

MARKET BULLETIN

REF: Y4224

Title Austria: Freedom of Establishment Authorisation and General Representative

Purpose To inform the market that Lloyd's has obtained establishment authorisation in Austria and appointed a General Representative in Austria.

Type Event

From Cameron Murray, Senior Manager, International Regulatory Affairs,
International Market Access

Date 18 December 2008

Deadline With immediate effect

Related links

Summary

Lloyd's has received authorisation to write insurance business in Austria on a freedom of establishment basis.

Lloyd's has appointed Dr Harald Svoboda of the law firm Kubac, Svoboda & Kirchwegger Rechtsanwälte in Vienna as its General Representative for Austria.

Background

Following the granting of establishment authorisation in Austria, Lloyd's underwriters are permitted to underwrite all classes of insurance in Austria on a freedom of establishment basis with immediate effect. This is with the exception of compulsory third party motor liability insurance (Class 10) and life business.

Freedom of establishment authorisation permits insurance to be written in the territory (Austria) by a branch of an insurance undertaking whose head office is located in another EU member state. For the purposes of Lloyd's, this permits Lloyd's underwriters to appoint coverholders in Austria to write Austrian business and provides the opportunity for managing agents to establish service companies in Austria.

Lloyd's status as a freedom of services insurer in Austria also remains and is unchanged.

For information on trading in Austria, please refer to the Crystal page for Austria:
<http://www.lloyds.com/Crystal/>

Austria requires insurers carrying on business in their territory on a freedom of establishment basis to comply with the 'general good' conditions. These conditions have been incorporated into the Crystal page, but for further information and the concept of the 'general good' please refer to Appendix 1.

Lloyd's General Representative

It is a requirement of the freedom of establishment authorisation to appoint a general representative in Austria. Contact details of Lloyd's General Representative for Austria are:

Dr Harald Svoboda
 Lloyd's General Representative in Austria
 C/O Kubac, Svoboda & Kirchwegger Rechtsanwälte
 Kantgasse 3
 A-1010 Vienna
 Austria
 Tel: + 43 (0)1 713 07 13
 Fax: + 43 (0)1 713 24 21
 Email: harald.svoboda@ksk-lawyers.com

Lloyd's General Representative must be nominated as service of suit for establishment business.

Please note that the Lloyd's representative in Austria is a "type 1" legal representative office which is the minimum required to enable underwriters to conduct establishment business. As such the office does not provide any additional services and underwriters wishing to obtain more information about business opportunities or market development in Austria should contact either the Lloyd's representative office in Germany, or International Markets department in London.

FIL Codes

The standard EU definition of the "Member State where a risk is situated", as set out in the EU 2nd Non-Life Insurance Directive, should be used to determine whether a risk is situated in Austria. The definition of a risk in Austria is also available on Crystal.

The following FIL codes have been introduced and should be used with immediate effect:

Placing Route	FIL Code	Market Code
Austrian risk placed under a full binding authority held by a coverholder in Austria (Establishment)	AUH1	PQ

Austrian risk not placed under a full binding authority held by a coverholder in Austria (Services)	AUJ1	PU
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The previous insurance FIL codes for Austria will no longer be used on new premiums and AP/RP (including declarations off of binding authorities). However, where corrections are made to entries originally processed using these codes, they will continue to be used. New claims must be set up using the applicable FIL codes from the tables above, which may therefore differ from the FIL code that applied to the premium to which they relate. Movements and settlements to existing claims should continue to be processed using the FIL code that applied when the claim was first established.

The current Austrian reinsurance FIL codes remain valid and unchanged:

Reinsurance		
Facultative	Non-proportional treaty	Proportional treaty
AUA2	AUA3	AUA4

Taxation

There are no additional taxation requirements or other fiscal charges. Please refer to the taxation section of the Crystal page on Austria for information on the current requirements.

Managing Agents who are considering setting up a service company to write establishment business in Austria are reminded that they must obtain their own tax advice based on their individual operations and activities to ensure all Austrian tax obligations are met.

Further Information

If you require additional information or wish to discuss this matter in more detail, please contact initially:

Lloyd’s International Trading Advice

Lloyd’s Desk, Ground Floor, Underwriting Room

Telephone: 020 7327 6677

Email: LITA@Lloyds.com

www.lloyds.com/crystal

Appendix 1

General good

Whilst the financial supervision of insurers is carried out on a home state basis, there are certain aspects of insurance supervision which remain exclusively subject to 'host state' supervision within the EU framework. Article 28 of the 3rd Non-Life Directive states that:

"The Member State in which a risk is situated shall not prevent a policyholder from concluding a contract with an insurance undertaking...as long as that does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated."

The regulatory authorities of a Member State in which a risk is situated therefore require an insurer to comply with its 'general good' provisions. Such provisions may include those concerning marketing and selling and contract law in respect of 'mass' (i.e. principally personal lines) risks.

The Directives do not define the concept of "general good". However a European Commission Interpretive Communication issued in 2000 provided some clarification on this point. The Interpretive Communication stated that:

"For such a measure to be justified as being in the general good, it:

- must not have been harmonised at Community level;
- must be non-discriminatory;
- must be justified by imperative requirements in the general interest;
- must be objectively necessary;
- must not duplicate rules of the country of origin;
- must be proportionate to the objective pursued."

The interpretive communication can be found at:

<http://europa.eu.int/scadplus/leg/en/lvb/l24227.htm>

Premium taxes and other fiscal charges are also subject to the rules of the country where the risk is located.

The general good conditions for Austria can be found here:

<http://www.fma.gv.at/cms/site/EN/einzel.html?channel=CH0151>

The conditions have been incorporated into the Austria Crystal page.