

MARKET BULLETIN

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Title	Germany: The new German Insurance Contract Law (VVG)
Purpose	To provide information on the new German Insurance Contract Law (VVG) and its implications for writing German business
Type	Event
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Related links	www.gdv.org (website of the German Insurance Association, the GDV) http://www.lloyds.com/Crystal/CrystalSearch.aspx

The German Insurance Contract Law (*Versicherungsvertragsgesetz / VVG*), which was first introduced in 1908, has now been completely rewritten. The new version, recently published in the Federal Gazette, will come into force on 1 January 2008.

The new law places emphasis on consumer rights and information. It imposes numerous duties on insurers to inform policyholders about their rights and obligations. This duty to provide information arises prior to, and at the time of, the conclusion of insurance contracts and also during the term of the contracts. An insurer may be subject to a denial of rights where it fails to provide information to the policyholder in the prescribed way. As with the old law, the new VVG will not apply to reinsurance and ocean marine insurance.

In conjunction with this market bulletin the Lloyd's German office will be contacting German coverholders with relevant operating guidelines. Managing agents are reminded that it is their responsibility that coverholders follow relevant operating guidelines and remain compliant.

The main provisions of the new law are set out in Appendix 1.

Transition rules

Covers having incepted before 1.1.2008 will adhere to the old VVG until 31.12.2008. Terms for such covers may be transitioned under the new VVG until 1.1.2009. And such transitions to take effect from 1 January 2009.

Large risks (per EU / VAG – German Insurance Supervision Law definition) are exempt from pre-bind information requirements.

Government Ordinance

In addition, Lloyd's, and the German insurance industry, are still awaiting publication of the main government ordinance which will clarify the separate new consumer information rules. In view of the short notice to the 1 January 2008 deadline, the new consumer information rules will allow for a transition period until 1 July 2008. As soon as details are available they will be placed into the German section of Crystal.

FURTHER INFORMATION

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APPENDIX 1- THE NEW GERMAN INSURANCE CONTRACT ACT - V V G to take effect on 1 January 2008

**Lloyd's German Office (LGO)
Status December 2007**

The Insurance Contract Act / Versicherungsvertragsgesetz (VVG) of 1908 has undergone a major reform and has been completely rewritten. It will take effect on 1 January 2008. Consumer rights and information have gained more relevance under this law.

In the following, please find guidance given by the Lloyd's German Office on the new law.

Please note that the Insurance Contract Act is neither applicable to reinsurance nor to ocean marine insurance.

Large risks as defined in accordance with the EU / German Insurance Supervisory Act (VAG) definition (Annex) and marine / open policies are exempt from statutory restraints set out by the VVG on contractual freedom.

The Essentials of the New Law

The main provisions of the new law are set out below. This overview does not include provisions on private health insurance and life assurance.

The new VVG contains numerous duties of the insurers to inform the policyholders about their rights and obligations. These information duties arise prior to and at the time of the conclusion of the insurance agreements and also during the term of the insurance agreements. An insurer may be subject to a denial of rights where it omits to inform the policyholder in the prescribed way. In particular in the case of claims, the insurer is strongly recommended to seek legal advice to safeguard its rights.

Advice and documentation of consultancy (section 6 VVG)

Prior to the pre-bind contract information per section 7 VVG (infra), insurers are required to provide suitable advice to the customer and to document such advice. Where there is a mandated broker, this requirement is waived for the insurer - it remains for the broker to perform this information and documentation duty (see also the Insurance Mediation Directive and its German implementation). Insurance agents acting on behalf of the insurer perform the obligation of advice also on behalf of the insurer. Bespoke rules apply to distance selling.

Pre-bind contract information, incl. wordings (section 7 VVG)

Contract certainty at time of conclusion of the insurance contract is a key principle of the new law.

Along the VVG-InfoV (Regulation on Insurance Contract Information) a Mandatory Insurer's Disclosure, which replaces the former law's "Consumer Information / Verbraucherinformation", has to feature a catalogue of information which now needs to be submitted to the customer at time of proposal; previously it was possible to combine this with the subsequent policy handover. This Mandatory Insurer's Disclosure is to include the full

policy wordings & conditions and to inform on the cooling-off rights of the assured and the legal consequences thereto. Also, it needs to disclose premium, taxes and the amount of the commission.

The Mandatory Insurer's Disclosure under the aforementioned Regulation needs to be prefaced by a brief Product Information Sheet which provides the customer with a set of initial basic facts of the insurance cover and makes him aware of his obligations.

Large risks (see Annex) are exempt from pre-bind information requirements. Only where the assured of the policy on a large risk is a natural person, the applicable law and the relevant insurance regulator need to be disclosed.

If the insurer wants to deviate in the insurance certificate from previous stipulations, it needs to inform the customer in the insurance certificate as well as in the accompanying correspondence about the deviation and that the deviation will be deemed approved by the customer unless he contradicts within one month after receipt of the certificate in text form, i.e. in writing, by e-mail or by fax.

Assured's right to revoke – legal consequences (sections 8 and 9 VVG)

The assured is entitled to revoke his contractual declaration within two weeks following receipt by him of the full contractual documentation (policy, Mandatory Insurer's Disclosure). The new law obliges the insurer to instruct the policyholder on his right to revoke and the legal consequences of his revocation at the time when the contract documentation is made available to him. A specific government regulation (Widerrufs-Verordnung) addresses the details of the instruction. If the policyholder revokes the contract after the cover commenced, the insurer is obliged to return the premium pro rata for the remaining insurance period. If the policyholder was not duly informed and instructed about his revocation right, the insurer also has to refund the premiums paid for the first year of cover, unless the policyholder has already made a claim under the policy.

The right of revocation is excluded in the following cases:

- where an insurance contract is for less than one month's duration
- where an insurance contract is for preliminary cover, unless via distance selling
- where an insurance contract is concluded with a pension insurer, unless via distance selling
- large risks (see Annex)

Inception / Expiry of cover (section 10 VVG)

Previously was 12.00pm (noon), now the cover commences at 00.00 hrs and ends at 24.00 hrs, respectively.

Prolongation of contract, cancellation (section 11 VVG)

Tacit renewal provisions may only apply for one year each period. Where a policy has no expiry date, it may only be cancelled per the end of the current period of insurance. The cancellation period is a maximum of three months and a minimum of one month. The insurer and the policyholder may agree to waive the cancellation right for up to two years. Contracts with a pre-agreed duration of more than 3 years may be cancelled by the policyholder at the end of the third year or of each subsequent year with a notice period of three months.

Non – disclosure rules modified (section 19 VVG)

Now, the assured needs only to disclose the facts he is asked for. If the assured violates his duty to disclose, the insurer may withdraw from the contract with immediate effect. Where the assured's breach of his duty to disclose was neither wilful nor grossly negligent, the insurer may cancel the contract with a one month's notice period. The insurer's right of withdrawal or cancellation is excluded if the insurer would have concluded the contract even though he would have been aware of the non-disclosed circumstances, albeit possibly on other terms and conditions, unless the assured acted wilfully. These other conditions will upon request of the insurer take effect retroactively and in the case of a no-fault breach of duty by the policyholder, from the current insurance period. Under certain circumstances, the policyholder may terminate the contract after such a change of conditions. The insurer has to inform the policyholder about this right of termination. The insurer may only make use of its rights of withdrawal, cancellation or amendment within one month after it received knowledge of the violation of the duty to disclose. The right of avoidance of the contract on the grounds of fraudulent deception by the assured remains in force.

The insurer is obliged to inform the policyholder about his rights and obligations in connection with the pre-contractual disclosure duty.

Additional risk rules modified (section 23 VVG)

In the case of an exposure of policyholders to additional significant risk, by themselves or third parties, the insurer may – within one month after it receives knowledge of this – either cancel the contract or amend it by increasing the premium or excluding the additional risk from the cover. The cancellation period depends on the policyholder's degree of fault. Under certain circumstances, the policyholder may terminate the contract after such an amendment of the change of conditions. The insurer has to inform the policyholder about this right of termination. If an insured event occurs after additional risks have been assumed, the insurer may be released from its duty of indemnification (if the policyholder acted wilfully) or its duty of indemnification may be reduced (if the policyholder acted with gross negligence). No reduction of the insurer's payment duty will occur where the insured event or the extent of the insurer's obligation was not caused by the additional risk or where the insurer had omitted to cancel the contract within one month after it knew about the additional risk.

Breach of assured's obligations: "All or Nothing" – principle removed in favour of "More or Less" rule, i.e. the principle of proportionality (section 28 VVG)

The categorical right of refusal by the insurer to pay claims when duties / obligations of the assured were violated are now relaxed in favour of the assured. Breach of contractual obligations by the assured will no longer lead to a full rejection of the claim. Instead, there will be a grading of fault: simple negligence by the assured shall no longer result in a relief of the insurer from performance. Where the contract has stipulated that the insurer is released from indemnification when the policyholder has violated contractual obligations, performance by the insurer in the case of gross negligence will be reduced commensurate with the degree of fault of the assured. The insurer will maintain his right of refusal to indemnify where there is wilful / intentional breach of obligations. These stipulations will take effect only where the insurer has separately informed the policyholder thereof. When a breach of obligation by the assured was neither causal for the occurrence nor for the ascertainment of the event insured or for the ascertainment or scope of the insurer's duty to indemnify, the insurer shall remain liable for indemnification unless there is wilful deceit on the part of the assured. Where the policyholder has violated a duty to inform or clarify after an event insured, the aforementioned rights of the insurer to refuse indemnity in part or in whole, have as a precondition that the insurer has informed the policyholder of these legal consequences in

text form.

Default of payment of first or single premium (section 37 VVG)

Where the assured is not at fault in not having paid the first or single premium, the insurer shall not have the right to withdraw from the policy. Where the first or the single premium has not been paid when an insured event occurs and the policyholder is at fault, the insurer is released from indemnification, but needs to have pointed at this legal consequence in text form or in highly visible format in the policy.

Changes to the insurance contract (section 40 VVG)

If the insurer increases the premium or decreases the cover under an insurance contract based on a contractual provision allowing for such adaptation of conditions, the insurer needs to inform the policyholder in the respective notification about his right to terminate the contract under certain preconditions. The notification needs to be provided to the policyholder one month prior to the effectiveness of the adaptation.

Provisional cover (section 49 VVG)

Where the provisional nature of a cover is the main element of insurance, the parties may agree that pre-bind consumer information requirements are only supplied on demand and at the latest when the insurance policy is handed over.

Introduction of pro-rata premium when cover is cancelled (section 39 VVG)

Previously, full premium could be charged even when cover was cancelled. Now the insurer is only entitled to a pro rata premium for the period of cover.

Intermediaries – alleviations for large risks (section 65 VVG)

Where intermediaries mediate large risks per the EU / VAG definition (see Annex), the specific advisory duties as well as the documentation duties are not compulsory.

Loss caused by the assured (section 81 VVG)

Wilful loss causation by the assured will lead to release of the insurer from indemnity. Gross negligence by the assured will release the insurer only to the degree of the assured's fault.

Direct claim extension (section 115 VVG)

In addition to direct claims against the insurer in Compulsory Motor Liability Insurance, a direct claim against the insurer may be made by the third party in cases where the insolvency of the insured encumbers the claim or where the insured's domicile is unknown.

Insurance for occupational disablement (sections 172 seq. VVG)

Insurance for occupational disablement has received a complete chapter and defines what constitutes occupational disablement (partial or total disablement to perform the profession

last exercised).

Personal accident insurance (sections 178 seq. VVG)

An increase in peril is to occur only where it is considered as constituting such following an express agreement hereon in text form.

Reinsurance & Ocean Marine (section 209 VVG)

These classes are exempted from the provisions of the VVG.

Exemptions from the restraints on contractual freedom (section 210 VVG)

Large risks per the EU VAG definition (see Annex) and floating / open policies are exempt from statutory restraints set out by the VVG on contractual freedom. However, when deviations from the legal situation under the VVG are agreed by general conditions, the provisions of the Civil Code (BGB) on general terms and conditions of trade need to be observed.

Statute of limitations (section 195 BGB / Civil Law Code)

Now 3 years both for non-life insurance (previously 2 years) and for life assurance (previously 5 years). Special transition provisions apply to covers incepting before 1.1.2008 (Art. 3 EGVVG / Introductory Law to the Insurance Contract Law).

Transition periods (Art. 1 EGVVG / Introductory Law to the Insurance Contract Law)

Covers having incepted before 1.1.2008 will adhere to the old VVG until 31.12.2008, transition of stipulations for such policies along the new VVG may be made until 1.1.2009 and taking effect from 1 January 2009.

The 6 months limitation period for court action following refusal of claim by the insurer and notification of legal consequences of lapse of period to the assured is no longer contained in the new VVG but will remain in force for limitation periods triggered before 1.1.2008.

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Annex

Large risks are defined as:

- (i) risks classified under classes 4 (railway rolling stock), 5 (aircraft), 6 (ships), 7 (goods in transit), 10b (liability for land transports) 11 (aircraft liability) and 12 (liability for ships) under Annex A to the Insurance Supervision Act (VAG);
- (ii) risks classified under classes 14 (credit) and 15 (suretyships) under Annex A to the VAG where the policyholder is engaged professionally in an industrial or commercial or mining activity or in one of the liberal professions, and the risks relate to such activity;
- (iii) risks classified under classes 3 (land vehicles – own damage claim), 8 (fire and natural

forces), 9 (hail, frost and other damage to property), 10 (land vehicles liability), 13 (general liability) and 16 (miscellaneous financial loss) under Annex A to the VAG so far as the policyholder exceeds the limits of at least two of the following three criteria:

- balance-sheet total: 6.2 m EUR

- net-turnover: 12.8 m EUR

- average number of employees during the financial year: 250

If the policyholder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC are drawn up, the criteria mentioned above shall be applied on the basis of the consolidated accounts.