

MARKET BULLETIN

From Director, Worldwide Markets

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Reference Y3909

Subject Italy: Revision of Italian Insurance Code

Attachments Appendix 1- Details of the revision

Action points Managing agents, underwriters and Lloyd's brokers to note

Deadlines

The Italian insurance sector is undergoing significant legislative changes following the adoption of Legislative Decree no. 209/2005.

The Decree was approved by the Italian Parliament on 7 September 2005 and partially came into force on 1 January 2006. It established a new Insurance Code divided into 19 sections and containing 355 articles, which itself replaces over 1000 provisions and related laws. The code reinforces the role of ISVAP and updates and reorganises existing Italian insurance legislation in line with European legislation, not least the EU Insurance Mediation Directive.

However, the Code will only come into force and its implications become known once the Italian regulator, ISVAP, has published a full set of regulations clarifying its provisions. ISVAP has begun this process and is due to have completed it by the end of 2006. Lloyd's has been working to ensure that full account is taken of the Lloyd's position.

In the meantime this bulletin serves to advise the market of some of the key developments and detail governing law, pre-contractual requirements, insurance contract requirements, and the insurance intermediary register. These are set out in Appendix 1

Further information

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

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APPENDIX 1: NEW ITALIAN INSURANCE CODE

In September 2005, a legislative decree (No. 209 of 7 September 2005) was issued in Italy approving the establishment of the Insurance Code ("IC"). The purpose of the IC is two-fold:

1. to consolidate and reorganise a large number of insurance provisions previously distributed across several laws, some of which date back to 1922;
2. to introduce new rules including in particular those required to implement the EU Insurance Mediation Directive.

The IC entered into force on 1 January 2006, but not all of its provisions took effect at that time as many were conditional upon ISVAP issuing related implementation rules. Notably, most of the provisions concerning insurance intermediaries are subject to the prior issuance of specific regulations. Draft regulations have now been published by ISVAP and most of these, and the related provisions of the IC, should accordingly enter into force on 1 January 2007.

The key provisions of the IC are summarised below:

Governing Law

- Article 193 of the IC provides that, while the activities of an insurer having its registered office in another EU Member State - including those activities carried out in Italy on a freedom of services or freedom of establishment basis - are subject to the prudential supervision of the Regulatory Authority of the insurer's Home State, ISVAP may, in case of any violation, nevertheless require the insurer to comply with the provisions of Italian law.
- If an insurer against which a claim is made fails to remedy the related violation, ISVAP will inform the Regulatory Authority in the insurer's Home State requesting that all necessary steps are taken to resolve the matter. Should the issue remain unresolved, ISVAP may take any necessary measures directly against the defaulting insurer, including prohibiting it from entering into new insurance contracts in Italy on a freedom of services or freedom of establishment basis. In the event that the insurer operates through a local office or owns any assets in Italy, any penalties imposed under Italian law will be enforced against such local office and/or assets.
- Lloyd's Italian Office (LIO) is, for the purposes of Italian insurance law, the local office of Lloyd's underwriters operating in Italy through freedom of establishment business. Accordingly, LIO will be the addressee of any penalties imposed by ISVAP for violations of Italian laws committed by underwriters.
- Article 27 of the IC provides that insurance companies having their registered office in another EU Member State and carrying out their business in Italy on a freedom of services or freedom of establishment basis cannot enter into contracts and/or resort

to any form of advertising that is in conflict with Italian General Good provisions, including those protecting insureds and other persons entitled to insurance benefits.

Pre-contractual requirements

- Article 185 of the IC, which also applies to foreign companies carrying out their business in Italy on a freedom of services or freedom of establishment basis, provides that, before a contract is concluded, insurers must deliver to the other contracting party ("the Client") explanatory notes ("the Notes") containing certain information ***as will be specified by ISVAP in regulations issued for this purpose.***
- ISVAP has already issued some provisions on the information to be included in the Notes (those to be supplied for life insurance are particularly detailed: see ISVAP's circular letter No. 551 of 2005). Please also note that the Client should acknowledge receipt of the Notes in the insurance contract. In relation to the present rules for this matter, LIO issued several circular letters (Nos. 1/98, 13/2000, 15/2002, 3/2004), which were sent to Lloyd's open market correspondents and to the LMA and that ISVAP's circular letter No. 551 was referred to in market bulletin Y3813, dated 16 May 2006, 'New regulations for Life Insurance in Italy'.

Insurance Contract Requirements

- Underwriters should be aware that, under Italian law, an insurer must deliver to the Client an insurance contract or equivalent document (article 1888 of the Civil Code). The requisite contract or document is not the "slip" signed by the underwriter(s), but a document expressly intended for the Client. Although such contract need not be signed by the Client to be valid, it is strongly recommended that the Client's signature be included.
- Article 166 of the IC provides that the insurance contract and any other document delivered by an insurer to its Client must be drawn up in a clear and comprehensive manner. Any clauses concerning forfeitures, avoidance or limitations of cover or expenses to be incurred by the Client or the insured must be clearly explained.
- Article 183 of the IC sets out rules of behaviour for insurers and intermediaries offering and issuing insurance contracts. This provision is not expressly stated to apply to foreign insurers carrying out their business in Italy on a freedom of services or freedom of establishment basis but it can reasonably be assumed to apply equally to them, at least in respect of paragraphs a), b) and c) below:-

Insurers and intermediaries are required to:

- a) act in a diligent, correct and transparent manner vis-à-vis the Client and insureds;
- b) obtain from the Client all necessary information in order to determine its insurance or welfare requirements and act in such a manner as to be accurately informed at any time;

- c) where possible, identify and avoid any conflicts of interest and, whenever such conflicts arise, to ensure that insureds are properly informed of any possible unfavourable effects; to manage any conflict of interest in such a way that the Client suffers no unfavourable effects;
 - d) establish independent, sound and prudent financial management and adopt all suitable measures to protect the rights of the Client and/or insureds.
- ISVAP will be issuing regulations which will clarify the above obligations.
- Underwriters should note in particular the obligation in paragraph b) to obtain all information so as to determine the insurance requirements of the Client. This obligation expressly applies to both life and non-life insurance, notwithstanding that article 183 states that ISVAP shall specify in its regulations the different ways in which this obligation shall be met depending, *inter alia*, on the insured risk.

Insurance Intermediaries

- As mentioned at the beginning of this memorandum, the most important changes concern insurance intermediaries, covered specifically in articles 106 to 121 of the IC. Such intermediaries must be entered via written application on a special register, which is divided into five sections identified by different alphabetic letters:
 - a) agents, i.e. intermediaries acting in the name and on behalf of one or several insurance or reinsurance companies;
 - b) insurance brokers, i.e. intermediaries acting upon appointment of the Client and not empowered to represent insurance or reinsurance companies;
 - c) producers, i.e. self-employed intermediaries acting in the classes of life and non-life insurance for whom an insurer accepts responsibility;
 - d) banks, financial intermediaries, stock broking companies ("SIMS") and the company Poste Italiane;
 - e) the employees and collaborators of the intermediaries set out in paragraphs a), b) and d) above who work outside the intermediary's premises.
- An intermediary may be registered under one category only.
- The Insurance Code imposes a number of obligations on insurance intermediaries (particularly those registered in sub-sections a) or b)), including, *inter-alia*, several relating to the information to be provided to the Client and to explaining their status, i.e. whether they operate independently or are bound by any contractual obligations to an insurer. In addition, they are required to offer the Client an insurance product fit for its requirements, and to explain clearly the provisions of the policy. These obligations will also be further clarified in regulations to be issued by ISVAP.
- Article 119 of the IC specifies that insurers acting through intermediaries registered in sub-section d) are jointly and severally liable with said intermediaries for any damages caused by the latter to third persons in performing their appointment. However, there is no provision establishing, in general terms, the insurer's liability for any violations of laws and/or any damages caused by intermediaries registered

in sub-sections a) or b). Nevertheless, please note that the regulations recently published by ISVAP provide for some supervisory obligations on insurance companies to ensure compliance with the law by their sales networks. At the moment it is unclear whether ISVAP considers the intermediaries registered in sub-section b) as included in a sales network.

- Finally, pursuant to article 118 of the IC, any payment made in good faith by the Client to an intermediary or to its collaborators is considered to have been made directly to the insurer. This rule does not apply to intermediaries registered in sub-section b), unless the insurer has expressly appointed them to collect premiums. In the event that an intermediary registered in sub-section b) is so appointed, the Client must be informed thereof in the pre-contractual Notes.