LLOYD'S

MARKET BULLETIN

REF: Y4489

Title	Policyholder Protection Rules in South Africa
Purpose	To advise the Lloyd's market of amendments to the South African Policyholder Protection Rules governing the rejection of claims by underwriters.
From	Cameron Murray, Senior Manager, International Regulatory Affairs, General Counsel Division
Date	21 April 2011

This bulletin serves to advise you that the Minister of Finance has approved amendments to the Policyholder Protection Rules (Short Term) governing the rejection of claims by underwriters and more specifically, 'Decisions relating to claims and time limitation provisions for the institution of legal claims'. These changes have been amended in Government Notice 1213 in the Extra-Ordinary Government Gazette No. 33881 of 17 December 2010.

Market bulletin Y2554, dated 1st June 2001, introduced the Policyholder Protection Rules (PPR) (Short Term Insurance) which came into operation on 1st July 2001. These were subsequently amended in 2004. Lloyd's underwriters, coverholders and open market correspondents should continue to refer to market bulletin Y2554 for more detailed information regarding compliance with the South African Policyholder Protection Rules (Short Term Insurance) 2001.

With immediate effect, the following rule has been amended:

- **Rule 7.4** (Short-term Insurance), 2004.

It should be noted that the Short-term Rule 7.4 only applies to personal lines policies where the policyholder is a natural person insuring personally and not their businesses. It is believed that as a result the impact on Lloyd's business will be limited.

The following guidelines apply to Rule 7.4. They do not provide a complete explanation of the changes to the Policyholder Protection Rules or the manner in which those rules must be complied with. Managing agents, coverholders and open market correspondents should therefore review the Policyholder Protection Rules to ensure compliance with all applicable requirements and seek independent advice as appropriate.

Rationale and effect of the new rule

The amendment to Rule 7.4 is designed to ensure that policies comply with required common protection standards of notice and fairness and that they provide a balanced and fair approach to decision-making and time limitations relating to claims under policies.

The proposed amendments provide for the following:–

1 timely decision-making by insurers;

2 policyholders to be informed of the reasons for a claim being rejected or the quantum of a claim being disputed;

3 policyholders to be afforded a minimum of 90 days within which representations relating to the rejected claim or disputed quantum of a claim may be made;

4 policyholders to be informed of alternative dispute resolution mechanisms available to them;

5 policyholders to be informed or reminded of specific contractual provisions included in their policies that may impact on their right to approach the Courts;

6 the exclusion of the aforementioned minimum 90 day period from any time limitation provision for the institution of legal action that *may* be included in a policy entered into before or after 1 January 2011; and

7 any time limitation provision for the institution of legal action that *may* be included in a policy entered into after 1 January 2011, to provide for a period of not less than 6 months after the expiry of the 90 day period within which representations may be made by a policyholder.

8 Where a policyholder refers a complaint to an Ombud (Ombudsman) under the Financial Service Ombud Schemes Act No. 37 of 2004, the latter Act already provides for policyholder protection in respect of time limitations and prescription.

The proposed amendments also:–

9 afford policyholders a right to request the court to condone non-compliance with a time limitation clause for the institution of legal action, if the court is satisfied, among other things, that good cause exists for the failure to institute legal proceedings and that the clause is unfair to the policyholder; and

10 provide that, for the purposes of section 12(1) of the Prescription Act No. 68 of 1969, where a policy does not address time limitations for the institution of legal proceedings in respect of a claim (prescription), this may only be calculated from a date after expiry of the aforementioned 90 day period.

Further practical guidance on the implications of the changes to Rule 7.4 is provided below. However, Lloyd's underwriters, coverholders and open market correspondents should seek independent advice as appropriate.

Current policies

Any time limit in an existing policy for instituting legal action must be extended by the 90 day period given to the policyholder to make representations regarding the rejection or dispute of a claim or the quantum of a claim.

Existing policies

Any policy entered into from 1 January 2011 may not include the aforementioned 90 day period in any time limit for the institution of legal action.

Every policy from 1 January 2011 must allow a period of not less than six months after that 90 day period for the institution of legal action.

Thus, every policy with greater limitations must be amended. This can be done by an endorsement, for example (depending on the wording of the rest of the policy):

"Despite anything else in this policy:

1. *Any time limitation provision for the institution of legal action provided for in this policy is extended by the period of 90 days allowed for the policyholder to make representations to the insurer in respect of any decision to reject or dispute a claim or the quantum of a claim for a benefit under the policy within a period of 90 days after the date of receipt of the notice of rejection or dispute.*

2. *The policyholder has 6 months* ***[CHANGE ACCORDING TO POLICY LIMITATION PERIOD]*** *after expiry of that 90 day period for the institution of legal action."*

Claims rejection from 1 January 2011

Claims decisions are to be made within a reasonable time

Insurers have to issue a decision on a claim within a reasonable time after receipt of the claim. What is a reasonable time depends on the circumstances, not least how soon the documents required to consider the claim are received by the insurer and when the claims investigations are complete (the investigations must also be completed within a reasonable time).

10 day notice period for informing the policyholder of claim decisions

The decision to accept or reject or dispute the claim must be notified to the policyholder within 10 days of taking the decision and the written notice must inform the policyholder of the reasons for the decision. This does not prevent the insurer from relying on other reasons which come to light subsequently.

Policyholder to be granted 90 days to make representations regarding claims decisions

The notice of rejection must give the policyholder not less than 90 days after receipt of the notice to make representations regarding the decision to reject or dispute the claim. Because the period runs "after the date of receipt of the notice", the insurer will have to make sure that the notice is received by the policyholder so that they know when the 90 day period begins to run. Policies should now invariably have an address for the delivery of notices designated by the policyholder.

Policyholder's right to lodge complaints with the Financial Services Ombud

The policyholder must be informed in plain understandable language of their right to lodge a complaint with the appropriate Ombud under the Financial Services Ombud Scheme Act 2004, including details of the relevant provisions of the FAIS Act on the lodging of a complaint. Underwriters, coverholders and open market correspondents should familiarise themselves with the "How to Complain" information on the FAIS Ombud's website for guidance on this matter. The following format for addressing this issue could be used as an example:

In order to complain you must lodge a complaint with the appropriate Ombud; if

1. *The complaint is against us as your insurer you must lodge a complaint with the Ombud for Short-Term Insurance. The procedure for lodging a complaint may be found on the website for the Ombud for Short-Term Insurance (**www.osti.co.za/logde a complaint**) or may be obtained from the Ombud (telephone 011 726 89000; fax 011 726 5501 or email **info@osti.co.za**; physical address JCC House, 2nd Floor, 27 Owl Street, Johannesburg, 2092. [Long-term insurers must substitute details of the Ombudsman for Long-Term Insurance]*

2. *If you have a complaint against the intermediary (e.g. a broker or underwriting manager) you must lodge a complaint with the FAIS Ombud. You must lodge a complaints registration form that may be downloaded from the FAIS Ombud's website (**www.faisOmbud.co.za/how to complain**) or obtained from the FAIS Ombud (telephone 012 4709080; fax 012 3483447 or email **info@faisOmbud.co.za**; physical address Eastwood Office Park, Baobab House, Ground Floor, Corner Lynnwood Road & Jacobson Drive, Lynnwood Ridge, 0081).*

You must read the form carefully, gather the necessary information, complete the form, sign the form and return the form to the appropriate Ombud's office enclosing supporting documents (for instance, correspondence, policy documents, application forms and contact details)."

Time limitation clauses in the policy must be clearly explained to the policyholder

Any time limitation clause in the policy for the institution of legal action and the implications of the provision must be drawn to the attention of the policyholder in an easily understandable manner. For instance:

*"Our policy requires you to institute legal action within 12 months **[CHANGE ACCORDING TO POLICY]** after receiving this notice plus the 90 day period referred to above. If you do not institute legal proceedings within that time you will no longer be entitled to claim the benefit under the policy. If we persist in our rejection or dispute of your claim after you have made representations, you should consult a lawyer who must institute the action for you within that time limit to avoid you losing your*

right to claim."

Where necessary, policyholders must be made aware of the implications of not suing.

If there is no time limitation provision in the policy you need to draw the policyholder's attention to the prescription period under the Prescription Act 1969 and the implications of not suing, in an easily understood manner. For instance:

"If you do not institute legal proceedings against us within 3 years after the end of the 90 day period referred to above (or any longer period you may be entitled to because of a disability (for example being a minor under the age of 18 years or unconscious) you will lose the right to claim any benefit under the policy. Therefore if we persist in our rejection or dispute of your claim after you have made representations, you should consult a lawyer who must institute the action for you within that time limit to avoid you losing your right to claim."

Letters of rejection or dispute which are not written by the insurer must include the insured's contact details and be sent to the insurer directly.

Where the letter of rejection or dispute is written by a person other than the insurer itself (a broker or underwriting manager for instance), the notice must include the name and contact details of the insured and a statement that any recourse or enquiries must be sent directly to that insurer. It should be noted that this takes claims handling out of the hands of a claims administrator or underwriting manager especially appointed to handle claims. Wording such as the following can be used as an example:

"This claim has been rejected or disputed [or the quantum is disputed] on behalf of your insurer ***[insert full name and contact details of insurer]*** *and any recourse steps you want to take to challenge the rejection or dispute and any enquiries must be directed directly to that insurer. We recommend that you send us a copy of any documents sent to the insurer."*

Where the policyholder makes representations within 90 days, the insurer must inform the policyholder of a decision within 45 days.

If the policyholder makes representations within the 90 day period, the insurer must, within 45 days of receipt of the representations, send a written notice to the policyholder of its final decision whether to accept, reject or dispute the claim or quantum of the claim for benefits. This 45 day period does not suspend the limitation period. The notice given by the insurer within the 45 day period must:

1. Inform the policyholder of the reasons for the decision.
2. Include the facts that informed the decision, including an easily understandable summary of the material facts which form the basis for the rejection or dispute.

Further information

If you have any queries relating to this bulletin please contact:-
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