is impossible for all but the most technical risk managers to be able to truly have a full understanding of their organisation's risks, and how best to mitigate these through insurance.

Corporate governance in today's organisations places significant burden on stakeholders to ensure that they have protection in place, and this burden can be further exacerbated by the requirements of external parties such as lenders, private equity houses and shareholders.

It is therefore important that organisations are able to demonstrate a structured and detailed evaluation of their insurance placement both in terms of cover, programme design and pricing, and that they can be confident that they have secured the most cost-effective programme from the market. These two factors are the core of broker value.

Over the last few years, there has been a significant consolidation within the broker market and some would say that this has impacted on the choice insurance buyers now have in the market. Harsh market conditions also mean a lack of supply in the insurance market and a wealth of clients looking for alternative options. Brokers are inundated with opportunity and, during this cycle of the market, we sometimes see some brokers believing that they do not need to compete for the business, proposing instead that the client appoints on blind faith. This AIRMIC guide shows that this isn't generally the way to go.

The sheer extent of activity in the insurance market makes it difficult for organisations to be able to create a clear, holistic understanding and perception of their risk. Brokers are consolidating their insurance panels, focusing on a smaller number of suppliers, creating standardised placements and funnelling accounts into 'silos' to ease the administrative burden – which can have benefits but potentially reduces competitive availability for the insurance buyer.

How can an organisation therefore create that competitive edge, whilst at the same time, ensuring that it maintains the required standard and quality of cover, and that it can achieve an independent evaluation to satisfy the demands of its stakeholders?

The following are some key areas that we would recommend organisations consider when choosing their insurance broker:

1. Does your broker genuinely have a full understanding of your business?
2. Are you confident in your ability to provide adequate disclosure to the insurers – how far does your broker assist with this?
3. Are you consistently pushing the boundaries in terms of policy structure, programme design via innovative thinking?
4. Does your broker have the strength and depth of knowledge and capability, and adequate resource to service your entire account, including overseas placements?
5. Have you met the servicing team? Do you know the names behind the gloss of the sales pitch and do you trust their expertise?
6. Is the broker well regarded by insurers in the market, and does it have the relationships to be able to negotiate and achieve the deals on your behalf?

"A well-run broker tender can be a very powerful tool in today's insurance market, but requires much more than going through the motions and listening to pitches. By using an independent and expert advisor such as Mactavish, you can ensure real competition and focus fully on the essential outcomes of a) the quality of your insurance protection and b) value for money.

"We hold brokers to account, ensuring that they remain honest in their relationship with you as the client. We push hard to ensure quality of service throughout their tenure and not just immediately following appointment, and we insist on full transparency in remuneration to help manage embedded structural conflicts.

"Using an independent advisor gives you the leverage to negotiate value for money, giving you wider access than via a single broker to capacity and giving you access to new and innovative designs and ideas for policy placement. It also enables you to have expert external verification of the cover being proposed and an independent review on its fitness for purpose."

Rob Smart, Chief Technical Officer, Mactavish

11. DECISION MAKING

When making a decision, the organisation needs to consider both the technical elements and more subjective elements. As mentioned, the tender objectives and critical criteria will be in place throughout the tender, and so scoring should be completed by all members of the tender panel. It is important that the views of those with day-to-day responsibilities are considered as well as those of senior management.

The ability to service the account as required will be a crucial element in broker selection, but the cultural and team fit is also important. Broker/client relationships are typically very close and, in many cases, the broker will become an extension to the internal team. The selection panel must be confident not only in the technical abilities of the chosen team, but also in the relationships that are being formed.

The process of decision-making should be documented so that the decision can be ratified by the stakeholders and an audit trail is available. Particularly if a decision to change broker is made, it is always useful to have full details on how the decision has been reached.

12. NEXT STEPS

Following the selection of the broker, the organisation should inform the winning broker, and negotiations will be required around contract engagement, Terms of Business Agreements (TOBAs) and Service Level Agreements. These negotiations are covered in the next section of this guide. Information provided in the tender is unlikely to be binding, unless stated as such, so items such as fees and penalties, limits of liability and service structure can also be negotiated, if required.

Unsuccessful participants should also be informed at this stage, particularly if they include the incumbent. It is important to approach this fairly, particularly as they would have invested significant amounts of time, energy and resources into the tender process.

Unsuccessful participants are likely to request feedback on the decision. Generally, this would be collected by someone external to the team who participated in the tender, and this is very helpful to the brokers in understanding what was found to be compelling about their proposal and what was less so. If possible, the tender panel should provide this as it can prove very useful for the participant brokers, as well as helping shape industry improvements moving forward.

SECTION 2: BROKER TERMS OF AGREEMENT, FEES AND TRANSPARENCY

1. BROKER ENGAGEMENT TERMS

Broker contracts are typically made up of two components: the main Terms of Business Agreement (TOBA) and a supporting Service Level Agreement (SLA) or Service Schedule.

The format can vary slightly between brokers, but typically, the TOBA includes the main (often largely standardised) terms of engagement, with the SLA containing the more client-specific requirements relating to service team, review meetings, clarification of role divisions and expectations, etc.

Finally, the contract framework may often contain appendices relating to the broker's compliance policies (e.g. ethics or good business practice) or outlining the array of potential remuneration types arising in relation to the placement.

One key point to consider, in particular, for organisations looking to negotiate bespoke terms, is whether the broker contract automatically updates with any general update to the broker's terms for all customers (e.g. if reissued as part of a future renewal), as the organisation may prefer all contract changes to require specific agreement with it in order to apply.

2. BROKER REMUNERATION

In an RFP, a broker will have set out estimated costs for its services. In most cases, these will be a guide, to be discussed if and when the appointment is made. For this reason, the organisation should expect to have some conversation around remuneration when beginning to negotiate the appointment. Equally, if the incumbent is reappointed, proposals from within the tender responses may prompt the organisation to require a discussion of remuneration or ask for additional detail to be provided on various sources of broker income.

The costs set out in an RFP will likely be estimated, based on the information provided during the tender. How accurate these figures are will depend on the level of detail that was given. If only certain coverages were included in the RFP or if additional services will be required by the organisation post-tender, the figure in the RFP may increase to reflect the additional workload.

At this stage, the broker should also confirm what its total income will be and what this will comprise. The following are common methods for insurance brokers to earn income, and their application and level should, as best practice, be confirmed by the broker as part of every placement:

Type of income	Reason for payment
Service fee	An agreed flat fee for defined services provided by the broker. This may be adjusted by a success fee or a penalty for poor service based on agreed KPIs.
Commission	May be charged as an alternative to (or in some circumstances, in addition to) a client fee. The client should decide if this is appropriate for work undertaken and whether the core fee needs to be adjusted to reflect this.
Additional service/project fees	If there is potential for broker services in projects outside the core duties to be required, a rate, as well as a point at which the additional fees would become due, can be agreed as part of these negotiations. This might include add-on services such as claims handling or risk engineering.
Brokerage	In some policies, the broker may be entitled to brokerage, usually as a percentage of the premium. The client will pay this as part of the premium, with the insurer passing this back to the broker. The buyer must decide if this fee can be retained by the broker or if this should be considered as part of the service fee.
Insurance Service Brokerage (ISB)	A standard additional levy paid by many insurers to many brokers for administrative services in connection with the placement, usually as a percentage of the premium.
Scheme/facility or work transfer fees, profit shares	Service fees sometimes applying to all business placed by a broker with a given insurer in a pre-arranged facility, typically paid by the insurers as a percentage of total premiums in the facility.
Reinsurance commissions	If an insurer passes part of the risk on via a client-specific 'facultative' reinsurance placement, the broker may earn further commission on the secondary placement, again as a percentage of premium.
Volume commissions, profit shares, additional fees for services/ client information	Additional agreements that may be in place at a portfolio level between the broker and insurer. Structures vary widely but will typically be linked to premium volume and potentially portfolio claims and profitability.

The broker should disclose the applicability and amounts of all fees paid to it, either on request or, ideally, as a matter of course for each placement. This will allow the client to consider the total amount paid for the work undertaken and for all parties to manage any potential conflicts of interest arising professionally. With a new broker, there may be difficulty in establishing exact amounts, given that no insurance has been placed, so an option may be to consider a cap on the total income, where the total payable is agreed upon, with the client responsible for payments up to that level, if anticipated brokerage and other income are not reached.

Although the tax situation can be complex, it is also worth noting that insurance premiums attract non-reclaimable Insurance Premium Tax (IPT). Intermediary fees do not generally attract IPT, although the fees for some types of intermediary services may attract Value Added Tax (VAT), which is often recoverable.

If the client pays a gross premium that includes commission, the insurance buyer will be paying IPT on the whole premium, including the commission paid to the intermediary. This may incentivise a structure with a higher core fee and lower commissions, as it is more tax-efficient.

When considering success fees, bonus payments, fees at risk or non-performance penalties, please see the Service Level Agreements section of this guide.

3. BROKER CONFLICTS OF INTEREST

Conflicts of interest can arise, in particular, when an insurance intermediary gains more income if the insurances are placed with a particular insurance company, or where the client pays more premium. Such conflict potential is exacerbated in a harsh market with rising premiums, given that most of the additional income sources noted above are premium linked. It is therefore critical to ensure full disclosure to allow the client to properly evaluate the broker's professional advice.

The scope of services provided by insurance intermediaries can be extensive. These can range from the collection of the underwriting information to the provision of engineering advice, in addition to the more obvious areas of advice on selection of insurance companies, evaluation of insurance coverage and advice on the limits of indemnity that should be purchased.

Given that this range of services can be very wide, it is important for organisations buying commercial insurance to understand the status of the insurance intermediary. The buyer of commercial insurance will take a different view of the advice given by insurance intermediaries, depending on whether the intermediary has the legal status of intermediary or is acting as a distributor for a particular insurance company.

In support of the provision of the information set out above and to deliver a more competitive and efficient market, the FCA has suggested that at least the following information should be supplied by insurance intermediaries to their commercial clients:

1. The commissions and income sources that the intermediary receives
2. The services the intermediary is providing
3. The capacity in which the intermediary is acting.

Additionally, the FCA has suggested that buyers of commercial insurance should be specifically alerted to their right to request commission information and should also be advised if there is a chain of intermediaries directly involved in the placement of the insurances.

Best-practice advice from Airmic and Mactavish goes somewhat further than this baseline FCA guidance by suggesting that disclosure should be proactive (not just on request) and include not only which sources of income apply but also the amounts concerned. This information is necessary to allow potential conflicts to be properly managed and for clients to remain confident that overall remuneration reflects the roles and value provided.

The client must understand when the broker is working solely for it and when the broker is working for the insurer. Being aware of these conflicts can lead to many outcomes. The client may accept that the product or placement in question remains in its interest or it might wish to request wider marketing of the cover to ensure that the pricing is competitive.

It is the view of Airmic that an insurance intermediary cannot act in the best interests of both the insurer and the insured at different times during the same insurance contract.

If an insurance intermediary is not able to state that it is the legal agent of the client throughout the whole life cycle of the insurance contract, or does not disclose all its income derived from the placement of that contract, then conflict of interest becomes harder to manage. In such circumstances, the client will need to decide whether such dual agency is acceptable. If the client decides to accept this split role, for example, as part of a managed facility placement, more detailed information should be requested on how conflicts of interest may arise and how they will be managed.

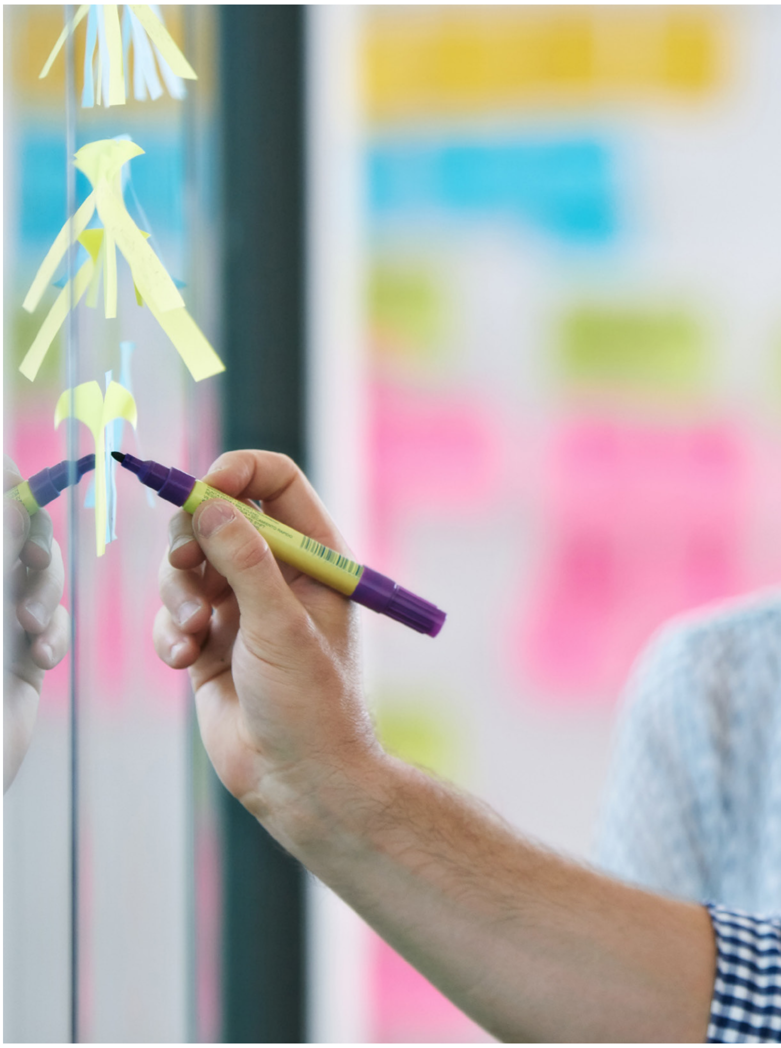
4. BROKER RANGE OF SERVICES

On entering a service agreement, the client must be clear about what services are included, if there are any limits to these, and what optional services are provided over and above the standard TOBA. Insurance intermediaries are able to provide a wide range of services to the client, with continual evolution of this service offering in a competitive environment. These services are provided throughout the life cycle of an insurance contract and may include the following:

- Data collection and the preparation of underwriting reports, including advice on legal and market requirements
- Search of the insurance market for suitable insurers
- Technical advice on wordings and efficacy
- Placement of the insurance contracts and premium collection
- Claims handling support
- Actuarial advice on risk appetite, retentions and programme structure
- Compliance support, including contract certainty and payment of taxes (in particular in relation to international programmes)
- Issuance and administration of local policies in different territories
- Advice on risk engineering, loss control and loss prevention.

The Insurance Act 2015 has evolved the legal context in which brokers provide services, establishing the broker as agent of the client (whereby, for example, the relevant knowledge of the broker is automatically disclosable as part of the client team involved in placing insurance). It is therefore important as part of any modern negotiation of a broker TOBA that the client is clear about the reasonable extent of the broker's role in related areas, and in particular in three key areas:

1. Advising the client on necessary disclosure and market information requirements, albeit always subject to limitations in the broker's knowledge (no broker can be expected to identify disclosable information of which it is not made aware)
2. Advising Handling the broker team's own knowledge of the client risk, ensuring this is captured and inputted to the risk presentation made to market if not already included
3. Clarifying how the broker will handle material insurer queries, ensuring that relevant and material additional information arising is shared with all relevant insurers to meet the client's obligations around fair presentation of risk.



5. BROKER MEANS OF DISCLOSURE

Brokers should provide sufficient information, so that the client can identify potential conflicts of interest. Often, the scope of conflict (or potential conflict) disclosure will be set out in a Service Level Agreement (SLA) between the client and the insurance intermediary or as part of the Terms of Business Agreement (TOBA).

As well as being aware of the status of the insurance intermediary, the client also needs to be aware of the level of (risk-bearing) premium that is ultimately received by the insurer, and all commissions and fees that apply. The client can then evaluate whether the total level of remuneration received by the intermediary is appropriate for the work involved and whether the level of premium received by the insurer is in line with the nature of the risk that has been transferred.

Appendix A offers a checklist of disclosures to consider for all covers.

6. BROKER LIMITS OF LIABILITY

Within the TOBA, the broker is likely to limit its own liability in case of failure to perform. As with all professional advice, if the advice is found to be negligent, there can be liability on the part of the broker. In addition to advice provision, the client also needs to consider whether the broker may have an executional role in areas such as policy placement and claim notification, where errors could directly impact policy response.

In most TOBAs, this will be a standard limit imposed on all arrangements with the broker. During negotiations, the client must consider if this limit is enough to cater for the worst-case scenario of a key policy failing to respond. In some cases, the standard limit will cover requirements, but the client may seek to negotiate higher broker limit of liability to what the client considers to be a more appropriate level.

It is important not only for the client to consider the level of liability cap but also any outright liability exclusions, to ensure that these align with its service expectations (for example, in relation to checking policies for errors).

7. SERVICE LEVEL AGREEMENTS

It is standard to have the broker agree to service levels in advance of agreement of the TOBA. This sets clear expectations on how the account will be serviced. It will be negotiated to include any service preferences in combination with how the broker can best service the account. It needs to consider the key areas where specific support is required, and put timelines around key activities, such as documentation and invoice issuance.

Considerations will include:

Servicing	• Frequency of meetings – this needs to fit with the client's own schedule and availability • Account stewardship • Communication methods – the client should ensure that this reflects its preferred approach and, if communications will be verbal, the SLA should include a requirement for the broker to follow up with written confirmation of agreed points • Response times – a realistic timescale should be agreed so that the broker offers a meaningful response each time
Document	• Policy issuance – this should not be more than 30 days, and preferably within 14 days. Requirements in respect of accuracy of documents, to avoid multiple rounds of erroneous documents being issued, should also be considered • Invoice issuance – this needs to fit with the client's finance systems, so the relevant colleagues should be consulted before agreeing obligations for the broker • Process specification – the process for gathering information should be agreed, together with a table of critical timescales, to help ensure there is enough time to gather and review all the information required • Guidance on the client's duty of fair presentation – the broker should make commitments to advise the client on this important issue, including whether the final presentation meets statutory requirements • Clarification of the broker's role and responsibilities in the process – including how it will manage any unique material information in its possession
Disclosure and the duty of fair presentation	• Policy issuance – this should not be more than 30 days, and preferably within 14 days. Requirements in respect of accuracy of documents, to avoid multiple rounds of erroneous documents being issued, should also be considered • Invoice issuance – this needs to fit with the client's finance systems, so the relevant colleagues should be consulted before agreeing obligations for the broker • Process specification – the process for gathering information should be agreed, together with a table of critical timescales, to help ensure there is enough time to gather and review all the information required • Guidance on the client's duty of fair presentation – the broker should make commitments to advise the client on this important issue, including whether the final presentation meets statutory requirements • Clarification of the broker's role and responsibilities in the process – including how it will manage any unique material information in its possession

Innovation and design	• Programme design – including commitments as far as possible around local placement requirements or any other relevant complex structures • Stress testing of the programme • Confirmation of the wordings' fitness for purpose – to avoid a situation where the broker simply pushes responsibility in this area back to the client
Claims handling	• Commitments in respect of claims support – including, as a minimum, a commitment not to prejudice live claims
Information and support	• Support on relevant issues, e.g. law changes • Good information flow on relevant market updates and new products

In many agreements, a proportion of fees may be placed at risk, or be contingent on achieving agreed service levels and/or renewal outcomes.

There are two possible ways that this can be done. It can be a positive adjustment, with an increase on the base fee payable for good service, or a negative adjustment, where a percentage of the base fee is withheld for poor service. In both cases, the base or deposit fee will be paid at the beginning of the contract term. Throughout the year, regular review meetings should be held to ensure both parties agree on how the account is being managed against the SLA. This allow any concerns to be raised and provides an opportunity for issues to be rectified.

At the end of the account year, the client will then be empowered to make a decision, provided it is based on evidence from throughout the year, on whether the additional sum is due.

The client should consider focusing some of the fee at risk/bonus on easily measurable KPIs (such as meeting pre-agreed timescales), but it may also be worth keeping a certain proportion dependent on its overall view of performance.

APPENDIX A: AIRMIC BROKER DISCLOSURE REQUIREMENTS CHECKLIST

Set out below is a list of key issues that the client should discuss with its insurance broker or intermediary. This list covers all stages in the purchase and servicing of an insurance contract, although it may not be exhaustive in all circumstances.

Obtaining this information will provide full transparency and disclosure of all sources of income for the insurance intermediary, across the life cycle of the insurance contract. Also, there are questions related to the proposed status of the insurance intermediary and the range of services that may be provided throughout the life cycle of the insurance contract. It will be for the insurance buyer to decide whether the declared status and relationships are acceptable.

This checklist has been constructed as a list of issues designed to ensure that risk managers get appropriate information from the intermediary in relation to each class of insurance/type of business, presented on a country-by-country basis. However, in many cases, further information will be required either to clarify the answer provided or to supply further details of, for example, additional income that has been acknowledged.

The structure of this checklist is related to the steps involved in the purchase of commercial insurance and the different aspects of servicing commercial insurance contracts. Additionally, arrangements should be agreed for conflict resolution, where this is necessary.

Disclosure Checklist – to be completed by the intermediary/broker

1. Remuneration Transparency

In relation to the class(es) of insurance to which this checklist refers, we receive income from the following sources:

- Service fee as agreed with the client
- Standard commission at policy level
- Insurance Services Brokerage (ISB) at policy level
- Sub-broking income from other intermediaries
- Facultative reinsurance commission
- Intermediary service income, e.g. scheme/facility fees, work transfer fees, etc.
- Loan pay-back arrangements
- Referral payments from any recommended third-party providers, e.g. premium finance companies
- Portfolio-level information or advisory fees (where the buyer is part of the portfolio)
- Portfolio-level contingent commission based on volume or profit (where the buyer is part of the portfolio)
- Portfolio-level non-contingent commission (where the buyer is part of the portfolio)
- Volume overriders (where the buyer is part of the portfolio)
- Any other sources of income.

The amount received from each source should be indicated (not just the generic possibility of such income). Where earnings at a portfolio level may vary, a range of possible remuneration is indicated, together with an indication of the factors that affect the level of earnings. No single client can manage the complex structure of broker remuneration summarised above, but a client is entitled to adequate information allowing it to appraise any potential conflicts applying to the placement.

2. Business Relationships

In relation to the class(es) of insurance to which this checklist refers, we have business relationships with the insurance companies (as named below) proposed for involvement in this insurance programme, as follows:

- Financial links with the insurers (including any equity interest)

- Finance provided by any insurer
- Provision of staff training programmes
- Provision of staff incentives by insurers
- Work transfer arrangements and payments.

3. Market Search

In relation to the class(es) of insurance to which this checklist refers, we undertake a market search on the following basis (more than one answer allowed) and we will supply additional information, as appropriate:

- Acting as your agent
- Full market search
- Limited market search
- Panel of insurers for this class of business, as named below
- Scheme with specific insurers, as named below
- Specific insurers, as named below
- Only offer insurances from the insurer, as named below.

4. Placement of Insurance

In relation to the class(es) of insurance to which this checklist refers, when we place the insurance contracts, the following circumstances apply:

- Acting as your agent
- Placement recommendations will have no impact on earnings
- Placement recommendations affect earnings in the following way

5. Claims Support

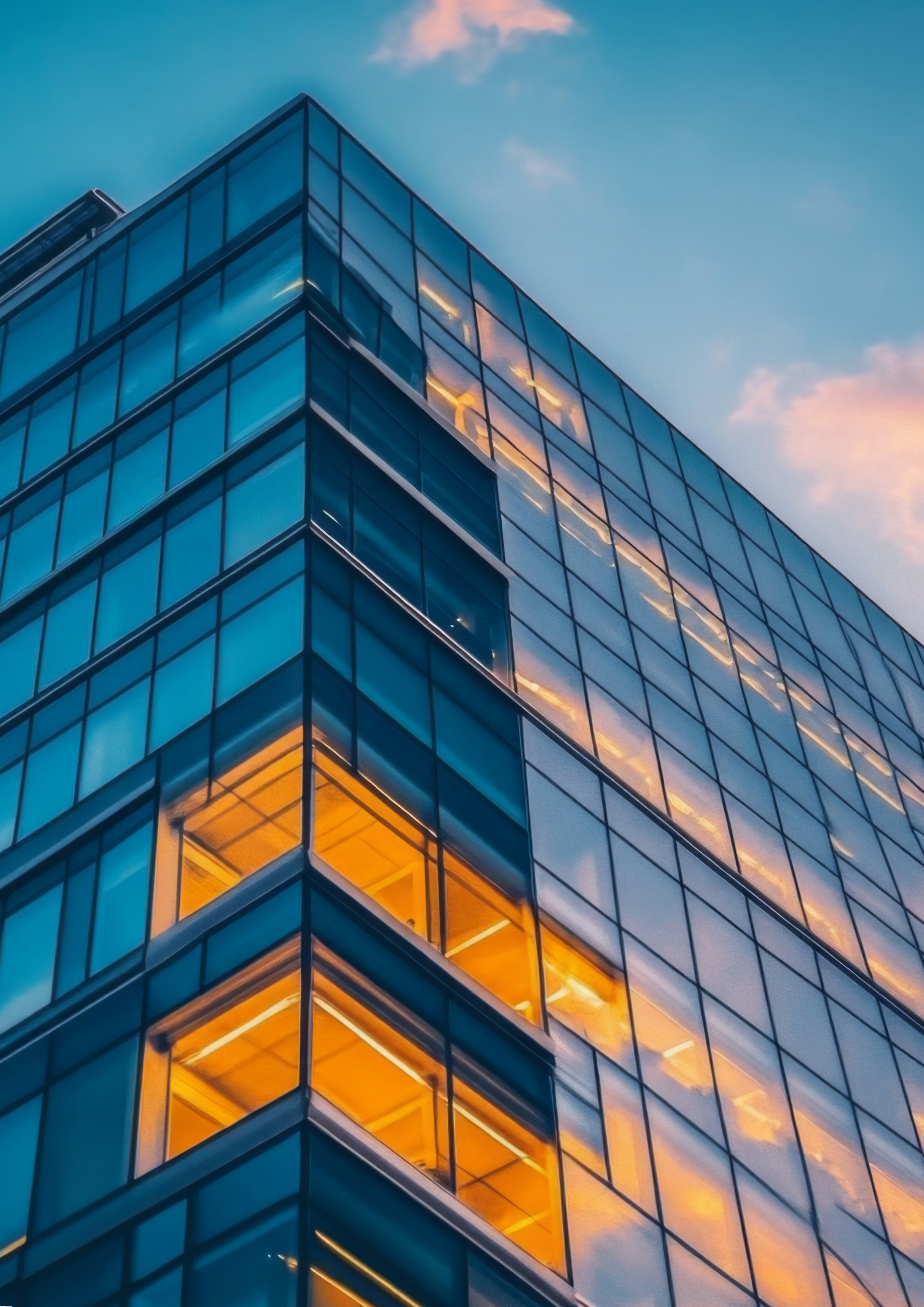
In relation to the class(es) of insurance to which this checklist refers, we provide claims support services in the following basis:

- Acting as your agent with primary insurer
- Acting as your agent when collecting money from the subscription market
- Agreeing to provide future claims support in relation to the policies placed (subject to reasonable additional remuneration if not covered by a service agreement in place at the time).

6. Future Disclosures

In relation to the class of insurance to which this checklist refers, we confirm that all of the above information is accurate and completed to the best of our knowledge and that in future we will provide relevant information:

- Automatically at the time of placement/renewal
- Without further request from you
- For each line of business/class of insurance
- For each country in which you operate.



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