

MARKET BULLETIN

From	Julian James
Date	16 January 2007
Reference	Y3948
Subject	Bulgaria and Romania: freedom of services authorisation
Attachments	Appendix 1- The EU insurance regime – some further details
Action points	Managing Agents and underwriters to note
Deadlines	None

Background

On 1 January, 2007 Bulgaria and Romania joined the European Union (EU). Governments of these countries implemented EU Insurance Directives into their national laws prior to accession and consequently the EU's insurance regime is immediately effective in these member states. Relevant parts of the EU's insurance regime are summarised in the Appendix to this bulletin.

Lloyd's authorisations in relation to these countries

Lloyd's has given the Financial Services Authority (FSA) the requisite notices of its intention to provide cross border services to Bulgaria and Romania. In accordance with the requirements for services authorisation to be granted, the FSA has confirmed to Lloyd's that it has notified the relevant regulators of Lloyd's notices of intention. Lloyd's underwriters are therefore permitted to provide life insurance and all classes of non-life insurance except compulsory third party motor liability insurance (Class 10) to Bulgaria and Romania on a "freedom of services" basis:

"Freedom of services" is defined in the Appendix to this bulletin.

Quick reference guides for these countries are available on Lloyd's website:

http://www.lloyds.com/Lloyds_Worldwide/Country_guides/Bulgaria/Bulgaria_Quick_reference_guide.htm?country=Bulgaria

http://www.lloyds.com/Lloyds_Worldwide/Country_guides/Romania/Romania+Quick+Reference+Guide.htm?country=Romania

Provision of life insurance by a Lloyd’s underwriter is subject to Lloyd’s requirements. See in particular market bulletin Y2243 entitled “term life business”, issued 22 March 2000.

Bulgaria and Romania may require insurers carrying on business from their territory on a “freedom of services” basis to comply with “general good” provisions. Lloyd’s has not been advised of “general good” provisions applying in relation to Bulgaria and Romania. Should it receive subsequent notification, it will provide appropriate notification to the market. The concept of “general good” is discussed in the Appendix.

FIL Codes

The standard EU definition of the “Member State where a risk is situated”, as set out in the EU’s 2nd Non-Life Insurance Directive, should be used to determine whether a risk is situated in Bulgaria or Romania. This definition is set out in the Appendix. It applies with immediate effect to business from Bulgaria and Romania and will also be used for FIL coding.

The following FIL codes will be applied to transactions processed through Xchanging Insure Services and Xchanging Claims Services, where the insurance contract incepts on or after 1st January 2007:

FIL coding for Bulgaria and Romania for risks incepting on or after 1st January 2007

Country	Insurance	Reinsurance		
		Facultative	Non-proportional treaty	Proportional treaty
Bulgaria	BGB1	BGB2	BGB3	BGB4
Romania	RMB1	RMB2	RMB3	RMB4

Existing country and currency codes

Country	Country code	Local currency	Currency code
Bulgaria	BG	LEV	BGN
Romania	RO	LEU	ROL

Currencies

Neither Bulgaria or Romania have adopted the Euro as their national currency at accession date. Their existing currencies remain in use for the time being.

Taxation

There are currently no premium taxes or parafiscal charges applicable in Bulgaria or Romania.

Further information and distribution

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This bulletin has been sent to active underwriters and compliance officers of managing agents and Lloyd's brokers.

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APPENDIX 1

THE EU INSURANCE REGIME – SOME FURTHER DETAILS

The information in this appendix is provided as a guide for Lloyd's underwriters and brokers only, and is not intended to be a definitive account of all the provisions applicable to business conducted in the EU on a freedom of services basis.

The EU insurance régime is set out in a series of directives, separate directives applying to life and to non-life insurance. The three principal Non-Life Insurance Directives are:

- 1st Non-Life Insurance Directive 73/239/EEC
- 2nd Non-Life Insurance Directive 88/357/EEC
- 3rd Non-Life Insurance Directive 92/49/EEC

These directives include definitions relevant to the accession process and to Lloyd's underwriters' ability to carry on insurance from the accession countries. These are set out below. Provisions relating to life insurance are similar.

Home state supervision

See 1st Non-Life Directive Article 13.1 (as amended):

"The financial supervision of an insurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State."

Freedom of services

Provisions relating to the "freedom to provide services" are set out in the 2nd Non-Life Directive. Article 12 of that Directive identifies "freedom to provide services" as:

"...where an undertaking, through an establishment situated in a Member State, covers a risk situated...in another Member State..."

Lloyd's interprets this as permitting Lloyd's underwriters to write business from another EU member state on an open market basis, or via facilities which do not permit the underwriting or finalisation of the contract to take place other than in Lloyd's "establishment" in the UK or in any "establishment" in EU member states other than the country of risk.

Lloyd's underwriters' ability to carry on business from the accession countries has been obtained in accordance with the applicable UK legislation. This enacts Article 14 of the 2nd Non-Life Directive, which states that:

"Any undertaking that intends to carry on business for the first time in one or more Member States under the freedom to provide services shall first inform the competent authorities of the home Member State, indicating the nature of the risks it proposes to cover."

The home state's regulatory authority grants authorisations to carry on business for particular classes. The insurance undertakings to which authorisation may be granted include "the association of underwriters known as Lloyd's". Lloyd's therefore seeks and maintains authorisations within the EU on a collective basis for all Lloyd's members.

General good

Whilst the financial supervision of insurers is carried out on a home state basis, there are certain aspects of insurance supervision which remain exclusively subject to 'host state' supervision, within the EU framework. Article 28 of the 3rd Non-Life Directive states that:

"The Member State in which a risk is situated shall not prevent a policyholder from concluding a contract with an insurance undertaking...as long as that does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated."

The regulatory authorities of an accession country in which a risk is situated may therefore require an insurer insuring the risk on a freedom of services basis to comply with its "general good" provisions. Such provisions may include those concerning marketing and selling and contract law in respect of 'mass' (i.e. principally personal lines) risks.

The Directives do not define the concept of "general good". However a European Commission interpretive communication issued in 2000 provided some clarification on this point and on freedom to provide services. The interpretive communication stated that:

"For such a measure to be justified as being in the general good, it:

- must not have been harmonised at Community level;
- must be non-discriminatory;
- must be justified by imperative requirements in the general interest;
- must be objectively necessary;
- must not duplicate rules of the country of origin;
- must be proportionate to the objective pursued."

The interpretive communication can be found at:

<http://europa.eu.int/scadplus/leg/en/lvb/l24227.htm>

Premium taxes and parafiscal charges are also subject to the rules of the country where the risk is located.

Member State where the risk is situated

See Article 2(d) of the 2nd Non-Life Directive. The “member state where the risk is situated” means:

- The Member State in which the property is situated, where the insurance relates either to:
 - **Buildings**, or
 - **Buildings and their contents**, covered by the same policy.

*This definition applies also to **liability** or **consequential loss relating to the building** (if covered as a risk ancillary to the building insurance).*

- The Member State of registration where the insurance relates to vehicles of any type.

“Vehicles” includes motor vehicles, ships, boats (including yachts) and aircraft, insured against loss, damage or liability (including ancillary risks).

- The Member State where the policyholder took out the policy in the case of policies:
 - of a duration of four months or less;
 - covering travel or holiday risks;
 whatever the class concerned.

- In all cases not explicitly covered by the foregoing indents, the Member State where the policyholder:
 - Has his habitual residence (*if the policyholder is a natural person*); or
 - The Member State where the policyholder’s establishment, to which the contract relates, is situated, if the policyholder is a legal person (*i.e. a business or other organisation*);

Businesses established in the country’s territory include the local subsidiaries or branches of foreign enterprises

(Interpretative comments are set out in italics. The definition set out here uses the same wording as the Directive, but for ease of reference the set out has been changed).

The definition of “the Member State where the risk is situated” for premium tax purposes is wider. Details are available from the taxation department website.