

MARKET BULLETIN

REF: Y4271

Title	Portugal: Freedom of Establishment Authorisation and General Representative
Purpose	To inform the market that Lloyd's has obtained establishment authorisation in Portugal and appointed a General Representative
Type	Event
From	Cameron Murray, Senior Manager, International Regulatory Affairs, General Counsel's Division
Date	29 April 2009
Deadline	With immediate effect

Summary

Lloyd's has received authorisation to write insurance business in Portugal on a freedom of establishment basis.

Lloyd's has established a branch in Portugal and appointed Juan Arsuaga as Lloyd's General Representative. Juan Arsuaga is also Lloyd's Managing Director of Lloyd's Iberia.

Background

Following a successful application for establishment authorisation in Portugal, Lloyd's underwriters are permitted to underwrite all classes of insurance in Portugal on a freedom of establishment basis with immediate effect. This is subject to the exceptions of third party motor liability insurance (Class 10) and life business.

Freedom of establishment authorisation permits insurance to be written in the territory (Portugal) by a branch of an insurance undertaking whose head office is located in another EU member state. For the purposes of Lloyd's, this permits Lloyd's underwriters to appoint coverholders in Portugal to write Portuguese business and for Managing Agents to establish service companies in Portugal.

Lloyd's status as a freedom of services insurer in Portugal also remains.

For information on trading in Portugal, please refer to the Crystal page for Portugal:

<http://www.lloyds.com/Crystal/>

Insurers carrying on business in Portugal on a freedom of establishment basis must comply with the ‘general good’ conditions. These conditions have been incorporated into the Crystal page, but for further background on the concept of the ‘general good’ please refer to Appendix 1.

Lloyd’s General Representative

It is a requirement of the freedom of establishment authorisation to establish a branch in Portugal and appoint a general representative. Lloyd’s has chosen to appoint Mr Juan Arsuaga. The branch address for Portugal is as follows:

Mr Juan Arsuaga
 Lloyd’s General Representative for Portugal
 c/o Simmons & Simmons Rebelo De Sousa
 Rua D. Francisco Manuel de Melo, 21
 1070-085 Lisbon
 Portugal
 Tel: + 351 21 388 34 79
 Email: Juan.Arsuaga@lloyds.com

Juan Arsuaga may be nominated as service of suit nominee for Portuguese establishment business.

Juan Arsuaga is also Managing Director of Lloyd’s Iberia which is located in Madrid. Lloyd’s Iberia is the main contact point for Lloyd’s underwriters who have questions about writing Spanish and Portuguese business.

FIL Codes

The standard EU definition of the “Member State where a risk is situated”, as set out in the EU 2nd Non-Life Insurance Directive, should be used to determine whether a risk is situated in Portugal. The definition of a risk in Portugal is also available on Crystal.

The following FIL codes have been introduced and should be used with immediate effect:

Placing Route	FIL Code	Market Code
Portuguese risk placed under a full binding authority held by a coverholder in Portugal (Establishment)	PGL1	QW
Portuguese risk not placed under a full binding authority held by a coverholder in Portugal (Services)	PGM1	QX

The previous insurance FIL codes for Portugal will no longer be used on new premiums and AP/RP (including declarations off of binding authorities). However, where corrections are made to entries originally processed using these codes they will continue to be used. New claims must be registered using the applicable FIL codes from the tables above, which may therefore differ from the FIL code that applied to the premium to which they relate. Movements and settlements to existing claims should continue to be processed using the FIL code that applied when the claim was first established.

The current Portuguese reinsurance FIL codes remain valid and unchanged:

Reinsurance		
Facultative	Excess of Loss	Treaty
PGB2	PGB3	PGB4

Coverholders

Portuguese law on insurance mediation distinguishes between tied intermediaries (who usually act for a single insurer and may not collect premiums), insurance agents (who may work for several Insurers and/or other intermediaries) and insurance brokers (who act for the insured). Each of these may be appointed as a coverholder. However, an insurance broker that holds a binding authority must maintain its independence according to the “portfolio dispersion” rules. This means that an insurance broker may only perform the duties of a coverholder if it works with at least 6 insurers and keeps a dispersed business portfolio.

Managing Agents should note that the appointment of an insurance agent must be registered with the Register of Insurance Intermediaries, which is maintained by the Portuguese regulator. In order to register an insurance agent the Managing Agent must notify Lloyd’s Iberia of the appointment at least one month prior to the commencement of the binding authority. Lloyd’s Iberia will then arrange the registration.

Taxation

Please refer to the taxation section of the Crystal page on Portugal for information on the current requirements.

Managing Agents that are considering setting up a service company to write establishment business in Portugal are reminded that they must obtain their own tax advice based on their individual operations and activities to ensure all Portuguese tax obligations are met.

Further Information

If you require additional information or wish to discuss this matter in more detail, please contact:

Lloyd's International Trading Advice

Lloyd's Desk, Ground Floor, Underwriting Room

Telephone: 020 7327 6677

Email: LITA@Lloyds.com

www.lloyds.com/crystal

Lloyd's Iberia

Calle José Ortega y Gasset 7, 1ª Planta

Edificio Serrano 49

28006 Madrid

Spain

Telephone: +44 207 327 7900

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 a Member State in which a risk is situated therefore require an insurer 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. 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://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000Y0216\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000Y0216(01):EN:HTML)

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

The general good conditions for Portugal can be found here:

<http://www.isp.pt/NR/rdonlyres/25C46E25-FB05-496F-AFCB971944650CD0/0/MicrosoftWorddocparaPDFsucursalingles.pdf>

The conditions have been incorporated into the Portugal Crystal page.