

# MARKET BULLETIN

<b>From</b>	Director, Worldwide Markets
<b>Date</b>	18 January 2007
<b>Reference</b>	Y3953
<b>Subject</b>	<b>FRANCE: Implementation of the Insurance Mediation Directive</b>
<b>Attachments</b>	Appendix 1: Checklist for Lloyd's brokers Appendix 2: Checklist for Lloyd's coverholders
<b>Action points</b>	<b>Underwriters and brokers to note</b>
<b>Deadlines</b>	<b>31 January 2007</b>

The Insurance Mediation Directive, 'IMD', sets out a framework for regulation of insurance intermediaries throughout the EU.

In France the IMD is being implemented through a new legal framework comprising:

- The law of 15 December 2005,
- The decree of 30 August 2006,
- The enforcement order completing the decree, dated 3 November 2006.

The new legislation does not appear to raise any issues or concerns for Lloyd's, although there are specific requirements that are of direct relevance to Lloyd's brokers and coverholders. Lloyd's Representative office in France has accordingly prepared the attached checklists which should assist in meeting these new requirements. In addition, more detailed legal advice has been obtained and this can be found on lloyds.com:

[http://www.lloyds.com/Lloyds\\_Worldwide/Country\\_guides/France+%28inc.+Monaco%29/Insurance+Mediation+Directive+in+France.htm?country=France%20\(inc.%20Monaco\)](http://www.lloyds.com/Lloyds_Worldwide/Country_guides/France+%28inc.+Monaco%29/Insurance+Mediation+Directive+in+France.htm?country=France%20(inc.%20Monaco))

Further information can also be obtained as follows:

In London

Lloyd's Worldwide Market Services  
Tel: 020 7327 6677  
Email: [market.services@lloyds.com](mailto:market.services@lloyds.com)

Box 190b, Gallery 1

Or, in France,

Lloyd's General Representative in France:

Anne-Gaëlle Leillard

Tel: +33 1 42 60 43 43

Email: [annegaelle.leillard@lloyds.fr](mailto:annegaelle.leillard@lloyds.fr)

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

Julian James  
Director  
Worldwide Markets

**APPENDIX 1****CHECKLIST FOR LLOYD'S BROKERS**

The purpose of this checklist is to inform Lloyd's brokers of the key elements of the new French law implementing the IMD affecting them. For further information brokers should contact the Lloyd's Representative office in Paris.

**I. THE LAW**

- The IMD is being implemented in France through a new legal framework comprising:
  - The law of 15 December 2005,
  - The decree of 30 August 2006,
  - The enforcement order completing the decree, dated 3 November 2006.
- This new legislation provides, inter alia, for the creation of a new National Register of Insurance and Reinsurance Intermediaries (ORIAS). This will be established by 31 January 2007 at the latest.

**II. POSITION OF LLOYD'S BROKERS**

The legislation makes explicit reference to intermediaries registered in another member state of the European Union or the European Economic Area. Lloyd's brokers operating in France under Freedom of Establishment or Freedom of Services, should fall into this category and may therefore benefit from the Passporting Rights offered by the IMD, provided that:

- They have informed the competent authority in charge of keeping the Register (for the UK, the FSA) in the State in which they are registered, of their intention to practise their activity in France under Freedom of Services or Freedom of Establishment. This authority then notifies the competent authority in France (ORIAS).
- The Lloyd's broker may then commence activity in France, without further formalities, one month after the date on which it is informed its home state regulator that notification has been sent to the French authority, assuming his application has not been refused.
- "Home country control" = FSA control.
- It is possible, of course, for a European intermediary to opt not to use its Passporting Rights, and to establish in France under French legislation. In this case, it could be subject to registration, as with a French intermediary. In these circumstances, advice should be sought from the Lloyd's Representative office in Paris.

## APPENDIX 2

### **CHECK LIST FOR LLOYD'S COVERHOLDERS IN FRANCE**

The purpose of this checklist is to inform Lloyd's coverholders of the key elements of the new French law implementing the IMD affecting them. For further information coverholders should contact the Lloyd's Representative office in Paris.

#### **II. THE LAW**

- The IMD is being implemented in France through a new legal framework comprising:
  - The law of 15 December 2005,
  - The decree of 30 August 2006,
  - The enforcement order completing the decree, dated 3 November 2006.
- This new legislation provides, inter alia, for the creation of a new National Register of Insurance and Reinsurance Intermediaries (ORIAS). This will be established by 31 January 2007 at the latest.

Registration must take place within three months from that date.

#### **II. POSITION OF LLOYD'S COVERHOLDERS**

There are four main categories of intermediary, of which two will probably concern Lloyd's coverholders :

1. insurance broker (without exclusivity with any insurer/s),
2. insurance underwriting agent ("*mandataire d'assurance*"): person other than general agent, mandated by an insurer, with or without exclusivity.

From the date of creation of the Register of Intermediaries brokers active as at 31 August 2006 have 18 months to comply with the requirement to have no exclusive contractual links with an insurer (s). Failing this they will have to adopt the status of insurance underwriting agent.

- Where Lloyd's coverholders have dual status as both broker and coverholder; registration in both categories 1 and 2 above is required.
- Where they are coverholders only registration in the second category only is required.

### III. CONDITIONS OF PRACTICE

The following conditions must be adhered to before intermediaries may practise in France:

- Good Repute;
- Professional Capability;
- Professional Liability Insurance;
  - covering the EU and EEA
  - minimum limits of €1.5 million any one loss and €2.0 million in the annual aggregate
  - deductible of not more than 20% of any claim, not opposable to claimants
- Financial Guarantee (where the intermediary, even on an occasional basis, handles client monies. This does not apply to reinsurance brokers, nor where the intermediary has full risk transfer authority for premiums and claims from the insurer).
  - limit:
    - at least €15.000;
    - not less than twice the sum of the monthly average cash received by the intermediary during the 12 months preceding the month in which the bond is taken out or renewed.

### IV. REGISTRATION

Registration with ORIAS must be completed by 31 January 2007.

Various formalities need to be completed for registration, and certificates/attestations supplied. Full details of these are available from the Lloyd's Representative office.

### V. INFORMATION AND ADVICE REQUIREMENTS FROM INSURANCE INTERMEDIARIES

#### **Main obligations:**

- Information should be supplied, in writing or other 'durable medium', before the conclusion of any insurance contract: different lists according to category of intermediary are available from the Lloyd's Representative office. N.B. Lloyd's coverholders with status of both broker and insurance underwriting agent will have to be very careful, depending on the type of contract proposed to clients, that they comply with the information requirements for both categories in which they are registered.

- Information linked to the duty of advice: obligation to explain to the client before the conclusion of a contract:
  - the demands and needs expressed by the potential insured.
  - the reasons behind the advice provided as to the choice of insurance contract.

Further information is available from the Lloyd's Representative office.

**Other obligations:**

Brokers who provide advice to the insured, must disclose, upon the latter's request, the amount of commission or remuneration paid by the insurer when:

- the contract taken out covers commercial risks,
- the annual premium of the contract exceeds 20 000 euros.

**VI. PENALTIES**

Criminal penalties (fines or imprisonment) apply in the event of breach of registration, or conditions of access to and practice of the activity of intermediation; administrative penalties are also laid down, and the activity of insurance or reinsurance intermediation is now subject to the control of the French Insurance and Mutuals Supervisory Authority, "ACAM". The French Insurance Code allows for exchange of information between ACAM and ORIAS.

**VII. OVERSEAS TERRITORIES**

The new legislation also applies to Overseas Departments. For Mayotte, Wallis and Fortuna, the 1989 legislation still applies, but the government is empowered to extend to these communities the complete new legislation by administrative order of 16 December 2006.