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SUBJECT: SOUTH AFRICA: FINANCIAL ADVISORY AND INTERMEDIARY SERVICES BILL 2000
SUBJECT AREA(S):
ATTACHMENTS: Appendix 1: Background Information
ACTION POINTS: **Managing Agents, Brokers and Underwriters to note**
DEADLINE:

The South African Financial Advisory and Intermediary Bill (“the Bill”), when enacted, will regulate the business of financial services providers to clients as regards a large range of financial products, including insurance. Under the Bill such providers will need to be licensed, and professional conduct is to be controlled through codes of conduct and enforcement measures.

The Bill is expected to be on the South African parliamentary agenda during the first quarter of 2001, with the enactment of the Bill in the last quarter of 2001. A copy of the Bill can be found on the Financial Services Board’s (“FSB”) website: www.fsb.co.za and Appendix 1 of this bulletin provides background information on the Bill.

WHAT DOES THIS MEAN FOR LLOYD’S OPERATIONS IN SOUTH AFRICA?

To understand the impact of the Bill, it is important to distinguish between the different entities in the Lloyd’s market. Thus:-

Lloyd’s Underwriters: Lloyd’s underwriters for the purposes of the Bill are product suppliers and are not directly implicated in the authorisation regime established under the Bill.

Coverholders: South African coverholders are clearly financial services providers to the extent that they furnish advice on purchases of specific financial products or render intermediary services such as the receipt and processing of premiums and claims. Coverholders will therefore need section 7 approval from the Registrar. It is the obligation of Lloyd's coverholders to obtain the relevant authorisation from the Registrar under the Bill's licensing procedures. Similarly, it is coverholders who become subject to the additional duties relating to the appointment of a compliance officer, record keeping, accounting and audit, and who assume specific responsibilities in relation to any representatives that they may appoint.

Whilst it is the responsibility of the coverholder to obtain the relevant authorisation, a copy of the application form should be sent to Lloyd's South Africa for their records.

It will be a requirement, once the Bill is enacted, and when applying for coverholder approval, that evidence of authorisation from the Registrar under the licensing procedures is submitted to the Correspondents Department. Without such evidence, the approval process will not be able to commence.

Approved Open Market Correspondents. Approved open market correspondents are financial services providers under the Bill and will require authorisation from the Registrar under the licensing procedures. **Lloyd's South Africa will be unable to begin the approval process of an open market correspondent until the appropriate documentation confirming such authorisation from the Registrar is submitted.**

Broker in the distribution chain (including retail brokers). These brokers will require authorisation from the Registrar under the licensing procedures.

Service companies of Managing Agents. Where managing agents have established service companies with operations in South Africa, each service company will need to take a view on whether it is caught by the definition of a financial services provider under the Bill. Where the service company has a Lloyd's approval as a coverholder or open market correspondent the position will be clear.

In the absence of any such approval, Lloyd's will not be privy to the activities of the service company and compliance with the Bill will be a matter for the relevant managing agency. In the first instance, however, the managing agency should ring Lloyd's South Africa to determine the way forward.

If you have any questions regarding the Financial Advisory and Intermediary Services Bill, please contact Maxine Hooper, International Department on extension 6291 or Amit Khilosia, Lloyd's General Manager of Lloyd's South Africa on 00 27 11 884 0486. If you have any general questions relating to South Africa, you can also contact our Overseas Help Desk on extension 6677.

This bulletin is being sent to all compliance officers, managing agents, active underwriters, brokers and market associations.

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Financial Advisory and Intermediary Services Bill 2000

The Financial Services Board (FSB) states that the Bill attempts to establish a new properly regulated financial intermediary profession, replacing the fragmented regulation of activities that currently exists. A more uniformed approach will not only remove confusion, but should result in a more professional and responsible intermediary sector, as well as a better informed consumer of financial services. At the heart of the Bill lies consumer protection.

The Bill creates the office of the Registrar of Financial Services Providers, a role to be taken up by the Executive Officer of the FSB. It is envisaged that the Registrar will be responsible for the publication of codes of conduct with which authorised financial services providers and their representatives will have to comply with in carrying on their business. The Bill also provides for the creation of an independent ombudsman scheme for the speedy and informal resolution of disputes.

The Lloyd's market is particularly affected by the provisions of the Bill relating to:-

- a) the authorisation of financial services providers;
- b) representatives of authorised financial services providers; and
- c) the duties of authorised financial services providers

Under Section 7 of the Bill, no person may act as a financial services provider unless that person has been authorised by means of a licence issued by the Registrar. Grounds for the issue of a licence follow the usual fit and proper requirements relating to personal qualities, competency and financial standing. It is important however to appreciate the width of the concept of a "financial services provider".

A financial services provider means any person who or which as part of a regular business:-

- a) furnishes advice;
- b) furnishes advice and renders any intermediary services; or
- c) renders an intermediary service.

Definitions:

Advice includes any recommendation, guidance or proposal furnished to a client on the purchase of a specific financial product or on the variation or replacement of any such product.

Financial product includes a short-term insurance contract or policy under the Short-Term Insurance Act 1998.

Intermediary service comprises any act (other than the furnishing of advice) performed with a view to servicing a financial product purchased by a client from a product supplier. It includes collecting or accounting for premiums or monies payable by the client to a product supplier, or processing claims of a client against any such product supplier.

Product supplier includes any person who issues a financial product to clients by virtue of a right granted under any South African law and will therefore include underwriters at Lloyd's.

Financial services providers incur a number of new duties in a South African context:

- the maintaining of records for a minimum of 5 years
- certain accounting and audit requirements
- appointment of a compliance officer (for those with one or more representatives)

The process of authorisation as a financial services provider has further implications for representatives. A person may only act as a representative in rendering financial services on behalf of a person who is authorised as a financial services provider or is exempted from the application of the Act. The authorised financial services provider would need to provide confirmation to the representative that a service contract to represent the provider exists and that the provider accepts responsibility for the representative's activities performed within the scope of that contract.

Authorised financial services providers have a continuing obligation to ensure that representatives, and key individuals of any representative, are competent to act and comply with applicable codes of conduct. For these purposes, they must maintain registers of these representatives and key individuals, specifying the categories in which they are competent to render financial services.