

# MARKET BULLETIN

REF: Y4073

<b>Title</b>	Italian intermediaries and premium payments
<b>Purpose</b>	To provide information on the new arrangements for the acceptance of premium on behalf of underwriters by Italian Open Market Correspondents (OMCs).
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<b>Date</b>	5 November 2007
<b>Deadline</b>	31 March 2008

## Background

Market bulletin Y4036 was issued on 6 July 2007;

[http://www.bulletins.lloydsolondon.com/bulletins/mktcirc.nsf/mktBulletins/Y4036/\\$file/Y4036.pdf](http://www.bulletins.lloydsolondon.com/bulletins/mktcirc.nsf/mktBulletins/Y4036/$file/Y4036.pdf)

This gave details of a change of law in Italy following the implementation of the Insurance Mediation Directive (IMD) and the implications regarding the way premium payments are regulated. For Lloyd's this meant that Italian producing brokers now formally needed permission in writing from managing agents to accept premium on behalf of underwriters.

The situation whereby brokers have authority to accept premium on behalf of underwriters is not a new one in Italy. Prior to the implementation of the IMD any payment to the broker would have already been effective as payment to underwriters. This was still an area of uncertainty in Italian law, however, and the procedure has now been formalised through this change in regulation which requires that insurers confirm to brokers that they have authority to accept premium on their behalf.

Following consultation with relevant managing agents and the LMA, Lloyd's wrote to all Lloyd's accredited Open Market Correspondents (OMCs) in Italy giving them temporary authorisation to accept premium on behalf of a number of managing agents. The temporary authorisation given by Lloyd's on behalf of managing agents was only for risks placed until 30 September 2007. The temporary authorisation has since been extended until 31 March 2008 (see below).

## Update

The Lloyd's Italian office (LIO) has now amended the Cooperation Agreement which all OMCs are required to enter into with LIO to be accredited as OMCs in Italy. In addition to certain other changes, the Cooperation Agreement now gives all OMCs the general authority to accept premium on behalf of underwriters. This is detailed in Clause 8 of the agreement, which is attached as Appendix 1.

The revised Cooperation Agreement now needs to be signed by all registered Italian OMCs and this process is being administered by LIO. All OMCs will receive their Cooperation Agreement by 31 December 2007 and the deadline for signing the revised Cooperation Agreement is 31 March 2008. In the meantime, Lloyd's through LIO and with the agreement of managing agents has extended the

temporary authorisation to Italian OMCs to accept premium on behalf of managing agents until this date. Please note however that the further temporary extension of authority given to OMCs will only be on behalf of those managing agents who previously agreed to Lloyd's giving authority to OMCs to accept premium for them.

LIO contacted all Italian registered OMCs in circular 9, issued on 28 September 2007, to inform them of the interim extension of authority and the proposed process for signing the revised Cooperation Agreement.

### **Actions and deadlines**

The amendment to the Cooperation Agreement preserves in Italy what was largely understood to be the legal position before the implementation of the IMD. The position for underwriters is therefore mainly unchanged in Italy. In addition, the amendment to the Cooperation Agreement allows the Lloyd's market to adopt a consistent approach in Italy, while still giving those managing agents who wish to the option to opt out of the "risk transfer" arrangement (see below).

Going forward, therefore, and unless a managing agent opts out of the arrangement, when insureds in Italy pay premium money to an OMC the payment will be deemed to be payment to underwriters, with the legal consequences that may apply in that case. In the circumstances, following the changes made to the Cooperation Agreement, when accepting Italian business, managing agents need to:

1. Consider any credit risk that arises from accepting business through Italian OMCs. LIO checks that the applicant is suitable to act as an OMC, including confirming that the applicant is enrolled in the Italian Intermediaries Register and that it complies with the relevant regulatory requirements. For this purpose, Italian OMCs have to complete the following form before they are given approval to be registered;

<http://www.lloyds.com/NR/ronlyres/8D75AAB3-9B62-46D3-B354-7D7A4C9C16AA/0/ItalyOMCApplication2007.pdf>

**Please note though, that LIO does not carry out detailed checks on the financial strength of the OMC. It is therefore for managing agents to satisfy themselves with regard to any credit risk that may arise.**

2. Implement as necessary appropriate controls to manage the credit risk. This may include having suitable provisions in a TOBA with the OMC.

In cases where managing agents do not wish to give authority to OMCs to accept premium on their behalf, managing agents can disapply Clause 8 of the Cooperation Agreement by agreeing the exception in writing with the relevant OMCs. Note, because it is possible for different managing agents on a risk to have different arrangements regarding "risk transfer" it is important that each managing agent is satisfied with regard to the credit risk arrangements. Managing agents should not, without further investigation, rely on the credit risk checks of the leading underwriter or of other managing agents as those managing agents may have different arrangements in place.

### **Financial Guarantee Fund**

All Italian OMCs have an obligation to belong to the Italian Financial Guarantee Fund. For further details of this please see Appendix II.

**FURTHER INFORMATION**

Please contact:

Lloyd's International Trading Advice (LITA):

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E-mail: [LITA@Lloyds.com](mailto:LITA@Lloyds.com)

Or

Lloyd's Milan

Lloyd's Representative in Italy:

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This bulletin has been sent to active underwriters and the Compliance Officers of Lloyd's brokers and managing agents and for information, to the LMA.

**APPENDIX I: CLAUSE 8 FROM THE ITALIAN COOPERATION AGREEMENT****Collection and payment of premiums**

- 8.1 Unless otherwise agreed on with the Underwriters, the Lloyd's Correspondent is authorised to collect premiums, with such consequences towards the Insured Parties/Contracting Parties as provided for by section 118 of the Insurance Code. Premiums will be collected in accordance with the procedures established by section 47 of the Intermediary Regulation and by any other applicable law provisions. The Lloyd's Correspondent undertakes to notify the Gen. Rep. in writing: i) upon the acceptance of this Agreement, of the details of the bank current account into which the sums payable to the Underwriters will be deposited; and ii) of any change in said current account, within 10 days of the occurrence of any such change.
- 8.2 The forwarding of collected premiums to the Underwriters, net of taxes, shall be governed by the agreement that the Lloyd's Correspondent will execute with the Underwriters by way of the Lloyd's Broker.
- 8.3 In any event, and irrespective of the agreement referred to in point 9.2 above, the Lloyd's Correspondent is required:
- 8.3.1 To send an amount representing the taxes payable on all premiums received during the previous month to the Gen. Rep. by way of a bank transfer with value on the 10<sup>th</sup> day of the month, via one of the current accounts whose details the Gen. Rep. shall advise of separately. By the same date, the Lloyd's Correspondent shall prepare a monthly statement for the taxes on premiums and shall provide it to the Gen. Rep. by e-mail in the form of an excel document as per specimen attached hereto as Annex A, attaching a copy of the documentation attesting that the necessary funds have been transferred to the Gen. Rep.;
- 8.3.2 To fulfil the obligation to verify the identity of the client and promptly send all relevant data to the Gen. Rep., in compliance with the money-laundering regulation in force from time to time. In particular, the Lloyd's Correspondent is required to strictly comply with any instructions given by the Gen. Rep., whether by means of circular letters or otherwise, in this respect.

## APPENDIX II: THE FINANCIAL GUARANTEE FUND IN ITALY

The Guarantee Fund is financed by the contributions that all the brokers (i.e. the insurance intermediaries entered in section B of the Register of insurance intermediaries) must pay every year. The amount of the contribution is equal to a percentage not exceeding 0.5% of the commissions received by each broker: the exact percentage is determined by Isvap (section 115 of the Insurance Code).

2. Article 4.4 of the IMD has been implemented in Italy by the provision of the above Guarantee Fund (that already existed in Italy) and by the following additional provisions:

2.1 Each intermediary must keep the amounts belonging to the insurers and/or the assureds on a specific bank account: such amounts are considered as a separate wealth in respect of the intermediary's wealth (section 117.1 of Insurance Code);

2.2 If an intermediary deals with more than one insurer, he shall adopt adequate measures in order to distinguish the amounts belonging to each insurer (section 54 of Isvap's Regulation no.5/2006);

2.3 Any amount received by an intermediary on behalf of an insurer or an assured shall be deposited into the above-mentioned bank account within 5 days (section 54.2 of Isvap's Regulation);

2.4 The above-mentioned bank account cannot be subject to any attachment proceedings by any person other than the insurers and assureds to whom the deposited amounts belong (section 117.2 of the Insurance Code);

2.5 The obligation mentioned in point 1 above does not apply to any intermediary who is in a position to give evidence, by means of a bank guarantee, that its financial capacity amounts on a permanent basis to 4 % of the sum of the annual premiums received, subject to a minimum of EUR 15,000.00 (section 117.3-bis of the Insurance Code);

2.6 The intermediaries entered in section B of the Register shall comply with the provisions mentioned above only if they are authorized by the insurer to receive premiums and/or pay claims on its behalf (section 54.3 of Isvap's Regulation).