

# MARKET BULLETIN

REF: Y4249

<b>Title</b>	Draft new Swiss Insurance Contract Law for consultation
<b>Purpose</b>	The Swiss Federal Council initiated consultation proceedings for the revision of the Swiss Insurance Contract Law and has published the draft law for consultation. This bulletin highlights the main issues and requests market feedback.
<b>Type</b>	Event
<b>From</b>	Cameron Murray, Senior Manager, International Regulatory Affairs General Counsel's Division
<b>Date</b>	9 March 2009
<b>Deadline</b>	1 May 2009
<b>Related links</b>	<a href="http://www.efd.admin.ch/dokumentation/gesetzgebung/00571/01345/index.html">http://www.efd.admin.ch/dokumentation/gesetzgebung/00571/01345/index.html</a>

## Draft Swiss Insurance Contract Law

The Swiss Federal Council recently initiated consultation proceedings for the revision of the Swiss Insurance Contract Law and has published the draft law. This draft law will replace the outgoing Insurance Contracts Act of 1908 and amend a small number of provisions of the Insurance Supervisory Law. It will apply to direct insurance and not to reinsurance.

Generally, the draft has a pro-consumer focus, with attention on policyholder protection and extending information obligations on the insurers in the pre-contractual and contractual process. The proposed changes will also have an impact upon the operation of insurance brokers in Switzerland with a possible knock-on effect on the Lloyd's market as our distribution model in Switzerland relies heavily on brokers. The draft law places restrictions on broker remuneration and, depending upon implementation, could prevent brokers from acting as coverholders.

Lloyd's has reviewed the draft law and has selected the following areas which we believe to be of the highest importance to the market. It is important to understand how the draft law will impact upon your business and we would be grateful to receive any feedback by 1 May 2009 which will be taken into consideration when formulating our submission to the Federal Department of Finance.

The draft law is not available in English but the German, French and Italian versions can be found via the link in the related links section above.

## **Analysis of draft Swiss Insurance Contract Law**

### Types of insured

In general the draft law does not differentiate between private/individual insureds and commercial insureds. Its provisions are generally mandatory and offer the parties little scope for deviation (or if so, in favour of the insured only). The provisions are non-mandatory for large risks (i.e. MAT, credit and suretyship insurance and certain commercial risks where the insured meets two of the following three criteria: balance sheet value of €6.2m, turnover of €12.8m, 250 employees or more).

### Pre-contractual duty to inform

The draft law requires that the insured is furnished with the general insurance conditions, the insurer's identity and the essential content of the contract sufficiently in advance of the acceptance. This includes the following information:

- the insured risks;
- the extent of insurance coverage;
- the premiums owed, the question of gender-specific premium differences, the manner of premium payment and additional duties of the policyholder;
- insurance period and termination of contract;
- right of recall (policyholders are entitled to a cooling-off period of 2 weeks)
- processing of personal data including the purpose and type of data collection as well as recipient and storage of data;
- a clause stating that coverage starts with the payment of the premium only (if applicable);
- a clause stating the time-limit for notification of loss (if applicable)

### Statute of limitations

The draft law proposes that the statute of limitations be five years. Under the current law, the statutory period is two years.

### Insurance broker remuneration

It is proposed that the broker's fee be payable only by the policyholder. Any payments, commissions, fees or other pecuniary benefits received from the insurer must be handed over to the policyholder. The policyholder may relinquish this right in writing but only to the extent that these payments are used as credit for the broker's fee.

The broker must inform the policyholder of its duty to pass payments received from the insurer on to the policyholder and provide information on the type, amount and calculation basis of any payment received from the insurer that is directly or indirectly related to the policyholder's contract.

### Insurance intermediary activity

The draft law states that the insurance broker is the agent of the policyholder and that any declarations made during contract negotiations are deemed to be the acts and declarations of the policyholder.

Furthermore, an insurance intermediary may not act as both an insurance broker and an insurance agent at the same time and the intermediary must advise the policyholder on which basis it is acting.

Depending upon implementation this could mean that a broker would be unable to act as a coverholder.

### Third party liability claims

For personal injury and property damage the injured party should be informed by the insured of the existence and details of any liability coverage held. The injured party has a direct claim against the liability insurer.

### Claims payment period

For all third party liability claims the insurer must provide the insured and/or the injured party, within 3 months following receipt of the loss advice or claim, with a substantiated offer if coverage is accepted or with a detailed opinion if coverage is denied or if the claim cannot yet be assessed. If the insurer fails to provide the insured and/or the injured party with its offer or opinion, and does not correct its failure within 4 weeks, it is presumed that the claim is valid.

### Insurance Ombudsman

A proposed amendment to the Insurance Supervisory Law provides that insurers and insurance intermediaries establish an insurance ombudsman office. Insurers must then become members. The form this office will take is currently unknown.

### **Feedback**

In order that Lloyd's may formulate and submit a considered response to the Swiss Federal Council within the deadline we would be grateful to receive all feedback by no later than 1 May 2009.

Please direct your comments to:

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## Summary

- The draft law will apply to direct insurance but not reinsurance.
- A pro-consumer focus with increased obligations on insurers in the pre-contractual and contractual process.
- Restrictions on broker remuneration.
- Possible inability for a broker to act as a coverholder.
- Increased responsibility on management of claims with regard to third party liability insurance.
- Set up of an insurance ombudsman office.

## Further Information

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

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