

MARKET BULLETIN

From	Director, Worldwide Markets
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Subject	Switzerland: Revision of Swiss Insurance Law
Attachments	Appendix 1
Action points	Managing agents, underwriters and Lloyd's brokers to note
Deadlines	Immediate

The purpose of this bulletin is to advise the market of key changes in the Swiss insurance supervisory law and the Swiss insurance contract law, which have practical implications for the Lloyd's market.

Background

Swiss insurance supervisory law has recently been totally revised and the Swiss insurance contract law partially revised. In November 2005, the Swiss Federal Council decided that the new laws would enter into force on 1 January 2006.

Owing to the tight timetable between the signing of the relevant Bills into law and their coming into force, the Swiss authorities have acknowledged that insurers and others affected by the laws need additional time to implement and comply with all provisions. The laws therefore provide for certain transition periods or exceptions.

Details of the amendments to the laws and implications for the Lloyd's market are set out in Appendix 1.

Further information

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This bulletin is being sent to all members' agents, direct corporate members, managing agents, recognised accountants, market associations, underwriters and Lloyd's brokers for information.

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Appendix 1: Key changes to the Swiss insurance law

1. Insurance Supervisory Law

The new insurance supervisory regime is now contained in;

- i) the Federal Law on the Supervision Over Insurance Undertakings of 17 December 2004 (“Insurance Supervisory Law” or “ISL”; SR 961.01) and
- ii) the Federal Ordinance on the Supervision of Private Insurance Undertakings of 9 November 2005 (“Insurance Supervisory Ordinance” or “ISO”; SR 961.011).

Together, they replace the five federal laws and nine federal ordinances which had previously comprised the totality of the public insurance law. Some additional, secondary legislation has been, and may still be, enacted, particularly by the Swiss insurance supervisory authority (i.e. the Swiss Federal Office of Private Insurance or “FOPI”) whose only piece of legislation is presently the Federal Ordinance of FOPI on the Supervision of Private Insurance Undertakings of 9 November 2005 (SR 961.011.1).

1.1 Scope of supervision

The law will no longer generally exempt from Swiss supervision the following three categories of business:

- i) transport insurance for goods transported across international frontiers;
- ii) insurances of risks located outside Switzerland;
- iii) insurances of war risks.

1.2 Insurance intermediaries

One of the main new areas covered by the revised Insurance Supervisory Law is that insurance intermediaries are now subject to registration and supervision by FOPI. In various regards the new Swiss rules are similar to the ones stipulated by the pertinent EU Directive (2002/92). In summary:

- i) FOPI will create a new public register for insurance intermediaries. Whilst the so-called independent intermediaries (the brokers) have to be registered, the so-called dependent intermediaries (the agents) have the right to be registered (Article 43 ISL).
- ii) Both individuals and companies can be entered into the register, the latter only if they can show that they employ a sufficient number of qualified intermediaries (Article 187 para. 3 ISO).

- iii) Pursuant to Article 183 ISO, dependent intermediaries are basically those that meet one or more of the following criteria (the others are deemed to be independent intermediaries):
- they receive more than 50% of their annual commission income from one or two insurance undertakings;
 - they receive from insurance undertakings commissions or remunerations that are unusual and which may, therefore, jeopardize their independence;
 - they have entered into cooperation or other agreements with a particular insurance undertaking whereby their freedom to consider other insurers is restricted;
 - they own directly or indirectly more than 10% of the share capital of an insurance undertaking;
 - they are engaged in the management or may influence management decisions of an insurance undertaking;
 - more than 10% of their share capital is directly or indirectly owned by an insurance undertaking;
 - an insurance undertaking is engaged in their management or may influence their management decisions.
- iv) An intermediary may be entered into the register both as an independent and as a dependent intermediary but not with regard to the same class of insurance (Article 187 para. 2 ISO).
- v) A condition for being entered into the register is that the intermediary is sufficiently qualified, which means that he or she has passed an exam (the details of which have been set out by FOPI in a separate bye-law). The exam takes place twice a year in the languages German, French and Italian. Insurance intermediaries who can show that on 1 January 2006 they had at least five years' full-time or eight years' part-time practice as an insurance intermediary are exempted.
- vi) An additional requirement for being entered into the register is that the intermediary has PI insurance coverage with a limit of liability of at least CHF 2 m for all losses during a year. There is no need to have individual coverage if the intermediary is included in the PI policy of his or her employer (Article 186 ISO).
- vii) An insurance intermediary is required to inform the insured about the following (Article 45 ISL):
- its identity and address;
 - whether the coverage offered in a particular class of insurance will be provided by one or by several insurance undertakings and their names;
 - the nature of its contract relationship with the insurance undertakings for which it is active and their names;

- the person liable for incorrect information, errors or negligence with regard to the intermediary's activity;
- the processing, the recipients and the storage of personal data.

viii) Insurance intermediaries have to apply for registration by 30 June 2006. If they do so they can continue their business activity until their application has been processed and a decision has been rendered by FOPI. Intermediaries who do not apply within the time limit mentioned will have to discontinue their activity starting 1 July 2006.

1.3 Implications for Lloyd's brokers

According to guidance issued by FOPI, foreign intermediaries may need to apply for registration in the Swiss register and, if doing so, they will have to meet the same requirements as the Swiss brokers set out in 1.2 above. They will likewise not have to pass an exam if they meet the requirements of five years' full-time or eight years' part-time practice (provided they apply for registration before 30 June 2006) or if they qualify for example as a CIB (Chartered Insurance Broker).

The deadline for registering is June 30 2006.

The above requirements may be subject to some change. A market bulletin will be issued detailing this when the situation has been clarified.

1.4 Miscellaneous

The law sets out miscellaneous provisions for particular branches of insurance. For accident business, Article 159 ISO in connection with Article 131 ISO, sets new limits for payments in the event of death by accident. These are: CHF 2,500 for children younger than 2.5 years and CHF 20,000 for children between 2.5 and 12 years. These limits apply not per policy, but per insurer.

2. Insurance Contract Law

The Swiss Federal Law on the Insurance Contract of 2 April 1908 ("Insurance Contract Law" or "ICL"; SR 221.229.1) has been partially revised. Whilst the changes outlined in point 2.2 to point 2.6 below are effective starting 1 January 2006, the amendments concerning point 2.1 below will enter into force on 1 January 2007. Lloyd's contract conditions used for Swiss risks are being reviewed by WWM in consultation with the LMA and they will be amended as necessary.

The wording NMA2241 containing the Swiss General Conditions NMA2242 has been revised and is available in English, French and German from Lloyd's Zurich office silvia.soltermann@lloyds.com; Tel: +41(0)44 266 60 70) or from Lloyd's Market Services desk. These new conditions should be included in every insurance contract that forms part of the Swiss business.

2.1 Insurer's duty to inform

Article 3 ICL requires the insurer to inform policyholder of the basic content of the policy (such as the identity of the insurer, applicable law, place of jurisdiction) before the contract is concluded. In particular, information has to be provided as to:

- (i) the insured risks;
- (ii) the scope of coverage;
- (iii) the premium owed and the other duties of the policyholder;
- (iv) the duration and end of the policy period;
- (v) data protection.

The sanction for an insurer's non-compliance with the duty to inform will be that the policyholder becomes entitled to cancel the contract in writing (Article 3a ICL). This right ends four weeks after the policyholder receives the missing information or in any case one year following the insurer's failure to inform (which amounts to basically one year after the contract was concluded).

As mentioned above, the Swiss Federal Council decided that Articles 3 and 3a ICL shall enter into force only on 1 January 2007, so as to allow insurers more time to draft new contract documents. A new wording NMA2241 will be prepared in consultation with the LMA.

2.2 Non-disclosure

If the policyholder or insured does not disclose relevant facts, or else provides incorrect answers in a questionnaire, the insurer will be entitled only to cancel and not rescind the contract and then only if there is a causal link between the non-disclosed fact and the loss. The written notice of cancellation will have to reach the policyholder within 4 weeks starting with the date on which the insurer learns of the non-disclosure. It will liberate the insurer from the duty to indemnify the insured for such loss (Article 6 ICL).

2.3 Pro rata premium

In the event that the contract is cancelled or ends before it expires, the policyholder has to be reimbursed with the premium on a "*pro rata temporis*" basis (Article 24 ICL). The only exception to this concerns the cancellation by the policyholder in the event of a partial loss (Article 42 para. 3 ICL).

2.4 Insurance intermediary

The former Article 34 ICL, which dealt with insurance "agents", has been deleted and replaced by the following wording: "The insurer is responsible to the policyholder for the

conduct of its intermediary as if that conduct were its own" (non-binding translation). The amendment is to be seen in the light of the new regulation of insurance intermediaries, which does not use the term "agent" anymore.

2.5 Place of performance

Article 46a ICL states that the place of performance is the insured's or policyholder's Swiss domicile. This provision is not new but was formerly contained in the old supervisory law.

2.6 Change of ownership

In cases of a change of ownership the insurance contract providing cover for the sold or transferred object was formerly transferred to and continued with the new owner. The amended Article 54 ICL changes that rule and states that the insurance contract ends with the change of ownership unless the transferred object is a car (motor insurance) or a building insured compulsorily by a private insurer (fire insurance).