

# MARKET BULLETIN

REF: Y4791

<b>Title</b>	Germany: New complaints handling procedure
<b>Purpose</b>	To inform the market of a new Lloyd's complaints handling procedure for freedom of services and establishment business in Germany.
<b>Type</b>	Event
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<b>Date</b>	17 April 2014
<b>Deadline</b>	19 May 2014
<b>Related links</b>	<a href="#">Crystal report for Germany</a>

## Summary

The regulator in Germany, BaFin, has announced new requirements for the handling of complaints by insurance undertakings. The requirements apply to all complaints that relate to insurance contracts of a mass risk that have been written on a freedom of services or establishment basis, regardless of whether the complainant is an individual person or a corporate entity.

Given the unique structure of the Lloyd's market, it has been necessary to introduce a new complaints handling procedure for German business to ensure that underwriters comply with the new rules. It will also enable Lloyd's to meet the associated requirement to report all relevant complaints to BaFin on an annual basis, which will be done centrally.

## Background

BaFin has implemented the EIOPA Guidelines on Complaints Handling by Insurance Undertakings<sup>1</sup> that were issued to EEA member state regulators in 2012. These Guidelines set out standards that member state regulators should apply to insurers in their territory in respect of how they handle and report complaints. Member state regulators were free to determine how the standards should be implemented in their territory and had to comply by

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<sup>1</sup> EIOPA-BoS-12/069.

15 January 2013. BaFin implemented the Guidelines through Circular 3/2013 (VA) on 20 September 2013. Please refer to Appendix 1 for the definitions of “complaint” and “complainant” adopted by BaFin.

### **Lloyd’s complaints handling procedure**

The new Lloyd’s procedure is set out in Appendix 2 and must be followed for complaints received with effect from 19 May 2014. It contains a two stage process that is similar to the procedure for handling complaints for UK personal lines business (see [Market Bulletin Y4683](#) for details of this) in order to provide an approach for the market that is as consistent as possible.

### **Provision of pre-contractual complaints information**

Under Article 31 of EU Directive 92/49/EEC (Third Non-Life Directive) and Article 36 of the EU Directive 2002/83/EEC (Consolidated Life Directive) an insurer must, prior to inception, inform proposers for non-life mass risks and life risks where the proposer is a natural person of the arrangements for handling the policyholder’s complaints. The Regulation on the Duty to Inform made under Section 7(2) of the Insurance Contract Act 2008 states that such information must be provided to all proposers in respect of mass risks prior to inception, except in respect of reinsurance and ocean marine contracts.

Lloyd’s has amended the existing pre-contractual information documents for Germany to reflect the new complaints handling procedure in Appendix 2. LSW1650E (for freedom of services business) or LSW1651D (for establishment business) must be given to all proposers in respect of mass risks, except for reinsurance and ocean marine risks, prior to inception. They are available on the [Lloyd’s Wordings Repository](#) and should be used with effect from 19 May 2014. LSW1650E and LSW1651D replace LSW1650D and LSW1651C, which will be archived from this date.

### **Complaints made to the Insurance Ombudsman**

The Insurance Ombudsman will only accept complaints in respect of insurance contracts written on an establishment basis that meets certain criteria (see Stage 1 of Appendix 2 for details) once six weeks have elapsed since the complaint was made to the insurer.

### **Complaints made directly to BaFin**

All policyholders and claimants may make a complaint directly to BaFin at any time and without first approaching the insurer. Where a complaint is made directly to BaFin, BaFin will request a response from the insurer in line with its Guidelines for Handling Complaints Circular 1/2006 (VA) dated 23 March 2006. Insurers must provide their response within four weeks for establishment business and six weeks for freedom of services business. Such complaints will be sent to the relevant managing agent by the Policyholder and Market Assistance department, who will co-ordinate the response. Complaints made directly to BaFin are not subject to the procedure in Appendix 2 of this Market Bulletin.

**Further information**

If you require information regarding the regulatory requirements for underwriting or placing German business, please contact:

Lloyd's International Trading Advice  
Lloyd's Desk, Ground Floor, Underwriting Room  
Telephone: + 44 (0) 20 7327 6677  
Email: [LITA@Lloyds.com](mailto:LITA@Lloyds.com)  
[www.lloyds.com/crystal](http://www.lloyds.com/crystal)

If you require information regarding the new complaints handling procedure for Germany, please contact:

Policyholder & Market Assistance department  
Complaints Helpline Telephone: + 44 (0) 20 7327 5696  
E-mail: [complaints-enquiries@lloyds.com](mailto:complaints-enquiries@lloyds.com)

## APPENDIX 1

### RELEVANT DEFINITIONS IN BAFIN CIRCULAR 3/2013 (VA) OF 20 SEPTEMBER 2013

**“complaint”** means: A statement of dissatisfaction expressed by any person in relation to an insurance undertaking with regard to the insurance contract or service offered to such a person. Complaints handling is differentiated from claims handling as well as from simple requests for execution of the contract, information or clarification.

**“complainant”** means: A person who is presumed to be eligible to have a complaint considered by an insurance undertaking and has already lodged a complaint e.g. a policyholder, insured person, beneficiary and in some cases, an injured third party.

This definition of “complainant” only applies to complaints that relate to insurance contracts of a mass risk<sup>2</sup> and thus a complainant may be an individual person or a commercial entity.

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<sup>2</sup> For the definition of a mass risk, please refer to the [Glossary](#) on lloyds.com.

**APPENDIX 2****PROCEDURE FOR HANDLING COMPLAINTS RELATING TO BUSINESS  
IN OR FROM GERMANY**

## Stage 1

1. The managing agent<sup>3</sup> receives a complaint.
2. As soon as practicable, the managing agent must acknowledge receipt of the complaint, in writing. The complainant must also be informed of the following information, in writing:
  - The complaint procedure that will be followed, in clear and accurate language.
  - That the final response will be available within six weeks of the receipt of the complaint.
  - The contact details of the Insurance Ombudsman and BaFin, to whom the complainant can refer the matter if he remains dissatisfied with the insurer's response. A complainant can only refer a complaint to the Insurance Ombudsman if the complainant is a consumer<sup>4</sup> or in a consumer-like situation, the complaint does not relate to private health insurance or credit insurance, the policy contract was written on an establishment basis, the value of the complaint is EUR 100,000 or less, the policy is subject to the jurisdiction of Germany and the policy has been issued in the German language.
  - The details of an available alternative dispute resolution method, if one is applicable to the policy contract concerned.
3. Within two weeks of receipt of the complaint, the managing agent must advise the complainant of its decision, in writing, based on the outcome of the investigation. The managing agent must include the following statement in the letter.

*“Should you remain dissatisfied you may, if you wish, refer your complaint to the Lloyd’s General Representative for Germany, who will investigate and assess this complaint and provide you with a final response. The contact details are as follows:*

*Lloyd’s General Representative for Germany / Hauptbevollmächtigter  
Lloyd’s Versicherer London Niederlassung für Deutschland  
Taunusanlage 11  
60329 Frankfurt  
Germany*

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<sup>3</sup> Reference to a managing agent in Appendix 2 includes reference to a coverholder or third party administrator (TPA) or legal representative that is authorised by a managing agent to adjudicate on a complaint on its behalf.

<sup>4</sup> According to the German Civil Code, a consumer is a natural person who enters into a legal transaction for a purpose that is outside his trade, business or profession.

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*Fax: +49 (0)69 7144 88 1 99*

*Email: lloydsfrankfurt@lloyds.com*

The above statement must be included in all letters where the managing agent provides its decision on the complaint, regardless of when the letter is sent. Lloyd's expects that there will be very few occasions where a managing agent is not able to provide its decision to the complainant within two weeks.

A copy of this letter must be e-mailed to the Lloyd's General Representative, together with the following information

- Date complaint was received.
  - Name and contact details of complainant.
  - Description of the complaint, e.g., denial of a claim, cancellation of the policy.
  - Class of business that the complaint relates to.
4. If the managing agent is not able to communicate its decision to the complainant within two weeks, it must notify the Lloyd's General Representative that this is the case. The Lloyd's General Representative will inform the complainant that he is now dealing with the complaint. The Lloyd's General Representative will examine and assess the complaint and may request any relevant information, documents or records from the managing agent as may be necessary in order to provide a final response to the complainant.

## Stage 2

5. Within six weeks of receipt of the complaint by the managing agent, the Lloyd's General Representative will make a decision on the complaint and issue a final response letter to the complainant confirming that the investigation has been completed. If the Lloyd's General Representative is unable to issue a final response letter within six weeks, e.g., due to a delay by the managing agent in providing relevant documents, he will inform the complainant in writing of the reason for the delay and the anticipated timeframe within which he hopes to resolve the complaint. If the complaint is not upheld in full, he will also advise the complainant of the reasons for this and his rights to refer the matter to the Insurance Ombudsman (if applicable, see point 2 above), to BaFin or to use an alternative dispute resolution method (if applicable).