

MARKET BULLETIN

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Title	Portugal: Policy production guidelines and new address for Lloyd's representative office
Purpose	To provide the market with guidelines on issuing a compliant Portuguese contract of insurance and to advise the new address of the Lloyd's representative office in Portugal
Type	Event
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Deadline	
Related links	

Policy Production Guidelines

Lloyd's has prepared the attached Policy Production Guidelines to help the market draft contracts of insurance that are compliant with Portuguese legal requirements.

Lloyd's Representative Office in Portugal

With effect from 9 April 2012, the address of the Lloyd's representative office will be:

Lloyd's Sucursal em Portugal
c/o Cruz, Menezes & Associados, Sociedade Civil de Advogados, R.L.
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Further Information

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PORTUGAL: POLICY PRODUCTION GUIDELINES

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VERSION 1.0

DISCLAIMER

Lloyd's provides this document (the Document) for general information purposes only. This Document provides general guidelines about certain key aspects to take into account when producing insurance documentation subject to Portuguese law. Therefore, this Document is not, and does not purport to be, a complete account of all matters that are or may be material when producing a specific Portuguese contract of insurance.

The information contained in this Document is correct to the best of Lloyd's knowledge at the time of publishing but may change over time. The Document is reviewed and updated from time to time. If you have further enquiries regarding this Document, please contact Lloyd's Iberia Representative SLU.

These guidelines should not be relied upon for any specific purpose and do not replace nor substitute any specific legal advice that Underwriters may require. Observance of these guidelines does not ensure full adaptation and compliance with the applicable legislation to each specific line of business.

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INSURED'S RIGHT TO RECEIVE A CONTRACT OF INSURANCE

EXECUTIVE SUMMARY

Portuguese insurance legislation provides the duty for the insurer to provide the policyholder with the contract of insurance in writing, duly dated and signed. Cover notes issued by Lloyd's brokers or non-Lloyd's brokers do not replace the contract of insurance.

The insurer may provide the insured with the written contract, either directly or indirectly (i.e. through coverholders or brokers).

The insurer should not only provide the insured with the contract of insurance but also ensure that the contract is drafted in accordance with the Portuguese Insurance Contract Act, where applicable and, in any event, with the general good requirements which always apply even in the case of application of another law.

The Portuguese legal system is very protective of the insured's rights. Therefore, non-compliance with Portuguese legal requirements may have severe consequences for Underwriters and, ultimately, increase legal and reputational risks for Lloyd's as a whole.

These guidelines set out a number of points that Underwriters, Lloyd's brokers and coverholders should take into consideration when preparing a Portuguese contract of insurance. The list here is not exhaustive. In summary:

- **Can the MRC be used as the contract of insurance for Portuguese risks?**

Yes, the MRC can be used as the contract of insurance as long as it complies with all Portuguese legal requirements. These guidelines are intended to provide underwriters with general advice on how to draft the MRC in a compliant manner. For example regarding the requirement to highlight certain clauses in bold and in a larger font, insert compulsory statements and the signing of the MRC by the insurer. Underwriters should however seek their own local legal advice to ensure compliance.

- **Structure of a contract of insurance**

The validity of the contract of insurance does not depend on observing a specific form. However, the contract of insurance should contain Particular Conditions (Schedule), Special Conditions (if any) and General Conditions. See below for further guidance.

- **Other important insurance documents**

In addition to the contract of insurance itself, there are other important insurance documents to be taken into account, in particular the proposal forms, which should be completed by

prospective policyholders but using model forms provided by the insurer.

- **Follow the basic rules**

Underwriters, Lloyd's brokers and coverholders are advised to follow three rules that, in our experience, should always be considered when drafting Portuguese contracts:

- ▶ use clear and understandable wordings adapted to the Portuguese terminology;
- ▶ draft the contract in the language agreed with the policyholder;
- ▶ do not underestimate the importance of local legal advice.

- **Clear identification of the insurer is paramount**

Portugal is not very familiar with the concept of Lloyd's as an insurance market. Hence, it is important to clearly identify the insurer assuming the risk (which is compulsory information).

The Association of Underwriters known as Lloyd's is a licensed "insurer" registered with the ISP (the Portuguese Insurance Regulator). Moreover, Portuguese customers should be made aware that they are insured at Lloyd's and, therefore, benefit from the Lloyd's financial strength and security. A good and clear identification of all the participating Lloyd's syndicates along with the use of Lloyd's brand is very important in achieving this.

- **Compulsory statements and clauses**

Portuguese insurance legislation provides a list of compulsory statements and clauses that must be included in any Portuguese contract of insurance. The purpose of these guidelines is not to list them all but to mention the most generally applicable ones. There are also specific clauses and statements that may apply to certain classes of insurance that are not listed here.

- **Clauses to be highlighted in bold and in a larger font.**

Portuguese law stipulates the clauses and provisions that must be highlighted in bold and in a font larger than the rest of the wording. Lack of compliance entitles the policyholder to terminate the contract, with retroactive effect within 30 days of receipt of the policy and gives the policyholder the right to be reimbursed of the premium paid and the right to request the amendment of the policy at any time.

BASIC RULES FOR PRODUCING A COMPLIANT CONTRACT OF INSURANCE

Comprehensible, concise and rigorous wordings

1ST RULE: DRAFTING CLEAR AND PRECISE WORDINGS

The Portuguese Insurance Contract Act (hereinafter, PICA) expressly provides that contracts of insurance must be drafted in a comprehensible, concise and rigorous manner and printed in very legible characters. Furthermore, the law provides that usual language and expressions should be used when the use of technical or legal language was not essential.

Otherwise, Courts may construe any ambiguous or confusing condition or term against the interests of the party that imposed its inclusion in the contract.

The most common reasons for drafting unclear wordings are direct translations of English wordings into Portuguese, use of inappropriate terminology or misleading legal concepts. The consequences are always against the insurers' interest and they may be very severe.

By contrast, a contract of insurance drafted in clear terms, using the appropriate Portuguese terminology and with an understandable structure is one of the best marketing tools for Underwriters.

Language

2ND RULE: USING THE LANGUAGE THAT THE POLICYHOLDER AGREES

PICA states that the contract of insurance shall be drafted in Portuguese. However, if requested by the policyholder, the contract may be drafted in another language. Therefore, contracts of insurance drafted in English are acceptable subject to the agreement of the insured. In that case, an appropriate language clause should be inserted. Lloyd's has drafted Language Clause LSW1693 for this purpose and it is available on the Lloyd's Wordings Repository.

It is common practice to issue insurance documents both in Portuguese and English simultaneously. This practice is not forbidden by law but this approach must be taken with care as it may give rise to misunderstandings and confusion. In case of conflict, the Portuguese version will prevail.

In the case of compulsory insurances, the contract of insurance must be drafted in Portuguese. Underwriters may issue versions in English or other languages but the **Portuguese one will always prevail**.

The importance of local legal advice

3RD RULE: SEEKING LOCAL LEGAL ADVICE IS IMPORTANT

It is strongly recommended to seek local legal advice, in order to ensure specific circumstances are taken into account when writing different types of insurance/risks. PICA identifies specific requirements with regard to some types of insurance such as fire, crops and livestock, transportation, legal expenses and life.

Underwriters are encouraged to seek professional advice in Portugal to ensure that policies comply with Portuguese law. A straightforward translation may not necessarily meet all legal requirements.

**UNDERWRITER MUST
ENSURE THAT PRE-
CONTRACTUAL
INFORMATION IS
PROVIDED**

PRE-CONTRACTUAL DUTIES

Pre-contractual information duty of the insurer

Portuguese insurance legislation requires an insurer to ensure that a prospective policyholder receives certain information in writing **prior** to the conclusion of the contract of insurance.

This is a duty for the Underwriter rather than for any coverholder or intermediary involved. If the business is arranged under a binding authority, the coverholder should be given clear instructions in order to provide the prospective insured with the appropriate pre-contractual information. If the contract is arranged on an open market basis, the Underwriter should ensure that the broker complies with this legal requirement.

Pre-contractual information must be clear, in writing and in Portuguese, unless the policyholder specifically requests the use of another language.

The content of the pre-contractual information includes information about the insurer, the EU Member State in which it is domiciled and its insurance regulator, the proposed terms and conditions (including coverage, exclusions and limits; premium or the calculation method, bonuses; duration); the proposed applicable law and the claims/complaints procedures. The draft MRC may be used as “pre-contractual information document”, but underwriters should ensure that all the required information is inserted.

To assist underwriters, Lloyd’s has drafted two standard pre-contractual notice clauses for non-life business that may be used. One applies to freedom of services and the other to establishment business. Please refer to the Insurance documentation section of Crystal for these notices.

The pre-contractual information is provided together with the quotation, upon receipt of the insurance proposal duly signed by the prospective policyholder.

PICA provides a special duty of clarification for the insurer when the complexity of the cover and the premium to pay or the insured capital justify it. This, however, does not apply when an insurance intermediary is involved or to large risks.

The pre-contractual information must be consistent with the contract of insurance, if this is finally concluded. Also, the insurance proposal must contain an attesting statement, by virtue of which the policyholder confirms that the pre-contractual information was provided. Otherwise, the policyholder may terminate the contract and shall be reimbursed any payment made. The policyholder will have also the right to terminate the contract if the conditions of the contract are not in accordance with the pre-contractual information which was provided.

What happens if the Underwriter does not provide the pre-contractual information?

Failure to provide the pre-contractual information may result in the Underwriter having to indemnify the policyholder for any eventual damage that the breach of this obligation may cause.

In addition, the policyholder may have the right to rescind the contract of insurance and be reimbursed for the premium paid.

The disclosure duty of the policyholder / insured

According to PICA, the policyholder or the insured has the obligation to disclose, prior to entering into the contract of insurance, all the circumstances that he/she is aware of, which may be relevant for the risk assessment, even if not specifically requested in the questionnaire eventually provided by the insurer for that purpose.

What happens if the policyholder / insured does not provide accurate / complete information?

The consequences are different depending on whether the policyholder acted fraudulently or just negligently.

In the first case, the contract of insurance may be annulled. Consequently, the insurer would not be obliged to cover any claim which may occur before the awareness of the policyholder's infringement or within the following 3 months.

In the second case, the insurer may decide to amend the contract of insurance and readjust the premium or cancel the contract, if it may be demonstrated that the insurer does not, under any circumstances, cover risks with the characteristics of the omitted or inaccurately declared facts.

**THE POLICYHOLDER
SHOULD DISCLOSE
RELEVANT INFORMATION**

**UNDERWRITERS SHOULD
INFORM ABOUT THE
DISCLOSURE DUTY**

Prior to completion of the contract of insurance, Underwriters must inform the prospective policyholder / insured about the disclosure duty and the consequences of non-compliance. Otherwise, the Underwriter may incur a liability and in some circumstances the contract of insurance may not be valid.

INSURANCE DOCUMENTATION

The proposal form and the quotation

**THE PROPOSAL IS THE
FIRST STEP IN THE
CONTRACTING PROCESS**

The insurance proposal

The insurance proposal is the document whereby the prospective policyholder expresses the intention of entering into a contract of insurance and provides information on the risk to be insured.

Very frequently, the insurer provides the prospective policyholder with its own model of insurance proposal. A questionnaire may be inserted in the insurance proposal with the questions which are relevant for the insurer in order to assess the risk. The prospective policyholder should answer accurately and completely, and include any relevant information, even if not specifically asked.

The proposal form must always include a statement indicating that the pre-contractual information was given to the prospective policyholder before the completion of the contract of insurance.

It is crucial that the insurance proposal is signed by the prospective policyholder.

**POLICYHOLDER'S
SIGNATURE IN THE
PROPOSAL IS CRUCIAL**

The quotation

Upon receipt of the duly filled out and signed insurance proposal, the insurer will assess the risk and calculate the premium. The quotation, if not previously provided, is provided with the other pre-contractual information.

Insurance policy, contract of insurance and certificate of insurance

According to PICA, a ***contract of insurance*** is the contract by virtue of which the insurer agrees, when an event occurs (the risk of which is the object of the coverage), to indemnify, within the agreed limits, the damage suffered by the insured or to pay a capital sum, a rent or other agreed compensation, while the policyholder agrees to pay the correspondent premium.

PICA uses the words "***policy***" and "***insurance policy***" as synonyms of "contract of insurance".

In contrast, a "***certificate of insurance***" is a document which confirms that a contract of insurance exists and is valid. The certificate may be given by the insurer or the intermediary.

In the UK, a "certificate of insurance" may also refer to the document issued by a coverholder evidencing the existence of insurance cover and stating the terms of such cover. In these circumstances no policy of insurance is issued.

Please note that the above definition of certificate issued by coverholders does not exist in Portugal. Therefore, insurance documents issued by coverholders in Portugal will always be

considered “contracts of insurance” rather than “certificates of insurance”.

Which documents comprise a Portuguese contract of insurance?

According to PICA, a contract of insurance includes:

- A **Schedule** or **Particular Conditions**, which identifies the essential elements of the contract: parties, the insured risk, period, limits, deductible, premium & taxes, etc.
- **General Conditions**, which include the basic aspects of the contract, such as the covers, general exclusions and general rights and obligations of the parties.
- **Special Conditions**, which complement or specify the general conditions.

The Schedule prevails over the Special Conditions, which, in turn, prevails over the General Conditions.

For large risks, PICA allows a different structure. Underwriters should seek local legal advice for further guidance.

Uniform policies

For certain compulsory insurances, the Portuguese Regulator (the *Instituto de Seguros de Portugal* - ISP) may approve what is known as a “uniform policy”. If it exists, the **uniform policy** is mandatory and, therefore, contracts of insurance covering that risk shall literally reproduce its wording. Conditions may be added in a manner but always provided that the uniform policy is not modified or changed. The ISP keeps a register of uniform policies.

Examples of uniform policies are compulsory motor liability insurances and accidents at work insurances.

SCHEDULE, GENERAL AND SPECIAL CONDITIONS ARE PART OF THE CONTRACT

UNDERWRITERS SHOULD CHECK IF THERE IS AN APPROVED UNIFORM POLICY.

IDENTIFICATION OF THE INSURER AND THE USE OF THE LLOYD'S LOGO

CLEAR IDENTIFICATION OF THE INSURER IS REQUIRED

The Portuguese market is not familiar with the idea of Lloyd's as an insurance market, although concepts such as "Syndicate", "Underwriter" or "coverholder" are gradually becoming more recognised. For this reason, the issue of the identification of the insurer is a matter to be considered carefully.

- **Identification of the Syndicate(s) and their respective percentage participation on the cover** is not compulsory but strongly recommended for transparency reasons.
- **The Lloyd's logo should be inserted** and particularly highlighted and in a larger font if used in conjunction with the managing agent's and/or coverholder's corporate logo. As is the case elsewhere in the EU "the Association of Underwriters known as Lloyd's" is the entity registered as an "insurer" in Portugal. It is therefore crucial that policyholders are clearly able to recognise that their contracts of insurance have been issued at Lloyd's.
- **Lloyd's Coat of Arms** may be used provided that its use is in accordance with the Lloyd's brand guidelines but ideally it should not replace the Lloyd's logo. This is because the Lloyd's Coat of Arms is not well-known in Portugal; it is, therefore, preferable to insert the Lloyd's logo.

The Lloyd's brand guidelines are available on [lloyds.com](http://www.lloyds.com)
<http://www.lloyds.com/The-Market/Tools-and-Resources/Resources/Lloyds-Brand/Brand-guidelines>

COMPULSORY STATEMENTS

PICA states that, in addition to the content agreed by the parties, the following information must be contained within the contract of insurance:

- Designation of the document as an “insurance policy” and complete identification of the documents constituting it.
- Complete identification of the parties, including their tax identification number and their addresses, as well as, if applicable, details of the insured, beneficiary and the insurer’s claims representative.
- Nature of the insurance.
- The risks covered.
- Territorial and temporal scope.
- Rights and duties of the parties, the insured and the beneficiary.
- Sum insured or calculation method.
- Premium or calculation method.
- Duration of the contract, indicating the day and hour of inception.
- Insurer’s indemnity in case of loss or the calculation method.
- Applicable Law and arbitration conditions.

**UNDERWRITER MUST
ENSURE THAT THE
MINIMUM INFORMATION
IS INCLUDED**

The above list represents the **minimum** information that compliant contracts of insurance should contain. However, including the above information does not alone imply that the contract of insurance is fully compliant with Portuguese law. In fact, depending on the type of insurance or risk covered, there may be other compulsory information to be included. For example, if a motor liability risk is written on a freedom of services basis, the name and address of the Lloyd’s motor claims representative must be inserted.

Failure to provide a contract of insurance without the above mentioned minimum information will entitle the policyholder to cancel the contract with retroactive effect within 30 days following receipt and the gives the policyholder the right to be reimbursed of the premium paid. The policyholder also has the right to request the amendment of the contract at any time.

Important information

Portuguese legislation states that the pre-contractual information previously provided by the Underwriter when the parties negotiated the terms of the contract, must be consistent with the clauses of the contract of insurance.

To assist underwriters, Lloyd's has drafted two standard pre-contractual notice clauses for non-life business that may be used. One applies to freedom of services and the other to establishment business. Please refer to the Insurance documentation section of Crystal for these notices.

Data protection clause

The UK Data Protection Law is applicable as the data controller (the Managing Agent) is based in UK. Therefore, Underwriters should ensure that suitable data protection clauses are included in the proposal form and/or the contract of insurance.

It should be pointed out that depending on the precise insurance or risk covered, other compulsory clauses may apply. Underwriters should seek local legal advice as required.

CLAUSES TO BE SPECIALLY HIGHLIGHTED

CERTAIN CLAUSES ARE SUBJECT TO SPECIAL FORMAL REQUIREMENTS

According to PICA, in addition to the above mentioned minimum information, the following clauses must be highlighted in bold and shown in a larger typeface.

- Clauses that provide the causes of invalidity, extension, suspension or cessation of the contract by either party.
- Clauses that establish the scope of the cover, namely the exclusions and limits.
- Clauses that impose on the policyholder or on the beneficiary the duty to give notice subject to deadlines.

The above is not a mere formality: non-compliance would entitle the insured to cancel the policy within 30 days from the date of the policy's delivery and give the insured the right, at any time, to request the amendment of the contract of insurance.

WHO SIGNS THE CONTRACT OF INSURANCE?

THE CONTRACT OF INSURANCE MUST BE DATED AND SIGNED BY THE INSURER

A contract of insurance is a contractual agreement and, as such, should be, in principle, signed by each contracting party (policyholder/insured and insurer) in proof of agreement. Having said this, PICA only provides the duty for the **insurer** to sign the contract of insurance.

Establishment business

The contract of insurance is issued and signed by the Portuguese coverholder. However, as the coverholder does not assume the risk by itself but on behalf of the underwriters, a clear statement reflecting this fact must be inserted.

Open Market business.

For open market business, there are, in principle, four alternatives.

- The MRC can be accepted as evidence of the contract of insurance without the need to issue any other document. The underwriter shall sign the MRC, **which needs to comply with all Portuguese legal requirements.**
- A Lloyd's policy can be prepared on the basis of the MRC, as per the existing system. XIS will sign and seal this document.
- A managing agent can issue its own policy, if the contract is written 100% by one syndicate.
- Non-Portuguese coverholder: As for Portuguese coverholders, the coverholder may sign the contract but a clear statement should be included indicating that the coverholder is acting on behalf of certain Underwriters at Lloyd's.

Brokers Insurance Documents (BID), cover notes or similar documents that may be issued by brokers as evidence of cover are not acceptable under Portuguese Law as they do not replace the contract of insurance.