

MARKET BULLETIN

REF: Y4225

Title Poland: Freedom of Establishment Authorisation and General Representative

Purpose To inform the market that Lloyd's has obtained establishment authorisation in Poland and established a corporate General Representative

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 Poland on a freedom of establishment basis.

Lloyd's has established a corporate representative in the form of Lloyd's Polska sp. z o.o (Lloyd's Poland Limited). Mr Witold Janusz was recently appointed as Lloyd's Country Manager for Poland and as President of Lloyd's Poland Limited.

Background

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

Freedom of establishment authorisation permits insurance to be written in the territory (Poland) 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 Poland to write Polish business and for managing agents to establish service companies in Poland.

Lloyd's status as a freedom of services insurer in Poland also remains.

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

Poland 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 background on the concept of the ‘general good’ please refer to Appendix 1.

Lloyd’s General Representative and Country Manager

It is a requirement of the freedom of establishment authorisation to appoint a general representative in Poland. Lloyd’s has chosen to appoint a corporate representative, Lloyd’s Poland Limited, which will be headed up by Lloyd’s Country Manager for Poland, Witold Janusz. The contact details are as follows:

Mr Witold Janusz
 President
 Lloyd’s Polska sp. z o.o
 Warszawskie Centrum Finansowe
 ul Emilii Plater 53
 00-113 Warszawa
 Poland
 Tel: + 48 602 247 478
 Email: witold.janusz@lloyds.com

Lloyd's Poland Limited should be nominated as service of suit nominee for establishment business.

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 Poland. The definition of a risk in Poland 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
Polish risk placed under a full binding authority held by a coverholder in Poland (Establishment)	PLF1	UY
Polish risk not placed under a full binding authority held by a coverholder in Poland (Services)	PLG1	UZ

The previous insurance FIL codes for Poland 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 Polish reinsurance FIL codes remain valid and unchanged:

Reinsurance		
Facultative	Non-proportional treaty	Proportional treaty
PLA2	PLA3	PLA4

Appointment of Coverholders

Polish law on insurance mediation distinguishes between insurance agents (who act for the insurer) and insurance brokers (who act for the insured). Accordingly, only insurance agents in Poland may act as coverholders and be given binding authorities by underwriters at Lloyd's.

The establishment of a new insurance agent, or the appointment of an existing insurance agent, must be notified to the Register of Insurance Agents. The use of insurance agents also imposes certain other obligations on the insurer. Please refer to Appendix 2 for further details.

Taxation

Please refer to the taxation section of the Crystal page on Poland for information on the current requirements.

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

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 Poland can be found here:

http://www.knf.gov.pl/en/Images/zasady_dobra_ogolnego_Eng_tcm21-8581.pdf

The conditions have been incorporated into the Poland Crystal page.

Coverholders in Poland

Summary Guidance

The following summarises the key requirements of Polish law in respect of the appointment and use of coverholders in Poland.

Background

The key provisions are found in the Act of May 22, 2003 (“the Act”) on insurance mediation (and various regulations made under that Act). The Act stipulates that insurance mediation shall be performed exclusively by either “insurance agents” or “insurance brokers”, who must be registered as such. An insurance agent acts on behalf of an insurance undertaking, and may perform “agency acts” (as defined); an insurance broker acts on behalf of an entity seeking insurance coverage, and may perform “brokerage acts” (as defined). An insurance agent may not perform brokerage acts and an insurance broker may not perform agency acts.

In view of the above, a managing agent may only appoint a registered insurance agent (or a new entity to be registered as an insurance agent) as a coverholder. Lloyd’s would expect the obligations on an insurance undertaking as described below to be complied with by the relevant managing agent, with the assistance of their advisers and Lloyd’s or Lloyd’s Polska sp.z.o.o as necessary.

Key requirements

- **Registration:** an insurance undertaking must submit an application (plus supporting documents) for registration of an entity with which it has concluded an insurance agency contract within fourteen days of the conclusion of that contract (article 38). If the entity is an existing agent, the insurance undertaking must submit a notification of changes to the agent’s registration. A Regulation of the Minister of Finance dated 4 July 2005 stipulates how the application or notification must be made and lists the supporting documentation to be provided. *Managing agents must ensure that these requirements are met. Witold Janusz will be able to assist in this regard.*
- **Power of Attorney:** article 12.1 of the Act requires the insurance undertaking to grant a POA to the insurance agent to perform agency acts on its behalf. Article 12.2 stipulates what must be specified within the POA, namely:
 - (i) the scope of the insurance agent’s activities indicating the class and groups of insurance;
 - (ii) the amount of the maximum sum insured for which the insurance agent may conclude a single insurance contract;
 - (iii) the territorial scope of an insurance agent’s activities.

There is no standard form POA available. Managing agents must ensure both that the statutory requirements are met, and that the POA is consistent with the binding authority given by them to the insurance agent.

- Training: natural persons conducting agency activities (whether on their own account or as employees of a corporate insurance agent) are required to undergo a training course and sit an exam set by the insurer. The amount of training required depends on whether the person is newly established as an insurance agent or is an existing agent who already acts for other insurers. Further guidance on the training requirements is set out in a Regulation of the Minister of Finance dated 7 July 2005. *Managing agents should contact Witold Janusz for further information on how the training requirements can be met.*
- Changes to Register: the insurance undertaking must notify any changes of data on the Register of Insurance Agents within seven days of becoming aware of the change (article 41).
- Stamp duty: a fee of PLN 110 applies both to applications to register an insurance agent on the Register and to changes to the details of an existing registration. The fee is payable to the tax authority applicable to the seat of the KNF. *Managing agents should contact Witold Janusz for details of the payee's bank account for payment purposes.*
- Termination: on termination of an agency contract, the insurance undertaking must apply to the supervisory body (KNF) to remove an insurance agent from the Register no later than seven days after the date of termination (article 42.1). *Managing agents are requested to notify Witold Janusz in advance of the submission of such an application.*
- Liability for damage: the insurance undertaking is liable for damage caused by the insurance agent in performing agency acts on its behalf unless the agent acts on behalf of more than one insurance undertaking, when the agent shall be liable (articles 11.1 and 11.2).
- Supervision: article 18 requires the insurer to exercise supervision over the insurance agent acting on its behalf. *Managing agents should take steps to satisfy themselves that they are exercising the appropriate level of supervision over the insurance agent.*
- Compulsory insurance: insurance agents acting on behalf of more than one insurance undertaking in the field of the same branch of insurance are subject to compulsory civil liability insurance. *Managing agents should ensure that any insurance agents that they appoint comply with this requirement (if applicable).*