

Market Bulletin

LLOYD'S

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EXTENSION: 5685
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REFERENCE: Y3182
SUBJECT: FINANCIAL GUARANTEE REGULATION
SUBJECT AREA(S):
ATTACHMENTS: 1989 Financial Guarantee Regulation
ACTION POINTS: **Underwriters, Brokers and Compliance Officers to note**
DEADLINE:

1 Purpose of the Bulletin

- 1.1 Deteriorations in equity markets and global political uncertainty appear to be generating a growing demand for insurance which indemnifies against losses arising from insolvency/default and/or from deterioration in the value of shareholdings and/or returns on investments. Would-be assureds are increasingly looking to carriers which have not traditionally written financial guarantee business to provide such coverage.
- 1.2 Given that these trends are occurring at a time when it is over 14 years since Lloyd's Financial Guarantee Regulation ("the FG Regulation") was made, it is timely to draw the market's attention once more to the FG Regulation, and to reiterate certain key aspects of its operation. A copy of the FG Regulation appears at the end of this bulletin.
- 1.3 In order to ensure a wide circulation, this Market Bulletin will, in addition to being distributed via the usual channels, be copied to every box in the Underwriting Room.

2 Operation of the Regulation

- 2.1 To summarise, in terms of defining and prohibiting FG business, the FG Regulation operates as follows:
 - i) the Schedule to the FG Regulation lists certain FG events;
 - ii) the FG Regulation prohibits Lloyd's underwriters from writing contracts of insurance which cover a "specified event [which] is of a description falling within the Schedule"; IF
 - iii) "the specified event is not directly caused by another specified event which is not of a description falling within the Schedule".

2.2 The approach summarised at 2.1 above can be found at under Section 3. (1) (a)-(c) of the Regulation.

3 The Exempted FG Classes

3.1 Since the Regulation was made in 1989, it has been deemed acceptable to exempt certain classes of FG business, where these are unlikely to result in either large individual losses or in large aggregations of loss. Those classes which are currently exempted, together with related Bulletins, are listed below:

Class	Bulletin Reference
Collision, Salvage and General Average Guarantees	060/98 26 June 1998
Contract Frustration	Y2406 7 November 2000
Mortgage Indemnity	060/98 26 June 1998 35/99 29 April 1999
Reinsurance of surety bond providers	060/98 26 June 1998 Y2642 31 October 2001
Trade Credit	060/98 26 June 1998

3.2 Copies of the Bulletins referenced above can be obtained either from myself, or from the Lloyd's website using the following search engine:

<http://www.bulletins.lloydsolondon.com/bulletins/mktdirc.nsf/PowerSearch?OpenForm>

Please contact me if you have questions relating either to this Bulletin, or to any other aspect of FG business at Lloyd's, exempted or otherwise.

This bulletin has been sent to all managing agents, active underwriters, members' agents, recognised auditors, market associations and Lloyd's brokers.

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FINANCIAL GUARANTEE INSURANCE REGULATION

(No. 4 of 1989)

(made on 27th September 1989)

COMMENCEMENT

This regulation commenced on 28 September 1989

AMENDMENTS

This regulation was amended by

Miscellaneous Administrative provisions Regulation (No. 2 of 1993)
Financial Guarantee Insurance (Amendment) Regulation (No. 3 of 1997)

The Committee of Lloyd's in exercise of the power delegated to it by the Council of Lloyd's under section 6(6)(a)(i) of Lloyd's Act 1982 hereby makes the following regulation.

1. Interpretation

(1) In this regulation unless the context otherwise requires:

"insurance company" means any body corporate whether incorporated in the United Kingdom or under the law of a country outside the United Kingdom carrying on insurance business.

(2) For the avoidance of doubt, in this regulation any reference to a contract of insurance includes any indemnity, guarantee, bond, contract of surety, slip or other similar instrument and references to "insurance" include "reinsurance".

(3) In paragraph 4 only, references to "the Committee" include the Committee of Lloyd's constituted under Lloyd's Act 1871.

2. Prohibition on contracts of financial guarantee insurance

(1) Subject to sub-paragraph (2) and paragraph 4 no underwriting member shall make any contract of financial guarantee insurance without the prior written approval of the Council.

(2) An underwriting member who is a member of a credit reinsurance syndicate approved by the Council may as a member of that syndicate reinsure an insurance company in respect of financial guarantee insurance contracts made by that insurance company.

(3) Any approval granted under this paragraph may be:

- (a) general;
- (b) for such classes of contracts of financial guarantee insurance as the Council may subscribe; or
- (c) for a specific contract of financial guarantee insurance.

3. Contracts of financial guarantee insurance

- (1) For the purposes of this regulation a contract of insurance is a contract of financial guarantee insurance if:
- (a) the insurer thereby agrees that on the occurrence of an event specified in the contract he will indemnify the assured against loss caused by the specified event or pay or otherwise benefit the assured to the extent provided by the contract; and
 - (b) the specified event is of a description falling within the Schedule to this regulation; and
 - (c) the specified event is not directly caused by another specified event which is not of a description falling within the Schedule.
- (2) The Council may on the application of any person conclusively determine for the purposes of this regulation whether or not a proposed contract of insurance is a contract of financial guarantee insurance.

4. Saving for existing approvals

Subject to any decision taken under paragraph 5 [or paragraph 7], contracts of financial guarantee insurance or classes of contracts of financial guarantee insurance that were, immediately before the coming into force of this regulation, contracts or classes of contracts specifically approved in writing by the Committee, the Council (or any committee, sub-committee, board or other body which had the authority of the Committee or the Council to approve the making of such contracts), are deemed to be approved for the purposes of this regulation, according to the terms and conditions attached to such approval.

5. Miscellaneous powers of the Financial Guarantee Committee

- (1) In respect of any approval given under paragraph 2 [*or paragraph 7, deleted*] or in respect of any contract of financial guarantee insurance that is deemed to be approved under paragraph 4, the Council may:
- (a) revoke such approval;
 - (b) attach any condition to such approval; or
 - (c) vary any condition attached to such approval.
- (2) Where the Council proposes to take action under sub-paragraph (1), it shall give to the underwriting agent and the Lloyd's broker concerned notice in writing of its proposal specifying the reasons why the Council proposes to act and, before taking action, the Council shall take into account any representations made by or on behalf of the underwriting agent or Lloyd's broker concerned within the period of 14 days beginning with the date of the service of the notice. After taking account of such representations the Council shall decide whether to:
- (a) take the course of action originally proposed;
 - (b) take no further action; or
 - (c) take some other course of action open to it under any byelaw or regulation for the time being in force

and shall notify the underwriting agent and the Lloyd's broker concerned of its decision.

- (3) In the absence of any representation being made on behalf of either the underwriting agent or Lloyd's broker concerned within the period set out in sub-paragraph (2), the Council's proposal to take action under that subparagraph shall be deemed to be a final determination taking effect from the date of the service of notice of the proposal upon the underwriting agent and Lloyd's broker concerned.

6. Publicity

The Council may publish such details of any determination made under paragraph 3(2) or any decision taken under paragraph 5 as it considers appropriate for facilitating or regulating the conduct of insurance business at Lloyd's.

[7. Review by the Committee: Paragraph deleted with effect from 13 November 1997 by regulation No. 3 of 1997.]

8. Commencement

This regulation shall come into force on 28th September 1989.

SCHEDULE

The events referred to in paragraph 3 of the regulation are any of the following:

- (a) the financial failure, default, insolvency, bankruptcy, liquidation or winding up of any person whether or not a party to the contract of insurance;
- (b) the financial failure of any venture;
- (c) the lack of or insufficient receipts, sales or profits of any venture;
- (d) the lack of or inadequate response or support by sponsors or financial supporters;
- (e) a change in levels of interest rates;
- (f) a change in rates of exchange of currency;
- (g) a change in the value or price of land, buildings, securities, or commodities;
- (h) a change in levels of financial or commodity indices;
- (i) any liability or obligation under an accommodation bill or similar instrument.