

INSURANCE MEDIATION DIRECTIVE 2: A STEP TO EVER CLOSER UNION IN THE EU?

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To Our Clients and Friends:

On 3 July 2012, the EU Commission published draft amendments to EU Directive 2002/92EC on insurance mediation. The Insurance Mediation Directive (the “IMD”), which came into force in 2005, covers the regulation of general insurance products such as motor insurance as well as life insurance policies, and includes those insurance products containing investment elements. At present, the IMD applies to agents and brokers rather than the sale of insurance products sold directly by insurers. This will change when the draft amendments to the IMD, known as IMD2, are adopted. IMD2 is expected to be adopted by the EU Parliament and Council during 2013/14 and enter into force about two years later.

INSURANCE MEDIATION IN THE EU

Insurance mediation is:

- advising on, proposing or carrying out any other work preparatory to the conclusion of insurance contracts, or of concluding such contracts; and
- assisting in the administration and performance of insurance contracts, in particular in the event of a claim.

The current IMD seeks to ensure:

- professionalism and competence among insurance intermediaries;
- protection of consumers’ interests;
- registration of individuals/companies providing insurance or reinsurance mediation in their home EU country (which allows them to do business elsewhere in the EU);
- involvement of national financial authorities and other bodies in the registration process;
- easy public access to details of registered insurance and reinsurance intermediaries;
- respect for minimum professional requirements such as:

- appropriate knowledge and ability;
- good reputation;
- professional indemnity insurance or other comparable guarantee; and
- sufficient financial capacity to protect consumers;
- clear explanations for consumers on the advice given; and
- appropriate and effective alternative dispute resolution procedures.

THE NEED FOR REFORM

The IMD is a minimum harmonisation instrument. This means that it provides a “floor” rather than a “ceiling” of basic policyholder protection. The IMD enabled EU Member States to “gold-plate” the implementing measures. Consequently, the IMD has been implemented by the EU Member States in substantially different ways. For example, the UK requires mandatory disclosure of intermediary remuneration for some insurance policies, whereas some other EU Member States did not implement such a requirement. In 2007, the Committee of European Insurance and Occupational Pensions Supervisors, now the European Insurance and Occupational Pensions Authority (“EIOPA”), advised the EU Commission to amend the IMD in order to address concerns with the standards of sale of insurance products in the EU and to clarify certain technical provisions of the IMD.

PURPOSE AND OBJECTIVES OF THE DRAFT IMD2

The main purpose of the draft IMD2 is to achieve a more effective single market for retail insurance across the EU and strengthen consumer protection. This is to be achieved through the harmonisation of national conduct of business rules for all sellers of insurance products and other market entities present in the insurance and reinsurance markets in the EU.

The objectives of the draft IMD2 include: (i) the creation of a level playing field; (ii) the reduction of conflicts of interest; (iii) the reduction of the burden for cross-border entry; (iv) the improvement of advice for complex insurance products; (v) raising the level of harmonisation between EU Member States (*e.g.*, establishment of a single electronic register of persons providing insurance mediation services in the EU) of administrative sanctions for infringements of sales rules; and (vi) the inclusion in the scope of application of IMD2 of all distribution channels (*e.g.*, direct and intermediary writers of life and non-life insurance products, car rentals and travel agents).

SCOPE OF APPLICATION OF THE DRAFT IMD2

The draft IMD2 would extend the current scope of application of the IMD from insurance intermediaries, such as agents and brokers, to cover all sellers of insurance products including, for the first time, insurance companies that sell insurance directly to consumers in the EU. This will include persons who sell such products on an ancillary basis, such as leasing and car rental companies. The draft IMD2 regime would also apply to price comparison websites, claims managers and loss adjusters. However, certain intermediaries which sell insurance on an ancillary basis under the supervision of an insurance undertaking or registered intermediary could, instead of registration, use a declaration procedure with significantly less onerous disclosure requirements. Further, under the “de minimis” exemption, sellers of insurance policies ancillary to the sale of goods under €600 pro rata premium on an annual basis would be exempt from compliance with IMD2. Those who merely “introduce” consumers would also not be caught by IMD2.

REGISTRATION REQUIREMENTS

The draft IMD2 requires EIOPA to establish a single electronic register of persons providing insurance mediation services in the EU which would be linked to national databases.

REMUNERATION DISCLOSURE REQUIREMENTS AND CONDUCT OF BUSINESS RULES

The draft IMD2 includes the following main provisions:

- a requirement to disclose the basis and the amount of the remuneration by the intermediary;
- a requirement to disclose the amount of any variable remuneration received by the sales employees of insurance undertakings and intermediaries;
- a mandatory “full disclosure” regime for the sale of life insurance products and an “on-request” regime (*i.e.*, on the consumer’s demand) for the sale of non-life products with a transitional period of five years. After the expiry of the five-year transitional period, the full disclosure regime would automatically apply to the sale of non-life products too;
- an obligation on insurance undertakings and intermediaries to give the consumer, prior to entry into the contract, sufficient information about the insurance product to allow him to make an informed decision;

- a general requirement for intermediaries to act in the best interest of their client; and
- a requirement that EIOPA ensures that the information it receives relating to national provisions is communicated to insurance undertakings, intermediaries and consumers.

Under IMD2, the person selling the insurance product will be obliged to disclose the capacity in which he is acting (*i.e.*, agent, direct writer, broker, etc.) by presenting a business card when selling the product.

The draft IMD2 also sets out various additional consumer protection requirements in relation to insurance investment products, including an obligation to: (a) act honestly, fairly and professionally in accordance with the best interests of the consumer; (b) ensure that information is clear, fair and not misleading; and (c) provide information about the insurance undertaking or intermediary and its services (in particular whether any advice is provided on an independent basis), including the scope of any market analysis about proposed products, investment strategies and costs.

INSURANCE PRODUCTS WITH INVESTMENT ELEMENTS

Differences in regulation between life insurance products and mutual-fund-type products have caused problems for European consumers. This is because less strict standards currently apply to insurance products than to non-insurance investment products. The draft IMD2 aims to address this grey area by amending the provisions dealing with life insurance products with investment elements by clearly delineating the rules regarding them. The draft IMD2 states that all information regarding such insurance products must be fully disclosed and clearly presented to consumers.

“BUNDLING” OF INSURANCE PRODUCTS

The draft IMD2 introduces a provision on “bundling” products together and requires that the consumer be advised that the products may be purchased separately. It also requires EIOPA to develop, and thereafter update, guidelines for the supervision of “bundling” practices.

OBLIGATION ON MEMBER STATES

IMD2 would require EU Member States to ensure that effective, proportionate and dissuasive administrative sanctions and measures are taken by competent authorities for breach of the national provisions adopted pursuant to IMD2.

REACTION FROM THE INDUSTRY

The British Insurance Brokers' Association and the European Federation of Insurance and Financial Intermediaries have, on the whole, welcomed the proposed IMD2. However, concerns remain over the mandatory disclosure requirements and the creation of a level playing field across the EU Member States. Both organisations have expressed a clear intention to continue voicing their views to the EU Commission, the EU Parliament and the Council of Ministers in the coming months in order to influence the legislative detail of IMD2.

CONCLUSION

The enhancement of consumer protection in the EU is clearly to be regarded as a good thing. However, given the differing nature of the various risks insured across the EU, the degree and method of harmonisation proposed by the draft IMD2 has the potential to be a somewhat blunt instrument. IMD2 represents an opportunity for the establishment of a well-coordinated, harmonised regime for the provision of insurance mediation in the EU. It is hoped that EIOPA, working together with the national authorities of the EU Member States, will use this opportunity wisely. As ever, the mischief will be in the detail and it remains to be seen how the draft IMD2 will be implemented and interpreted by the EU Member States.

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Please do not hesitate to contact us if you have any questions.

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