

MARKET BULLETIN

REF: Y4647

Title	Spain: Law on Sustainable Economy and impact on Spanish coverholders
Purpose	To provide information to the market on the Law on Sustainable Economy and its impact on the status of Spanish coverholders.
From	Cameron Murray, Senior Manager, Lloyd's International Regulatory Affairs General Counsel's Division
Date	7 December 2012
Related links	Market Bulletin Y4044, 20 July 2007 Market Bulletin Y4487, 18 April 2011

1. SUMMARY

This Market Bulletin is issued to reflect the current position regarding the regulation of underwriting agencies in Spain. It replaces Market Bulletin Y4487 dated 18 April 2011. In particular it notes the continued prohibition on passporting for underwriting agencies, which the Spanish insurance regulator, the DGS, had intended to overcome through agreements with other EU regulators.

2. LAW 2/2011 OF 5 MARCH ON SUSTAINABLE ECONOMY

Law 2/2011 on Sustainable Economy ("the Law") was approved by the Spanish Parliament on 15 February 2011 and entered into force on 6 March 2011. The law was a comprehensive package of regulatory changes aimed at providing a better regulatory environment for the Spanish economy.

The Law established new provisions for Spanish underwriting agencies¹. They are now regulated under the newly created Articles 86 *bis* and 86 *ter* of the Law of Ordination and Supervision of Private Insurance. Please find attached an unofficial English translation of Article 86 *bis* and *ter* in **Appendix 1**.

The new provisions make some improvements to the regulatory framework that applies to Spanish coverholders writing business on behalf of Lloyd's managing agents.

¹ Unless specified otherwise, the term 'underwriting agency' in this Bulletin should be read to mean a Lloyd's Spanish coverholder.

3. BACKGROUND

Under the Law on Mediation of Private Insurance and Reinsurance 2006, coverholders in Spain became regulated as so-called 'underwriting agencies'. The manner in which the provisions of the Law relating to underwriting agencies were framed restricted the way managing agents could delegate underwriting authority to Spanish intermediaries and how those intermediaries could act as coverholders.

In particular, underwriting agencies were subject to the following restrictions.

- They were not permitted to act as independent brokers and underwriting agencies.
- They were not liable for the activities performed on behalf of underwriters.
- They were not regarded as intermediaries.
- They were not registered with, and authorised by, the Spanish regulator, the DGS

The final two points above meant that they were unable to passport to other EEA member states.

For more information regarding the previous arrangements for Spanish coverholders, please refer to Lloyd's Market Bulletin [Y4044](#) dated 20 July 2007.

4. 2011 PROVISIONS FOR UNDERWRITING AGENCIES

Following the change to regulate underwriting agencies under Article 86 *bis* and Article 86 *ter* of the Law of Ordination and Supervision of Private Insurance, some, but not all, of the restrictions that previously applied to them have been eased or removed.

The key features of the new provisions are as follows:

Status of underwriting agencies

An "underwriting agency" is still not regarded in Spain as an insurance intermediary and its activities are not regarded as insurance intermediation. Spanish law instead regards an underwriting agency as a direct distribution channel of the insurer for whom it underwrites. Therefore, underwriting agencies are not regulated under the Spanish Insurance Mediation Law, which applies to insurance intermediaries, but under the Law of Ordination and Supervision of Private Insurance, which applies to insurance undertakings.

Authorisation and registration of underwriting agencies with the Spanish Regulator (DGS)

Underwriting agencies must now be registered with, and licensed and supervised by, the DGS. Requirements for this authorisation and registration are explained in detail in Section 5 below.

EU passporting issues

As underwriting agencies are not treated as intermediaries and are regulated under the Law of Ordination and Supervision of Private Insurance, they are unable to exercise the passporting rights available to intermediaries under the EU Insurance Mediation Directive (2002/92/EC) that would allow them to transact business in or from other EEA member states.

Incompatibility with being a broker

The activities of a direct insurance broker remain incompatible with those of an underwriting agency under the Law, with the result that managing agents may not grant binding authorities for direct insurance business to Spanish insurance brokers. Please note, however, that this prohibition does not apply to reinsurance brokers who may be able to act as underwriting agencies on behalf of Underwriters.

Therefore, as under the current arrangements, a Spanish direct insurance broker wishing to act as a coverholder on behalf of one or more Lloyd's managing agent needs to establish a separate legal entity – an underwriting agency – to be able to do so.

In addition, staff (including directors and general representatives) who perform key functions at a broking firm may not be directors or officers in an underwriting agency. Therefore, new Spanish coverholders who have a related broking firm need to ensure that the two firms are managed separately.

A broker (either individual or company), an insurer or another underwriting agency intending to hold a significant shareholding in an underwriting agency (over 10%) needs to obtain prior consent from the DGS.

Non exclusivity

An underwriting agency may now act on behalf of more than one insurer. Therefore, mixed binding authorities (Lloyd's and non-Lloyd's security) are now allowed.

Separate bank accounts

An underwriting agency must set up a separate bank account in relation to those activities carried out on behalf of the insurer who grants the binding authority.

Liability for actions of underwriting agencies (and compulsory PI insurance for underwriting agencies)

Managing agents are no longer liable for the actions of underwriting agencies acting on their behalf (including in respect of obligations to the Spanish regulator and/or any other third parties). Instead, underwriting agencies are liable for their own actions carried out on behalf of the managing agent and must obtain professional indemnity insurance coverage prior to applying for DGS authorisation and Lloyd's coverholder approval.

Submission and registration of binding authorities to the DGS

For both existing and new coverholders, the responsibility to register the binding authority lies with the coverholder. This means new binders, renewals, extensions, non-renewals and cancellations.

For practical reasons, Lloyd's Iberia will continue handling the submission of binders to the DGS once the underwriting agencies are licensed. It is the responsibility of the underwriting agencies to provide Lloyd's Iberia with copies of the binding authorities and keep it duly informed of changes.

Underwriting agencies may act on a wholesale basis

As under the previous regime, underwriting agencies may operate on either a "retail" basis, dealing directly with policyholders, or on a "wholesale" basis, accepting business introduced by intermediaries.

A wholesale Spanish coverholder may accept business offered to it by:

- a) A registered Spanish broker: The underwriting agency must draw up a "letter of terms" with the broker (i.e. a terms of business agreement) that sets out the relevant transparency and independence requirements. Please contact Lloyd's Iberia (details below) to obtain a model letter of terms.
- b) An insurance agent: Lloyd's underwriting agencies may not enter into an agency agreement with an insurance agent to produce business for that agent. The recommended solution is for the Lloyd's managing agent, the underwriting agency and the insurance agent to enter into a "tripartite agreement". This means an agreement in which the managing agent directly appoints the insurance agent, but which also makes clear that the underwriting itself will be carried out by the underwriting agency. This structure has been used successfully under the Law on Mediation of Private Insurance and Reinsurance and further details were included in the previous Market Bulletin Y4044. Please contact Lloyd's Iberia to obtain a model tripartite agreement.

Please note that the managing agent must provide Lloyd's Iberia with a copy of each tripartite agreement entered into so that Lloyd's Iberia may file it with the DGS.

A managing agent wishing to enter into such an agreement should comply with the obligations attaching to the appointment of an insurance agent. The obligations vary depending upon whether the insurance agent is an "exclusive agent" or "tied agent"² and remain unchanged from the Law on Mediation of Private Insurance and Reinsurance (see Market Bulletin Y4044).

² An "exclusive agent" may only act for one insurer. It may act on behalf of another insurer for different types of business if the first insurer authorises it to do so, i.e., it may act on behalf of a maximum of two insurers. A "tied agent" may act for several insurers each of which must hold separate agency agreements with the agent.

Non-Spanish coverholders and service companies

Articles 86 *bis* and *ter* do not apply to non-Spanish coverholders or to any coverholders and service companies in Spain that do not have the legal form of an underwriting agency.

Managing agents may continue to accept Spanish risks through non-Spanish coverholders (i.e. where the non-Spanish coverholder has passported into Spain). Non-Spanish coverholders are no longer required to register the scope of their binding authority with the DGS before they accepts risks.

A non-Spanish coverholder may enter into a “terms of business agreement” with a Spanish broker (or with an “external auxiliary” which acts as a form of introducer). However, a non-Spanish coverholder may not enter into a tripartite agency agreement in Spain. It will be for the relevant managing agent to appoint the insurance agent and enter into the agency agreement.

Appendix 2 contains a table comparing the previous requirements under the Law on Mediation of Private Insurance and Reinsurance and the new requirements now in effect under the Law of Ordination and Supervision of Private Insurance.

5. REGISTRATION AND AUTHORISATION PROCESS WITH THE DGS

This process is unaltered from that outlined in Market Bulletin Y4487.

5.1 Existing Spanish underwriting agencies

Timetable

In accordance with the Law on Sustainable Economy, existing Lloyd’s underwriting agencies must adapt the provisions of Article 86 *bis* of the Law of Ordination and Supervision of Private Insurance within one year of this Law coming into effect (i.e. 6 March 2011).

Therefore, existing Lloyd’s underwriting agencies (excluding non-Spanish coverholders and service companies that do not have the legal form of an underwriting agency) must be authorised by, and registered with, the DGS by 6 March 2012.

Registration process

Lloyd’s Iberia will centralise the adaptation and registration process with the DGS and has already contacted existing underwriting agencies in this regard. The underwriting agencies will be required to send the following documentation to Lloyd’s Iberia:-

- Certificate of Professional Indemnity coverage
- A written confirmation signed by the underwriting agency stating that the underwriting agency keeps a separate bank account in respect of insurance money.

- The company's organisational chart (even when the underwriting agency comprises only one or two people).
- Information on the underwriting agency's internal control procedures³
- Curriculum Vitae, ID and criminal record certificate of the underwriting agency's CEO and senior executives.

5.2 New underwriting agencies

Registration process

Lloyd's Iberia will not be involved in licensing and registering new Spanish underwriting agencies with the DGS. It is therefore each underwriting agency's responsibility to meet the licensing requirements.

The registration and authorisation process for new underwriting agencies is as follows:

- 1 The applicant underwriting agency will first need to obtain approval from Lloyd's Delegated Authorities Department to be approved as Lloyd's coverholders. The approval will be granted "subject to obtaining a licence from the DGS".
- 2 The managing agent will grant the binding authority to the underwriting agency "subject to obtaining a licence from the DGS".
- 3 The applicant underwriting agency should then submit all documentation required by Article 86 *bis* to the DGS (and summarised below). Lloyd's Iberia should be kept informed.
- 4 The DGS has 3 months from the submission of all required documents to grant the licence.
- 5 Once the underwriting agency obtains the DGS licence, it must notify Lloyd's Delegated Authority Department and Lloyd's Iberia.

Documentation to be provided to the DGS for registration and authorisation

- Notarised copy of the Deeds of Incorporation containing the underwriting agency's by-laws duly registered with the Spanish Official Company Register.
- Binding authority with details of the risks, insurers (managing agents/syndicates) and terms and conditions.

³ Lloyd's already has controls in place for coverholders wishing to be approved by Lloyd's Delegated Authority Department. The DGS has accepted that a summary of these controls will be sufficient in order to comply with this requirement.

- The underwriting agency's organisational chart (even if it comprises only one or two people).
- Information on the underwriting agency's internal control procedures⁴
- Shareholders with significant links. There is a Ministerial order regulating the documentation to be provided in this regard. However, as it is a very cumbersome requirement, the DGS is considering reducing this requirement for underwriting agencies.
- A copy of the Curriculum Vitae, ID and criminal record certificate of directors and senior executives.
- Certificate of professional indemnity coverage.
- A written confirmation signed by the underwriting agency stating that the underwriting agency keeps a separate bank account in respect of insurance money.

FURTHER INFORMATION

If you have any queries relating to this bulletin, or any general enquires regarding doing business in Spain, please contact:

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⁴ Lloyd's already has controls in place for coverholders wishing to be approved by Lloyd's Delegated Authority Department. The DGS has accepted that a summary of these controls will be sufficient in order to comply with this requirement.

APPENDIX 1

Article 86.bis. Underwriting agencies

1. Insurance entities domiciled in an EU Member State other than Spain and that operate in Spain on an establishment or freedom of services basis, shall be able to enter into delegated authority contracts with Spanish legal entities to underwrite risks on their behalf.

2. The Spanish underwriting agency of an EU insurer shall only be able to exercise activities on behalf of this insurer once it has obtained authorisation from the General Directorate of Insurance and Pensions Funds.

3. The following requirements shall be met in order to obtain and keep the above mentioned authorisation:

a) To be a duly incorporated legal entity, whose by-laws state that the specific underwriting agency activity falls within the underwriting agency's business purpose.

b) To submit and comply with a business plan which details the risks to be written, the insurers the underwriting agency is acting on behalf of and the terms of business, enclosing a copy of the powers; its organisational structure and the internal control procedures.

c) Information about the participations and shares of shareholders with significant links, who must comply expressly with the requirements of article 14.

d) To be managed effectively by people who meet the relevant standards of propriety and qualification or experience, which are set out in article 15.

e) To have separate bank accounts from the other funds of the company, to be used only for the management of monies on behalf of each of the insurers granting the powers.

f) To have professional indemnity insurance or other financial guarantee, to cover any liability for professional negligence that may arise within the scope of the EEA, to the amount fixed by regulation

4. Authorisation will also be required in order to allow the underwriting agency to operate with insurers other than those it is already authorised with, or to write risks other than those initially authorised with the insurer with whom the underwriting agency is granted. The extension of authorisation shall be subject to the submission of a business plan, which must detail the risks to be written, the insurers the underwriting agency is acting on behalf of and the terms of business, enclosing a copy of the powers.

5. The application to be registered as underwriting agency shall be submitted to the General Directorate of Insurance and Pension Funds together with the documentation evidencing the fulfillment of the requirements set out in number 3 above. The application shall be processed within three months from the application's submission date. The registration shall detail those insurers granting authority to the underwriting agency. The lapse of this term without express response cannot be treated as tacit approval. The application shall be rejected if the fulfillment of the required requirements is not established in full.

6. The authorisation shall trigger the registration mentioned in article 74, identifying the name of the insurers granting the underwriting power, its duration, classes of insurance and the its renewals.

7. The rules about significant links which are set out in article 22, 22 bis and paragraph 2 of article 22 ter of this Law shall apply to underwriting agencies. In this regard, any reference to insurance entities shall apply equally to underwriting agencies, provided that the seller or the buyer is an insurer, an insurance intermediary, a reinsurance broker or other underwriting agency.

8. The term “underwriting agency” only applies to these companies defined in this article. All commercial insurance documents and publicity materials that underwriting agencies may issue, either generally or by electronic means, must mention the nature of their underwriting agency and the insurer/s from which they have delegated authority.

9. The insurers’ customer service departments shall deal with and resolve any complaints or claims that may be submitted in connection with the activity of underwriting agencies in accordance with the requirements set out in legislation protecting financial services’ customers.

Article 86 ter. Intervention and supervision of underwriting agencies

1. The General Directorate of Insurance and Pensions Funds shall revoke authorisation granted to underwriting agencies in accordance with the provisions of article 26.1a), b), c) and e) and article 26.3 and 4 of this Law. In this regard, any reference to insurance entities also refers to underwriting agencies.

The revocation of the authorisation owing to a lack of activity, as stated under article 26.1.b) of this Law, shall refer to the revocation of all powers granted to the underwriting agency.

2. Special control measures stated under article 39 of this Law shall apply to underwriting agencies. In this regard, any mention of insurance entities also refers to underwriting agencies, except sections a) to d) of number 1, a) to c) of number 2 and numbers 3, 4 and 8.

3. The infringements and penalties regime shall be as stated under section 5, Chapter III, Title II of this Law.

4. The underwriting agencies activity shall be subject to Finance Ministry controls, in accordance with articles 70, 71, 72, 74, 75 and 77 of this Law.

APPENDIX 2

OLD PROVISIONS – LAW ON MEDIATION OF PRIVATE INSURANCE AND REINSURANCE, EFFECTIVE FROM 19 JULY 2006	NEW PROVISIONS – LAW OF ORDINATION AND SUPERVISION OF PRIVATE INSURANCE, EFFECTIVE FROM 6 MARCH 2011
<p>a. Underwriting agencies are not regarded as insurance intermediaries, but as a direct distribution channel of the insurer. They were regulated under the Insurance Mediation Law.</p> <p>b. Underwriting agencies are not authorised by, and registered with, the DGS.</p> <p>c. Underwriting agencies cannot exercise passporting rights.</p> <p>d. Underwriting agencies cannot be insurance brokers (this prohibition does not apply to reinsurance brokers).</p> <p>e. Underwriting agencies can only underwrite on behalf of a single Spanish or EU insurer.</p> <p>f. No requirements regarding bank accounts.</p> <p>g. The insurer is responsible for all liabilities arising from an underwriting agency's activities.</p> <p>h. All underwriting agencies must submit to the DGS binding authorities, renewals and cancellations through Lloyd's Iberia.</p> <p>i. Distribution channels. The underwriting agencies may work with brokers (through letter of terms) and insurance agents (through tripartite agency agreements).</p> <p>j. Key broker's staff cannot be a director or officer in an underwriting agency.</p> <p>k. If a broker intends to hold a significant shareholding link with an underwriting agency (over 10%) then the broker needs</p>	<p>a. Underwriting agencies are not regarded as insurance intermediaries, but as special attorneys of the insurer. They are regulated under the Law of Ordination and Supervision of Private Insurance which also regulates insurance companies.</p> <p>b. Underwriting agencies are authorised by, and registered with, the DGS.</p> <p>c. Underwriting agencies cannot exercise passporting rights.</p> <p>d. Underwriting agencies cannot be insurance brokers (this prohibition does not apply to reinsurance brokers).</p> <p>e. Underwriting agencies may underwrite on behalf of one or more EU insurers only operating on a freedom of services or establishment basis.</p> <p>f. Underwriting agencies must set a separate bank account in relation to the activities carried out on behalf of the insurer granting the power.</p> <p>g. Underwriting agencies are responsible for all liabilities arising from their activities. PI coverage is compulsory.</p> <p>h. All underwriting agencies must submit to the DGS all binding authorities, renewals and cancellations through Lloyd's Iberia. New underwriting agencies must submit to the DGS all binding authorities as a requirement to obtain authorisation and registration from the DGS.</p> <p>i. Distribution channels. The underwriting agencies may work with brokers (through letter of terms) and insurance agents (through tripartite agency agreements).</p> <p>j. Key broker's staff cannot be a director or officer in an underwriting agency.</p> <p>k. If a broker, an insurer or another underwriting agency intends to hold a significant shareholding link with an</p>

<p>to obtain prior consent from the DGS.</p> <p>i. Old regime applied to non-Spanish coverholders and service companies. These needed to register their binders with the DGS.</p>	<p>underwriting agency (over 10%) then they need to obtain prior consent from the DGS.</p> <p>i. New regime does <u>not</u> apply to non-Spanish coverholders, branch of non-Spanish coverholders and service companies. These do <u>not</u> need to register their binders with the DGS anymore.</p>
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