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FSMA NEWS

Newsletter intermediaries

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In this Newsletter

MANDATED UNDERWRITERS

THE LAW OF 3 APRIL 2019 INTRODUCES, EFFECTIVE 10 APRIL 2019, A NEW CATEGORY OF INSURANCE INTERMEDIARY: THE MANDATED UNDERWRITER (GEVOLMACHTIGDE ONDERSCHRIJVER / SOUSCRIPTEUR MANDATÉ)

This newsletter describes the new category known as ‘mandated underwriter’ (‘Gevolmachtigde onderschrijver’ in Dutch / ‘Souscripteur mandaté’ in French) and answers the following questions:

- / What is a mandated underwriter?
- / Why create a new category of insurance intermediary?
- / What requirements must mandated underwriters fulfil?
- / What do you have to do if you carry out such activities?



WHAT IS A MANDATED UNDERWRITER?

A MANDATED UNDERWRITER IS
AUTHORIZED BY AN INSURANCE
COMPANY TO ACCEPT THE COVERAGE
OF A RISK ON ITS BEHALF

The mandated underwriter is:

- / an **insurance intermediary** that;
- / **acting on behalf of** one or more insurance companies;
- / is mandated to **accept coverage of risks**;
- / to **write** and manage **insurance contracts**;
- / in the name and on behalf of insurance companies.

The mandated underwriter does not itself insure any risks. The insurance company for which the mandated underwriter acts carries the risks.

Example:

Insurance company X wishes to enter the marine insurance market. It comes into contact with insurance intermediary Y, which specializes in marine insurance and has built up a loyal clientele. Given Y's expertise, the insurance company decides to give Y a mandate (often called a 'binding authority') to perform the risk analysis. Insurance company X will therefore not analyse each contract separately, but will rely on the correct risk assessment made by Y. This mandate also allows Y to determine the premium, based on the risk assessment made within the terms of its mandate, and to draw up, conclude and sign the insurance contract.

Once it has been concluded with the policyholder, the policy names X as the insurance company. Y signs it with 'Y, acting on behalf of insurance company X'. This way it is clear that X carries the risk and will be the one to act if a claim is made.



WHY CREATE A NEW CATEGORY OF INSURANCE INTERMEDIARY?

A MANDATED UNDERWRITER IS NOT A 'CLASSIC' INSURANCE INTERMEDIARY. THE NEW CATEGORY CLARIFIES THIS

The activity of mandated underwriters was not always well known on the Belgian market. They were often confused with the insurer on behalf of whom they acted. Some policyholders and even professionals wrongly believed that the mandated underwriter itself covers the risks.

The creation of a separate category is intended, among other things, to recognize the distinctive nature of this profession. By clearly separating this category from the traditional insurance intermediaries, there is greater transparency about the role of mandated underwriters. Their characteristic feature is that they accept risks on behalf of the insurance company. Mandated underwriters are often the ones who establish the insurance premiums.

In the summer of 2018, the FSMA conducted a market study in Belgium among intermediaries that were already carrying out this activity. In the United Kingdom as well, this activity was traditionally carried out by many specialized intermediaries. As a result of Brexit, part of their product offering might disappear. This new category in Belgium increases the likelihood that the specialized offer of insurance that is often crucial for companies can continue to be available.

WHAT REQUIREMENTS MUST MANDATED UNDERWRITERS FULFIL?

A MANDATED UNDERWRITER MUST HAVE IN PLACE AN ADEQUATE ORGANIZATION

Mandated underwriters are always insurance intermediaries. They may only carry out the activity of underwriting after having been registered with the FSMA in the public register of insurance intermediaries, in the category of 'mandated underwriters'.

In order to be registered, the mandated underwriter must meet almost the same requirements as an insurance broker. The mandated underwriter is not, however, required to be independent of the insurance company. Unlike an insurance broker, a mandated underwriter may decide to be tied to, or work exclusively for, one specific insurance company. Moreover, the mandated underwriter must also abide by the following rules:

HAVE IN PLACE AN APPROPRIATE INTERNAL ORGANIZATION

A mandated underwriter must have in place an appropriate internal organization allowing it to manage the risks associated with its activities. It must therefore adapt its organization to the nature, scale and complexity of the activities being carried out. The insurance company often imposes various requirements in its mandate, given that the company is the one that bears the risk if any problems should arise. Thus the insurance company needs to know exactly which risks the mandated underwriter has underwritten in its name and on its behalf.

In a sense, the organizational requirement imposed on mandated underwriters is the counterpart to the organizational requirement that insurance companies must fulfil.

The Law provides that the King may further specify the conditions that the organization must meet.

INFORMATION REQUIREMENTS

The mandated underwriter must, like any other insurance intermediary, communicate in a clear and transparent manner. In addition, there are information requirements that apply specifically to mandated underwriters:

- / It must state on its website the name of the insurance companies and insurance branches for which it can act. If the mandated underwriter has no website, it must provide the client with the aforesaid information, upon request, on a durable medium.
- / On every insurance policy, it must indicate the name of the insurance company(ies) that cover the risk.

THIS ACTIVITY MAY NOT BE COMBINED WITH REGISTRATION AS A 'CLASSIC' INSURANCE INTERMEDIARY

A mandated underwriter may not combine its activities with registration in another category, such as insurance broker, agent or subagent. The mandated underwriter always acts as a representative of the insurer, and it accepts risks on the latter's behalf. The classic insurance broker intermediates between the policyholder and the insurer, without being able itself to determine aspects such as the terms and conditions of the policy or the calculation of the premium.

Combining the two activities would lead to uncertainty and confusion as to the capacity in which the intermediary is acting, and would thus entail an irreconcilable conflict of interest.

It is possible, however, for two related companies to be registered, each in a different category. Thus, for example, within a single group, one company could register as an insurance broker, while another company of the same group could register as a mandated underwriter.

WHAT SHOULD YOU DO IF YOU CARRY OUT ACTIVITIES AS A MANDATED UNDERWRITER?

NOTIFY THE FSMA IN A TIMELY MANNER, IN ORDER TO BENEFIT FROM THE TEMPORARY TRANSITION PERIOD

A TRANSITION PERIOD FOR MANDATED UNDERWRITERS WHO ARE ALREADY ACTIVE

IF YOU ARE ALREADY REGISTERED AS AN INSURANCE INTERMEDIARY ON 10 APRIL 2019, YOU MAY CONTINUE TO CARRY OUT AN ACTIVITY AS MANDATED UNDERWRITER. IN ORDER TO BENEFIT FROM THIS TRANSITION PERIOD, YOU SHOULD NOTIFY THE FSMA AT THE VERY LATEST ON 10 JULY 2019 THAT YOU ARE CARRYING OUT AN UNDERWRITING ACTIVITY. THIS NOTIFICATION CAN BE DONE ONLY BY SENDING AN EMAIL TO TPC@FSMA.BE STATING YOUR NAME, COMPANY NUMBER AND THE FACT THAT YOU ARE CARRYING OUT ACTIVITIES AS A MANDATED UNDERWRITER.

YOU THEN HAVE UNTIL 10 APRIL 2020 TO SUBMIT AN APPLICATION FOR REGISTRATION AS A MANDATED UNDERWRITER. THE FSMA WILL CONTACT YOU AND PROVIDE YOU WITH ADDITIONAL INFORMATION ABOUT THE PRACTICAL MODALITIES TO BE FOLLOWED.



Please note! If you have not submitted an application for registration by 10 april 2020 at the latest, or if your request for registration was denied (because you did not meet the legal requirements), you may no longer carry out the activity of a mandated underwriter.

NEW REGISTRATION AS A MANDATED UNDERWRITER

If you were not registered as an insurance intermediary on 10 april 2019 and wish to carry out the activity of a mandated underwriter, you are required to register as an insurance intermediary in the category 'mandated underwriters'. Without registration, you may not carry out the activity of mandated underwriter.