

**Insurance: Conduct of Business**

# Chapter 1

# Application

## 1.1 The general application rule

### The general application rule

1.1.1 **R** This sourcebook applies to a *firm* with respect to the following activities carried on in relation to a *non-investment insurance contract* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

- (1) an *insurance distribution activity*;
- (2) *effecting and carrying out contracts of insurance*;
- (3) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (4) *communicating or approving a financial promotion*;

and activities connected with them.

### Modifications to the general application rule

1.1.2 **R** The general application *rule* is modified in ■ ICOBS 1 Annex 1 according to the type of *firm* (Part 1), its activities (Part 2), and its location (Part 3).

1.1.3 **R** The general application *rule* is also modified in the chapters of this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

### Guidance

1.1.4 **G** *Guidance* on the application provisions is in ■ ICOBS 1 Annex 1 (Part 4).

Application (see ICOBS 1.1.2 R)

Part 1: Who?

Modifications to the general application rule according to type of firm

1			Third party processors
1.1	R	(1)	This rule applies where a <i>firm</i> (or its <i>appointed representative</i> ) ("A") has outsourced <i>insurance distribution activities</i> to a <i>third party processor</i> .
		(2)	Any rule in this sourcebook which requires the <i>third party processor</i> , when acting as such, to disclose its identity to a <i>customer</i> must be read as applying to the <i>third party processor</i> only to the extent that it applies to A and as requiring disclosure of A's identity.
1.2	G	(1)	The disclosure required of the <i>third party processor</i> under ICOBS 4.3-7R can be made without having to disclose the identity of the <i>third party processor</i> to the <i>customer</i> and therefore without breaching paragraph 1.1R(2) above.
2			Managing agents
2.1	R	(1)	References to an <i>insurer</i> (including within the reference to <i>insurance distributor</i> ) apply equally to a <i>managing agent</i> unless the context requires otherwise.
		(2)	A <i>managing agent</i> must give effect to the policy that a <i>consumer</i> must, where required by this sourcebook, be offered cancellation rights.
		(3)	References to <i>managing agents</i> in this sourcebook relate to their functions in managing the obligations of a <i>member</i> in his capacity as such.
3			Authorised professional firms
3.1	R		This sourcebook (except for ICOBS 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:
		(1)	the provisions on communications to <i>clients</i> and <i>financial promotions</i> (see ICOBS 2.2);
		(2)	the e-commerce provisions (ICOBS 3.2);
		(3)	general information disclosure requirements in relation to complaints procedures (see ICOBS 4.1); and
		(4)	provisions implementing articles 1(4), 17, 18, 19, 20, 23, and 24 of the <i>IDD</i> (see ICOBS 2.2.2R (communication to customers and financial promotions), ICOBS 2.2.2AR (marketing communications), ICOBS 2.5.-1R (the customer's best interests rule), ICOBS 2.6 (Distribution of connected contracts through exempt persons), ICOBS 4.1 (Information about the firm, its services and remuneration), ICOBS 4.1A (Means of communicating to customers), ICOBS 4.3 (remuneration disclosure), ICOBS 5.2 (Demands and needs), ICOBS 5.3.3R (Advice on the basis of a fair analysis), ICOBS 5.3.4R (Personalised explanation), ICOBS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOBS 6A.3 (Cross-selling)), except to the extent that the <i>firm</i> is subject to equivalent rules of its <i>designated professional body</i> approved by the <i>FCA</i> .
3.2	G		Compliance with provisions of the <i>Distance Marketing Directive</i> is dealt with in the Professional Firms sourcebook (see PROF 5.4).
4			Appointed representatives
4.1	R	(1)	An <i>insurer</i> must ensure that its <i>appointed representative</i> complies with this sourcebook as it applies to an <i>insurance intermediary</i> .

Part 1: Who?

Modifications to the general application rule according to type of firm

- (2) However, if the *appointed representative* is acting as the *insurer's third party processor* then:
  - (a) this *rule* is subject to the *third party processors rule* (see paragraph 1.1R); and
  - (b) the *insurer* is not required to ensure that the *appointed representative* complies with the *rules* in this sourcebook on commission disclosure (see ICOB 4.4).
- 4.2 G The cancellation requirements in chapter 7 do not apply to a *distance contract* entered into by an *appointed representative* to provide distribution services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the *Distance Marketing Regulations* apply instead.
- 5 Service companies
- 5.1 R This sourcebook does not apply to a *service company*, except for the provisions on communications to *clients* and *financial promotions* (see ICOB 2.2).
- 6 Lloyd's
- 6.1 R The *Society* must ensure that no *member* carries on *motor vehicle liability insurance business* at Lloyd's unless a claims representative has been appointed to act for that *member* in each *EEA State* other than the *United Kingdom*, with responsibility for handling and settling a claim by an *injured party*. Otherwise, this sourcebook does not apply to the *Society*.

Part 2: What?

Modifications to the general application rule according to activities

- 1 Reinsurance
- 1.1 R This sourcebook does not apply to activities carried on in relation to a *reinsurance contract*.  
[Note: recital 51 to the *IDD*]
- 2 Contracts of large risks
- 2.1 R Subject to Part 3 of this Annex:
  - (1) where the risk is located outside the *European Economic Area*; this sourcebook does not apply to a *firm* distributing a *contract of large risks*
  - (2) only ICOB 2 (General matters) and ICOB 6A.3 (Cross-selling) apply to a *firm* distributing a *contract of large risks* for a *commercial customer* where the risk is located within the *European Economic Area*; and
  - (3) the *IPID* requirement in ICOB 6.1.10AR (How must *IPID* information be provided?) and ICOB 6 Annex 3R (Providing product information by way of a standardised insurance information document) do not apply to a *firm* distributing a *contract of large risks*.  
[Note: article 22(1) of the *IDD*]
- 2.2 G *Principle 7* continues to apply so a *firm* should provide evidence of cover promptly after inception of a *policy* to its *customer*. In respect of a *group policy*, a *firm* should provide information to its *customer* to pass on to other *policyholders* and should tell the *customer* the information should be given to each *policyholder*.
- 2.3 R ICOB 6.2.3 R does not apply to *contracts of large risks*.  
[Note: article 184(1) of the *Solvency II Directive*]
- 3 Pure protection contracts: election to apply COBS rules
- 3.1 R (1) This sourcebook (except for ICOB 4.6) does not apply in relation to a *pure protection contract* to the extent that a *firm* has elected to comply with the Conduct of Business sourcebook (*COBS*) in respect of such business.

Part 2: What?

Modifications to the general application rule according to activities

- (2) Within the scope of such an election, a *firm* must:
    - (a) comply with the rest of the Handbook (except for COBS 6.1A, COBS 6.1B and COBS 6.1.9 R) treating the *pure protection contract* as a life policy and a *designated investment*, and not as a *non-investment insurance contract*; and
    - (b) if applicable, also comply with ICOBS 4.6.
  - (3) A *firm* must make, and retain indefinitely, a record in a *durable medium* of such an election (and any reversal or amendment). The record must include the effective date and a precise description of the part of the *firm's* business to which the election applies.
- 4 Chains of insurance intermediaries
- 4.1 R Where there is a chain of *insurance intermediaries* between the *insurer* and the *customer*, this sourcebook, except ICOBS 2, applies to any *insurance intermediary* in contact with the *customer*.
- 4.2 G ICOBS 2 applies to all *insurance intermediaries*, including those within a chain who are not in contact with the *customer*.

Part 3: Where?

Modifications to the general rule of application according to location

- 1 EEA territorial scope rule: compatibility with European law
- 1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for *guidance* on this).
- (2) This *rule* overrides any other *rule* in this sourcebook.
- 1.2 R In addition to the *EEA territorial scope rule*, the effect of the *E-Commerce Directive* on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 8 of Part 4 for *guidance* on this).
- [Note: article 3(3) of, and Annex to, the *E-Commerce Directive*]
- 2 Exemption for insurers: business with non-EEA customers via non-UK intermediaries
- 2.1 R This sourcebook does not apply to an *insurer* if:
- (1) the intermediary (whether or not an *insurance intermediary*) in contact with the *customer* is not established in the *United Kingdom*; and
  - (2) the *customer* is not *habitually resident* in, and, if applicable, the *State of the risk* is outside, an *EEA State*.
- 3 Exemption for insurers: business with non-UK EEA customers
- 3.1 R A *rule* in this sourcebook which goes beyond the minimum required by *EU* legislation does not apply to an *insurer* if the *customer* is *habitually resident* in (and, if applicable, the *State of the risk* is) an *EEA State* other than the *United Kingdom*, to the extent that the *EEA State* in question imposes measures of like effect.

Part 4: Guidance

- 1 The main extensions and restrictions to the general application rule
- 1.1 G The general application *rule* is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.
- 1.2 G The provisions of the *Single Market Directives* and other directives also extensively modify the general application *rule*, particularly in relation to territorial scope. However, for the majority of circumstances, the general application *rule* is likely to apply.
- 2 The Single Market Directives and other directives
- 2.1 G This *guidance* provides a general overview only and is not comprehensive.

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- 2.2 G When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. The *EEA* territorial scope *rule* is unlikely to apply if a *UK firm* is doing business from a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *UK product*. However, if there is a non-UK element, the *firm* should consider whether:
- (1) it is subject to the directive;
  - (2) the business it is performing is subject to the directive; and
  - (3) the particular *rule* is within the scope of the directive.
- If the answer to all three questions is 'yes', the *EEA* territorial scope *rule* may change the effect of the general application *rule*.
- 2.3 G When considering a particular situation, a *firm* should also consider whether two or more directives apply.
- 3 Insurance Distribution Directive: effect on territorial scope
- 3.1 G The *IDD's* scope covers most *firms* carrying on most types of *insurance distribution*.
- 3.2 G The *rules* in this sourcebook within the Directive's scope are those implementing the minimum requirements in articles 1(4), 17, 18, 19, 20, 23 and 24(1) to (3) and (6) of the *IDD* set out in:
- (1) ICOB5 2.2.2R (communication to customers and financial promotions), ICOB5 2.2.2AR (marketing communications), ICOB5 2.5.-1R (the customer's best interests rule), ICOB5 2.6 (Distribution of connected contracts through exempt persons);
  - (2) ICOB5 4.1 (General requirements for insurance intermediaries and insurers), ICOB5 4.1A (Means of communicating to customers), ICOB5 4.3 (Remuneration disclosure);
  - (3) ICOB5 5.2 (Demands and needs), ICOB5 5.3.4R (Personalised explanation), ICOB5 5.3.3R (Advice on the basis of a fair analysis); and
  - (4) ICOB5 6.1 (Providing product information to customers: general) and ICOB5 6 Annex 3R (Providing product information by way of a standardised insurance information document); and
  - (5) ICOB5 6A.1.4R (Ensuring the customer can make an informed decision) and ICOB5 6A.3 (Cross-selling).
- 3.2A G A Member State is entitled to impose additional requirements within the Directive's scope in the 'general good'. (See recital 52 to, and article 22 of, the *IDD*.)"
- 3.2B G The additional requirements within the scope of the *IDD* and found in this sourcebook are those that:
- (1) deal with communication to *customers* and *financial promotions*, the *customer's best interests rule* and additional responsibilities of *insurance distributors* (see ICOB5 2.2.2R, ICOB5 2.2.2AR, ICOB5 2.5.-1R and ICOB5 2.6); and
  - (2) require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see ICOB5 4 (Information about the firm, its services and remuneration), ICOB5 5.2 (Demands and needs), ICOB5 5.3.3R (Advice on the basis of a fair analysis), ICOB5 6.1A.5R (Responsibility for producing the standardised insurance product information document), ICOB5 6.1 (Providing product information to customers: general); ICOB5 6A.1.4R (Ensuring the customer can make an informed decision) and ICOB5 6A.3 (Cross-selling)).
- 3.3 G The *IDD* places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the *Home State*, except in relation to business conducted through a *branch*, in which case the responsibility rests with the *EEA State* in which the *branch* is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and art

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icle 7(2) of, the *IDD*). Accordingly the general *rules* on territorial scope are not modified by the *IDD* except:

- (1) for an *EEA firm* providing *passport activities* under the Directive in the *United Kingdom*, additional rules within the Directive's scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect; and
- (2) for *insurance distribution* business carried on by *insurers*:
  - (a) minimum and additional requirements apply to a *UK firm* unless responsibility for any matter it covers is reserved by the *Solvency II Directive* to the *firm's Host State* regulator; and
  - (b) paragraph (1), and 3.3AG, below, apply in the same way unless the responsibility for any matter it covers is reserved by the *Solvency II Directive* to the *firm's Home State* regulator

3.3A G An *EEA firm* acting as the principal of an *appointed representative* carrying on *insurance distribution activities* from an establishment in the *United Kingdom* is required to ensure that its *appointed representative* complies with this sourcebook.

4 Solvency II Directive non-life business: effect on territorial scope

4.1 G The *Solvency II Directive's* scope covers *insurers* authorised under that Directive conducting *general insurance business*.

4.2 G The *rules* in this sourcebook within the *Solvency II Directive's* scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the insurance contract (see [ICOBS 2.2](#) (Communications to clients and financial promotions), [ICOBS 6A.1.4R](#) (Ensuring the customer can make an informed decision) and [ICOBS 8](#) (Claims handling) except those parts of [ICOBS 8.2](#) (Motor vehicle liability insurers) implementing the *Consolidated Motor Insurance Directive*).

4.3 G The *Solvency II Directive* specifies minimum information requirements and permits *EEA States* to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the *Solvency II Directive*.)

4.4 G If the *State of the risk* is an *EEA State*, the *Solvency II Directive* provides that the applicable information rules shall be determined by that state. Accordingly, if the *State of the risk* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the risk* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the *Solvency II Directive* explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 156 and 180 of the *Solvency II Directive*.)

5 Solvency II Directive life business: effect on territorial scope

5.1 G The *Solvency II Directive's* scope covers *long-term insurers* which are *Solvency II firms* conducting *long-term insurance business*.

5.2 G The *rules* in this sourcebook within the Directive's scope are the cancellation *rules* (see [ICOBS 7](#)) and those *rules* requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance* (see [ICOBS 2.2](#) (Communications to clients and financial promotions), [ICOBS 6](#) (Product information) and [ICOBS 8](#) (Claims handling) except [ICOBS 8.2](#) (Motor vehicle liability insurers)).

5.3 G The Directive specifies minimum information and cancellation requirements and permits *EEA States* to adopt additional information requirements that are necessary for a proper understanding by the *policyholder* of the essential elements of the commitment.

5.4 G If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the commitment* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial pro-*

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*motion rules*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 156, 180, 185 and 186 of the *Solvency II Directive*.)

## 6 Motor Insurance Directives: effect on territorial scope

6.1 G The scope of the *Consolidated Motor Insurance Directive* covers *insurers* conducting *motor vehicle liability insurance business*. The rules in this sourcebook within the Directive's scope are those regarding the appointment of claims representatives and handling of claims by *injured parties* (see ICOBS 8.2).

6.2 G The Directive requires a *motor vehicle liability insurer* to appoint a claims representative in each *EEA State* other than its *Home State*. It specifies minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by *injured parties*.

6.3 G The Directive's provisions apply to *motor vehicle liability insurers* for which the *United Kingdom* is the *Home State*. (See articles 21 and 22 of the *Consolidated Motor Insurance Directive*.)

## 7 Distance Marketing Directive: effect on territorial scope

7.1 G In broad terms, a *firm* is within the *Distance Marketing Directive's* scope when conducting an activity relating to a *distance contract* with a *consumer*. The rules in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information (see ICOBS 2.2 (Communications to clients and financial promotions), ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 6 (Product information), and ICOBS 6A.1.4R (Ensuring the customer can make an informed decision)), the cancellation rules (see ICOBS 7) and the other specific rules implementing the Directive (see ICOBS 3.1.)

7.2 G In the *FCA's* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a *branch*, in which case the responsibility rests with the *EEA State* in which the *branch* is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*.)

7.3 G This means that relevant rules in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *United Kingdom* or of any other *EEA State* or *non-EEA state*).

7.4 G Conversely, the territorial scope of the relevant rules in this sourcebook is modified as necessary so that they do not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA State* if the *firm* is a national of the *United Kingdom* or of any other *EEA State*.

7.5 G In the *FCA's* view:

(1) the 'country of origin' basis of the Directive is in line with that of the *E-Commerce Directive* and the *IDD*; (See recital 6 to the *Distance Marketing Directive*.)

(2) for business within the scope of both the *Distance Marketing Directive* and the *Solvency II Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the rules requiring pre-contract information and cancellation rules derived from the *Solvency II Directive* apply on a 'country of origin' basis rather than being based on the *State of the commitment* (See articles 4(1) and 16 of the *Distance Marketing Directive*.)

## 8 Electronic Commerce Directive: effect on territorial scope

8.1 G The *E-Commerce Directive's* scope covers every *firm* carrying on an *electronic commerce activity*. Every rule in this sourcebook is within the Directive's scope.

8.2 G A key element of the Directive is the ability of a *person* from one *EEA State* to carry on an *electronic commerce activity* freely into another *EEA State*. Accordingly, the territorial application of the rules in this sourcebook is modified so that they apply at least to a *firm* carrying on an *electronic commerce activity* from an *establishment*



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- in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.
- 8.3 G Conversely, a *firm* that is a national of the *United Kingdom* or another *EEA State*, carrying on an *electronic commerce activity* from an *establishment* in another *EEA State* with or for a *person* in the *United Kingdom*, need not comply with the *rules* in this sourcebook. (See article 3(1) and (2) of the *E-Commerce Directive*.)
- 8.4 G The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the *FCA* has adopted for this sourcebook. The derogation applies to an *insurer* that is authorised under, and carrying on an *electronic commerce activity* within, the scope of the *Solvency II Directive* and permits *EEA States* to continue to apply their advertising rules in the 'general good'.
- 8.5 G Where the derogation applies, the *rules* on *financial promotion* continue to apply for incoming *electronic commerce activities* (unless the *firm's* 'country of origin' applies rules of like effect), but do not apply for outgoing *electronic commerce activities*. (See article 3(3) and Annex, fourth indent of the *E-Commerce Directive*; Annex to European Commission Discussion Paper MARKT/2541/03.)
- 8.6 G In the *FCA's* view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
- (1) is in line with the *Distance Marketing Directive* and the *IDD*;
  - (2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
- 8.7 G The 'derogations' in the Directive may enable other *EEA States* to adopt a different approach to the *United Kingdom* in certain fields. (See recital 52 to the *IDD*, recital 6 to the *Distance Marketing Directive*, article 3 of, and the Annex to, the *E-Commerce Directive*.)

