INSURANCE DISTRIBUTION DIRECTIVE INSTRUMENT 2018

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
   (a) section 55U (Applications under this Part);
   (b) section 60 (Application for approval);
   (c) section 137A (The FCA’s general rules);
   (d) section 137B (FCA general rules: clients’ money, right to rescind, etc);
   (e) section 137R (Financial promotion rules);
   (f) section 137T (General supplementary powers);
   (g) section 138C (Evidential provisions);
   (h) section 138D (Action for damages);
   (i) section 139A (Power of the FCA to give guidance);
   (j) section 250 (Modification or waiver of rules);
   (k) section 332 (Rules in relation to persons to whom the general prohibition does not apply);
   (l) section 395 (The FCA’s and PRA’s procedures); and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 October 2018 except:

(1) Annex A (Glossary) Part 1 which comes into force on 25 May 2018; and

Amendments to the Handbook

D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

<table>
<thead>
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<td>Senior Management Arrangements, Systems and Controls sourcebook (SYSC)</td>
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The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)  
Training and Competence sourcebook (TC)  
General Provisions (GEN)  
Fees manual (FEES)  
Prudential sourcebook for Mortgage and Home Finance firms, and Insurance Intermediaries (MIPRU)  
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))  
Conduct of Business sourcebook (COBS)  
Insurance: Conduct of Business sourcebook (ICOBS)  
Client Assets sourcebook (CASS)  
Product Intervention and Product Governance sourcebook (PROD)  
Supervision manual (SUP)  
Dispute Resolution: Complaints sourcebook (DISP)  
Compensation sourcebook (COMP)  
Credit Unions sourcebook (CREDS)  
Professional Firms sourcebook (PROF)  

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<tbody>
<tr>
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<td>Training and Competence sourcebook (TC)</td>
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<td>Conduct of Business sourcebook (COBS)</td>
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<td>Credit Unions sourcebook (CREDS)</td>
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<tr>
<td>Professional Firms sourcebook (PROF)</td>
<td>Annex S</td>
</tr>
</tbody>
</table>

E. The Financial Conduct Authority confirms and remakes in the Glossary of definitions:

(1) The defined expressions “Financial Promotion Order” and “Regulated Activities Order”.

(2) To the extent that they appear in the Glossary of definitions, the defined expressions relating to any other legislation referred to in the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (SI 2018/546).

Amendments to material outside the Handbook

F. The Enforcement Guide (EG) is amended in accordance with Annex T to this instrument.

G. The Perimeter Guidance manual (PERG) is amended in accordance with Annex U to this instrument.

Notes

H. In this instrument, the “notes” (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.
European Union Legislation

I. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the electronic Official Journal of the European Union is deemed authentic.

Citation

J. This instrument may be cited as the Insurance Distribution Directive Instrument 2018.

By order of the Board
24 May 2018
Annex A

Amendments to the Glossary of definitions

Part 1: Comes into force on 25 May 2018

Insert the following new definitions in the appropriate alphabetical positions. The text in this section is not underlined.


[Note: See http://eur-lex.europa.eu/eli/dir/2016/97/oj]

**IDD IPID Regulation** Commission Implementing Regulation (EU) 2017/1469 of 11 August laying down a standardised presentation format for the insurance product information document.


**IDD Regulation** Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017, supplementing the **IDD** of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance–based investment products.

**IDD POG Regulation** Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017, supplementing the **IDD** of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors.
Part 2: Comes into force on 1 October 2018

For “IMD”, substitute “IDD” in the following definitions in the paragraphs indicated. The new text is not shown as underlined and the deleted is not shown as struck through.

<table>
<thead>
<tr>
<th>Definition</th>
<th>Instances</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEA authorisation (a)</td>
<td>two</td>
</tr>
<tr>
<td>EEA firm (e)</td>
<td>three</td>
</tr>
<tr>
<td>top-up cover</td>
<td>two</td>
</tr>
</tbody>
</table>

For “Insurance Mediation Directive”, substitute “IDD” in the following definitions. The new text is not shown as underlined and the deleted is not shown as struck through.

<table>
<thead>
<tr>
<th>Definition</th>
<th>Instances</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEA authorisation (a)</td>
<td>one</td>
</tr>
<tr>
<td>EEA right (b)(i)</td>
<td>one</td>
</tr>
<tr>
<td>Single Market Directives (d)</td>
<td>one</td>
</tr>
</tbody>
</table>

For “mediation”, substitute “distribution” in the following definitions. The new text is not shown as underlined and the deleted is not shown as struck through.

<table>
<thead>
<tr>
<th>Definition</th>
<th>Instances</th>
</tr>
</thead>
<tbody>
<tr>
<td>category B3 firm (a)</td>
<td>one</td>
</tr>
<tr>
<td>charge (2)(b)</td>
<td>one</td>
</tr>
<tr>
<td>client money (2)</td>
<td>one</td>
</tr>
<tr>
<td>commission (b)</td>
<td>one</td>
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<tr>
<td>exempt insurance intermediary (a) (b) (c)</td>
<td>one</td>
</tr>
<tr>
<td>group policy (b)(ii)</td>
<td>one</td>
</tr>
<tr>
<td>third party processor (1) (2)</td>
<td>one</td>
</tr>
<tr>
<td>UK insurance intermediary</td>
<td>one</td>
</tr>
</tbody>
</table>

Insert the following new definitions in the appropriate alphabetical positions. The text in this section is not underlined.

**customer’s best interests rule**  
*ICOBS 2.5.-1R.*

**IDD ancillary insurance intermediary**

any natural or legal person, other than a credit institution or an investment firm who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:

(a) the principal professional activity of that natural or legal person is other than insurance distribution;

(b) the natural or legal person only distributes certain insurance products that are complementary to a good or service; and
the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity.

[Note: article 2(1)(4) of the IDD]

**IDD insurance intermediary**

(a) as defined in article 2(1)(3) of the IDD, any natural or legal person, other than an **IDD insurance undertaking** or an **IDD reinsurance undertaking** or their employees and other than an **IDD ancillary insurance intermediary** who, for remuneration, takes up or pursues the activity of insurance distribution; or

(b) an **IDD ancillary insurance intermediary**.

[Note: article 2(1)(3) and (4) of the IDD]

**IDD insurance undertaking**
an undertaking as defined in article 13(1) of the Solvency II Directive.

[Note: article 2(1)(6) of the IDD]

**IDD insurance undertaking**
an undertaking as defined in article 13(1) of the Solvency II Directive.

[Note: article 2(1)(6) of the IDD]

**IDD reinsurance intermediary**
any natural or legal person, other than an **IDD reinsurance undertaking** or its employees who, for remuneration, takes up or pursues the activity of reinsurance distribution.

[Note: article 2(1)(5) of the IDD]

**IDD reinsurance undertaking**
an undertaking as defined in article 13(4) of the Solvency II Directive.

[Note: article 2(1)(7) of the IDD]

**insurance-based investment product**
a contract of insurance which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:

(a) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);

(b) life insurance contracts where the benefits under the contract are payable only on death or in respect of
incapacity due to injury, sickness or disability;

(c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;

(d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;

(e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

[Note: article 2(1)(17) of the IDD]

**insurance distribution** (as defined in article 2(1) of the IDD) the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

The following shall not be considered to constitute insurance distribution:

(a) the provision of information on an incidental basis in the context of another professional activity where the provider does not take any additional steps to assist in concluding or performing an insurance contract;

(b) the management of claims of an *IDD insurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims;

(c) the mere provision of data and information on potential policyholders to an *IDD insurance intermediary* or *IDD insurance undertaking* where the provider does not take any additional steps to assist in the conclusion of an insurance contract;
(d) the mere provision of information about an insurance product, an *IDD insurance intermediary* or an *IDD insurance undertaking* to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance contract; and

(e) (in *MIPRU 5*), the services of an *IDD ancillary insurance intermediary* where all the following conditions are met:

(i) the insurance is complementary to the good or service supplied by a provider, where such insurance covers:

(A) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or

(B) damage to, or loss of, baggage and other risks linked to travel booked with that provider;

(ii) the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a pro rata annual basis; and

(iii) by way of derogation from (ii), where the insurance is complementary to a service referred to in (i) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.

[Note: articles 1(3), 2(1)(1) and 2(2) of the *IDD*

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**insurance distribution activity** any of the following regulated activities carried on in relation to a contract of insurance or rights to or interests in a *life policy*:

(a) *dealing in investments as agent* (article 21);

(b) *arranging (bringing about) deals in investments* (article 25(1));

(c) *making arrangements with a view to transactions in investments* (article 25(2));

(d) *assisting in the administration and performance of a contract of insurance* (article 39A);
(e) advising on investments (except P2P agreements) (article 53(1));

(f) agreeing to carry on a regulated activity in (a) to (e) (article 64).

insurance distributor an insurance intermediary or insurer.

[Note: article 2(1)(8) of the IDD]

insurance product information document the standardised presentation format as specified in the IDD IPID Regulation and in ICOBS 6 Annex 3R paragraph 1.1R.

IPID the insurance product information document.

IPID information (in ICOBS) the IDD information to be included in the IPID as required by ICOBS 6 Annex 3R, paragraph 2.1R.

primary place of business (in relation to insurance distribution activity) the location from where the main business is managed.

reinsurance distribution (as defined in article 2(1)(2) of the IDD) the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by an IDD reinsurance undertaking without the intervention of an IDD reinsurance intermediary.

The following shall not be considered to constitute reinsurance distribution:

(a) the provision of information on an incidental basis in the context of another professional activity where the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;

(b) the management of claims of an IDD reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;

(c) the mere provision of data and information on potential policyholders to an IDD reinsurance intermediary or IDD reinsurance undertaking where the provider does not take any additional steps to assist in the conclusion of a reinsurance contract; and

(d) the mere provision of information about a reinsurance product, an IDD reinsurance intermediary or an IDD reinsurance undertaking to potential policyholders where the provider does not take any additional steps
to assist in the conclusion of a reinsurance contract.

[Note: article 2(1)(2) and article 2(2) of the IDD]

relevant details

for a UK firm exercising an EEA right derived from the IDD, the details listed in regulation 17D of the EEA Passport Rights Regulations.

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

branch

(d) (in relation to an IMD IDD insurance intermediary):

(i) a place of business which is a part of an IMD insurance intermediary IDD insurance intermediary, not being the principal place of business, which has no separate legal personality and which provides insurance mediation insurance distribution for which the IMD insurance intermediary IDD insurance intermediary has been registered;

(ii) for the purposes of the Insurance Mediation Directive IDD, all the places of business set up in the same EEA State by an IMD insurance intermediary IDD insurance intermediary with headquarters in another EEA State are to be regarded as a single branch;

(iii) an agency or permanent presence of an IDD insurance intermediary in a Host State that is equivalent to a branch is to be regarded as a branch, unless the intermediary lawfully sets up such permanent presence in another legal form.

[Note: articles 2(1)(12) and 6(1) of the IDD]

(e) (in relation to an IMD IDD reinsurance intermediary):

(i) a place of business which is a part of an IMD reinsurance intermediary IDD reinsurance intermediary, not being the principal place of business, which has no separate legal personality and which provides reinsurance mediation reinsurance distribution for which
the **IMD IDD reinsurance intermediary** has been registered;

(ii) for the purposes of the **Insurance Mediation Directive IDD**, all the places of business set up in the same **EEA State** by an **IMD reinsurance intermediary** with headquarters in another **EEA State** are to be regarded as a single branch;

(iii) an agency or any permanent presence of an **IDD reinsurance intermediary** in the territory of a **Host State** that is equivalent to a branch is to be regarded as a branch, unless the intermediary lawfully sets up such permanent presence in another legal form.

[Note: articles 2(1)(12) and 6(1) of the **IDD**]

**connected contract**

a **non-investment insurance** contract which:

(a) is not a contract of long-term insurance (as defined by article 3 of the **Regulated Activities Order**);

(b) has a total duration (including renewals) of five years or less; [deleted]

(c) has a **premium** of -

(i) has an annual **premium** (or the equivalent of annual **premium**) of €500 or less; 600 euro or less (calculated on a pro rata annual basis), or

(ii) where the **contract of insurance** is complementary to a service being provided by the provider and the duration of that service is equal to or less than three **months**, 200 euro or less;

or equivalent amounts of sterling or another currency;

(d) covers the risk of:

(i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or

(iia) the non-use of services supplied by the provider; or
(ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider (“travel risks”) in circumstances where:

(A) the travel booked with the provider relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his their private capacity) or a small business; or

(B) the travel booked with the provider is only the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation;

(e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract); and

(f) is complementary to the non-motor goods being supplied or service being provided by the provider; and

(g) is of such a nature that the only information that a person requires in order to carry on one of the insurance mediation activities is the cover provided by the contract. [deleted]

(h) …

close links …

(2) (except where (1) applies and except in SUP 3 (Auditors) and SUP 4 (Actuaries) and SUP 12.4.8CR (Close links)) (in accordance with paragraph 3(2) in Schedule 6 to the Act (Close links)) the relationship between a person (“A”) and another person (“CL”) which exists if:

…

(3) …

(4) (in SUP 12.4.8CR (Close links)) a situation in which two or more persons are linked by:

(a) participation which means the ownership, direct or by way
of control, of 20% or more of the voting rights or capital of an undertaking:

(b) control which means the relationship between a parent undertaking and a subsidiary undertaking as set out in article 1 of Directive 83/349/EEC, or a similar relationship between any person and an undertaking.

A situation in which two or more persons are permanently linked to one and the same person by a control relationship is also to be regarded as constituting a close link between such persons.

[Note: article 2(1)(13) of the IDD]

consumer …

(7) (in the definitions of cross-border dispute, domestic dispute, sales contract and service contract, and in DISP 1.1.10-BR, DISP 1.1A.42R, DISP 2.7.3R and DISP 2.7.9AR) has the meaning in regulation 3 of the ADR Regulations, which is an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft, or profession.

[Note: article 4(1) of the ADR Directive]

contracts of large risks (in ICOB ICOBS and PROD) contracts of insurance covering risks within the following categories, in accordance with article 13(27) of the Solvency II Directive:

…

[Note: article 13(27) of the Solvency II Directive and article 2(1)(16) of the IDD]

customer (A) in the PRA Handbook Rulebook:

…

(B) in the FCA Handbook:

(1) (except in relation to SYSC 19F.2, ICOBS, a credit-related regulated activity, MCOB 3A, an MCD credit agreement, CASS 5 and PRIN in relation to MiFID or equivalent third country business, DISP 1.1.10-BR, PROD 1.4 and PROD 4) a client who is not an eligible counterparty for the relevant purposes.

…

(3) (in relation to SYSC 19F.2, ICOBS, DISP 1.1.10-BR, PROD 1.4 and PROD 4) a person who is a policyholder, or a prospective policyholder, but (except in ICOBS 2
(general matters) and (in respect of that chapter) ICOBS 1 (application) excluding a policyholder or prospective policyholder who does not make the arrangements preparatory to him concluding the conclusion of the contract of insurance.

(3A) (in relation to ICOBS 2 (General matters) and in respect of that chapter also ICOBS 1 (Application)) a person who is a policyholder, or a prospective policyholder.

... director

(1) ...

(a) ...

(b) ...

(c) (in SYSC, MIPRU 2 (Insurance mediation Responsibility for insurance distribution and MCD credit intermediation activity: responsibility, knowledge, ability and good repute), SUP 10A (FCA Approved persons) and SUP 10C (FCA senior management regime for approved persons in relevant authorised persons) a partnership;

(d) ...

...

distribute

(1) (in relation to PROD 1.1.3R, PROD 1.3 and PROD 3) offering, recommending or selling an investment or providing an investment service to a client.

[Note: recital 15 to the MiFID Delegated Directive]

(2) (in relation to PROD 1.4 and PROD 4) advising on or proposing a contract of insurance to a customer.

distributor

(1) (in relation to PROD 1.1.3R, PROD 1.3 and PROD 3) a firm which offers, recommends or sells investments or provides investment services to clients.

[Note: recital 15 to the MiFID Delegated Directive]

(2) (in relation to PROD 1.4 and PROD 4) a firm which advises on or proposes contracts of insurance which it does not manufacture.

durable medium

(a) paper; or

(b) any instrument which enables the recipient to store information addressed personally to him or her in a way accessible for future reference and for a period of time adequate
for the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, durable medium covers floppy disks, CD ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes internet sites, unless such sites meet the criteria specified in the first sentence of this paragraph. (In relation to the equivalent business of a third country investment firm, MiFID optional exemption business or collective portfolio management, if the relevant rule derives from the MiFID Org Regulation or implements the UCITS Directive, the UCITS Implementing Directive or the UCITS Implementing Directive No 2) the instrument used must be:

(i) appropriate to the context in which the business is to be carried on; and

(ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

In ICOBS and, in relation to life policies, in COBS:

(iii) the instrument used must be appropriate in the context of the business conducted between the insurance distributor and (for ICOBS) the customer or (for COBS) the client; and

(iv) the customer (for ICOBS) or client (for COBS) must be given the choice between information on paper and the instrument used, and must specifically choose the latter medium.

For the purposes of this definition, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business is sufficient.

[Note: article 2(f) of, and Recital 20 to, the Distance Marketing Directive, article 2(12) of the Insurance Mediation Directive, articles 2(1)(18), 23(4) and 23(6) of the IDD, article 4(1)(62) of MiFID and article 3(1) of the MiFID Org Regulation, articles 75(2) and 81(1) of the UCITS Directive, article 20(3) of the UCITS Implementing Directive and article 7 of the UCITS Implementing Directive No 2]

establishment conditions

(in relation to the establishment of a branch in the United Kingdom) the conditions specified in paragraph 13 of Schedule 3 to the Act (EEA Passport Rights), which are that:

(a) if the firm falls within paragraph (a), (b), (c), (d) or (f) in the definition of “EEA firm”\textsuperscript{2}
(b) if the firm falls within paragraph (e) in the definition of “EEA firm”:

(i) the EEA firm has given its Home State regulator notice of its intention to establish a branch in the United Kingdom;

(ii) the FCA or PRA (as the case may be) appropriate UK regulator has received notice (“a regulator’s notice consent notice”) from the firm’s Home State regulator that it has given the firm consent to establish a branch in the United Kingdom;

(ii) the consent notice is:

(A) given in accordance with the IDD;

(B) identifies the activities to which the consent relates; and

(C) includes such other information as may be prescribed; and

(iii) the EEA firm’s Home State regulator has informed it that the regulator’s notice has been sent to the FCA or PRA (as the case may be), and the EEA firm has been informed of the applicable provisions or one month has elapsed, beginning with the date on which the appropriate UK regulator received the consent notice.

(iv) one month has elapsed beginning with the date on which the EEA firm’s Home State regulator informed the firm that it had sent the regulator’s notice to the FCA or PRA (as the case may be).

…

fee

(1) (except in ICOBS and, in relation to a life policy, in COBS 6.1ZA) any payment or remuneration offered or made by a client to a firm in connection with designated investment business or with any other business of the firm, including (where applicable) any mark-up or mark-down;

(2) (in ICOBS and, in relation to a life policy, in COBS 6.1ZA)) remuneration payable directly by a customer in relation to insurance distribution activities carried on for the customer that is not:

(a) a commission of any kind, that is the remuneration included
in the insurance premium; or

(b) any other type of remuneration (i.e. that is not directly payable by the customer), including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in connection with the insurance contract.

[Note: article 19(1)(e)(i),(ii) and (iii) of the IDD]

financial promotion

…

(4) (in ICOBS and in relation to a life policy, in COBS 3.2.1R(3) and 4.3.1R), in addition to (1), any marketing communication within the meaning of article 17(2) of the IDD.

[Note: articles 10 and 11 of the MCD, and article 17(2) of the IDD]

Amend the following as shown.

Home State …

(5) (in relation to an IMD insurance intermediary or an IMD reinsurance intermediary):

(a) where the insurance intermediary is a natural person (P), the EEA State in which his P’s residence is situated and in which he carries on business;

(b) where the insurance intermediary is a legal person, the EEA State in which its registered office is situated or, if under its national law it has no registered office, the EEA State in which its head office is situated.

[Note: article 2(1)(10) of the IDD]

…

Host State …

(7) (for an IDD insurance intermediary or an IDD reinsurance intermediary) the EEA State, other than its Home State, in which the intermediary has a permanent presence or establishment or provides services.

[Note: article 2(1)(11) of the IDD]
a firm carrying on insurance mediation activity other than an insurer.

in the definition of IDD ancillary insurance intermediary, and in IFPRU and BIPRU 12) has the meaning in article 4(1)(2) of the EU CRR.

[Note: article 2(1)(4) of the IDD]

…

(1) (in relation to PROD 1.3 and PROD 3) creating, developing, issuing and/or designing an investment, including when advising corporate issuers on the launch of new investments.

[Note: recital 15 to the MiFID Delegated Directive]

(2) (in relation to PROD 1.4 and PROD 4) creating, developing, designing and/or underwriting a contract of insurance.

(1) (in relation to PROD 1.3 and PROD 3) a firm which creates, develops, issues, and/or designs investments, including when advising corporate issuers on the launch of new investments.

[Note: recital 15 to the MiFID Delegated Directive]

(2) (in relation to ICOBS 6.1.5R, ICOBS 6 Annex 3R paragraph 1.1R, PROD 1.4 and PROD 4) a firm which manufactures contracts of insurance for sale to customers.

[Note: recital 15 to the MiFID Delegated Directive]

…

[Note: article 2(1)(15) of the IDD, article 9 of the MiFID Org Regulation and article 53(1C) and 53(1D) of the Regulated Activities Order]

insurance mediation activities insurance distribution activities which are covered by the compensation scheme, as defined in COMP 5.7.1R.

(in COBS 21, ICOBS, CASS 1, CASS 5 and COMP) a contract of insurance covering all or part of a risk to which a person is exposed under a contract of insurance.

(1) (except where (2) or (3) applies) any form of remuneration, including salaries, discretionary pension benefits and benefits of any kind.
(2) …

[Note: article 2(5) of the MiFID Org Regulation]

(3) (in SYSC 19F.2, ICOBS and, in relation to a life policy, in COBS 6.12ZA) any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.

[Note: article 2(1)(9) of the IDD]

service conditions (in accordance with paragraph 14 of Schedule 3 to the Act (EEA Passport Rights)) the conditions that:

…

(c) if the firm falls within paragraph (d), (e), (h) or (i) of that definition, its Home State regulator has informed it that the regulator’s notice has been sent to the FCA or the PRA (as the case may be); and

(d) if the firm falls within paragraph (e) (i) of that definition, one month has elapsed beginning with the date on which the firm’s Home State regulator informed the firm that it had sent the regulator’s notice to the FCA or the PRA (as the case may be).

suitability report a report which a firm must provide to its client which, among other things, explains why the firm has concluded that a recommended transaction is suitable for the client and which is provided pursuant to:

(a) COBS 9.4 (Suitability reports) where the firm is carrying on designated investment business other than any MiFID, equivalent third country or optional exemption business or in relation to an insurance-based investment product;

(b) article 54(12) of the MiFID Org Regulation where the firm is carrying on MiFID business;

(c) GEN 2.2.22AR and COBS 9A.3.3EU where the firm is carrying on the equivalent business of a third country investment firm;

(d) COBS 9A.1.2R and COBS 9A.3.3EU where the firm is carrying on MiFID optional exemption business; or

(e) COBS 9A.3.2R where the firm is carrying on insurance distribution activities in relation to an insurance-based investment product.

UK firm (1) (except in REC) (as defined in paragraph 10 of Schedule 3 to the
Act (EEA Passport Rights)) either a person:

(a) whose head office is in the United Kingdom and who has an EEA right to carry on activity in an EEA State other than the United Kingdom; or

(b) whose registered office is in the United Kingdom and who has an EEA right which derives from the IDD to carry on an activity in an EEA State other than the United Kingdom.

…

[Note: article 23(5) of the IDD, article 3 of the MiFID Org Regulation and article 38(2) of the KII Regulation]

Delete the following definitions. The text is not shown struck through.

**IMD insurance intermediary** (as defined in article 2(5) of the IMD) any natural or legal person who, for remuneration, takes up or pursues insurance mediation.

**IMD insurance undertaking** (as defined in article 2(1) of the Insurance Mediation Directive) an undertaking which has received official authorisation in accordance with article 14 of the Solvency II Directive.

**IMD reinsurance intermediary** (as defined in article 2(6) of the Insurance Mediation Directive) any natural or legal person who, for remuneration, takes up or pursues reinsurance mediation.

**IMD reinsurance undertaking** (as defined in article 2(2) of the Insurance Mediation Directive) an undertaking, other than an IMD insurance undertaking or a non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an IMD insurance undertaking, a non-member country insurance undertaking or other IMD reinsurance undertaking.


**insurance mediation** (as defined in article 2(3) of the IMD) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when
undertaken by an *IMD insurance undertaking* or an employee of an *IMD insurance undertaking* who is acting under the responsibility of the *IMD insurance undertaking* shall not be considered as *insurance mediation*. The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an *IMD insurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *insurance mediation*.

*reinsurance mediation* (as defined in article 2.4 of the *Insurance Mediation Directive*) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by an *IMD reinsurance undertaking* or an employee of an *IMD reinsurance undertaking* who is acting under the responsibility of the *IMD reinsurance undertaking* shall not be considered as *reinsurance mediation*. The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of an *IMD reinsurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *reinsurance mediation*. 
Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Rules about application

...

3.2 What?

3.2.1A PRIN applies with respect to the carrying on of:

...

(3) ancillary activities in relation to designated investment business, home finance activity, credit-related regulated activity, insurance mediation activity insurance distribution activity and accepting deposits.

...
Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1A Application

…

1.1A.1 The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurer, UK ISPV</td>
<td>Chapters 2, 3, 12 to 18, 19F.2, 21, 22, 28</td>
</tr>
<tr>
<td>Managing agent</td>
<td>Chapters 2, 3, 11, 12, 18, 19F.2, 21, 22, 28</td>
</tr>
<tr>
<td>Society</td>
<td>Chapters 2, 3, 12, 18, 19F.2, 21, 22, 28</td>
</tr>
<tr>
<td>Every other firm</td>
<td>Chapters 4 to 12, 18, 19D, 19F.2, 21, 22, 28</td>
</tr>
</tbody>
</table>

…

1.1A.1A The application of this sourcebook to specific firms that are not PRA-authorised persons is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-scope UK AIFM</td>
<td>Chapters 4 to 10, 12, 18, 19B, 19F.2, 21, 22, 28</td>
</tr>
<tr>
<td>BIPRU firm (including a third-country BIPRU firm)</td>
<td>Chapters 4 to 10, 12, 18, 19C, 19F.2, 20, 21, 22, 28</td>
</tr>
<tr>
<td>IFPRU investment firm (including an overseas firm that would have been an IFPRU investment firm if it had been a UK domestic firm)</td>
<td>Chapters 4 to 10, 12, 18, 19A, 19F.2, 20, 21, 22, 28</td>
</tr>
</tbody>
</table>

1.1A.2 …
For Solvency II firms, the FCA considers that the requirements and guidance in Chapters 2, 3, 12 to 18, 19F.2, 21 and 22 and 28 of SYSC are not inconsistent with:

...

1.4 Application of SYSC 11 to SYSC 22 and 28

What?

1.4.1 G ...

1.4.1-A G The application of each of the chapters SYSC 19F.2, SYSC 22 and SYSC 28 is set out in those chapters.

...

Actions for damages

1.4.2 R A contravention of a rule in SYSC 11 to SYSC 21, SYSC 22.8.1R or SYSC 22.9.1R or SYSC 28 does not give rise to a right of action by a private person under section 138D of the Act (and each of those rules is specified under section 138D(3) of the Act as a provision giving right to no such right of action).

1 Annex 1 Detailed application of SYSC

<table>
<thead>
<tr>
<th>Part 1</th>
<th>Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>What?</td>
<td></td>
</tr>
<tr>
<td>1.3</td>
<td>R SYSC 2 and SYSC 3 apply with respect to the carrying on of:</td>
</tr>
<tr>
<td></td>
<td>(1) regulated activities;</td>
</tr>
<tr>
<td></td>
<td>(2) activities that constitute dealing in investments as principal, disregarding the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc); and</td>
</tr>
<tr>
<td></td>
<td>(3) ancillary activities in relation to designated investment business, home finance activity and insurance mediation activity, insurance distribution activity; and</td>
</tr>
</tbody>
</table>
(4) activities directly arising from *insurance risk transformation*;

except that SYSC 3.3 applies as described in SYSC 1 Annex 1 1.3AR and SYSC 3.2.6AR to SYSC 3.2.6JG do not apply as described in SYSC 1 Annex 1.1.4R.

<table>
<thead>
<tr>
<th>1.3A</th>
<th>R</th>
<th>SYSC 3.3 only applies in relation to the carrying on of <em>insurance distribution activities</em>.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4</td>
<td>R</td>
<td>SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>(1)</em> …</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>(2)</em> in relation to the following <em>regulated activities</em>:</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>(a)</em> …</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>(b)</em> <em>insurance mediation activity insurance distribution activity</em> in relation to a general insurance contractor pure protection contract;</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>(…)</em></td>
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<tr>
<td></td>
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<td><em>(…)</em></td>
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<tr>
<td></td>
<td></td>
<td><em>(…)</em></td>
</tr>
</tbody>
</table>

Part 2 | Application of the common platform requirements

| 2.8A  | R | *(1)* Subject to *(2) and *(3) and *(5)*, in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the *MiFID Org Regulation* (including any relevant definitions in *MiFID*, *MiFIR* and the *MiFID Org Regulation*) apply as if they were *rules* or *guidance* in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a *firm’s carrying on of the business set out in SYSC 1 Annex 1 2.8R which is not *MiFID business* or a *structured deposits activity*. |
Subject to (2), and (3) and (6), articles 33 to 35 of the MiFID Org Regulation of the MiFID Org Regulation (including any relevant definitions in MiFID, MiFIR and the MiFID Org Regulation) apply as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a firm’s carrying on of the business set out in SYSC 10.1.1R which is not MiFID business or a structured deposits regulated activity.

---

2.8B G The purpose of SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR is that the common platform organisational requirements and the common platform requirements on conflicts of interest also apply when carrying on any of the activities listed in SYSC 1 Annex 1 2.8R or SYSC 10.1.1R respectively even where they do not involve investment services and/or activities and, where relevant, ancillary services (unless provided otherwise within a specific rule).

---

2.9 G The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.-2G SYSC 10.1.-4G to SYSC 10.1.1AR and SYSC 10.2.1R.

2.10 R The provisions on record-keeping in SYSC 9 and articles 21 and 72 of the MiFID Org Regulation apply as set out in SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR, except that they only apply to the carrying on of ancillary activities that are performed in relation to:

- insurance mediation activity
- insurance distribution activity

---

(3)
2.11  R The common platform requirements on financial crime apply as set out in SYSC 1 Annex 1.2.8R, except that they do not apply:

(1) …

(2) in relation to the following regulated activities:

(a) …

(b) insurance mediation activity insurance distribution activity in relation to a general insurance contractor pure protection contract;

…

Part 3

<table>
<thead>
<tr>
<th>Tables summarising the application of the common platform requirements to different types of firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1   G …</td>
</tr>
<tr>
<td>3.1A  G The IDD Regulation is directly applicable to a firm when carrying on insurance distribution in relation to insurance-based investment products. Articles 3 to 7 of the IDD Regulation are reproduced in SYSC 10.1A for information for these firms.</td>
</tr>
<tr>
<td>…</td>
</tr>
<tr>
<td>3.2-A R For a common platform firm (other than a dormant account fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation apply to the firm’s business other than MiFID business or structured deposits regulated activities as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR.</td>
</tr>
<tr>
<td>…</td>
</tr>
</tbody>
</table>

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10
<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
<th>COLUMN B</th>
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<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms</td>
</tr>
<tr>
<td>...</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule applies this section only to: (1)… (2) activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is: … (e) a firm with permission to carry on</td>
</tr>
</tbody>
</table>

SYSC 4.4.1AR
insurance mediation activity insurance distribution activity in relation to non-investment insurance contract non-investment insurance contracts but no other regulated activity except advising on P2P agreements;

(2A)…

…

```
<table>
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<tr>
<th>Provision SYSC 5</th>
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<th>COLUMN A+</th>
<th>COLUMN A++</th>
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<tbody>
<tr>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
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<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and</td>
</tr>
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<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A: Application to a common platform firm other than to a UCITS investment firm</th>
<th>COLUMN A+: Application to a UCITS management company</th>
<th>COLUMN A++: Application to a full-scope UK AIFM of an authorised AIF</th>
<th>COLUMN B: Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms</th>
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<td>9.1.2R</td>
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<td>SYSC 9.1.2BG</td>
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<td>SYSC 9.1.2DR</td>
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<table>
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<th>COLUMN A</th>
<th>COLUMN A+ Application to a UCITS management company</th>
<th>COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF</th>
<th>COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID</th>
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<tbody>
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<td></td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
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<td>Guidance in relation to insurance distribution activities</td>
<td>Guidance in relation to insurance distribution activities</td>
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<td>Guidance in relation to insurance distribution activities. Otherwise, Not not applicable</td>
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<td>Rule in relation to insurance distribution activities. Otherwise Not not applicable</td>
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<tr>
<td>SYSC 10.1.4R</td>
<td>Not applicable</td>
<td>Rule, but not applicable in relation to insurance distribution activities</td>
<td>Not applicable</td>
<td>Guidance - but applies as a rule in relation to the production or arrangement of investment</td>
</tr>
</tbody>
</table>
research, or the production or dissemination of non-independent research, in accordance with COBS 12.2.

<table>
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<th>SYSC 10.1.4AG</th>
<th>Not applicable</th>
<th>Not applicable</th>
<th>Not applicable</th>
<th>Guidance: - but not applicable in relation to insurance distribution activities</th>
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<tbody>
<tr>
<td>SYSC 10.1.4BR</td>
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<td>SYSC 10.1.4CR</td>
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<tr>
<td>SYSC 10.1.6R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Rule in relation to insurance distribution activities. Otherwise, Not not applicable</td>
<td>Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment</td>
</tr>
<tr>
<td>FCA 2018/25</td>
<td>Page 34 of 401</td>
<td></td>
<td></td>
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<th>SYSC 10.1.7R</th>
<th>SYSC 10.1.6AA</th>
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</tr>
</thead>
<tbody>
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<td>Rule</td>
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<thead>
<tr>
<th>SYSC 10.1.8AR</th>
<th>Not applicable</th>
<th>Rule</th>
<th>Not applicable</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
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<td>SYSC 10.1.9AR</td>
<td>Not applicable</td>
<td>Rule in relation to insurance distribution activities. Otherwise, Not not applicable</td>
<td>Rule in relation to insurance distribution activities. Otherwise, Not not applicable</td>
<td>Guidance - but applies as a rule in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 10.1.10R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Rule in relation to insurance distribution activities. Otherwise, Not not applicable</td>
<td>Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 10.1.11R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Rule in relation to insurance distribution activities. Otherwise, Not not applicable</td>
<td>Guidance - but applies as a rule: (a) in relation to the production or arrangement</td>
</tr>
</tbody>
</table>
of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to insurance distribution activities

| SYSC 10.1.11A  | Not applicable | Not applicable | Guidance - but not applicable in relation to insurance distribution activities |
| SYSC 10.1.11A AR | Not applicable | Rule in relation to insurance distribution activities | Rule in relation to insurance distribution activities |
| SYSC 10.1.11A BR | Rule in relation to insurance distribution activities | Not applicable | Not applicable |

... 

| SYSC 10.1.23R to SYSC 10.1.26R | ... | ... | ... |

| SYSC 10.1A | EU Directly applicable to a firm carrying on insurance distribution in | EU Directly applicable to a firm carrying on insurance distribution in | EU Directly applicable to a firm carrying on insurance |
| SYSC 10.1A | EU | EU | EU |

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Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN B</th>
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<tbody>
<tr>
<td></td>
<td>MiFID optional exemption firms</td>
<td>Third country firms</td>
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<tr>
<td>...</td>
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<td>SYSC 9</td>
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<tr>
<td>...</td>
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<tr>
<td>SYSC 9.1.2R</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 9.1.2AR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 9.1.2BG</td>
<td>Guidance in relation to insurance distribution activities</td>
<td>Guidance in relation to insurance distribution activities</td>
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<td>SYSC 9.1.2CEU</td>
<td>EU</td>
<td>EU</td>
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<tr>
<td>SYSC 9.1.2DR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 9.1.6AG</td>
<td>Guidance in relation to insurance distribution activities</td>
<td>Guidance in relation to insurance distribution activities</td>
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<tr>
<td>SYSC 10</td>
<td>Guidance in relation to insurance distribution activities</td>
<td>Guidance in relation to insurance distribution activities</td>
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<tr>
<td>SYSC 10.1.-3G</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
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<tr>
<td>SYSC 10.1.-2G</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 10.1.4BR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
</tr>
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<td>SYSC 10.1.4CR</td>
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<td>Rule in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 10.1.6R</td>
<td>Rule</td>
<td>Guidance – but applies as a rule in relation to: (a) the production or arrangement of investment research, or the production or dissemination of non-independent</td>
</tr>
<tr>
<td>SYSC 10.1.6AG</td>
<td>...</td>
<td>research, in accordance with \textit{COBS 12.2}; and (b) insurance distribution activities</td>
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<tr>
<td>SYSC 10.1.6AAR</td>
<td>Rule in relation to \textit{insurance distribution activities}</td>
<td>Rule in relation to \textit{insurance distribution activities}</td>
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<td>...</td>
<td>...</td>
<td>...</td>
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<tr>
<td>SYSC 10.1.7AR</td>
<td>Rule in relation to \textit{insurance distribution activities}</td>
<td>Rule in relation to \textit{insurance distribution activities}</td>
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<td>SYSC 10.1.8R</td>
<td>Rule</td>
<td>Rule</td>
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<tr>
<td>SYSC 10.1.8AR</td>
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<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 10.1.9AR</td>
<td>Rule in relation to \textit{insurance distribution activities}. Otherwise \textbf{Not not applicable}</td>
<td>Rule in relation to \textit{insurance distribution activities}. Otherwise \textbf{Not not applicable}</td>
</tr>
<tr>
<td>SYSC 10.1.10R</td>
<td>Rule</td>
<td>Guidance – but applies as a rule in relation to: (a) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with \textit{COBS 12.2}; and (b) insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 10.1.11R</td>
<td>Rule</td>
<td>Guidance – but applies as a rule in relation to: (i) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (ii) insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 10.1.11AG</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 10.1.11AAR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
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<tr>
<td>SYSC 10.1.11ABR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
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<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 10.1A</td>
<td>EU</td>
<td>EU</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>

2 Senior management arrangements
2.1 Apportionment of responsibilities

... 

2.1.6 G ... 

Insurance distribution activities

2.1.6A R A firm carrying on insurance distribution activities must allocate to a senior manager the function of ensuring the proper implementation of the policies and procedures approved in accordance with SYSC 3.1.11R.

[Note: second paragraph of article 10(8) of the IDD]

... 

3 Systems and Controls

3.1 Systems and Controls

... 

Competent employees rule

3.1.6 R A firm which is not a common platform firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

3.1.7 R ... 

3.1.7A G SYSC 28 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

... 

3.1.10 G ... 

Insurance distribution activities

3.1.11 R A firm carrying on insurance distribution activities must approve, implement and regularly review its internal policies and procedures in respect of its obligations under SYSC 28.

[Note: first paragraph of article 10(8) of the IDD]

3.1.12 G SYSC 2.1.6AR prescribes how a firm must allocate the function of ensuring the proper implementation of the policies and procedures approved in accordance with SYSC 3.1.11R.

...
3.2 Areas covered by systems and controls

Records

3.2.21

3.2.21A

SYSC 28 contains rules and guidance relating to knowledge and competence record keeping requirements in relation to insurance distribution activities undertaken by a firm.

Insert the following new section after SYSC 3.2 (Areas covered by systems and controls). The text is not underlined.

3.3 Additional requirements for insurance distribution

Application

3.3.1

R SYSC 3.3 applies to an insurer in the course of it carrying on any insurance distribution activities.

Effect of provisions marked “EU”

3.3.2

G The IDD Regulation is directly applicable to an insurer when carrying on insurance distribution in relation to insurance-based investment products. Some of the articles of the IDD Regulation (see the provisions marked with the status letters “EU”) are reproduced in this section for those insurers for information only.

3.3.3

R (1) To the extent that the IDD Regulation does not directly apply, provisions in this section marked with the status letters ‘EU’ apply to the insurer as if they were rules.

(2) References in Column (1) to a word or phrase used in the IDD Regulation have, for the purpose of SYSC 3.3.3R(1) above, the meaning indicated in Column (2) of the table below:

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“article 27”</td>
<td>SYSC 3.3.8R and SYSC 3.3.9R</td>
</tr>
<tr>
<td>“article 28”</td>
<td>SYSC 3.3.5R and SYSC 3.3.13R</td>
</tr>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
<tr>
<td>“customer”</td>
<td>Client</td>
</tr>
<tr>
<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>“Directive (EU) 2016/97”</td>
<td>IDD</td>
</tr>
<tr>
<td>“insurance-based investment products”</td>
<td>Policies</td>
</tr>
<tr>
<td>“insurance distribution activities”</td>
<td>insurance distribution activities</td>
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<tr>
<td>“insurance intermediary”</td>
<td>insurance intermediary</td>
</tr>
<tr>
<td>“insurance undertakings”</td>
<td>Insurer</td>
</tr>
<tr>
<td>“relevant person”</td>
<td>any of the following:</td>
</tr>
<tr>
<td></td>
<td>(a) a director, partner or equivalent, or manager of the insurance intermediary or insurer;</td>
</tr>
<tr>
<td></td>
<td>(b) an employee of the insurance intermediary or insurer, as well as any other natural person whose services are placed at the disposal and under the control of the insurance intermediary or insurer and who is involved in the insurance distribution activities; and</td>
</tr>
<tr>
<td></td>
<td>(c) a natural person who is directly involved in the provision of services to the insurance intermediary or insurer under an outsourcing agreement for the purpose of the carrying on by the insurance intermediary or insurer of insurance distribution activities.</td>
</tr>
<tr>
<td>“remuneration”</td>
<td>Remuneration</td>
</tr>
<tr>
<td>“shall”</td>
<td>Must</td>
</tr>
</tbody>
</table>

3.3.4 G The effect of SYSC 3.3.3R is that:

1. the provisions marked “EU” apply as rules to an insurer when carrying on insurance distribution activities other than insurance distribution in relation to insurance-based investment products;
(2) where SYSC 3.3.3R applies, an insurer is required to read the provisions marked “EU” as though the application of those provisions (and articles 27 and 28 of the IDD) is not limited to the distribution of insurance-based investment products; and

(3) the scope of the application of the IDD Regulation is extended from insurance distribution to insurance distribution activities.

Identifying conflicts

3.3.5 R A firm must take all appropriate steps to identify conflicts of interest that arise between:

(1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or

(2) one client of the firm and another client.

[Note: article 28(1) of the IDD]

3.3.6 EU 3(1) For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

(a) it is distinct from the customer’s or potential customer’s interest in the outcome of the insurance distribution activities;
(b) it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3.3.7 EU 3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:

(a) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;
(b) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;

(c) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

[Note: article 3 of the IDD Regulation]

Managing conflicts

3.3.8 R A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest identified under SYSC 3.3.5R from adversely affecting the interests of its clients.

[Note: article 27 of the IDD]

Proportionality

3.3.9 R The arrangements in SYSC 3.3.8R must be proportionate to the activities performed, the policies sold and the type of insurance distributor the firm is or uses.

[Note: article 27 of the IDD]

Conflicts policy

3.3.10 EU 4(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the IDD Regulation]

Contents of policy
3.3.11 EU 4(2) The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

(a) with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;

(b) procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[Note: article 4(2) of the IDD Regulation]

3.3.12 EU 5(1) The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.

The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

(c) the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by control;

(e) measures to prevent or control the simultaneous or
sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

(f) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the IDD Regulation]

Disclosure of conflicts

3.3.13 R (1) If arrangements made under SYSC 3.3.8R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must:

(a) clearly disclose to the client the general nature or sources of the conflicts of interest (or both); and

(b) include sufficient detail in the disclosure, taking into account the nature of the client, to enable that client to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

(2) The disclosure must be made:

(a) in a durable medium; and

(b) in good time before the conclusion of the contract of insurance.

[Note: article 28(2) and (3) of the IDD]

3.3.14 EU 6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to Article 28(2) of Directive (EU) 2016/97, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 are not sufficient to ensure, with reasonable confidence,
that risks of damage to the interests of the customer will be prevented.

6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:

(a) provide a specific description of the conflict of interest in question;
(b) explain the general nature and sources of the conflict of interest;
(c) explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
(d) clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[Note: article 6 of the IDD Regulation]

Review of conflicts policy

3.3.15 EU 7(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the IDD Regulation]

Record keeping

3.3.16 EU 7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise. Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[Note: article 7(2) of the IDD Regulation]

3.3.17 R A firm carrying on insurance distribution activities in relation to insurance-based investment products must retain its records relating to:
(1) suitability (COBS 9A); and

(2) appropriateness (COBS 10A),

for a period of at least five years.

3.3.18 G (1) COBS 9A.4 and COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the IDD Regulation (and apply these requirements to firms not in scope of the IDD Regulation). They specify information which should be recorded by firms carrying on insurance distribution in relation to insurance-based investment products and for how long the records must be retained.

(2) For the purposes of SYSC 3.3.17R, a firm will need to consider whether the requirement in article 19 of the IDD Regulation (or in COBS 9A.4.3EU or 10A.7.2EU for any firm to whom the IDD Regulation is not directly applicable) means that a record needs to be retained for longer than five years.

3.3.19 EU 19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority. The competent authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the IDD Regulation]

Amend the following as shown.

4 General organisational requirements

... 4.4 Apportionment of responsibilities

Application

...

4.4.1A R This section applies to:

(1) …
(2) activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:

(a) …

…

(e) a firm with permission to carry on insurance mediation activity insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity (except advising on P2P agreements);

…

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

…

Competent employees rule

…

5.1.3 G …

5.1.3A G SYSC 28 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

…

5.1.5B R When complying with the competent employees rule, a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

…

9 Record-keeping

9.1 General rules on record-keeping

Application to a common platform firm

9.1-2 G For a common platform firm:

(1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-
BR; and

(2) the rules and guidance apply as set out in the table below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>General requirements</td>
<td>SYSC 9.1.1AR</td>
</tr>
<tr>
<td>Specific requirements for insurance distribution</td>
<td>SYSC 9.1.2AR, SYSC 9.1.2DR</td>
</tr>
</tbody>
</table>

Specific requirements for the distribution of insurance-based investment products

9.1.2A  R  A firm carrying on insurance distribution activities in relation to insurance-based investment products must retain its records relating to:

(1) suitability (COBS 9A); and

(2) appropriateness (COBS 10A).

for a period of at least five years.

9.1.2B  G  (1) COBS 9A.4 and COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the IDD Regulation (and apply these requirements to firms not in scope of the IDD Regulation). They specify information which should be recorded by firms carrying on insurance distribution in relation to insurance-based investment products and for how long the records must be retained.

(2) For the purposes of SYSC 9.1.2AR, a firm will need to consider whether the requirement in article 19 of the IDD Regulation (or in COBS 9A.4.3EU or COBS 10A.7.2EU for any firm to whom the IDD Regulation is not directly applicable) means that a record needs to be retained for longer than five years.

9.1.2C  EU  19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority. The competent authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such
| 9.1.2D | R | (1) SYSC 9.1.2CEU applies as if it was a rule to firms doing insurance distribution activities to which the IDD Regulation does not apply, in relation to the records for an insurance-based investment product required in COBS 9A.4 and COBS 10A.7. |
| 9.1.2D | R | (2) Firms to whom (1) applies must read references in SYSC 9.1.2CEU to “the competent authority” as meaning “the FCA”. |

Guidance on record-keeping

| 9.1.6 | G | … |
| 9.1.6A | G | SYSC 28 contains rules and guidance relating to knowledge and competence record keeping requirements in relation to insurance distribution activities undertaken by the firm. |

10 Conflicts of interest

10.1 Application

Application to insurance intermediaries

| 10.1.-4 | G | (1) Subject to SYSC 10.1.-3R, this section applies to a firm carrying on insurance distribution activities in accordance with the tables in Part 3 of SYSC 1 Annex 1. Certain rules are disapplied where the firm is subject to directly applicable provisions in the IDD Regulation (see SYSC 10.1.-3R). |
| 10.1.-3 | R | (2) Where a provision in this section applies to an insurance intermediary, it applies in relation to the carrying on of insurance distribution activities. |
| 10.1.-3 | R | The rules and guidance in the table below do not apply to a firm when carrying on insurance distribution in relation to insurance-based investment products (see SYSC 10.1A for the provisions of the IDD Regulation on conflicts of interest). |
Application to a common platform firm

10.1.-2  G  For a common platform firm:

(1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

(2) the rules and guidance in the table below apply:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision of services</td>
<td>SYSC 10.1.2G</td>
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<tr>
<td>Identifying conflicts</td>
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<tr>
<td>Types of conflicts</td>
<td>SYSC 10.1.5G</td>
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<tr>
<td>Managing conflicts</td>
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<tr>
<td>Contents of policy</td>
<td>SYSC 10.1.11R, SYSC 10.1.11AG, SYSC 10.1.11AAR and SYSC 10.1.11BG</td>
</tr>
</tbody>
</table>

(3) SYSC 10.1.7AR (Proportionality – insurance distribution activities), SYSC 10.1.8R (Disclosure of conflicts) and SYSC 10.1.11ABR (Contents of policy) also apply in relation to the carrying on of insurance distribution activities.
General application

10.1.1 R (1) This section applies to a firm which provides services to its clients in the course of carrying on regulated activities or ancillary activities or providing ancillary services (but only where the ancillary services constitute MiFID business).

(2) This section also applies to a management company.

[Note: The provisions in SYSC 10.1 also implement articles 27 and 28 of the IDD, articles 74(1) and 88 of CRD and as applied under the discretion in the third paragraph of article 95(2) of the EU CRR, BCD article 22 and BCD Annex V paragraph 1]

…

Requirements only apply if a service is provided

10.1.2 G (1) The requirements in this section only apply where a service is provided by a firm. The status of the client to whom the service is provided (as a retail client, professional client or eligible counterparty) is irrelevant for this purpose.

[Note: recital 46 to the MiFID Org Regulation]

(2) For the avoidance of doubt, a reference to “service” in this section includes all insurance distribution activities.

Identifying conflicts

10.1.3 R A firm must take all appropriate steps to identify and to prevent or manage conflicts of interest between:

(1) the firm, including its managers, employees and appointed representatives (or where applicable, tied agents), or any person directly or indirectly linked to them by control, and a client of the firm; or

(2) one client of the firm and another client,

that arise or may arise in the course of the firm providing any service referred to in SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the firm’s own remuneration and other incentive structures.

[Note: article 23(1) of MiFID and articles 27 and 28(1) of the IDD]

Types of conflicts

10.1.4 … …
10.1.4A G Other firms (except common platform firms, and UCITS management companies and insurance intermediaries) should take account of the rule on the types of conflicts (see SYSC 10.1.4 R) in accordance with SYSC 1 Annex 1 3.3R.

10.1.4B R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on insurance distribution activities and whose existence may damage the interests of a client (“A”), a firm must assess whether:

1. the firm or a relevant person, or a person directly or indirectly linked by control to the firm; or

2. (in the case of conflicts between A and another client) the other client,

has an interest in the outcome of the insurance distribution activities, which meets the following criteria:

3. it is distinct from A’s interest in the outcome of the insurance distribution activities; and

4. it has the potential to influence the outcome of the activities to the detriment of A.

10.1.4C R For the purpose of carrying out the assessment in SYSC 10.1.4BR, a firm must take into account, as a minimum, whether the firm or a relevant person, or a person directly or indirectly linked by control to the firm:

1. is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

2. has a financial or other incentive to favour the interest of another client or group of clients over the interest of the client;

3. carries on the same business as the client;

4. receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service; or

5. is substantially involved in the management or development of policies, in particular where such a person has an influence on the pricing of those policies or their distribution costs.

…

Record of conflicts

10.1.6 R A management company and an insurance intermediary must keep and regularly update a record of the kinds of service or activity carried out by
or on behalf of that firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

[Note: article 20(1) of the UCITS implementing Directive]

10.1.6A G Other firms (other than common platform firms and insurance intermediaries) should also take account of the rule on records of conflicts (see SYSC 10.1.6R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R).

10.1.6A R A An insurance intermediary must ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R.

10.1.6B G A firm (other than a common platform firm and an insurance intermediary) should ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R. Read SYSC 10.1.6AAR as if “should” appeared in that rule instead of “must”.

Managing conflicts

10.1.7 R A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3R from adversely affecting the interests of its clients.

[Note: article 16(3) of MiFID and article 27 of the IDD]

Proportionality – insurance distribution activities

10.1.7A R Where a firm carries on insurance distribution activities, the arrangements in SYSC 10.1.7R must be proportionate to the activities performed, the policies sold and the type of insurance distributor the firm is or uses.

[Note: article 27 of the IDD]

Disclosure of conflicts

10.1.8 R (1) If arrangements made by a firm under SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must clearly disclose the following to the client before undertaking business for the client:

(a) the general nature or sources of conflicts of interest, or both; and

(b) the steps taken to mitigate those risks.

(2) The disclosure must:
(a) be made in a durable medium;

(b) clearly state that the organisational and administrative arrangements established by the firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented;

(c) include specific description of the conflicts of interest that arise in the provision of insurance distribution activities, investment services or ancillary services;

(d) explain the risks to the client that arise as a result of the conflicts of interest; and

(e) include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

(3) This rule does not apply to the extent that SYSC 10.1.21R applies.

[Note: article 23(2) and (3) of MiFID and article 28(2) and (3) of the IDD]

10.1.8A R The obligation in SYSC 10.1.8R(2)(a) does not apply to a firm when carrying on insurance mediation activity. [deleted]

10.1.9A R A firm must treat disclosure of conflicts pursuant to SYSC 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the firm to prevent or manage its conflicts of interest in accordance with SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.

Conflicts policy

10.1.10 R (1) A management company and an insurance intermediary must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.

(2) Where the management company or insurance intermediary is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 18(1) of the UCITS implementing Directive]
Contents of policy

10.1.11 R (1) The conflicts of interest policy must include the following content:

(a) it must identify in accordance with SYSC 10.1.3R, and SYSC 10.1.4R, SYSC 10.1.4BR and SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the management company or insurance intermediary, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients; and

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

(2) The procedures and measures provided for in paragraph (1)(b) must:

(a) be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of clients; and

(aa) (for an insurance intermediary) be designed to ensure that the insurance distribution activities are carried out in accordance with the best interests of the client and are not biased due to conflicting interests of the insurance intermediary or another client; and

(b) include, for an insurance intermediary, where appropriate, the following, and for a management company, such of the following as are necessary and appropriate for the management company to ensure the requisite degree of independence:

(i) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(ii) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;
(iii) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(iv) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out services or activities; and

(v) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities where such involvement may impair the proper management of conflicts of interest; and

(vi) (for insurance intermediaries) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

(3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a management company must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

(4) If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an insurance intermediary must adopt such alternative measures and procedures as are necessary and appropriate.

(5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to an insurance intermediary’s size and activities, the group to which it may belong and to the risk of damage to the interests of the client.

[Note: articles 18(2), 19(1) and 19(2) of the UCITS implementing Directive]
measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

10.1.11 A common platform firm, in relation to its insurance distribution activities, must:

(1) take into account the factors set out in SYSC 10.1.4BR(4) and SYSC 10.1.4CR(5) when complying with article 33 of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)); and

(2) include the measure set out in SYSC 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with article 34 (3) of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)).

10.1.11 A firm (other than a common platform firm and an insurance intermediary) should assess and periodically review, on at least an annual basis, the conflicts of interest policy established in accordance with SYSC 10.1.10R and SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest) read SYSC 10.1.11AAR as if “should” appeared in that rule instead of “must”.

After SYSC 10.1 (Application) insert the following new section SYSC 10.1A. The text is not underlined.

10.1A IDD Regulation – Conflicts of interest

Application

10.1A.1 The IDD Regulation is directly applicable to a firm when carrying on insurance distribution in relation to insurance-based investment products. The relevant articles relating to conflicts of interest are set out in this section for information only.

Identifying conflicts

10.1A.2 For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance
distribution activities, which meets the following criteria:

(a) it is distinct from the customer’s or potential customer’s interest in the outcome of the insurance distribution activities;

(b) it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:

(a) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;

(b) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;

(c) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

[Note: article 3 of the IDD Regulation]

Conflicts policy

10.1A.3 EU 4(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities
of other members of the group.

[Note: article 4(1) of the *IDD Regulation*]

## Contents of policy

### 10.1A.4 EU 4(2)

The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

- **(a)** with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;

- **(b)** procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[Note: article 4(2) of the *IDD Regulation*]

### 10.1A.5 EU 5(1)

The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.

The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:

- **(a)** effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;

- **(b)** the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

- **(c)** the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

- **(d)** measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance
distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by control;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

(f) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the IDD Regulation]

Disclosure of conflicts

10.1A.6 EU 6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to Article 28(2) of Directive (EU) 2016/97, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:

(a) provide a specific description of the conflict of interest in question;

(b) explain the general nature and sources of the conflict of interest;

(c) explain the risks to the consumer that arise as a result of the
conflict of interest and the steps undertaken to mitigate those risks;

(d) clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[Note: article 6 of the IDD Regulation]

Review of conflicts policy

10.1A.7 EU 7(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the IDD Regulation]

Record keeping

10.1A.8 EU 7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.

Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[Note: article 7(2) of the IDD Regulation]

Amend the following as shown.

13 Operational risk: systems and controls for insurers

... 

13.3 Other related Handbook sections

... 

13.3.1A G The following is a non-exhaustive list of rules and guidance in the Handbook that are relevant to a firm’s management of operational risk:

(1) COBS contains rules and guidance that can relate to the
management of operational risk; for example, COBS 2 (Conduct of business obligations), COBS 4 (Communicating with clients, including financial promotions), COBS 6 (Information about the firm, its services and remuneration), COBS 7 (Insurance mediation distribution), COBS 9 (Suitability (including basic advice) (other than MiFID and insurance-based investment products)), COBS 9A (Suitability (MiFID and insurance-based investment products provisions), COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions), COBS 11 (Dealing and managing), COBS 12 (Investment research), COBS 14 (Providing product information to clients) and COBS 19 (Pensions: supplementary provisions).

After SYSC 19F.1 (MiFID remuneration incentives) insert the following new section SYSC 19F.2. The text is not underlined.

19F Remuneration and performance management of sales staff

... 

19F.2 IDD remuneration incentives

Application

19F.2.1 R This section applies to insurance distributors carrying on insurance distribution activities from an establishment maintained by it, or its appointed representative, in the United Kingdom.

[Note: article 7(2) of the IDD]

Remuneration and the customer’s best interests

19F.2.2 R (1) Insurance distributors must not:

   (a) be remunerated; or

   (b) remunerate or assess the performance of their employees,

in a way that conflicts with their duty to comply with the customer’s best interests rules (ICOBS 2.5.-1R, in relation to a non-investment insurance contract, or COBS 2.1.1R, in relation to a life policy).

   (2) In particular, an insurance distributor must not make any arrangements by way of remuneration, sales target or otherwise that could provide an incentive to itself or its employees to recommend a particular contract of insurance to a customer when the insurance distributor could offer a different insurance contract which would better meet the customer’s needs.
After SYSC 22 (Regulatory references) insert the following new chapter SYSC 28. The text is not underlined.

28 Insurance distribution: specific knowledge, ability and good repute requirements

28.1 Minimum knowledge, ability and good repute requirements for carrying out insurance distribution activities

Application

28.1.1 R This chapter applies to a firm with Part 4A permission to carry on insurance distribution activities.

28.1.2 R In this chapter, relevant employees are employees or other persons:

(1) directly involved in the carrying on of the firm's insurance distribution activities; or

(2) within the management structure responsible for the firm’s insurance distribution activities; or

(3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

[Note: article 10(1) and the fifth paragraph of article 10(2) of the IDD]

28.1.3 R In this chapter ‘employee’:

(1) is not restricted to an individual working under a contract of employment; and

(2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the firm, under an arrangement between the firm and a third party; and

(3) also includes appointed representatives and their employees.

28.1.4 G Rules specified in sections SYSC 28.2 (knowledge and ability), SYSC 28.4 (record-keeping) and SYSC 28.5 (other requirements to consider) relate to the requirements in:

(1) SYSC 3.1.6R;

(2) SYSC 5.1.1R;
(3) SYSC 3.2.20R, SYSC 9.1.1R and SYSC 9.1.1AR;

(4) TC 4.2 (Specified requirements for firms carrying on insurance distribution activities); and

(5) article 22 of the AIFMD level 2 regulation.

28.2 Knowledge and ability requirements

Knowledge and ability requirements

28.2.1 R (1) A firm must ensure that it and each relevant employee possesses appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.

(2) A firm must ensure that it and each relevant employee complies with continued professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.

(3) A firm must ensure that each relevant employee completes a minimum of 15 hours of professional training or development in each 12 month period.

(4) For the purposes of (3), a firm must take into account the:

(a) role and activity carried out by the relevant employee within the firm; and

(b) type of distribution and the nature of the products sold.

[Note: article 10(1) and the first, second and fourth paragraphs of article 10(2) of the IDD]

28.2.2 G Training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.

[Note: recital 29 to the IDD]

28.2.3 R A firm must, including in relation to the relevant employee, demonstrate compliance with the following professional knowledge and competence requirements:

(1) for general insurance contracts:

(a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies;
(b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;

(c) minimum necessary knowledge of claims handling;

(d) minimum necessary knowledge of complaints handling;

(e) minimum necessary knowledge of assessing customer needs;

(f) minimum necessary knowledge of the insurance market;

(g) minimum necessary knowledge of business ethics standards; and

(h) minimum necessary financial competence;

(2) for insurance-based investment products as defined at article 2(1)(17) of the IDD (which in summary says that it is an insurance product which offers a maturity or surrender value, and where the maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. This excludes products such as non-investment insurance and certain life insurance):

(a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;

(b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;

(c) minimum necessary knowledge of financial risks borne by policyholders;

(d) minimum necessary knowledge of policies covering life risks and other savings products;

(e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;

(f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;

(g) minimum necessary knowledge of the insurance market and the saving products market;

(h) minimum necessary knowledge of complaints handling;
(i) minimum necessary knowledge of assessing customer needs;

(j) conflict of interest management;

(k) minimum necessary knowledge of business ethics standards; and

(l) minimum necessary financial competence; and

(3) for long-term insurance contracts:

(a) minimum necessary knowledge of policies including the terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;

(b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;

(c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;

(d) minimum necessary knowledge of insurance and other relevant financial services markets;

(e) minimum necessary knowledge of complaints handling;

(f) minimum necessary knowledge of assessing consumer needs;

(g) conflict of interest management;

(h) minimum necessary knowledge of business ethics standards; and

(i) minimum necessary financial competence.

[Note: article 10(2) last paragraph and annex I of the IDD]

28.3 Good repute

Good repute requirements

28.3.1 A firm (other than a connected travel insurance intermediary) must ensure that all the persons in its management structure and any staff directly involved in insurance distribution activities are of good repute.

[Note: article 10(3) paragraphs 1 to 3 of the IDD]
28.3.2 G This includes but is not limited to those natural persons:

(1) that are directly involved in insurance distribution activities; or

(2) within the management structure responsible for insurance distribution activities; or

(3) within the management structure responsible for any staff directly involved in insurance distribution activities.

[Note: article 10(3) paragraphs 1 and 3 of the IDD]

28.3.3 R An IDD ancillary insurance intermediary must ensure that natural persons working in the firm, responsible for ancillary insurance distribution activities, are of good repute.

[Note: article 10(3) paragraph 4 of the IDD]

28.3.4 R In considering a person’s repute the firm must at a minimum ensure that the person:

(1) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and

(2) has not previously been declared bankrupt,

unless they have been rehabilitated in accordance with national law.

[Note: article 10(3) paragraph 1 of the IDD]

28.3.5 G (1) In the United Kingdom the following persons will be considered to have been rehabilitated:

(a) in relation to a serious criminal offence, where the conviction is considered ‘spent’ under the Rehabilitation of Offenders Act 1974;

(b) in relation to bankruptcy, where the bankruptcy has been discharged.

(2) References to “serious criminal offences” are not restricted to offences considered to have been committed in or under the law of the United Kingdom.

(3) A firm should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

28.3.6 G A firm’s systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see SYSC 3.2.13G and SYSC
5.1.2G). This includes, among other things, the assessment of an individual’s honesty.

28.4  **Record-keeping requirements**

Record-keeping requirements

28.4.1  R  A *firm* must:

(1) establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and

(2) be in a position to provide to the *FCA*, on request, the name of the person responsible for the record-keeping requirement in (1).

*Note:* article 10(8) last paragraph of the *IDD*

28.4.2  R  A *firm* must:

(1) make an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 month period;

(2) retain that record for not less than 3 years after the relevant employee stops carrying on the activity; and

(3) be in a position to provide any version of the record to the *FCA* on request.

*Note:* article 10(2) second paragraph of the *IDD*

28.4.3  R  A *firm* must not prevent a relevant employee from obtaining a copy of the records relating to that relevant employee which are maintained by the *firm* for the purposes of *SYSC* 28.4.1R and *SYSC* 28.4.2R.

28.5  **Other requirements to consider**

28.5.1  G  In addition to the requirements in *SYSC* 28:

(1) *firms* may have to take into account and comply with the requirements in the Training and Competence sourcebook (*TC*);

(2) article 22 of the *AIFMD level 2 regulation* and the *competent employees rules* (*SYSC* 3.1.6R and *SYSC* 5.1.1R) set out a high-level competence requirement which every *firm* has to comply with; and

(3) it may be that the effect of the *rules* referred to in (1) and (2) is that *firms* have to meet requirements additional to those in *SYSC*
28.

Amend the following as shown.

**Sch 1  Record keeping requirements**

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
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<tr>
<td><strong>SYSC 9.1.1AR</strong></td>
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<td>...</td>
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<tr>
<td><strong>SYSC 9.1.2AR,</strong></td>
<td><strong>Suitability or</strong></td>
<td><strong>(1) In relation</strong></td>
<td><strong>(1) From the date of:</strong></td>
<td><strong>5 years</strong></td>
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<td><strong>SYSC 3.3.6R</strong></td>
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<td><strong>to an</strong></td>
<td><strong>(a) why the</strong></td>
<td><strong>(a) recommend</strong></td>
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<td><strong>in relation</strong></td>
<td><strong>insurance-based</strong></td>
<td><strong>recommendation</strong></td>
<td><strong>ation; and</strong></td>
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<td><strong>to</strong></td>
<td><strong>investment</strong></td>
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<td><strong>(2) Date of</strong></td>
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<td><strong>assessment.</strong></td>
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<td><strong>client</strong></td>
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<td><strong>assessment of</strong></td>
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<td><strong>appropriateness</strong></td>
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<td><strong>and the</strong></td>
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<td></td>
<td></td>
<td><strong>appropriateness</strong></td>
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</tr>
<tr>
<td>SYSC 28.4.1R</td>
<td>Arrangements made to demonstrate compliance with knowledge, ability and good repute requirements in relation to the carrying out of insurance distribution activities.</td>
<td>As required to demonstrate compliance.</td>
<td>As required to demonstrate compliance.</td>
<td></td>
</tr>
<tr>
<td>SYSC 28.4.2R</td>
<td>Matters dealing with knowledge and competence and completed continued professional training and development in relation to the carrying out of insurance distribution activities.</td>
<td>The firm must record the professional training or development completed by each relevant employee in each 12 month period.</td>
<td>As required to demonstrate compliance.</td>
<td>As required to demonstrate compliance but at least 3 years after the relevant employee stops carrying on the activity.</td>
</tr>
</tbody>
</table>
Annex D

Amendments to the Threshold Conditions (COND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 The threshold conditions

...  

2.2 Location of offices

Paragraph 2B of Schedule 6 to the Act

2.2.1A UK ...

(4) If A is seeking to carry on, or is carrying on, an insurance mediation distribution activity -

...  

(5) “Insurance mediation distribution activity” means any of the following activities -

...  

...  

2.2.2 G Paragraph 2B(1) of Schedule 6 to the Act implements article 7(1)(d) of the UCITS Directive, paragraphs 2B(1) to 2B(23) of Schedule 6 to the Act implement article 5(4) of MiFID, paragraph 2B(4) of Schedule 6 to the Act implements article 2.9 2(1)(10) of the Insurance Mediation Directive IDD and paragraph 2B(7) of Schedule 6 to the Act implements article 8(1)(e) of AIFMD, although the Act extends the threshold condition set out in paragraph 2B of Schedule 6 of the Act to authorised persons that are not PRA-authorised persons who are outside the scope of these Single Market Directives.

2.2.3 G Neither the UCITS Directive, MiFID, the Insurance Mediation Directive IDD, AIFMD nor the Act define what is meant by a firm’s ‘head office’. This is not necessarily the firm’s place of incorporation or the place where its business is wholly or mainly carried on. Although the FCA will judge each application on a case-by-case basis, the key issue in identifying the head office of a firm is the location of its central management and control, that is, the location of:
2.5 Suitability

Paragraph 3D to Schedule 6 of the Act

2.5.1C UK …

2.5.6 G Examples of the kind of particular considerations to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition include, but are not limited to, whether:

(1) …

…

(18) in the case of a firm that carries on insurance mediation distribution activity:

(a) a reasonable proportion of the persons employees or other persons within its management structure who are responsible for the insurance mediation activity firm’s insurance distribution activities; and

(b) all employees or other persons directly involved in its insurance mediation activity the carrying on of the firm’s insurance distribution activities; and

(ba) employees or other persons responsible for the supervision of a relevant employee acting in the capacity as set out in (b), demonstrate the appropriate knowledge and ability necessary for the performance of in order to complete their tasks and perform their duties adequately (see competent employee rule SYSC 28 (Insurance distribution: specific knowledge; ability and good repute requirements)); and

(c) all the persons in the firm’s management structure and any staff directly involved in insurance mediation distribution activity are of good repute (see MIPRU 2.3.1R (Knowledge and ability and good repute SYSC 28.3 (Good repute)); and
(d) natural persons working in the firm, responsible for ancillary insurance distribution activities are of good repute (see SYSC 28.3.3R); and
Annex E

Amendments to The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 General

...

1.2 Introduction

...

1.2.4A G  (1) ...

(2) Where the function relates to:

(a) ...

(b) business outside the scope of the MiFID business of an incoming EEA firm, for example insurance mediation activities in relation to life policies; or insurance distribution activities in relation to life policies;

(c) ...

...

...

1.2.4C G  Under article 10(1) and (2) of the IDD appropriate knowledge and ability is reserved to the firm’s Home State (see SUP 13A Annex 2G).
Annex F

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and Purpose

1.1 Who, what and where?

Who and what?

1.1.1 R …

1.1.1A R The application of this sourcebook is modified for a MiFID investment firm and a third country investment firm by the provisions in TC 4.1 where its employee carries on an activity in TC App 1 which is also an activity in TC 4.1.2R:

1. R a MiFID investment firm and a third country investment firm by the provisions in TC 4.1 where its employee carries on an activity in TC App 1 which is also an activity in TC 4.1.2R; and

2. R a firm carrying on insurance distribution activities by the provisions in TC 4.2.

…

After TC 4.1 (Specified requirements for MiFID investment firms and for third country investment firms) insert the following new section TC 4.2. The text is not underlined.

4.2 Specified requirements for firms carrying on insurance distribution activities

4.2.1 R For a firm which carries on insurance distribution activities the rules and guidance set out in column 1 of the table in TC 4.2.5R below are amended as set out in column 2.

4.2.2 R TC 4.2.1R is limited as set out in TC App 2 and TC App 3.

4.2.3 R In this section, and the provisions in column 1 of TC 4.2.5R, relevant employees are employees and other persons:

1. R directly involved in the carrying on of the firm’s insurance distribution activities; or
within the management structure responsible for the firm’s insurance distribution activities; or

(3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

4.2.4 R In TC 4.2 ‘employee’:

(1) is not restricted to an individual working under a contract of employment; and

(2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the firm, under an arrangement between the firm and a third party; and

(3) also includes appointed representatives and their employees.

<table>
<thead>
<tr>
<th>Relevant rules or guidance</th>
<th>Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1</th>
</tr>
</thead>
</table>
| TC 2.1.1R(1)              | The provision is amended by adding after TC 2.1.1R(1):
|                           | ‘A firm must ensure that a relevant employee’s appropriate knowledge and ability includes the requirements set out in SYSC 28.2.3R and is appropriate to the:
|                           | (a) role and activity carried out by the relevant employee within the firm; and
|                           | (b) type of distribution and the nature of the products sold.’ |
| TC 2.1.15R; TC 2.1.17R; TC 2.1.24R and TC 2.1.25R | The rules apply as if references to retail investment advisers included ‘relevant employees’. |
| TC 2.1.15R               | (1) For firms whose relevant employees are not also retail investment advisers, the rule applies as if ‘35 hours’ was a reference to ‘15 hours’.
|                           | (2) The rule is amended by adding at the end:
|                           | ‘Where the relevant employee is also a retail investment adviser, the minimum 35 hours appropriate continued professional development requirement in TC 2.1.15R must include a minimum 15 hours covering the...
requirements in SYSC 28.2.3R.’

| TC 2.1.16G | For relevant employees acting in that capacity, the guidance is replaced by the following: ‘To meet the requirements in TC 2.1.15R (as modified by TC 4.2.5R) a relevant employee’s continued training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.’ |
| TC 2.1.18G, TC 2.1.19G, and TC 2.1.23G | The guidance applies as if references to retail investment advisers included ‘relevant employees’. |
| TC 2.1.24R | The rule is amended by adding after TC 2.1.24R(2): ‘the firm must be in a position to make available to the FCA, on request, the name of the person responsible for this record keeping requirement.’ |
| TC 3.1.1R | The provision is amended by adding after TC 3.1.1R(3): ‘a firm must keep an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 month period, |
| | (a) for not less than 3 years after the relevant employee stops carrying out the activity; and |
| | (b) the firm must be in a position to provide any version of the record to the FCA on request.’ |

4.2.6 R Where the relevant employee is also a retail investment adviser the rules and guidance in TC 4.2.5R apply as follows (unless otherwise stated in TC 4.2.5R):

(1) the unamended TC rules and guidance in column 1 of TC 4.2.5R apply in relation to the person when acting in the capacity of a retail investment adviser; and

(2) the amended TC rules and guidance in column 2 apply in relation to the person when acting in the capacity of a relevant employee.

4.2.7 G Rules and guidance in this section relate to the requirements in SYSC 28 (Minimum knowledge and competence requirements for carrying out
Amend the following as shown.

### App 2.1 Territorial scope subject to the limitation in TC Appendix 3

<table>
<thead>
<tr>
<th></th>
<th>UK domestic firm</th>
<th>Incoming EEA firm</th>
<th>Overseas firm (other than an incoming EEA firm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
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<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>Insurance mediation</strong></td>
<td><strong>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</strong> and <strong>TC also applies in respect of employees who engage in or oversee activities from a branch established in another EEA state</strong></td>
<td><strong>TC does not apply</strong></td>
<td><strong>TC does not apply</strong></td>
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<td>...</td>
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### TP 1 Designated Investment Business: Assessments of competence before commencement

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</table>
1.1A | G | Notwithstanding TC TP 1 1.1R:

|   |   | (1) a firm is subject to SYSC 5.1.5ABR in respect of such an employee and should have regard to the guidelines ESMA has issued specifying the criteria for the assessment of knowledge and competence. The ESMA guidelines can be found at: https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence; and |
|   |   | (2) a firm, in relation to its insurance distribution activities, is subject to SYSC 28 (Insurance distribution: specific knowledge requirements) in respect of such an employee. |
Annex G

Amendments to the General Provisions (GEN)

Part 1: Comes into force on 25 May 2018

After GEN TP 3 (Transitional Provision in relation to the Alternative Investment Fund Managers Directive Instrument 2013) insert the following new Transitional Provision, TP 4. The text is not underlined.

TP 4  Transitional Provision on early compliance with the Insurance Distribution Directive applying across the Handbook


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<tbody>
<tr>
<td>1</td>
<td>Not applicable</td>
<td>G</td>
<td>The purpose of this transitional provision is to enable a firm to elect to comply early with one or more provisions implementing the Insurance Distribution Directive (IDD).</td>
<td>From 25 May 2018 up to and including 30 September 2018</td>
<td>Not applicable</td>
</tr>
<tr>
<td>2</td>
<td>Rules that will be amended or deleted by the Insurance Distribution Directive Instrument 2018 (other than forms in Annex O (SUP) part 2)</td>
<td>R</td>
<td>If a firm elects to comply with: (1) a rule made, or amended by, the Insurance Distribution Directive Instrument 2018 other than a form in Annex O (SUP) part 2; or (2) a provision of the IDD IPID Regulation, the IDD POG Regulation or the IDD Regulation,</td>
<td>From 25 May 2018 up to and including 30 September 2018</td>
<td>Already in force</td>
</tr>
</tbody>
</table>
then the firm:

(3) must comply with that made, amended or draft provision as if it was a rule currently in force; and

(4) need not comply with the rule in column (2) that it will replace (if any).

<table>
<thead>
<tr>
<th></th>
<th>Not applicable</th>
<th>G</th>
<th>In considering which new provision (or set of provisions) is replacing a current rule (or set of current rules), a firm should have regard to whether the new provisions are similar in purpose and provide similar or greater consumer protection. If a firm elects to comply with some but not all new provisions that replace a current rule, that current rule will continue to apply to the firm.</th>
<th>From 25 May 2018 up to and including 30 September 2018</th>
<th>Not applicable</th>
</tr>
</thead>
</table>
| 3 | Not applicable | G | A firm should make and retain a record of:

(1) any election it makes for the purpose of this transitional provision; and

(2) the new and replaced provisions to which that election relates,

in accordance with the firm’s general record keeping obligations. | From 25 May 2018 up to and including 30 September 2018 | Not applicable |

...
Sch 1  Record keeping requirements

Record keeping requirements

1.1 G There are no record keeping requirements in GEN. [deleted]

1.2 G The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

1.3 G It is not a complete statement of those requirements and should not be relied on as if it were.

1.4 G

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>GEN TP 4, row 4G</td>
<td>An election to comply early with the Insurance Distribution Directive (IDD)</td>
<td>The election and the new and replaced provisions to which that election relates</td>
<td>In accordance with the firm’s general record keeping obligations</td>
<td>In accordance with the firm’s general record keeping obligations</td>
</tr>
</tbody>
</table>


Part 2: Comes into force on 1 October 2018

In this Annex striking through indicates deleted text and underlining indicates new text.

4 Statutory status disclosure

…

4.3 Letter disclosure

…

4.3.1B G An example for GEN 4.3.1AG would be where a letter covers business for which the FCA is the competent authority under the Insurance Mediation Directive IDD and under MiFID.

…

Exception: use of third party processors in home finance and insurance mediation distribution activities

4.3.6 R …

(2) Where an appointed representative has outsourced insurance mediation activities insurance distribution activities other than advising on life policies or home finance mediation activities to a third party processor, GEN 4.3.1R does not apply to that third party processor when acting as such, so long as the appointed representative’s principal ensures that the third party processor and its employees comply with that rule as if it was the appointed representative and they were the employees of the appointed representative.

(3) Where an appointed representative of a firm is carrying on:

(a) insurance mediation activities insurance distribution activities other than advising on life policies; or

(b) home finance mediation activities;

which have been outsourced to it by the firm, GEN 4.3.1R does not apply to the firm when the appointed representative is carrying on the outsourced activities, so long as the firm ensures that the appointed representative and its employees comply with that rule as if it was the firm and they were employees of the firm.
Annex H

Amendments to the Fees manual (FEES)

In this Annex striking through indicates deleted text and underlining indicates new text.

3 Application, Notification and Vetting Fees

3 Annex Authorisation fees payable

1R

... Part 2 – Complexity groupings not relating to credit-regulated activities

<table>
<thead>
<tr>
<th>Activity grouping</th>
<th>Description</th>
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<tbody>
<tr>
<td>...</td>
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<tr>
<td>A.19</td>
<td>General insurance mediation distribution</td>
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</tbody>
</table>

... Part 6 – Change of legal status

... (2) which is to:

... (e) have the individuals within the firm that are responsible for insurance mediation activity insurance distribution activity perform the same role for the applicant.

... 4 Periodic fees

...
4.2 Obligation to pay periodic fees

... 4.2.7K R ...

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

<table>
<thead>
<tr>
<th>Fee-block</th>
<th>Tariff base</th>
<th>Calculation where trading data are not available</th>
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<tr>
<td>...</td>
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<tr>
<td>A19. General insurance mediation distribution</td>
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</table>

... 4 Annex Periodic fees for designated professional bodies payable in relation to the period 1 April 2017 to 31 March 2018

... 4 Annex Notes Note

(4) The Financial Services Register includes details of exempt professional firms carrying out insurance mediation activity and insurance distribution activity.

... 4 Annex Definition of annual income for the purposes of calculating fees in fee blocks A.13, A.14, A.18, A.19 and B. Service Companies, Recognised Investment Exchanges and Benchmark Administrators

<table>
<thead>
<tr>
<th>Annual income definition</th>
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</table>

 Where the relevant fee-block is fee-block A.19
For the purposes of calculating annual income for fee-block A.19, also include the following:
(g) in relation to any activities in (a), for any insurance mediation activity insurance distribution activity carried out by the firm for which it receives payment from the insurer on a basis other than that in (a), the amount of premiums receivable on its contracts of insurance multiplied by 0.07;
PLUS:
(h) if the firm is an insurer in relation to the activities in (a), the amount of
premiums receivable on its contracts of insurance multiplied by 0.07, excluding those contracts of insurance which:

- result from insurance mediation activity insurance distribution activity by another firm, where payment has been made by the insurer to the firm under (a); or

- are not general insurance contracts or pure protection contracts.

AND

(i) for the purposes of calculating annual income for fee-block A.19:- the provision in the UK of the regulated activities specified in FEES 4 Annex 1A Part 1 as belonging to the relevant fee block includes the provision of activities that would have been insurance mediation activity insurance distribution activity in relation to general insurance contracts or pure protection contracts if they had been carried on after 13 January 2005 or, in relation to connected travel insurance contracts, from 1 January 2009; - a reference to a “firm” includes a reference to any person, including a connected travel insurance intermediary, who carried on activities which would be insurance mediation activity insurance distribution activity (in respect of general insurance contracts or pure protection contracts) if they had been carried on after 13 January 2005 or, in relation to connected travel insurance contracts, from 1 January 2009. Guidance on the interpretation of this definition is presented in FEES 4 Annex 13G.

---

4 Annex Guidance on the calculation of tariffs set out in FEES 4 Annex 1AR Part 3

13G

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
</tr>
</tbody>
</table>

| (3) | Firms should only include revenue streams that relate to regulated activities which are carried on ‘in the United Kingdom’. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a client is outside the United Kingdom or because some other element of the activity happens outside the United Kingdom, the question may arise as to where the activity is carried on. PERG 2.4 generally and PERG 4.11 regarding activities relating to regulated mortgage contracts, PERG 5.12 regarding activities relating to insurance mediation activities insurance distribution activities and PERG 14.6 regarding home reversion plans and home purchase plans describe the legislation that is relevant to this question and gives the FCA’s views on various scenarios. |
| ... |
5 Financial Ombudsman Service Funding

...  

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2018/19

...  

Compulsory jurisdiction - general levy

<table>
<thead>
<tr>
<th>Industry block</th>
<th>Tariff base</th>
<th>General levy payable by firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

17 - General insurance mediation distribution (excluding firms in blocks 13, 14 & 15)  

<table>
<thead>
<tr>
<th>Industry block</th>
<th>Tariff base</th>
<th>General levy payable by firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

...  

6 Financial Services Compensation Scheme Funding

...  

6.6 Incoming EEA firms

6.6.1 R If an incoming EEA firm, which is an IMD insurance intermediary, IDD insurance intermediary, an MCD mortgage credit intermediary or MiFID investment firm, is a participant firm, the FSCS must give the firm such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the firm’s Home State scheme.
Annex I

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

For “Insurance Mediation Directive”, substitute “IDD” in the following provision. The new text is not shown as underlined and the deleted is not shown as struck through.

| 4.1.2G | one instance |

For “mediation”, substitute “distribution” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

| 1.1.1R(1) | one instance |
| 2.1.1R | one instance |
| 2.2.2R | one instance |
| 2.2.3G(1) | one instance |
| 2.2.3G(1B) | two instances |
| 2.2.3G(2) | two instances |
| 2.2.3G(3) | one instance |
| 2.2.4G | three instances |
| 3.1.1R(1A)(a) | one instance |
| 3.1.1R(3) | one instance |
| 3.1.2G | one instance |
| 3.2.2G | two instances |
| 3.2.4R(5), second line | one instance |
| 4.1.1R(1) | one instance |
| 4.1.3G | one instance |
| 4.2.10R(1)(a) | one instance |
| 4.2.10R(4) | one instance |
| 4.2.20R, heading | one instance |
| 4.2.20R | two instances |
| 4.4.8R(1)(a)(i) | one instance |

2 Insurance Responsibility for insurance distribution and MCD mediation

credit intermediation activity: responsibility, knowledge, ability and good

good repute

2.1 Application and purpose

... Purpose

2.1.2 G The main purpose of this chapter is to implement in part the provisions of
the *Insurance Mediation Directive* *IDD* and the *MCD* as these apply to firms regulated by the appropriate regulator.

2.2 **Allocation of the responsibility for insurance mediation distribution activity**

or MCD credit intermediation activity

Responsibility for insurance mediation distribution activity or MCD credit intermediation activity

2.2.1 **R** A firm, other than a sole trader, must allocate the responsibility for the firm’s insurance mediation activity, insurance distribution activity or MCD credit intermediation activity to a director or senior manager.

[Note: Article 3(1), fourth paragraph, of the *Insurance Mediation Directive* article 3(1), eighth paragraph of the *IDD* and article 29(4)(a), first sentence, of the *MCD.*]

…

2.2.5 **G** The FCA will specify in the *Financial Services Register* the name of the persons to whom the responsibility for the firm’s insurance mediation activity, insurance distribution activity or MCD credit intermediation activity has been allocated by inserting after the relevant controlled function the words “(insurance mediation distribution)” or “(MCD intermediation)”. In the case of a sole trader, the FCA will specify in the *Financial Services Register* the name of the sole trader as the ‘contact person’ in the firm.

[Editor’s note: The provisions in MIPRU 2.3 are moved to SYSC in a new section SYSC 28 (Insurance distribution: specific knowledge, ability and good repute requirements.))]

2.3 **Knowledge, ability and good repute [deleted]**

2.3.4 **R** A firm (other than a connected travel insurance intermediary) must establish on reasonable grounds that:

(1) a reasonable proportion of the persons within its management structure who are responsible for insurance mediation activity; and

(2) all other persons directly involved in its insurance mediation activity;

demonstrate the knowledge and ability necessary for the performance of their duties; and

(3) all the persons in its management structure and any staff directly involved in insurance mediation activity are of good repute.
[Note: Article 4(1) and (2) of the Insurance Mediation Directive]

2.3.2 G In determining a person's knowledge and ability, the firm should have regard to matters including, but not limited to, whether the:

(1) has demonstrated by experience and training that he is able or will be able to perform his duties related to the firm's insurance mediation activity; and

(2) satisfies the relevant requirements in the FCA's Training and Competence sourcebook and the Senior Management Arrangements, Systems and Controls sourcebook.

2.3.4 G The firm should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

2.3.5 G Firms are reminded that Principle 3 requires firms to take reasonable care to organise and control their affairs responsibly and effectively. Principle 3 is amplified by the rule which requires firms to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1R and SYSC 4.1.1R). A firm's systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (SYSC 3.2.13G and SYSC 5.1.2G). This includes the assessment of an individual's honesty and competence. In addition, the competent employees rule (SYSC 3.1.6R and SYSC 5.1.1R) sets out a high-level competence requirement which every firm should follow.

3 Professional indemnity insurance

3.1 Application and purpose

Application

3.1.1 R …

(5) This chapter does not apply to:

…

(d) an exempt CAD firm to which IPRU(INV) 9.2.5R (Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also IMD IDD insurance intermediaries) applies.

…
Purpose

3.1.3 G The purposes of this chapter are to:

(1) implement article 4.3 articles 10(4) and 10(5) of the Insurance Mediation Directive IDD in so far as it requires insurance intermediaries to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and

3.2 Professional indemnity insurance requirements

3.2.1 R …

[Note: Article 4(3) articles 10(4) and 10(5) of the Insurance Mediation Directive IDD]

…

Minimum limits of indemnity: insurance intermediary

3.2.7 R If the firm is an insurance intermediary, then the minimum limits of indemnity per year are:

(1) for a single claim, €1,120,200 €1,250,000; and

(2) in aggregate, the higher of:

(a) €1,680,300 €1,850,000; and

(b) or, if higher, an amount equivalent to 10% of annual income up to (this amount being subject to a maximum of £30 million).

[Note: Article 4(3) articles 10(4) and 10(5) of the Insurance Mediation Directive IDD]

3.2.7A G Article 4(7) of the Insurance Mediation Directive requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

Article 10(7) of the IDD requires EIOPA to review the limits of indemnity every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the limits of indemnity will be subject to further adjustments that
will apply to firms in accordance with the regulatory technical standards adopted under article 10(7) of the IDD.

[Note: The regulatory technical standards adopted under article 10(7) of the IDD will be available on EIOPA’s website at: https://eiopa.europa.eu/]
Capital resources requirement: home finance mediation activity and home financing or home finance administration

4.2.21 R (1) …

(2) If the firm holds client money or other client assets in relation to its home finance mediation activity, the capital resources requirement is:

(a) …

(b) the amount which is applied to a firm carrying on insurance mediation activity, insurance distribution activity or home finance mediation activity (and no other regulated activity) that holds client money or other client assets in relation to these activities (see MIPRU 4.2.11R(2)).

4.3 Calculation of annual income

4.3.3 R For a firm which carries on insurance mediation activity, insurance distribution activity or home finance mediation activity, annual income is the amount of all brokerage, fees, commissions and other related income (for example, administration charges, overrides, profit shares) due to the firm in respect of or in relation to those activities. But it does not include income generated from carrying on any home finance mediation activity for:

…

4.4 Calculation of capital resources

…

Subordinated loans

4.4.7 R A subordinated debt must not form part of the capital resources of the firm unless it meets the following conditions:

(1) (for a firm which carries on insurance mediation activity, insurance distribution activity, home finance mediation activity (or both) but not home financing or home finance administration) it has an original maturity of:
5 Insurance undertakings distributors and home finance providers using insurance distribution or home finance mediation services

5.1 Application and purpose

Application

5.1.1 This chapter applies to a firm with a Part 4A permission to carry on:

(1) insurance business; or

(1A) insurance distribution activity; or

(2) home financing;

(3) and which uses, or proposes to use, the services of another person consisting of: [deleted]

(a) insurance mediation; or

(b) insurance mediation activity; or

(c) home finance mediation activity.

Purpose

5.1.2 The purpose of this chapter is to implement article 3.6.16 of the Insurance Mediation Directive IDD in relation to insurance undertakings and insurance intermediaries. The provisions of this chapter have been extended to home finance providers in relation to insurance mediation distribution activity, and to insurance undertakings and home finance providers in relation to home finance mediation activity, to ensure that firms using these services are treated in the same way and to ensure that clients have the same protection. To avoid the loss of protection where an intermediary itself uses the services of an unauthorised person, this chapter also ensures that each person person in the chain of those providing services is authorised.

5.2 Use of intermediaries

5.2.1 A firm must not use, or propose to use, the services of another person person consisting of:
(1) insurance mediation distribution; or

(1A) reinsurance distribution; or

(2) insurance mediation distribution activity; or

(3) home finance mediation activity;

unless MIPRU 5.2.2R is satisfied.

[Note: Article 3(6) article 16 of the Insurance Mediation Directive IDD]

5.2.1-A R MIPRU 5.2.1R does not apply to a firm carrying on an insurance distribution activity if it uses or proposes to use the services of a person consisting of home finance mediation activity. In that case, MIPRU 5.2.2R does not need to be satisfied.

…

5.2.2 R For the purposes of MIPRU 5.2.1R, the person person, in relation to the activity must:

…

(4) be registered in another EEA State for the purposes of the Insurance Mediation Directive IDD; or

(5) in relation to insurance mediation activity insurance distribution activity, not be carrying this activity on in the EEA; or

…

[Note: Article 3(6) article 16 of the Insurance Mediation Directive IDD]

5.2.3 E (1) A firm should:

(a) before using the services of the intermediary, check:

(i) the Financial Services Register; or

(ii) in relation to insurance mediation insurance distribution or reinsurance distribution carried on by an EEA firm, the register of its Home State regulator, for the status of the person person; and

(b) use the services of that person person only if the relevant register indicates that the person person is registered for that purpose.

(2) (a) Checking the Financial Services Register before using the services of the intermediary and using the services of that
person only if the Financial Services Register indicates that the person is registered for that purpose may be relied on as tending to establish that:

(i) the person, in relation to the activity, has permission; or

(ii) the person, in relation to insurance mediation insurance distribution activity, also is an exempt person or an authorised professional firm.

(b) In relation to insurance mediation insurance distribution or reinsurance distribution carried on by an EEA firm, checking the register of the firm’s Home State regulator and using the services of the EEA firm only if the register indicates that the firm is registered for that purpose may be relied on as tending to establish that the firm is registered for the purposes of the Insurance Mediation Directive IDD.
9 Financial resources requirements for an exempt CAD firm

... 

9.2 GENERAL REQUIREMENTS

... 

Initial capital and professional indemnity insurance requirements - exempt CAD firms that are not IMD IDD insurance intermediaries

9.2.4 R (1) An exempt CAD firm which is not an IMD insurance intermediary IDD insurance intermediary must have:

... 

... 

Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also IMD IDD insurance intermediaries

9.2.5 R (1) An exempt CAD firm that is also an IMD insurance intermediary IDD insurance intermediary must comply with the professional indemnity insurance requirements at least equal to those set out in IPRU(INV) 9.2.4R(1)(b) (except that the minimum limits of indemnity are at least EUR 1,120,200 1,250,000 for a single claim and EUR 1,680,300 1,850,000 in aggregate) and in addition has to have:

... 

[Note: article 31(2) of the CRD and articles 10(4) and 10(5) of the IDD]

... 

9.2.5A G Article 4(7) of the Insurance Mediation Directive requires the limits of indemnity every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

Article 10(7) of the IDD requires EIOPA to review the limits of indemnity every five years to take into account changes in the European index of
consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the limits of indemnity will be subject to further adjustments that will apply to firms in accordance with the regulatory technical standards adopted under article 10(7) of the IDD.

[Note: The regulatory technical standards adopted under article 10(7) of the IDD will be available on EIOPA’s website at: https://eiopa.europa.eu/]

13 Financial Resource Requirements for Personal Investment Firms

13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

... Requirement to hold professional indemnity insurance

13.1.5 R ... 

[Note: Article 4(3) articles 10(4) and 10(5) of the Insurance Mediation Directive IDD]

... Limits of indemnity

13.1.10 R If the firm is an IMD insurance intermediary IDD insurance intermediary, whether or not it is also an exempt CAD firm, the appropriate minimum limits of indemnity per year are no lower than:

(1) EUR 1,120,200 1,250,000 for a single claim against the firm; and

(2) EUR 1,680,300 1,850,000 in the aggregate.

[Note: Article 4(3) articles 10(4) and 10(5) of the Insurance Mediation Directive IDD]

... If the firm is both an IMD IDD insurance intermediary and an exempt CAD firm that maintains professional indemnity insurance under IPRU(INV) 13.1A.4(1)(b), the appropriate additional limits of indemnity to IPRU(INV) 13.1.10R per year are no lower than:

...

13.1.12 R If the firm is not an IMD IDD insurance intermediary or an exempt CAD firm, then the following limits of indemnity apply:
13.1.14 G Article 4(7) of the Insurance Mediation Directive requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

Article 10(7) of the IDD requires EIOPA to review the limits of indemnity every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the limits of indemnity will be subject to further adjustments that will apply to firms in accordance with the regulatory technical standards adopted under article 10(7) of the IDD.

[Note: The regulatory technical standards adopted under article 10(7) of the IDD will be available on EIOPA’s website at: https://eiopa.europa.eu/]

Limits of indemnity - additional requirements

13.1.19 R In addition to the specific requirements in IPRU(INV) 13.1.9R to 13.1.13R, the policy must make provision for the following:

(1) for a firm with relevant income of more than £6,000,000 £10,000,000, the aggregate limit identified in the table below:

<table>
<thead>
<tr>
<th>Relevant income is (£)</th>
<th>Minimum aggregate limit of indemnity (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>more than 6,000,000</td>
<td>7,000,000</td>
</tr>
<tr>
<td>7,000,000</td>
<td>8,000,000</td>
</tr>
<tr>
<td>8,000,000</td>
<td>9,000,000</td>
</tr>
<tr>
<td>9,000,000</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

...
13.1A.3 R (1) A firm which is not an insurance intermediary IDD insurance intermediary must have:

... 

... 

13.1A.4 R (1) A firm that is also an insurance intermediary IDD insurance intermediary must have professional indemnity insurance at least equal to the limits set out in IPRU(INV) 13.1.10R and in addition must have:

... 

... 

13.13 CAPITAL RESOURCES REQUIREMENT FOR AN EXEMPT CAD FIRM AND A CATEGORY B FIRM

... 

13.13.3 R ... 

... 

Table 13.13.3(2)(b)(ii)

This table forms part of IPRU-INV 13.13.3R.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Provision</th>
<th>Fixed amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance mediation activity Insurance distribution activity or home finance mediation activity</td>
<td>MIPRU 4.2.11R(1)(a) (firm not holding client money or assets)</td>
<td>£5,000</td>
</tr>
<tr>
<td></td>
<td>MIPRU 4.2.11R(2)(a) (firm holding client money or assets)</td>
<td>£10,000</td>
</tr>
</tbody>
</table>

... 

13.14 CALCULATION OF ANNUAL INCOME FOR AN EXEMPT CAD FIRM AND A CATEGORY B FIRM

...
13.14.6  G  A firm should not include in its annual income those amounts due to it that are used in the calculation of its capital resources requirement under MIPRU 4.2.11R (Capital resources requirement: insurance distribution activity or home finance mediation activity only) or MIPRU 4.2.19R 4.2.20R (Capital resources requirement: insurance mediation distribution activity and home financing, or home finance administration).
Annex K

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

After COBS 1.2 (Markets in Financial Instruments Directive) insert the following new section COBS 1.3. The text is not underlined.

1.3 Insurance distribution

References in COBS to the IDD Regulation

1.3.1 G (1) This sourcebook contains a number of provisions which transpose the IDD.

(2) In order to help firms which are subject to the requirements of the IDD to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the directly applicable IDD Regulation, marked with the status letters “EU”. The authentic provisions of the IDD Regulation are directly applicable to firms carrying on insurance distribution in relation to insurance-based investment products.

(3) This sourcebook does not reproduce the IDD Regulation in its entirety. A firm to which provisions of the IDD Regulation applies should refer to the electronic version of the Official Journal of the European Union for:

(a) the authentic version of the applicable articles of the IDD Regulation; and

(b) a comprehensive statement of its obligations under the IDD Regulation.

1.3.2 G In some cases, this sourcebook applies provisions of the IDD Regulation to firms as if those provisions were rules.

1.3.3 R (1) Where this sourcebook applies provisions of the IDD Regulation as if they were rules, (2) applies to enable firms to correctly interpret and understand the application of those provisions.

(2) In this sourcebook, a word or phrase found in a provision marked “EU” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>“advice”</td>
<td>personal recommendation</td>
</tr>
<tr>
<td>“article 20(1) of Directive (EU) 2016/97”</td>
<td>COBS 9A.2.3AR or COBS 7.3.4R</td>
</tr>
<tr>
<td>“article 30(1) of Directive (EU) 2016/97”</td>
<td>COBS 9A.2.1R and COBS 9A.2.16R</td>
</tr>
<tr>
<td>“article 30(2) of Directive (EU) 2016/97”</td>
<td>COBS 10A.2.1R and COBS 10A.2.2R</td>
</tr>
<tr>
<td>“article 30(3)(a) (ii) of Directive (EU) 2016/97”</td>
<td>COBS 10A.4.1R(2A)</td>
</tr>
<tr>
<td>“article 14(1) of this Regulation”</td>
<td>COBS 9A.3.3AEU</td>
</tr>
<tr>
<td>“article 185 of Directive 2009/138/EC”</td>
<td>relevant rules in COBS 13, COBS 14 and COBS 16.6 which are followed by a</td>
</tr>
<tr>
<td></td>
<td>“Note:” referring to article 185 of Solvency II</td>
</tr>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
<tr>
<td>“customer” and “potential customer”</td>
<td>Client</td>
</tr>
<tr>
<td>“Directive (EU) 2016/97”</td>
<td>IDD</td>
</tr>
<tr>
<td>“durable medium”</td>
<td>durable medium</td>
</tr>
<tr>
<td>“financial instrument”</td>
<td>financial instrument and (if the context requires) designated investment</td>
</tr>
<tr>
<td></td>
<td>and structured deposit</td>
</tr>
<tr>
<td>“insurance-based investment product”</td>
<td>insurance-based investment product</td>
</tr>
<tr>
<td>“insurance distribution”</td>
<td>insurance distribution activities</td>
</tr>
<tr>
<td>“insurance intermediary” and “intermediary”</td>
<td>insurance intermediary</td>
</tr>
<tr>
<td>“insurance product”</td>
<td>life policy</td>
</tr>
<tr>
<td>“insurance undertaking” and “undertaking”</td>
<td>Insurer</td>
</tr>
</tbody>
</table>
“shall”

Must

(3) In this sourcebook, where a reproduced provision of an article of the *IDD Regulation* refers to another part of the *IDD Regulation*, that other provision must also be read with reference to the table in (2).

1.3.4 **Firms** to which provisions of the *IDD Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “EU” to assist in interpreting any such references or cross-references.

**Interpretation – “in good time”**

1.3.5 **(1)** Certain provisions in this sourcebook which implement *IDD* require *firms* to provide *clients* with information “in good time”. There are also other provisions in this sourcebook which require information to be provided “in good time”, for example, *COBS 6.1ZA.19AR.*

**(2)** In determining what constitutes the provision of information “in good time”, a *firm* should take into account, having regard to the urgency of the situation, the *client’s* need for sufficient time to read and understand the information before taking an investment decision.

**(3)** A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

Amend the following as shown.

**1 Annex 1 Application (see COBS 1.1.2R)**

**Part 1: What?**

**Modifications to the general application of COBS according to activities**

<table>
<thead>
<tr>
<th>1.</th>
<th>Eligible counterparty business</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>R</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COBS provision</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>COBS 6.1</td>
<td>Information about the firm, its services and remuneration (non-MiFID and non insurance distribution provisions)</td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>…</td>
</tr>
<tr>
<td>COBS 10</td>
<td>Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)</td>
</tr>
<tr>
<td></td>
<td>…</td>
</tr>
<tr>
<td>COBS 10A</td>
<td>Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)</td>
</tr>
<tr>
<td></td>
<td>…</td>
</tr>
<tr>
<td></td>
<td>…</td>
</tr>
</tbody>
</table>

**6. Use of third party processors in life insurance mediation distribution activities**

6.1 R If a firm (or its appointed representative or, where applicable, its tied agent) outsources insurance mediation activities insurance distribution activities to a third party processor:

  ...  

  ...  

Part 2: Where?

Modifications to the general application according to location

  ...  

Part 3: Guidance

1. The main extensions, modifications and restrictions to the general application

  ...  

1.3 G In particular, certain chapters of this sourcebook apply only to firms in relation to their MiFID, equivalent third country or optional exemption business and, in some of these chapters, specified insurance distribution activities (sometimes only in relation to insurance-based investment
products) while others apply only to firms’ designated investment business which is not MiFID, equivalent third country or optional exemption business or, in some of these chapters, certain insurance distribution activities.

... 


4.1 G The Insurance Mediation Directive’s IDD’s scope covers most firms carrying on most types of insurance mediation insurance distribution in relation to risks and commitments located in an EEA State.

4.1A G The rules in this sourcebook within the Directive’s scope are those relating to life policies that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis. The rules implementing that implement the minimum information and other requirements in articles 12 and 13 1(4), 17, 18, 19, 20, 21, 23, 24(1) to (3) and (6), 29, and 30 of the Directive IDD are set out in:

1. COBS 2.1.1R, COBS 2.2A and COBS 2.3A (Conduct of business obligations);

2. COBS 4 (Communicating with clients, including financial promotions);

3. COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));

4. COBS 7 (Insurance mediation distribution); and

5. COBS 8 (Client agreements);

6. COBS 9 (Suitability (including basic advice) (other than MiFID and insurance-based investment products provisions)) and COBS 9A (Suitability (MiFID and insurance-based investment products provisions));

7. COBS 10A (Appropriateness (for non-advised services));

8. COBS 14.2 (Providing product information to clients); and

9. COBS 16A.2 (General client reporting and record keeping requirements).

4.1B G A Member State is entitled to impose additional requirements within the IDD’s scope in the ‘general good’ (see recital 52 to, and article 22 of, the IDD).

4.2 G In the FCA’s view, the responsibility for these minimum requirements...
rests with the *Home State*, but a *Host State* is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. The **IDD** places responsibility for requirements in this sourcebook within the Directive’s scope (both minimum and additional requirements) on the *Home State*, except:

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<td>(1)</td>
<td>in relation to business conducted through a <em>branch</em>, in which case the responsibility rests with the <em>EEA State</em> in which the <em>branch</em> is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis) (see recital 22 to, and article 7(2) of, the <strong>IDD</strong>). So <em>firms</em> operating under the freedom of establishment in the <em>UK</em> must adhere to the requirements in the <em>UK</em>, regardless of the habitual residence of the customer (other than in the situations described in (2)); and</td>
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<td>(2)</td>
<td>where a Member State has:</td>
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<td>(a)</td>
<td>introduced the stricter requirements in article 29(3) of the <strong>IDD</strong>; or</td>
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<td>(b)</td>
<td>introduced requirements which have not made use of the derogation in article 30(3) of the <strong>IDD</strong> to allow <em>firms</em> not to carry out an appropriateness assessment in relation to a non-advised sale of an <em>insurance-based investment product</em>.</td>
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*firms* concluding contracts with customers having their habitual residence or establishment in that Member State must adhere to the more onerous requirements in (a) or (b) in force in that State.

4.3 G Accordingly, the general *rules* on territorial scope are *not* modified so that by the **IDD** except:

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<td>(1)</td>
<td>for a <em>UK firm</em> providing <em>passported activities</em> through a <em>branch</em> in another <em>EEA State</em> under the Directive, the <em>rules</em> implementing the Directive’s minimum requirements apply but the territorial scope of the additional <em>rules</em> within the Directive’s scope is not modified;</td>
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| (2) | for an *EEA firm* providing *passported activities* under the Directive in the *United Kingdom*, the *rules* implementing the Directive’s minimum requirements do not apply, but the additional *rules* within the Directive’s scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect. (See recital 19 and article 12(5) of the **Insurance Mediation Directive**)

| (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 |
paragraphs (1), (3), (4) and 4.4G, 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.

for a UK firm concluding contracts with customers having their habitual residence or establishment another Member State, it must comply with the requirements of that Member State falling within 4.2G(2):

for an EEA firm providing passported activities in the United Kingdom under the IDD the rules in COBS which give effect to article 29(3) apply, where the client has their habitual residence or establishment in the UK, when it is operating under the freedom to provide services.

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

The Solvency II Directive’s scope covers long-term insurers. The rules in this sourcebook within the Directive’s scope are the cancellation rules (COBS 15) 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. 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.

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 promotion 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)

In the FCA’s view:
(1) the ‘country of origin’ basis of the Directive is in line with that of the *Electronic Commerce Directive* and the *IDD*; (See recital 6 of the *Distance Marketing Directive*)

(3) for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the ‘Home State’, but the minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a ‘country of origin’ basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)

7. Electronic Commerce Directive: effect on territorial scope

7.4 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*; and

(2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.

7.5 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 19 of the *Insurance Mediation Directive IDD*, recital 6 of the *Distance Marketing Directive*, article 3 and Annex of the *Electronic Commerce Directive*)

2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client’s best interests rule

2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client’s best interests rule*).

(2) This *rule* applies:
(a) in relation to designated investment business carried on for a retail client; and

(b) in relation to MiFID, equivalent third country or optional exemption business, for any client; and

(c) in relation to insurance distribution, for any client.

…

[Note: article 24(1) of MiFID, article 17(1) of the IDD and article 14(1)(a) and (b) of the UCITS Directive]

…

2.2 Information disclosure before providing services (non- other than MiFID provisions and insurance distribution)

Application

2.2.-1 R …

(2) This section applies in relation to designated investment business (other than MiFID, equivalent third country or optional exemption business or insurance distribution activities), carried on for a retail client:

(a) in relation to a derivative, a warrant, a non-readily realisable security, a P2P agreement, or stock lending activity, but as regards the matters in COBS 2.2.1R(1)(b) only; and

(b) in relation to a retail investment product, but as regards the matters in COBS 2.2.1R(1)(a) and (d) only.

2.2.-1A G COBS 2.2A (Information disclosure before providing services (MiFID provisions and insurance distribution)) contains the information disclosure requirements applying to a firm carrying on MiFID, equivalent third country or optional exemption business and insurance distribution activities.

…

2.2A Information disclosure before providing services (MiFID and insurance distribution provisions)

Application

2.2A.1 R This section applies to a firm:

(1) in relation to its MiFID, equivalent third country or optional
exemption business;

(2) carrying on insurance distribution activities in relation to:

(a) an insurance-based investment product for any client; and/or

(b) any other life policy for a retail client but as regards the matters in COBS 2.2A.2R(1)(a) and (d) only.

Information disclosure in good time

2.2A.2 R (1) A firm must provide appropriate information in good time to a client with regard to:

(a) the firm and its services;

(b) (for financial instruments) the financial instruments and, proposed investment strategies and execution venues;

(c) execution venues (for insurance-based investment products) the distribution of insurance-based investment products including at least appropriate guidance on, and warnings of, the risks associated with the insurance-based investment product or in respect of particular investment strategies proposed; and

(d) all costs and related charges.

[Note: article 24(4) of MiFID and article 29(1)(b) of the IDD]

(2) That information may be provided in a standardised format.

2.2A.2A R For an insurance-based investment product, a firm must provide the information in good time prior to the conclusion of the contract.

[Note: first paragraph of article 29(1) of the IDD]

2.2A.3 R (1) A firm must provide the information required by this section in a comprehensible form in such a manner that a client is reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument or life policy that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[Note: article 24(5) of MiFID and last paragraph of article 29(1) the IDD]

Related rules

2.2A.4 G A firm to which the rule on providing appropriate information (COBS 2.2A.2R) applies should also consider the rules on disclosing information
about a firm, its services, costs and associated charges, and financial instruments and life policies in COBS 6.1ZA, COBS 9A.3, COBS 14.3 and COBS 14.3A.

2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business and insurance-based investment products

Application

2.3.-1A R This section does not apply to:

(1) giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme where that scheme is a qualifying scheme; or

(2) a firm in relation to MiFID, equivalent third country or optional exemption business (but see COBS 2.3A (Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products)); or

(3) a firm carrying on an insurance distribution activity in relation to an insurance-based investment product.

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products

Application

2.3A.1 R This section applies to a firm:

(1) in relation to its MiFID, equivalent third country or optional exemption business; and

(2) carrying on insurance distribution activities in relation to an insurance-based investment product.

Relationship with the adviser charging, product provider and platform service provider rules in COBS 6.1A, COBS 6.1B and COBS 6.1E

2.3A.2 G A firm which makes a personal recommendation to a retail client in the United Kingdom in relation to:

(a) a retail investment product in the course of carrying on MiFID, equivalent third country or optional exemption
business with or for that client; or

(b) an insurance-based investment product.

is also required to comply with the rules in COBS 6.1A (Adviser charging and remuneration).

...  

2.3A.4 G Where:

(1) the firm:

(a) is a retail investment product provider or a platform service provider; and

(b) carries on MiFID, equivalent third country or optional exemption business, or carries on insurance distribution activities, in relation to those activities; and

(2) the client is a retail client in the United Kingdom,

the firm is required to comply with the rules in this section and in COBS 6.1B (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) and, where relevant, COBS 6.1E (Platform services: platform charges using a platform service for advising).

Rules on inducements relating to the provision of investment services and ancillary services

2.3A.5 R (1) Except where COBS 2.3A.6R applies, a firm must not:

(1) pay to or accept from any party (other than the client or a person on behalf of the client) any fee or commission in connection with the provision of an investment service or an ancillary service; or

(2) provide to or receive from any party (other than the client or a person on behalf of the client) any non-monetary benefit.

(2) (1)(a) and (b) only apply in relation to fees, commissions or non-monetary benefits paid or accepted, or provided or received, in connection with:

(a) the provision of an investment service or an ancillary service; or

(b) the distribution of an insurance-based investment product or an ancillary service.
[Note: article 24(9) of MiFID, articles 22(3), 29(2) and 29(3) of the IDD]

2.3A.6 R (1) COBS 2.3A.5R does not apply to:

(a) a fee, commission or non-monetary benefit which:

   (i) is designed to enhance the quality of the relevant service to the client (see COBS 2.3A.8R and, also for an insurance-based investment product, COBS 2.3A.9AEU); and

   (ii) does not impair compliance with the firm’s duty to act honestly, fairly and professionally in the best interests of the client;

(b) a payment or benefit which enables or is necessary for the provision of an investment service, or the distribution of an insurance-based investment product, by the firm, such as custody costs, settlement and exchange fees, regulatory levies or legal fees and which, by its nature, cannot give rise to conflicts with the firm’s duty to act honestly, fairly and professionally in the best interests of the client; or

(c) (in relation to MiFID, equivalent third country or optional exemption business) third party research received in accordance with COBS 2.3B (see COBS 2.3B.3R).

(2) Where a firm pays, provides, accepts or receives, a fee, commission or non-monetary benefit which falls within (1)(a), the firm must clearly disclose to the client:

(a) the existence and nature of the payment or benefit; and

(b) the amount of the payment or benefit or, where the amount cannot be ascertained, the method for calculating that amount.

(3) That information must be disclosed:

(a) prior to the provision of the relevant service; and

(b) in a manner that is comprehensive, accurate and understandable (see also COBS 2.3A.10R (Disclosure of payments or benefits received from, or paid to, third parties)).

(4) Where applicable, a firm must inform a client of the mechanisms for transferring to the client the fee, commission,
monetary or non-monetary benefit received in relation to the provision of the relevant service.

[Note: article 24(9) of MiFID, article 22(3) and 29(3) of the IDD]

2.3A.7 E A firm which fails to comply with COBS 2.3A.5R is to be regarded as not fulfilling its obligations in relation to:

(1) conflicts of interest (see SYSC 3.3 (for insurers and managing agents) and SYSC 10 (for other firms)); and

(2) acting honestly, fairly and professionally in accordance with the best interests of its clients (see COBS 2.1.1R).

[Note: article 24(9) of MiFID, article 29(2) and 29(3) of the IDD]

2.3A.8 R (1) For the purposes of COBS 2.3A.6R(1)(a)(i), a fee, commission or non-monetary benefit is designed to enhance the quality of the relevant service to a client only if:

(a) it is justified by the provision of an additional or higher level service to the client and is proportional to the level of inducements received;

(b) it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the client;

(c) it is justified by the provision of an ongoing benefit to the client in relation to an ongoing inducement; and

(d) the provision of the service by the firm to the client is not biased or distorted as a result of the fee, commission or non-monetary benefit.

(2) A firm must fulfil these conditions on an ongoing basis as long as the firm continues to pay or receive the fee, commission or non-monetary benefit.

[Note: article 11(2) and (3) of the MiFID Delegated Directive]

2.3A.9 R A fee, commission or non-monetary benefit may be justified for the purposes of COBS 2.3A.8R(1)(a) where, for example, the firm provides:

(1) restricted advice on, and access to, a wide range of suitable financial instruments or insurance-based investment contracts including an appropriate number of financial instruments or insurance-based investment contracts from third party product providers having no close links with the firm; or
(2) restricted advice combined with:

(a) an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments or insurance-based investment contracts in which the client has invested; or

(b) another ongoing service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or

(3) access, at a competitive price, to a wide range of financial instruments or insurance-based investment contracts that are likely to meet the needs of the client, including an appropriate number of financial instruments or insurance-based investment contracts from third party product providers having no close links with the firm, together with either the provision of added-value tools, such as objective information tools helping the client to take investment decisions or enabling the client to monitor, model and adjust the range of financial instruments or insurance-based investment contracts in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments or insurance-based investment contracts.

[Note: article 11(2) of the MiFID Delegated Directive]

Additional requirements for the assessment of inducements: insurance-based investment products

2.3A.9A EU 8(1) An inducement or inducement scheme shall be considered to have a detrimental impact on the quality of the relevant service to the customer where it is of such a nature and scale that it provides an incentive to carry out insurance distribution activities in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

8(2) For the purposes of assessing whether an inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the customer, insurance intermediaries and insurance undertakings shall perform an overall analysis taking into account all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer, and any organisational measures taken by the insurance intermediary or insurance undertaking carrying out distribution activities to prevent the risk of detrimental impact.

They shall, in particular, consider the following criteria:

(a) whether the inducement or inducement scheme could provide an incentive to the insurance intermediary or insurance undertaking to offer or recommend a particular
insurance product or a particular service to the customer despite the fact that the insurance intermediary or insurance undertaking would be able to offer a different insurance product or service which would better meet the customer's needs;

(b) whether the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria or whether it takes into account appropriate qualitative criteria, reflecting compliance with applicable regulations, the quality of services provided to customers and customer satisfaction;

(c) the value of the inducement paid or received in relation to the value of the product and the services provided;

(d) whether the inducement is entirely or mainly paid at the moment of the conclusion of the insurance contract or extends over the whole term of that contract;

(e) the existence of an appropriate mechanism for reclaiming the inducement in case the product lapses or is surrendered at an early stage or in case the interests of the customer have been harmed;

(f) the existence of any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales.

2(2) ‘inducement’ means any fee, commission, or any non-monetary benefit provided by or to such an intermediary or undertaking in connection with the distribution of an insurance-based investment product, to or by any party except the customer involved in the transaction in question or a person acting on behalf of that customer;

2(3) ‘inducement scheme means a set of rules governing the payment of inducements, including the conditions under which the inducements are paid.

[Note: articles 2(2), 2(3) and 8 of the IDD Regulation]

2.3A.9B R COBS 2.3A.14AEU applies as if it was a rule to firms in relation to insurance distribution activities to which the IDD Regulation does not apply.

Disclosure of payments or benefits received from, or paid to, third parties

...
firm must inform, at least annually, that client about the actual amount of payments or benefits received.

(2) For these purposes, minor non-monetary benefits may be described in a generic way.

[Note: article 11(5)(c) of the MiFID Delegated Directive]

2.3A.13 R In implementing the requirements of COBS 2.3A.10R to COBS 2.3A.12R, a firm must take into account the costs and charges rules set out:

(1) (for MiFID, equivalent third country or optional exemption business) in article 24(4)(c) of MiFID and article 50 of the MiFID Org Regulation (see COBS 6.1ZA.11R to COBS 6.1ZA.13R and COBS 6.1ZA.14EU); and

(2) (for insurance-based investment products) in COBS 6.1ZA.11R to COBS 6.1ZA.13R and COBS 6.1ZA.15AR.

[Note: article 11(5) of the MiFID Delegated Directive]

2.3A.14 R Each firm involved in a distribution channel which provides an investment service or, an ancillary service or distributes an insurance-based investment product must comply with its obligations to make disclosures to its clients.

[Note: article 11(5) of the MiFID Delegated Directive]

Inducements relating to the provision of independent advice, restricted advice and portfolio management services to retail clients in the United Kingdom

2.3A.15 R (1) This rule applies where a firm provides a retail client in the United Kingdom with:

(a) independent advice; or

(b) restricted advice; or

(c) portfolio management services.

(2) The firm must not accept any fees, commission, monetary or non-monetary benefits which are paid or provided by:

(a) any third party; or

(b) a person acting on behalf of a third party,

in relation to the provision of the relevant service to the client.

(2A) Where the firm provides independent advice or restricted advice, the rule in (2) applies in connection with:
(a) the firm’s business of advising; or

(b) any other related service, where ‘related service’ has the same meaning as in COBS 6.1A.6R.

(3) Paragraph (2) does not apply to:

(a) acceptable minor non-monetary benefits (see COBS 2.3A.19R in relation to the provision of investment services and COBS 6.1A.5AR in relation to the distribution of an insurance-based investment product); or

(b) …

Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients

2.3A.16 R (1) This rule applies where a firm provides independent advice or portfolio management services to:

(a) a retail client outside the United Kingdom; or

(b) (for investment services) a professional client.

(2) In relation to the provision of the relevant service to the client, the firm must not:

(a) …

(b) accept any non-monetary benefits other than acceptable minor non-monetary benefits (see COBS 2.3A.19R and, in relation to the distribution of an insurance-based investment product, COBS 6.1A.5AR) or third party research received in accordance with COBS 2.3B (see COBS 2.3B.3R),

where these are paid or provided by any third party or a person acting on behalf of a third party.

…

Record keeping: inducements

…

2.3A.35 G In relation to the distribution of an insurance-based investment product, a firm should refer to SYSC 3 (for insurers and managing agents) and SYSC 9 (for other firms) for its obligations in relation to record keeping.
2.4 Agent as client and reliance on others

2.4.5 Reliance on other insurance distributors

2.4.5A Where a firm carrying on insurance distribution activities in relation to an insurance-based investment product is required to perform an appropriateness assessment under COBS 10A, it may rely upon:

(1) a suitability assessment performed by another firm, if that other firm was subject to the requirements for assessing suitability in COBS 9A or equivalent requirements in another EEA State; or

(2) an appropriateness assessment performed by another firm, if that other firm was subject to the requirements for assessing appropriateness in COBS 10A.2 or equivalent requirements in another EEA State.

in performing that assessment.

[Note: article 30(2) of the IDD]

Reliance on others: other situations

2.4.6 (1) This rule applies if the applicable rule on reliance on other investment firms or insurance distributors (COBS 2.4.4R and COBS 2.4.5AR) does not apply.

4 Communicating with clients, including financial promotions

4.1 Application

4.1.4 (1) In COBS 4.3.1R, the defined term “financial promotion” includes:

(a) in relation to MiFID, equivalent third country or optional exemption business, all communications that are marketing communications within the meaning of MiFID; and

(b) in relation to insurance distribution, all communications that are marketing communications within the meaning of IDD.
4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

4.2.1 R (1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

(2) This rule applies to:

(a) a communication by the firm to a customer in relation to designated investment business which is not MiFID, equivalent third country or optional exemption business, other than a third party prospectus;

(aa) a communication to an eligible counterparty that is in relation to:

(i) MiFID or equivalent third country business, other than a third party prospectus; or

(ii) insurance distribution;

(ab) …

(b) a financial promotion communicated by the firm that is not:

(i) an excluded communication;

(ii) a non-retail communication;

(iii) a third party prospectus; and

(c) a financial promotion approved by the firm.

(3) As part of complying with (1), a firm must take into account the nature of the client.

[Note: article 24(3) and article 30(1) of MiFID, article 17(2) of the IDD and article 77 of the UCITS Directive]

4.2.2 G …

[Note: article 30(1) of MiFID and recital 65 to the MiFID Org Regulation, article 17(2) of the IDD]
4.3.1 R  (1)  A firm must ensure that a financial promotion addressed to a client is clearly identifiable as such.

[Note: article 24(3) of MiFID, article 17(2) of the IDD and article 77 of the UCITS Directive]

…

(3) …

(e) to the extent that it relates to a pure protection contract that is a long-term care insurance contract. [deleted]

(4) In the case of a marketing communication that relates to:

(a) a UCITS scheme or an EEA UCITS scheme, or

(b) insurance distribution.

(2) and (3) do not limit the application of this rule.

6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)

Application

6.1.1 R  (1) This section applies to a firm that carries on designated investment business, other than MiFID, equivalent third country or optional exemption business or insurance distribution activities, for a retail client.

…

6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

Application

6.1ZA.1 R  (1) Subject to (2) and (3), this section applies to a firm:

(a) in relation to its MiFID, equivalent third country or optional exemption business; and

(b) carrying on insurance distribution activities.
6.1ZA.1A G For the purposes of COBS 6.1ZA.1R(3) if a rule implements a requirement of the IDD, a note (“Note:”) follows the rule indicating which provision is being implemented.

Information about a firm and its services: MiFID business

6.1ZA.5 EU …

Information about a firm and its services: insurance distribution

6.1ZA.7 R A firm carrying on insurance distribution activities must provide a retail client with the following general information, if relevant:

(1) the name and address of the firm, and the contact details necessary to enable a client to communicate effectively with the firm;

(2) the methods of communication to be used between the firm and the client including, where relevant, those for the sending and reception of orders;

(3) a statement of the fact that the firm is authorised and the name of the competent authority that has authorised it;

(4) if the firm is acting through an appointed representative a statement of this fact specifying the EEA State in which that appointed representative is registered;

(5) the nature, frequency and timing of the reports on the performance of the service to be provided by the firm to the client in accordance with the rules on reporting to clients on the provision of services (COBS 16 or COBS 16A in relation to an insurance-based investment product);

(6) (a) a description, which may be provided in summary form, of (as applicable) the conflicts of interest policy, SYSC 3.3.1EU (applied by SYSC 3.3.3R) or the policy required by article 4(1) of the IDD Regulation; and

(b) if not included in the information provided under (a), when a material interest or conflict of interest may or does arise, the manner in which the firm will ensure fair treatment of the
client:

(7) at any time that the client requests it, further details of the conflicts of interest policy.

The timing of these disclosures is governed by COBS 6.1ZA.19AR.

Status disclosure general information: insurance distribution

6.1ZA.7 R In good time before the conclusion of a life policy and, if necessary, on its amendment:

(1) a firm must provide the client with at least the following information:

(a) its identity, address and whether it is an insurance intermediary or an insurance undertaking;

(b) whether it provides a personal recommendation about the insurance products offered;

(c) the procedures allowing clients and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its clients; and

(2) an insurance intermediary must also provide the client with the following information:

(a) the fact that it is included in the Financial Services Register (or if it is not on the Financial Services Register, the register in which it has been included) and the means for verifying this;

(b) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer);

(c) whether a given insurance undertaking (that is not a pure reinsurer) or its parent undertaking has a direct or indirect holding representing 10% or more of the voting rights or capital in the firm; and

(d) whether it is representing the client or is acting for and on behalf of the insurer.

[Note: articles 18 and 19(1)(a) and (b) of the IDD]
Where an insurance intermediary proposes or advises on a life policy, in good time before the conclusion of a life policy and, if necessary, on its amendment, an insurance intermediary must provide the client with at least information on whether the firm:

1. gives a personal recommendation on the basis of a fair and personal analysis; or

2. is under a contractual obligation to conduct insurance distribution exclusively with one or more insurance undertakings, in which case it must provide the names of those insurance undertakings; or

3. (a) is not under a contractual obligation to conduct insurance distribution exclusively with one or more insurance undertakings; and

   (b) does not give a personal recommendation on the basis of a fair and personal analysis,

   in which case it must provide its client with the name of those insurance undertakings with which the insurance intermediary may and does conduct business.

[Note: article 19(1)(c) of the IDD]

If an insurance intermediary informs a client that it gives a personal recommendation on the basis of a fair and personal analysis, it must give that personal recommendation on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation in accordance with professional criteria, regarding which life policy would be adequate to meet the client’s needs.

[Note: article 20(3) of the IDD]

Information about a firm’s portfolio management service: MiFID business

Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business

Information concerning safeguarding of client money: insurance distribution

Where a firm doing insurance distribution activities holds client money for a retail client and has elected to comply with the client money chapter, it must provide that client with the information
specified in:

(a) **COBS 6.1.7R**; or

(b) (if it is a **firm** doing **MiFID, equivalent third country or optional exemption business**) **COBS 6.1ZA.9EU** and **COBS 6.1.7R(1)(e)**;

in relation to that **client money**.

(2) For the purposes of **COBS 6.1ZA.10AR(1)(b)**, **COBS 1.2.3R** applies except ‘funds’ should be read as meaning **client money** that a **firm** receives or holds for, or on behalf of, a **client** in the course of, or in connection with, its **insurance distribution activities**.

(3) The timing of this disclosure is governed by **COBS 6.1ZA.19AR**.

... Information about costs and associated charges: MiFID and insurance distribution

**6.1ZA.1 R**  **COBS 2.2A.2R** requires a **firm** to **must** provide a **client** with at least the following information about all costs and related charges (see also **COBS 2.2A.2R**). That information must include:

(1) (as applicable) information relating to:

(a) both **investment services** and **ancillary services**; and

(b) the distribution of an **insurance-based investment product**;

(2) where relevant, the cost of any **investment advice**;

(3) the cost of the **financial instrument** or **insurance-based investment product** recommended or marketed to the **client**;

(4) information on how the **client** may pay; and

(5) details of any third party payments.

[Note: article 24(4)(c) of **MiFID**, article 29(1)(c) of the **IDD**]

**6.1ZA.1 R**  (1) A **firm** must aggregate the information about costs and charges required by **COBS 2.2A.2R** and **COBS 6.1ZA.11R**, where those costs and charges are not caused by the occurrence of underlying market risk. This is to allow the **client** to understand the overall cost, and the cumulative effect on the return, of the investment.

(2) A **firm** must provide the **client** with an itemised breakdown of the costs and charges information required by (1) and **COBS 6.1ZA.11R** when requested by the **client**.
The information must, where applicable, be provided to the client on a regular basis, and at least annually, during the life of the investment.

[Note: article 24(4) of MiFID, second paragraph of article 29(1) of the IDD]

6.1ZA.1 R 3 (1) A firm must provide the information required by COBS 6.1ZA.11R and COBS 6.1ZA.12R in a comprehensible form in such a manner that the client is reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument or insurance-based investment product that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[Note: article 24(5) of MiFID, third paragraph of article 29(1) of the IDD]

Costs and associated charges disclosure: MiFID

6.1ZA.1 EU …

6.1ZA.1 G …

Costs and associated charges disclosure: insurance distribution

6.1ZA.1 R 5A In addition to the information specified by COBS 2.2A.2R and COBS 6.1ZA.11R, a firm carrying on insurance distribution activities must provide a retail client with the following information on costs and associated charges, if applicable:

(1) the total price to be paid by the client in connection with the life policy or the insurance distribution activity, including all related fees, commissions, charges and expenses, and all taxes payable via the firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it. The commissions charged by the firm must be itemised separately in every case;

(2) if any part of the total price referred to in (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(3) notice of the possibility that other costs, including taxes, related to transactions in connection with the life policy or the insurance distribution activity may arise for the client that are not paid via the firm or imposed by it; and

(4) the arrangements for payment or other performance.
The timing of this disclosure is governed by COBS 6.1ZA.19AR.

Remuneration received by firm disclosure: insurance intermediaries

6.1ZA.1  5B  In good time before the conclusion of the life policy and, if necessary, on its amendment, an insurance intermediary must provide the client with information:

(1) on the nature of the remuneration received in relation to the life policy;

(2) about whether in relation to the life policy it works on the basis of:

(a) a fee, that is remuneration paid directly by the client; or

(b) a commission of any kind, that is the remuneration included in the premium; or

(c) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract; or

(d) on the basis of a combination of any type of remuneration set out above in (a), (b) and (c).

[Note: article 19(1)(d) and (e) of the IDD]

Remuneration of employees disclosure: insurers

6.1ZA.1  5C  In good time before the conclusion of a life policy an insurance undertaking must provide its client with information on the nature of the remuneration received by its employees in relation to the life policy.

[Note: article 19(4) of the IDD]

General remuneration disclosure: insurance distributors

6.1ZA.1  5D  The remuneration referred to in this section includes remuneration that is not guaranteed or which is contingent on meeting certain targets.

6.1ZA.1  5E  The information required to be disclosed by COBS 6.1ZA.15BR and COBS 6.1ZA.15CR includes the type of the remuneration and, taking into account the clear, fair and not misleading rule (COBS 4.2.1R), should also include the source of the remuneration.

6.1ZA.1  5F  When considering what information to provide about the remuneration, a firm should include all remuneration which the insurance intermediary or the employee of an insurance undertaking, receives or may receive in relation to the distribution of the life policy. This includes remuneration:

(1) provided indirectly by the insurer or another firm within the
distribution chain; or

(2) provided by way of a bonus (whether financial or non-financial) paid to the firm by the insurer or another firm, or provided by the firm to its employees, where this bonus is contingent on the achievement of a target to which the distribution of the particular life policy could contribute. For example, this can include cash bonuses paid for achieving a sales target and additional annual leave for achieving a high customer service score on sales calls, profit share arrangements, overrides or other enhanced commissions.

6.1ZA.1 R If any payments, other than ongoing premiums and scheduled payments, are made by the client under the life policy after its conclusion, a firm must make the disclosures required by COBS 6.1ZA.14AR or COBS 6.1ZA.14BR, for each such payment.

[Note: articles 19(3) and (5) of the IDD]

6.1ZA.1 G Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Insurance distributors fee disclosure: additional requirements

6.1ZA.1 R (1) Where a fee is payable in relation to a life policy, the firm must inform its client of the amount of the fee.

(2) The information in (1) must be given before the client incurs liability to pay the fee, or before conclusion of the life policy, whichever is earlier.

(3) To the extent that it is not possible for an amount to be given, a firm must give the basis for its calculation.

[Note: articles 19(2) and (5) of the IDD]

6.1ZA.1 R The fee disclosure requirement extends to all such fees that may be charged during the life of a policy.

[Note: article 19(3) of the IDD]

Information about costs and charges of different services or products: MiFID business

6.1ZA.1 R …

Cross selling requirements where insurance is the primary product

6.1ZA.1 R When offering a non-insurance ancillary product or service as part of a package or the same agreement with a life policy, a firm must:

(1) inform the client whether it is possible to buy the different
components separately and, if so, must provide the client with an adequate description of:

(a) the different components;

(b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and

(2) provide the client with separate evidence of the costs and charges of each component.

[Note: article 24(1) and (2) of the IDD]

Cross selling requirements where insurance is the ancillary product

6.1ZA.1 R When offering a life policy ancillary to and as part of a package or in the same agreement with a non-insurance product or service, a firm must offer the client the option of buying the non-insurance goods or services separately.

6.1ZA.1 R COBS 6.1ZA.16BR does not apply where the non-insurance product or service is any of the following:

(1) investment services or activities; or

(2) a credit agreement as defined in point 3 of article 4 of the MCD which is:

(a) an MCD credit agreement; or

(b) an exempt MCD credit agreement; or

(c) a CBTL credit agreement; or

(d) a credit agreement referred to in articles 72G(3B) and (4) of the Regulated Activities Order; or

(3) a payment account as defined in regulation 2(1) of the Payment Accounts Regulations.

[Note: article 24(3) of the IDD]

6.1ZA.1 R COBS 6.1ZA.16AR to COBS 6.1ZA.16CR do not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[Note: article 24(5) of the IDD]

6.1ZA.1 G In addition to the rules in COBS 6.1ZA.16AR and 6.1ZA.16BR firms should still comply with the other rules in COBS relating to the offer and sale of insurance products that form part of the package or agreement, such
as COBS 2.5 (Optional additional products).

[Note: article 24(6) of the IDD]

Timing of disclosure: MiFID business

…

Medium of disclosure: MiFID business

…

Timing of disclosure: specified rules for insurance distribution

6.1ZA.1 9A R (1) A firm must provide a client with the information required by COBS 6.1ZA.7AR, COBS 6.1ZA.10AR and COBS 6.1ZA.15AR in good time before the provision of the insurance distribution activity concerned unless otherwise provided by this rule.

(2) A firm may instead provide that information immediately after starting to provide the insurance distribution activity concerned if:

(a) the firm was unable to comply with (1) because, at the request of the client, the agreement was concluded using a means of distance communication which prevented the firm from doing so; and

(b) in any case where the rule on voice telephony communications (COBS 5.1.12R) does not otherwise apply, the firm complies with that rule in relation to the retail client, as if that client were a consumer.

Medium of disclosure: insurance distribution

6.1ZA.1 9B R Where this section requires an insurance distributor to provide information to clients in relation to a life policy it must do so in accordance with COBS 7.4 (Means of communication to clients), unless COBS 6.1ZA.18AR(2) applies.

[Note: article 23 of the IDD]

Keeping the client up to date: MiFID business

…

Keeping the client up to date: insurance distribution

6.1ZA.2 0A R (1) A firm carrying on insurance distribution activities must notify a client in good time about any material change to the information provided in relation to an insurance distribution activity under this section which is relevant to a service that the firm is providing to that client.
(2) A firm must provide this notification in a durable medium if the information to which it relates was given in a durable medium.

Existing clients: MiFID business

... Compensation information: MiFID business

... Record keeping: information about the firm and compensation information for MiFID business and insurance distribution

6.1ZA.2 G Firms are reminded of the general record-keeping requirements in SYSC 3.2 for insurers and managing agents and SYSC 9 for other firms.

6.1A Adviser charging and remuneration

... Acceptable minor non-monetary benefits

6.1A.5A R (1) For the purposes of COBS 6.1A.4R(2), a firm or its associate may solicit or accept minor non-monetary benefits which meet the requirements of:

(a) COBS 2.3A.15R, in relation to the provision of investment services; or

(b) COBS 6.1A.5AR(2) paragraph (2), in relation to other business.

(2) An acceptable minor non-monetary benefit is one which:

(a) is clearly disclosed prior to the provision of the relevant service to the client, which the firm may describe in a generic way;

(b) is capable of enhancing the quality of service provided to the client;

(c) is of a scale and nature that it could not be judged to impair the firm’s compliance with its duty to act honestly, fairly and professionally in the best interests of the client;

(d) is reasonable, proportionate and of a scale that is unlikely to influence the firm’s behaviour in any way that is detrimental to the interests of the relevant client; and
(e) consists of:

(i) information or documentation relating to a specific retail investment product or a service provided in the course of carrying on related designated investment business, that is generic in nature or personalised to reflect the circumstances of an individual client;

(ii) written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any firms wishing to receive it, or to the general public;

(iii) participation in conferences, seminars and other training events on the benefits and features of a specific retail investment product or a service provided in the course of carrying on related designated investment business; and

(iv) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under (iii).

(v) research relating to an issue of shares, debentures, warrants or certificates representing certain securities by an issuer, which is:

(A) produced:

(1) prior to the issue being completed; and

(2) by a person that is providing underwriting or placing services to the issuer on that issue; and

(B) made available to prospective investors in the issue; or

(vi) research that is received so that the firm may evaluate the research provider’s research service, provided that:
(A) it is received during a trial period that lasts no longer than three months;

(B) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;

(C) the trial period is not commenced with the research provider within 12 months from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and

(D) the firm makes and retains a record of the dates of any trial period accepted under this rule, as well as a record of how the conditions in (A) to (C) were satisfied for each such trial period.

6.1A.5B G COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a client in relation to MiFID, equivalent third country or optional exemption business or the distribution of an insurance-based investment product. For the purposes of COBS 2.3A.19R(2) and COBS 6.1A.5AR(2), those conditions are also likely to be relevant to firms considering whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service to a client in relation to the restriction in COBS 6.1A.4R(2).

[Note: articles 24(7) and (8) of MiFID refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the client]

…

7 Insurance mediation distribution

7.1 Application

7.1.1 R This chapter applies to a firm carrying on insurance mediation insurance distribution activities in relation to a life policy, but only if the State of the commitment is an EEA State.

[Note: articles 12(4) and (5), 20(1) and 23 of the Insurance Mediation Directive IDD]

COBS 7.2 (Information to be provided by an insurance intermediary) is deleted in its entirety. The deleted text is not shown.
7.2 Information to be provided by an insurance intermediary [deleted]

After the deleted COBS 7.2 (Information to be provided by an insurance intermediary) insert the following new section COBS 7.3. The text is not underlined.

7.3 Additional insurance distribution obligations

Demands and needs

7.3.1 R (1) Prior to the conclusion of a life policy, a firm must specify, on the basis of the information obtained from the client, the demands and needs of that client.

(2) The details must be modulated according to the complexity of the life policy proposed and the type of client.

(3) A statement of the demands and needs must be communicated to the client prior to the conclusion of a life policy.

(4) This rule and COBS 7.3.4R do not apply when a firm makes a personal recommendation in relation to a life policy.

[Note: first paragraph of article 20(1) and article 20(2) of the IDD]

7.3.2 G Firms are reminded that they are obliged to take reasonable steps to ensure that a personal recommendation is suitable for, and consistent with the insurance demands and needs of, the client and that, whenever a personal recommendation relates to a life policy, a suitability report is required (see COBS 9 or 9A).

7.3.3 G A firm may obtain information from the client in a number of ways including, for example, by asking the client questions in person or by way of a questionnaire prior to any life policy being proposed.

7.3.4 R When proposing a life policy a firm must ensure it is consistent with the client’s insurance demands and needs.

[Note: recital 44 to, and second paragraph of article 20(1) of, the IDD]

7.3.5 R The sale of a life policy must always be accompanied by a demands and needs test on the basis of information obtained from the client.

[Note: recital 44 to, and article 20(1) of, the IDD]

Distribution of connected contracts through exempt persons
7.3.6 R (1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met.

(2) The requirements referred to in (1) are:

(a) *SYSC* 19F.2 (Remuneration and insurance incentives)

(b) *COBS* 4 (Communicating with clients, including fair financial promotions);

(c) *COBS* 2.1.1R (client’s best interests);

(d) *COBS* 6.1ZA.7AR(1)(a) and (c) (Status disclosure general information: insurance distribution);

(e) *COBS* 7.3.1R to *COBS* 7.3.5R (Additional insurance distribution obligations: demands and needs); and

(f) *COBS* 6.1ZA.16AR to 6.1ZA.16DR (cross-selling).

*[Note: article 1(4) of the *IDD]*

7.3.7 G To comply with the relevant chapter of *SYSC* or Principle 3, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with *COBS* 7.3.6R.

After *COBS* 7.3 (Additional insurance distribution obligations) insert the following new section *COBS* 7.4. The text is not underlined.

### 7.4 Insurance distribution: Means of communication to clients

#### 7.4.1 R

This section applies to all information required to be provided to a *client* in *COBS* 7.3 and where it is stated to apply in other sections or chapters.

Means of communication to customers: Non-telephone sales

#### 7.4.2 R (1) A *firm* must communicate information to a *client* using any of the following:

(a) paper; or

(b) a *durable medium* other than paper; or

(c) a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.
(2) The firm must communicate the information in (1):

(a) in a clear and accurate manner, comprehensible to the client;

(b) in an official language of the State of the commitment or in any other language agreed by the parties; and

(c) free of charge.

[Note: article 23(1), (2), (4) and (5) of the IDD]

7.4.3 R Where the information is communicated using a durable medium other than paper or by means of a website, the firm must, upon request and free of charge, also send the customer a paper copy.

[Note: article 23(3) of the IDD]

Means of communications to clients: Telephone sales

7.4.4 R In the case of telephone selling:

(1) the information must be given in accordance with the distance marketing disclosure rules (see COBS 5); and

(2) if prior to the conclusion of the contract the information is provided:

(a) orally; or

(b) on a durable medium other than paper,

the firm must also provide the information to the client in accordance with COBS 7.4.2R and COBS 7.4.3R immediately after the conclusion of the life policy.

[Note: article 23(7) of the IDD]

Amend the following as shown.

8 Client agreements (non-MiFID provisions)

8.1 Client agreements: non-MiFID designated investment business

Application

8.1.1 R (1) This chapter applies to a firm in relation to designated investment business carried on for a retail client.

…
(3) But this chapter does not apply to:

(a) …

(b) subject to (3A), a firm to the extent that it is effecting contracts of insurance in relation to a life policy issued or to be issued by the firm as principal.

(3A) COBS 8.1.4R and COBS 8.1.5R apply to a firm carrying on insurance distribution in relation to insurance-based investment products for any client.

…

Record keeping: client agreements

8.1.4 R (1) A firm must establish a record that includes the document or documents agreed between it and a client which set out the rights and obligations of the parties, and the other terms on which it will provide services to the client.

…

[Note: article 30(4) of the IDD]

8.1.5 R For the purposes of this chapter, a firm may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[Note: article 30(4) of the IDD]

8.1.6 G When considering its approach to client agreements, a firm should be aware of other obligations in the Handbook which may be relevant. These include the fair, clear and not misleading rule, the rules on disclosure of information to a client before providing services, the rules on distance communications (principally in COBS 2.2, 5, 6 and 13) and the provisions on record keeping (principally in SYSC 3, for insurers and managing agents, and SYSC 9, for other firms).

…

9 Suitability (including basic advice) (non- other than MiFID provisions and insurance-based investment products)

9.1 Application and purpose provisions

Application
9.1.1 R This chapter applies to a firm which:

(a) makes a personal recommendation to a retail client in relation to a designated investment; or

(b) manages investments of a retail client of the firm;

(c) manages the assets of an occupational pension scheme, stakeholder pension scheme or personal pension scheme, other than in relation to its MiFID, equivalent third country or optional exemption business or to an insurance-based investment product.

9.1.1A G COBS 9A contains suitability requirements which apply in respect of insurance-based investment products, or in respect of a firm’s MiFID, equivalent third country or optional exemption business involving the provision of investment advice or portfolio management.

Providing basic advice on a stakeholder product

9.1.2 R If a firm to which this chapter applies makes a personal recommendation in relation to a stakeholder product, other than in the course of MiFID or equivalent third country business, it may choose to give basic advice under the rules in section 9.6 of this chapter instead of the rules in the remainder of this chapter.

Life policies for professional clients

9.1.5 R If the firm makes a personal recommendation to a professional client to take out a life policy which is not an insurance-based investment product, this chapter applies, but only those rules which implement the requirements of the Insurance Mediation Directive IDD.

9.1.6 G If a rule implements a requirement of the Insurance Mediation Directive IDD, a Note ("Note:" ) follows the rule indicating which provision is being implemented. COBS 7 (Insurance mediation) 2.1 (acting honestly fairly and professionally), COBS 2.6 (additional insurance distribution obligations, COBS 4 (communicating with clients), COBS 6 (information about the firm, its services and remuneration) and COBS 14 (product information) contains contain further rules implementing the Insurance Mediation Directive IDD.

9.1.7 G The effect of these application rules and the fact that the Insurance Mediation Directive does not apply to an insurer (unless it is involved in mediation activities) is that this chapter does not apply applies to an insurer when it is making a personal recommendation to a professional client to take out a life policy. [deleted]

...
9.1.9 G  COBS 7 (Insurance mediation) 6.1ZA contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.

9.2 Assessing suitability

Assessing suitability: the obligations

9.2.1 R  (1) A firm must:

(a) take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client; and

(b) ensure that any life policy proposed is consistent with the client’s insurance demands and needs.

(2) When making the personal recommendation or managing a client’s investments, the firm must obtain the necessary information regarding the client’s:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives,

so as to enable the firm to make the recommendation, or take the decision, which is suitable for the client and for a life policy, to propose a contract that is consistent with the client’s insurance demands and needs.

[Note: article 12(2) of the Insurance Mediation Directive recital 44 to, and second paragraph of article 20(1), of the IDD]

9.2.1A G A client’s insurance demands and needs are those which would need to be obtained under COBS 7.3 where a contract is sold without the provision of a personal recommendation.

...
9.4 Suitability reports

9.4.2 R If a firm makes a personal recommendation in relation to a life policy, it must provide the client with a suitability report.

[Note: article 12(3) of the Insurance Mediation Directive first and third paragraphs of article 20(1) of the IDD]

9.4.3 R The obligation to provide a suitability report does not apply:

(3) to any personal recommendation by a friendly society for a small life policy sold by it with a premium not exceeding £50 a year or, if payable weekly, £1 a week; [deleted]

(4) if the personal recommendation is to increase a regular premium to an existing contract;

Timing

9.4.4 R A firm must provide the suitability report to the client:

(1) in the case of a life policy, before the contract is concluded unless the necessary information is provided orally or immediate cover is necessary; or

(2) in the case of a personal pension scheme or stakeholder pension scheme that is not a life policy, where the rules on cancellation (COBS 15) require notification of the right to cancel, no later than the fourteenth day after the contract is concluded; or

(3) in any other case, when or as soon as possible after the transaction is effected or executed.

[Note: article 12(3) of the Insurance Mediation Directive first and third paragraphs of article 20(1) of the IDD]

9.4.5 R If, in respect of a life policy, the firm gives necessary information orally or gives immediate cover, it must provide a suitability report to the client in a durable medium immediately after the contract is concluded. [deleted]
9.4.6  R  In the case of telephone selling of a life policy (when the only contact between a firm and its client before conclusion of a contract is by telephone), the suitability report must: be given in accordance with COBS 7.4.

(1) comply with the distance marketing disclosure rules (COBS 5.1);

(2) be provided immediately after; and

(3) be in a durable medium.

[Note: article 13(2) of the Insurance Mediation Directive]

9.4.7  R  The suitability report must, at least:

(1) specify, on the basis of the information obtained from the client, the client’s demands and needs;

(2) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and

(3) explain any possible disadvantages of the transaction for the client; and

(4) in the case of a life policy, include a personalised recommendation explaining why a particular life policy would best meet the client’s demands and needs.

[Note: article 12(3) of the Insurance Mediation Directive first and third paragraphs of article 20(1) of the IDD]

9.4.8  G  R  A firm should give the client such details as are appropriate ensure the details are modulated according to the complexity of the transaction or the proposed contract of insurance and the type of client.

[Note: article 12(3) of the Insurance Mediation Directive article 20(2) of the IDD]

9.4.8A R  Where a friendly society has given a personal recommendation on a small life policy in COBS 9.2.9R(2), the suitability report must include, at least, the information required by COBS 9.4.7R(1) and (4).

[Note: first and third paragraphs of article 20(1) of the IDD]

Means of communication (life policies)
9.4.9 R If a firm is providing a suitability report in the course of insurance mediation activity insurance distribution activity, the information must be provided: in accordance with COBS 7.4.

(1) in a durable medium which is available and accessible to the client;
(2) in a clear and accurate manner, comprehensible to the client; and
(3) in an official language of the State of the commitment in which the contract of insurance is made or in any other language agreed by the parties.

[Note: article 13 of the Insurance Mediation Directive article 23 of the IDD]

9.6 Special rules for giving basic advice on a stakeholder product

9.6.18A R (1) A firm providing basic advice on a stakeholder product that is a life policy must, in addition to providing the statement of demands and needs required under COBS 7.3.1R, provide the client with a personalised explanation of why a particular life policy would best meet the client’s demands and needs.

(2) The details must be modulated according to the complexity of the life policy proposed and the type of client.

(3) The information in (1) must be provided in accordance with COBS 7.4.

[Note: third paragraph of article 20(1) and 20(2) of the IDD]

9 Annex Basic advice initial disclosure information

This Annex belongs to COBS 9.6.5R(1)

<table>
<thead>
<tr>
<th>Information that comprises the following:</th>
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| ... ... ... ... ... ... ... ... ... ... ...

[Note: in respect of 1, 2, 4, 5, and 6, Articles 12 and 13 of the Insurance mediation directive and in respect of 7, Article article 10 of the Investors compensation directive]
9A Suitability (MiFID and insurance-based investment products provisions)

9A.1 Application and purpose

...

Application

9A.1.1 R This chapter applies to a firm which provides:

(1) investment advice or portfolio management in the course of MiFID, equivalent third country or optional exemption business; or

(2) investment advice in relation to an insurance-based investment product.

Effect of provisions marked “EU” for third country investment firms and MiFID optional exemption firms

9A.1.2 R Provisions in this chapter marked “EU” and including a Note (‘Note:) referring to the MiFID Org Regulation apply in relation to MiFID optional exemption business as if they were rules.

9A.1.3 G The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

Effect of provisions marked “EU” for the firms distributing insurance-based investment products

9A.1.4 R Provisions in this chapter marked “EU” and including a Note (‘Note:) referring to the IDD Regulation apply as if they were rules in relation to insurance distribution activities to which the IDD Regulation does not apply.

9A.2 Assessing suitability

Assessing suitability: the obligations

9A.2.1 R When providing investment advice or portfolio management a firm must:

(1) obtain the necessary information regarding the client’s:

(a) knowledge and experience in the investment field relevant to the specific type of financial instrument, insurance-based investment product or service;

(b) financial situation including his ability to bear losses; and

(c) investment objectives including his risk tolerance,
so as to comply with (2);

(2) only recommend investment services, and financial instruments and insurance-based investment products, as applicable, or take the decision to trade, which is suitable for the client and, in particular, in accordance with the client’s risk tolerance and ability to bear losses.

[Note: first paragraph of article 25(2) of MiFID, first paragraph of article 30(1) of the IDD]

9A.2.2 G Firms should undertake a suitability assessment not only when making a personal recommendation to buy a financial instrument or an insurance-based investment product but for all decisions whether to trade, including making any personal recommendations about whether or not to buy, hold or sell an investment.

[Note: recital 87 to the MiFID Org Regulation]

…

9A.2.3A R When proposing an insurance-based investment product a firm must ensure it is consistent with the client’s insurance demands and needs.

[Note: recital 44 to, and second paragraph article 20(1) of, the IDD]

Assessing the extent of the information required: MiFID business

…

Assessing the extent of the information required: insurance-based investment products

9A.2.4A EU 9(1) For the purposes of providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the advice to be provided to the customer or potential customer.

9(2) Without prejudice to the fact that, in accordance with Article 20(1) of Directive (EU) 2016/97, any contract proposed shall be consistent with the customer’s demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:

(a) it meets the customer’s or potential customer’s investment
objectives, including that person’s risk tolerance;

(b) it meets the customer’s or potential customer’s financial situation, including that person’s ability to bear losses;

(c) it is such that the customer or potential customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service.

17(3) Where information required for the purposes of Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[Note: articles 9(1) and (2) and 17(3) of the IDD Regulation]

Professional clients: MiFID business

Obtaining information about knowledge and experience: MiFID business

Obtaining information about knowledge and experience: insurance-based investment products

9A.2.6A EU 17(1) For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer’s or potential customer’s knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

(a) the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;

(b) the nature, number, value and frequency of the customer's or potential customer's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the customer or potential customer.

[Note: article 17(1) of the IDD Regulation]

Obtaining information about a client’s financial situation: MiFID business
Obtaining information about a client’s financial situation: insurance-based investment products

9A.2.7A EU 9(3) The information regarding the customer’s or potential customer’s financial situation, including that person’s ability to bear losses, shall include, where relevant, information on the source and extent of the customer’s or potential customer’s regular income, assets, including liquid assets, investments and real property and the regular financial commitments. The level of information gathered shall be appropriate to the specific type of product or service being considered.

[Note: article 9(3) of the IDD Regulation]

Obtaining information about a client’s investment objectives: MiFID business

... 

Obtaining information about a client’s investment objectives: insurance-based investment products

9A.2.8A EU 9(4) The information regarding the customer’s or potential customer’s investment objectives, including that person’s risk tolerance, shall include, where relevant, information on the length of time for which the customer or potential customer wishes to hold the investment, that person’s preferences regarding risk taking, the risk profile, and the purposes of the investment. The level of information gathered shall be appropriate to the specific type of product or service being considered.

[Note: article 9(4) of the IDD Regulation]

Reliability of information: MiFID business

... 

Reliability of information: insurance-based investment products

9A.2.9A EU 10 Insurance intermediaries and insurance undertakings shall take reasonable steps to ensure that the information collected about customers and potential customers for the purposes of the assessment of suitability is reliable. Such steps shall include, but shall not be limited to, the following:

(a) ensuring that customers are aware of the importance of providing accurate and up-to-date information;

(b) ensuring that all tools, such as risk assessment profiling tools or tools to assess a customer’s knowledge and experience,
employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their customers, with any limitations identified and actively mitigated through the suitability assessment process;

(c) ensuring that questions used in the process are likely to be understood by the customers and to capture an accurate reflection of the customer’s objectives and needs and the information necessary to undertake the suitability assessment;

(d) taking steps, as appropriate, to ensure the consistency of customer information, such as considering whether there are obvious inaccuracies in the information provided by the customer.

[Note: article 10 of the IDD Regulation]

Maintaining adequate and up-to-date information: MiFID business

... Discouraging the provision of information: MiFID business

... Discouraging the provision of information: insurance-based investment products

9A.2.11 EU 17(2) The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.

[Note: article 17(2) of the IDD Regulation]

Reliance on information: MiFID business

... Reliance on information: insurance-based investment products

9A.2.12 EU 17(4) The insurance intermediary or insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 17(4) of the IDD Regulation]

Insufficient information: MiFID business

...
Insufficient information: insurance-based investment products

9A.2.13 EU  
9(5) Where the insurance intermediary or insurance undertaking does not obtain the information required under Article 30(1) of Directive (EU) 2016/97, the insurance intermediary or insurance undertaking shall not provide advice on insurance-based investment products to the customer or potential customer.  

[Note: article 9(5) of the IDD Regulation]

Insufficient information: MiFID business and insurance-based investment products

9A.2.14 G  
Although a firm may not be permitted to provide investment advice or take a decision to trade because it does not have the necessary information, its client may still ask the firm to provide another service such as, for example, to arrange a deal or to deal as agent for the client. If this happens, the firm should ensure that it receives written confirmation of the instructions. The firm should also bear in mind the client’s best interests rule and any obligation it may have under the rules relating to appropriateness when providing the different service (see COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions )).  

Identifying the subject of a suitability assessment: MiFID business

…

Identifying the subject of a suitability assessment: insurance-based investment products

9A.2.15 EU  
13 With regard to group insurance the insurance intermediary or insurance undertaking shall establish and implement a policy as to who shall be subject to the suitability assessment in case an insurance contract is concluded on behalf of a group of members and each individual member cannot take an individual decision to join. Such a policy shall also contain rules on how that assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives shall be collected.

The insurance intermediary or insurance undertaking shall record the policy established pursuant to the first paragraph.  

[Note: article 13 of the IDD Regulation]

…

Bundled packages: MiFID business and insurance-based investment products

9A.2.16 R  
Where a firm provides a personal recommendation investment advice
recommending a package of services or products bundled pursuant to COBS 6.1ZA.16R (for MiFID business) or COBS 6.1ZA.16AR to COBS 6.1ZA.16ER (for insurance-based investment products), the firm must ensure that the overall bundled package is suitable for the client.

[Note: second paragraph of article 25(2) of MiFID and second paragraph of article 30(1) of the IDD]

9A.2.17 G When considering the suitability of a particular financial instrument or insurance-based investment product which is linked directly or indirectly to any form of loan, mortgage or home reversion plan, a firm should take account of the suitability of the overall transaction. The firm should have regard to any applicable suitability rules in MCOB.

Switching: MiFID business

... Switching: insurance-based investment products

9A.2.18 EU 9(7) When providing advice that involves switching between underlying investment assets, insurance intermediaries and insurance undertakings shall also collect the necessary information on the customer’s existing underlying investment assets and the recommended new investment assets and shall undertake an analysis of the expected costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

[Note: article 9(7) of the IDD Regulation]

Adequate policies and procedures: MiFID business

...

Unsuitability: MiFID business

...

Unsuitability: insurance-based investment products

9A.2.20 EU 9(6) When providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.

[Note: article 9(6) of the IDD Regulation]

Guidance on assessing suitability: MiFID business and insurance-based investment products
9A.2.21 G (1) A transaction may be unsuitable for a client due to the risks of the associated financial instruments, the type of transaction, the characteristics of the order or the frequency of the trading.

(1A) An insurance-based investment product may be unsuitable for a client due to the risks of the underlying investment assets, the type or characteristics of the product or the frequency of switching of underlying investment assets.

(2) A series of transactions, each of which are suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the client.

(3) In the case of portfolio management, a transaction might be unsuitable if it would result in an unsuitable portfolio.

[Note: recital 88 to the MiFID Org Regulation, recital 9 to the IDD Regulation]

Investments subject to restrictions on retail distribution: MiFID business and insurance-based investment products

9A.2.22 G (1) Firms should note that restrictions and specific requirements apply to the retail distribution of certain financial instruments:

(a) …

…

(2) A firm should be satisfied that an exemption is available before recommending a financial instrument an investment subject to a restriction on distribution to a retail client, noting in particular that a personal recommendation to invest will generally incorporate a financial promotion.

(3) In addition to assessing whether the promotion is permitted, a firm giving advice on a financial instrument an investment subject to a restriction on distribution should comply with their obligations in COBS 9A and ensure any personal recommendation is suitable for its client.

(4) In considering its obligations under COBS 9A, a firm purchasing a financial instrument an investment subject to a restriction on distribution on behalf of a retail client as part of a discretionary management agreement should exercise particular care to ensure the transaction is suitable and in the client’s best interests, having regard to the FCA’s view that such financial instruments
investments pose particular risks of inappropriate distribution.

(5) A restriction on promotion does not affect a transaction where there has been no prior communication with the client in connection with the investment by the firm or a person connected to the firm. Nonetheless, if promotion of a financial instrument an investment to a retail client would not have been permitted, then the discretionary manager’s decision to purchase it on behalf of the retail client should be supported by detailed and robust justification of his assessment of suitability.

Automated or semi-automated systems: MiFID business

…

Automated or semi-automated systems: insurance-based investment products

9A.2.24 EU 12 The insurance intermediary’s or insurance undertaking’s responsibility to perform the suitability assessment in accordance with Article 30(1) of Directive (EU) 2016/97 shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.

[Note: article 12 of the IDD Regulation]

…

9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability: MiFID business

…

Explaining the reasons for assessing suitability: insurance-based investment products

9A.3.1A EU 11 Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with Article 30(1) of Directive (EU) 2016/97. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.

[Note: article 11 of the IDD Regulation]

Suitability reports: MiFID business and insurance-based investment products

9A.3.2 R (1) [deleted]
(2) When providing *investment advice* to a retail client, a *firm* must, before the transaction is concluded, provide the *client* with a *suitability report* in a *durable medium*:

(a) specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the *client*;

(b) *(for an *insurance-based investment product*):*

(i) specifying, on the basis of the information obtained from the *client*, the *client’s* demands and needs; and

(ii) including a personalised recommendation explaining why a particular *insurance-based investment product* would best meet the *client’s* demands and needs.

The details in (i) and (ii) must be modulated according to the complexity of the *contract of insurance* proposed and the type of *client*.

(3) Where the agreement to buy or sell a *financial instrument transaction* is concluded using a means of distance communication which prevents the prior delivery of the *suitability report*, the *firm* may provide the *suitability report* in a *durable medium* immediately after the *client* is bound by any such agreement the *transaction*, provided both the following conditions are met:

(a) the *client* has consented to receiving the *suitability report* without undue delay after the conclusion of the transaction; and

(b) the *firm* has given the *client* the option of delaying the transaction in order to receive the *suitability report* in advance.

...
Providing a suitability report: insurance-based investment products

9A.3.3A EU 14(1) When providing advice on the suitability of an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall provide a statement to the customer (suitability statement) that includes the following:

(a) an outline of the advice given;

(b) information on how the recommendation provided is suitable for the customer, in particular how it meets:

(i) the customer’s investment objectives, including that person’s risk tolerance;

(ii) the customer’s financial situation, including that person’s ability to bear losses;

(iii) the customer’s knowledge and experience.

14(2) Insurance intermediaries and insurance undertakings shall draw customers’ attention to, and shall include in the suitability statement, information on whether the recommended insurance-based investment products are likely to require the customer to seek a periodic review of their arrangements.

14(3) Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent statements after the initial service is established may be limited to changes in the services or underlying investment assets, and/or the circumstances of the customer without repeating all the details contained in the first statement.

[Note: article 14(1) to (3) of the IDD Regulation]

Periodic assessments: MiFID business and insurance-based investment products

9A.3.6 R A firm must:

(1) in relation to an insurance-based investment product, at least in good time prior to the conclusion of the contract;

(2) otherwise, in good time before it provides its investment advice.
inform the client whether it will provide the client with a periodic assessment of the suitability of the financial instruments or the insurance-based investment products recommended to the client.

[Note: article 24(4)(a)(iii) of MiFID, article 29(1)(a) of the IDD]

9A.3.7 G COBS 9A.3.6R supplements COBS 2.2A.2R (information disclosure before providing services (MiFID provisions and insurance distribution)).

Periodic assessments: MiFID business

9A.3.8 …

9A.3.9 …

Periodic assessments: insurance-based investment products

9A.3.10 EU 14(4) Insurance intermediaries and insurance undertakings providing a periodic assessment of suitability shall review, in accordance with the best interests of their customers, the suitability of the recommended insurance-based investment products at least annually. The frequency of this assessment shall be increased depending on the characteristics of the customer, such as the risk tolerance, and the nature of the recommended insurance-based investment product.

[Note: article 14(4) of the IDD Regulation]

9A.4 Record keeping and retention periods for suitability records

Record keeping: MiFID business and insurance-based investment products

9A.4.1 G A firm to which SYSC 9 applies is required to keep orderly records of its business and internal organisation (see SYSC 9, General rules on record-keeping). The records may be expected to reflect the different effect of the requirements in this chapter depending on whether the client is a retail client or a professional client; for example, in respect of information about the client which the firm must obtain and whether the firm is required to provide a suitability report.

9A.4.2 G A firm should refer to SYSC 3.2 and SYSC 3.3 (for insurers and managing agents) and SYSC 9 (for other firms) for its obligations in relation to record keeping.

[Note: article 16(7) of MiFID]

Retention of records: insurance-based investment products

9A.4.3 EU 19(1) Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance
intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with Article 30(1) and (2) of Directive (EU) 2016/97. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

[Note: article 19(1) of the IDD Regulation]

Record-keeping obligations for the assessment of suitability: insurance-based investment products

| 9A.4.4 | EU 19(2) | In the case of an assessment of suitability undertaken in accordance with Article 30(1) of Directive (EU) 2016/97, the record shall further include the following:
|   |   | (a) the result of the suitability assessment;
|   |   | (b) the recommendation made to the customer and the statement provided in accordance with Article 14(1) of this Regulation;
|   |   | (c) any changes made by the insurance intermediary or insurance undertaking with regard to the suitability assessment, in particular any change to the customer's risk tolerance;
|   |   | (d) any changes to the underlying investment assets.

[Note: article 19(2) of the IDD Regulation]

…

10 Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)

…

10A Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)

10A.1 Application

…

Application
10A.1.1 R  This chapter applies to a firm which:

(1) provides investment services in the course of MiFID or equivalent third country business; or

(2) carries on insurance distribution in relation to an insurance-based investment product, other than making when the firm makes a personal recommendation or carrying out portfolio management.

...

Effect of provisions marked EU

10A.1.3 R  The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” and including a Note (‘Note:’) referring to the MiFID Org Regulation also apply in relation to the equivalent business of a third country investment firm as if they were rules.

10A.1.4 R  Provisions in this chapter marked “EU” and including a Note (‘Note:’) referring to the IDD Regulation apply as if they were rules to firms, to whom the IDD Regulation does not apply, when doing insurance distribution.

10A.2  Assessing appropriateness: the obligations

10A.2.1 R  When providing a service to which this chapter applies, a firm must ask the client to provide information regarding that client’s knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the firm to assess whether the service or product envisaged is appropriate for the client.

[Note: article 25(3) of MIFID, first paragraph of article 30(2) of the IDD]

10A.2.1 G  A firm carrying on insurance distribution is also required to comply with the requirements in COBS 7.3 (additional insurance distribution obligations: demands and needs).

[Note: first paragraph of article 30(2) of the IDD]

Bundled packages: MiFID business and insurance-based investment products

10A.2.2 R  Where a bundle of services or products is envisaged pursuant to COBS 6.1ZA.16R (for MiFID business) or COBS 6.1ZA.16AR to COBS 6.1ZA.16E (for insurance-based investment products), the assessment made pursuant to COBS 10A.2.1R must consider whether the overall bundled package is appropriate.
Assessing a client’s knowledge and experience: MiFID business

...
Article 20 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[Note: article 17(1) and (3) of the IDD Regulation]

Discouraging the provision of information: MiFID business

... Discouraging the provision of information: insurance-based investment products

10A.2.5 EU 17(2) The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.

[Note: article 17(2) of the IDD Regulation]

Reliance on information: MiFID business

... Reliance on information: insurance-based investment products

10A.2.6 EU 17(4) The insurance intermediary or insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 17(4) of the IDD Regulation]

Use of existing information: MiFID business and insurance-based investment products

... Knowledge and experience: MiFID business and insurance-based investment products

... Increasing the client’s understanding: MiFID business and insurance-based investment products

... No duty to communicate firm’s assessment of knowledge and experience: MiFID business and insurance-based investment products

10A.2.1 G If a firm is satisfied that the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the client. If the firm does so, it must not do so in a way that amounts to making a personal
recommendation unless it complies with the rules in COBS 9A (MiFID and insurance-based investment products provisions).

10A.3 Warning the client

10A.3.1 R (1) If a firm considers, on the basis of information received to enable it to assess appropriateness, that the product or service is not appropriate for the client, the firm must warn the client.

(2) This warning may be provided in a standardised format.

[Note: article 25(3) of MiFID, second paragraph of article 30(2) of the IDD]

10A.3.2 R (1) If the client does not provide the information to enable the firm to assess appropriateness, or if the client provides insufficient information regarding their knowledge and experience, the firm must warn the client that the firm is not in a position to determine whether the service or product envisaged is appropriate for the client.

(2) This warning may be provided in a standardised format.

[Note: article 25(3) of MiFID, third paragraph of article 30(2) of the IDD]

... 

10A.4 Assessing appropriateness: when it need not be done due to type of investment

10A.4.1 R (1) A firm is not required to ask its client to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:

(a) the service:

(i) only consists of execution or reception and transmission of client orders, with or without ancillary services, excluding ancillary service (2) in section B of Annex I to MiFID (granting of credits or loans), where the relevant credits or loans do not comprise existing credit limits of loans, current accounts and overdraft facilities of clients;

(ii) relates to particular financial instruments (see paragraph (2)); and

(iii) is provided at the initiative of the client; or

(aa) the insurance distribution activity:

(i) relates to particular types of insurance-based
investment products (see (2A)); and

(ii) is carried out at the initiative of the client; and

(b) the client has been clearly informed (whether in a standardised format or not) that, in the provision of this service or insurance distribution activity, the firm is not required to assess the appropriateness of the financial instrument or service or insurance-based investment product provided or offered and that therefore the client does not benefit from the protection of the rules on assessing appropriateness; and

(c) the firm complies with its obligations in relation to conflicts of interest.

(2) The financial instruments referred to in (1)(a)(ii) are any of the following:

(a) shares in companies admitted to trading on:

(i) a regulated market; or

(ii) an equivalent third country market; or

(iii) an MTF,

except shares that embed a derivative and units in a collective investment undertaking that is not a UCITS; or

(b) bonds or other forms of securitised debt admitted to trading on:

(i) a regulated market; or

(ii) an equivalent third country market; or

(iii) an MTF,

except those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved; or

(c) money-market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved; or

(d) shares or units in a UCITS, excluding structured UCITS as referred to in the second subparagraph of article 36(1) of the KII Regulation; or

(e) structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term; or
(f) other non-complex financial instruments.

(2A) The insurance-based investment products referred to in (1)(aa) are:

(a) insurance-based investment products which only provide investment exposure to financial instruments referred to in (2) and do not incorporate a structure which makes it difficult for the client to understand the risks involved; or

(b) other non-complex insurance-based investment products.

(3) …

[Note: article 25(4) of MIFID, article 30(3) of the IDD]

…

Non-complex Other non-complex financial instruments

…

10A.4.3 EU 16 An insurance-based investment product shall be considered as non-complex for the purposes of Article 30(3)(a)(ii) of Directive (EU) 2016/97 where it satisfies all of the following criteria:

(a) it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;

(b) it does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk, or pay-out profile of the insurance-based investment product;

(c) it provides options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;

(d) it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise the insurance-based investment product, doing so may cause unreasonable detriment to the customer because the charges are disproportionate to the cost to the insurance undertaking;

(e) it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

[Note: article 16 of the IDD Regulation]
10A.5 Assessing appropriateness: guidance

The initiative of the client: MiFID business and insurance-based investment products

10A.5.1 A service should be considered to be provided, or carried out, at the initiative of a client (see COBS 10A.4.1R(1)(a)(iii) and (aa)(ii)), unless the client demands it in response to a personalised communication from or on behalf of the firm to that client which contains an invitation or is intended to influence the client in respect of a specific financial instrument, insurance-based investment product or specific transaction.

[Note: recital 85 to MIFID]

10A.5.2 A service can be considered to be provided, or carried out, at the initiative of a client notwithstanding that the client demands it on the basis of any communication containing a promotion for, or offer of, financial instruments or insurance-based investment products made by any means and that by its very nature is general and addressed to the public or a larger group or category of clients.

[Note: recital 85 to MIFID]

Personalised communications: MiFID business and insurance-based investment products

... 

10A.6 When Assessing appropriateness: when a firm need not assess appropriateness due to suitability assessment

10A.6.1 A firm need not assess appropriateness if it is receiving or transmitting an order in relation to which or carrying on insurance distribution in relation to an insurance-based investment product, for which it has assessed suitability under COBS 9A (Suitability (MiFID and insurance-based investment products provisions)).

10A.6.2 A firm may not need to assess appropriateness if it is able to rely on a recommendation made by an investment firm (see COBS 2.4.5G (Reliance on other investment firms: MiFID and equivalent business)) or, in relation to an insurance-based investment product, made by an insurance distributor (see COBS 2.4.5AR (Reliance on other insurance distributors)).

10A.7 Record keeping and retention periods for appropriateness records

...
Record keeping: MiFID business

10A.7.2 EU …

Record keeping: insurance-based investment products

10A.7.2 A EU 19(1) Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with Article 30(1) and (2) of Directive (EU) 2016/97. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

19(3) In the case of an assessment of appropriateness undertaken in accordance with Article 30(2) of Directive (EU) 2016/97, the record shall further include the following:

(a) the result of the appropriateness assessment;

(b) any warning given to the customer where the insurance-based investment product was assessed as potentially inappropriate for the customer, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with concluding the contract;

(c) any warning given to the customer where the customer did not provide sufficient information to enable the insurance intermediary or insurance undertaking to assess the appropriateness of the insurance-based investment product, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with concluding the contract.

[Note: article 19(1) and (3) of the IDD Regulation]

Record keeping: MiFID business and insurance-based investment products

10A.7.3 G A firm should refer to SYSC 3.3 (for insurers and managing agents) and SYSC 9 (for other firms) for its obligations in relation to record keeping. This requires These provisions require records kept for the purposes of this chapter to be retained for a period of at least five years.
14 Providing product information to clients

14.2 Providing product information to clients

Providing information about PRIIPs

14.2.-1 G (1) …

…

(3) A firm that sells a life policy that is also a PRIIP must provide the Solvency II Directive information as information required by COBS 14.2.1R(2). Some or all of this information may be included in a key information document if this is required to be provided by, and such inclusion is permitted under, the PRIIPs Regulation.

The provision rules for products other than PRIIPS

14.2.1 R A firm that sells:

(1) …

(2) a life policy to a client, must provide:

(a) the Solvency II Directive information to that client;

(b) a client with objective and relevant information about the policy:

(i) in a comprehensible form to allow the client to make an informed decision;

(ii) modulated in a way that takes into account the complexity of the policy and the type of client;

(iii) whether or not the firm makes a personal recommendation; and

(iv) irrespective of whether the policy is offered as part of a package pursuant to COBS 6.1ZA.16AR to COBS 6.1ZA.16ER;

(c) the information in (b) must be provided prior to the conclusion of the life policy and in accordance with COBS 7.4, rather than in accordance with the other rules in this section;

…
[Note: in respect of (2) article 185(1) of the Solvency II Directive and in respect of (2)(b) articles 20(1) first paragraph, 20(2), 20(4) and 23 of the IDD]

...
of the service provided to the client; and

(b) where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

[Note: article 25(6) of MIFID, article 30(5) of the IDD]

16A.2.2 G A firm should refer to SYSC 3.2 (for insurers and managing agents) and SYSC 9 (Record keeping) (for other firms) for the requirements that apply in relation to the retention of records.

16A.3 Occasional reporting: MiFID business

...

16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

...

Provision by a firm and contents: insurance-based investment products

16A.4.2 EU A

18(1) Without prejudice to Article 185 of Directive 2009/138/EC of the European Parliament and of the Council, the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.

18(2) The periodic report required under paragraph 1 shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer during the reporting period and shall include, where relevant, the total costs associated with these services and transactions, and the value of each underlying investment asset.

18(3) The periodic report required under paragraph 1 shall be provided at least annually.

[Note: article 18 of the IDD Regulation]

...

18 Specialist Regimes

...

18.2 Energy market activity and oil market activity

...
18.2.2 G The provisions of COBS in the table are unlikely to be relevant to any energy market activity or oil market activity carried on by a firm which is MiFID or equivalent third country business:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Insurance mediation distribution</td>
</tr>
<tr>
<td>...</td>
<td></td>
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</tbody>
</table>

18.3 Corporate finance business

18.3.2 G The provisions of COBS in the table are unlikely to be relevant to any corporate finance business carried on by a firm which is MiFID or equivalent third country business:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Insurance mediation distribution</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

18.4 Stock lending activity

18.4.2 G The provisions of COBS in the table are unlikely to be relevant in relation to any stock lending activity carried on by a firm:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Insurance mediation distribution</td>
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<td>...</td>
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</tbody>
</table>
COBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except that:

(1) the fair, clear and not misleading rule applies;

(2) the financial promotion rules apply as modified below;

(3) the rules in the following parts of COBS which implement the IDD apply in relation to insurance distribution activities:

(a) COBS 2.1.1R, COBS 2.2A and COBS 2.3A (Conduct of business obligations);

(b) COBS 4 (Communicating with clients, including financial promotions);

(c) COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));

(d) COBS 7 (Insurance mediation distribution);

(e) COBS 8 (Client agreements);

(f) COBS 9 (Suitability (including basic advice) (other than MiFID and insurance-based investment products provisions)) and COBS 9A (Suitability (MiFID and insurance-based investment products provisions));

(g) COBS 10A (Appropriateness (for non-advised services));

(h) COBS 14.2 (Providing product information to clients); and

(i) COBS 16A.2 (General client reporting and record keeping requirements),

applies but only if the designated professional body of the firm does not have rules approved by the FCA under section 332(5) of the Act that implement articles 12 and 13 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the Insurance Mediation Directive IDD and that apply to the firm;

(4) COBS 8.1.3R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and

(5) COBS 5.2 (E-commerce) applies.
### TP 2 Other Transitional Provisions

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provisions: coming into force</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 2.- | **COBS 2.3A** | R | The rules and guidance on inducements in COBS 2.3A: | From 3 January 2018 | 3 January 2018 (and in relation to an insurance-based investment product, 1 October 2018) |

(1) apply to fees, commission, monetary and non-monetary benefits which are paid, provided or received by a **firm** in respect of:

(a) (unless (b) applies) services that are provided to a **client** on or after 3 January 2018;

(b) (in relation to an insurance-based investment product) services that are provided to a **client** on or after 1 October 2018; and

(2) do not apply to fees, commission, monetary or non-monetary benefits which are paid, provided or received in respect of:
(a) (unless (b) applies) services that are provided to a client before 3 January 2018;

(b) (in relation to an insurance-based investment product) services that are provided to a client on or after 1 October 2018.

Sch 1 Record keeping requirements

Sch 1.2A G (1) A MiFID investment firm, third country investment firm or MiFID optional exemption firm should refer to the requirements on record keeping in the MiFID Org Regulation and SYSC 9. In particular, Annex I to the MiFID Org Regulation contains a minimum list of records to be kept by those firms to which it applies.

[Note: article 72 of the MiFID Org Regulation]

(2) An insurance distributor should refer to the requirements on record keeping in the IDD Regulation and in SYSC 3 (for insurers and managing agents) or SYSC 9 (for other firms).

[Note: article 19 of the IDD Regulation]

Sch 1.3 G

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
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</tr>
<tr>
<td>COBS 9A.4.1G</td>
<td>Suitability (MiFID provisions)</td>
<td>Client information for suitability report</td>
<td>From date of suitability report</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 9A.4.3EU</td>
<td>Suitability (insurance-based)</td>
<td>Client information for suitability</td>
<td>From date of suitability report</td>
<td>For whichever is the longer of</td>
</tr>
<tr>
<td>COBS 9A.4.3EU</td>
<td>Investment products</td>
<td>Report - details in COBS 9A.4.3EU and COBS 9A.4.4EU</td>
<td>5 years or the duration of the relationship with the client</td>
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<tr>
<td>COBS 10A.7.2EU</td>
<td>Appropriate ness (MiFID provisions)</td>
<td>Records of appropriateness assessments including the results of such assessments and any warnings given to clients</td>
<td>Date of assessment</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 10A.7.2AEU</td>
<td>Appropriate ness (insurance-based investment products)</td>
<td>Records of appropriateness assessments including the results of such assessments and any warnings given to clients - details in COBS 10A.7.2A</td>
<td>Date of assessment</td>
<td>For whichever is the longer of 5 years or the duration of the relationship with the client</td>
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<tr>
<td>COBS 16A.4.1EU</td>
<td>Periodic statements (MiFID provisions)</td>
<td>A copy of a periodic statement sent to a client</td>
<td>From date of despatch to client</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 16A.4.2EU</td>
<td>Periodic statements (insurance-based investment)</td>
<td>A copy of a periodic statement sent to a client</td>
<td>From date of despatch to client</td>
<td>At least 5 years</td>
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<tr>
<td>products</td>
<td>client</td>
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Annex L

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

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. (1) an insurance mediation activity 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.

1 Annex Application (see ICOBS 1.1.2R)

1 Part 1: Who?

<table>
<thead>
<tr>
<th>Modifications to the general application rule according to type of firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Third party processors</td>
</tr>
<tr>
<td>1.1 R (1) This rule applies where a firm (or its appointed representative) (“A”) has outsourced insurance mediation activities insurance distribution activities to a third party processor.</td>
</tr>
<tr>
<td>1.2 G (1) The disclosure required of the third party processor under ICOBS 4.3-7R can be made without having to disclose the identity of the</td>
</tr>
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...
<table>
<thead>
<tr>
<th>2</th>
<th>Managing agents</th>
</tr>
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<tbody>
<tr>
<td>2.1</td>
<td>R</td>
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<tr>
<td>3</td>
<td>Authorised professional firms</td>
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<td>3.1</td>
<td>R</td>
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<tr>
<td>4</td>
<td>Appointed representatives</td>
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<tr>
<td>4.1</td>
<td>R</td>
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<td></td>
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</tbody>
</table>
4.2 G The cancellation requirements in chapter 7 do not apply to a distance contract entered into by an appointed representative to provide mediation distribution services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the Distance Marketing Regulations apply instead.

**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: article 12(4) of the Insurance Mediation Directive recital 51 to the IDD]

2 Contracts of large risks

2.1 R Subject to Part 3 of this Annex,

(1) this sourcebook does not apply to an insurance intermediary mediating a firm distributing a contract of large risks;

(4) where the risk is located outside the European Economic Area; or

(2) only ICOBS 2 (General matters) and ICOBS 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 ICOBS 6.1.10AR (How must IPID information be provided?) and ICOBS 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.
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* that he should give the information should be given to each *policyholder*.

2.3 R  
*ICOBS 6.2.3R* does not apply to contracts of large risk risks.

[Note: article 184(1) of the *Solvency II Directive*]

---

4 chained 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 *only* to the *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 4: Guidance**

1 The main extensions and restrictions to the general application rule

---


3.1 G  
The *Insurance Mediation Directive’s IDD’s* scope covers most *firms* carrying on most types of insurance mediation insurance distribution. The *rules* in this sourcebook within the Directive’s scope are those that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis (see *ICOBS 4* (Information about the firm, its services and remuneration), *ICOBS 5.2* (Statement of demands and needs), *ICOBS 5.3.3R* (Advice on the basis of a fair analysis), *ICOBS 6* (Product information) and *ICOBS 6A.1.4R* (Ensuring the customer can make an informed decision)).

3.2 G  
The *rules* in this sourcebook within the Directive’s scope are those implementing the minimum information and other requirements in articles 12 and 13 1(4), 17, 18, 19, 20, 23 and 24(1) to (3) and (6) of the Directive *IDD* are set out in;
(1) 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);

(2) ICOBS 4.1 (General requirements for insurance intermediaries and insurers), ICOBS 4.1A (Means of communicating to customers), ICOBS 4.3 (Remuneration disclosure);

(3) ICOBS 5.2 (Statement of demands Demands and needs), ICOBS 5.3.4R (Personalised explanation), and ICOBS 5.3.3R (Advice on the basis of a fair analysis); and

(4) ICOBS 6.1 (Providing product information to customers: general) and ICOBS 6 Annex 3R (Providing product information by way of a standardised insurance information document); and

(5) ICOBS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOBS 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 ICOBS 2.2.2R, ICOBS 2.2.2AR, ICOBS 2.5.-1R and ICOBS 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 ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 5.2 (Demands and needs), ICOBS 5.3.3R (Advice on the basis of a fair analysis), ICOBS 6.1A.5R (Responsibility for producing the standardised insurance product information document), ICOBS 6.1 (Providing product information to customers: general); ICOBS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOBS 6A.3 (Cross-selling)).

3.3 G In the FCA’s view, the responsibility for these minimum requirements rests with the Home State, but a Host State is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. (See recital 19 to and article 12(5) of the Insurance Mediation Directive.

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

(1) **for a UK firm providing passported activities through a branch in another EEA State** under the Directive, the *rules* implementing the Directive’s minimum requirements apply, but the territorial scope of the additional *rules* within the Directive’s scope is not modified;

(2) **for an EEA firm providing passported activities under the Directive in the United Kingdom**, the *rules* implementing the Directive’s minimum requirements do **not** apply, but 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) **an EEA firm acting as the principal of an appointed representative** is required to ensure that its appointed representative complies with this sourcebook as it applies to a *UK firm* that is an authorised person.

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 Directive’s *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 4 (Information about the firm, its services and remuneration)*, *ICOBS 6 (Product information)*, *ICOBS 6A.1.4R (Ensuring the customer can make an informed decision)* and
**4.3 G** The **Directive 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 **Directive 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 **Directive 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 cancelling *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 4 (Information about the firm, its services and remuneration)**, **ICOBS 6 (Product information)** and **ICOBS 8 (Claims handling) except ICOBS 8.2 (Motor vehicle liability insurers)**).

**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 promotion 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**.)

**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
**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.)

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**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.)

3. for business within the scope of both the Distance Marketing Directive and the Insurance Mediation Directive, the minimum requirements in the Insurance Mediation Directive continue to be those applied by the Home State, but the minimum requirements in the Distance Marketing Directive and any additional pre-contract information requirements are applied on a ‘country of origin’ basis. (The basis for this is that the Insurance Mediation Directive was adopted after the Distance Marketing Directive and is not expressed to be subject to it.)

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**8 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.)

... 

8.5 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’):

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<td>(1)</td>
<td>is in line with the Distance Marketing Directive and the IDD;</td>
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<td>(2)</td>
<td>overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.</td>
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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 19 to the Insurance Mediation Directive IDD, recital 6 to the Distance Marketing Directive, article 3 of, and the Annex to, the E-Commerce Directive.)

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2 General matters

... 

2.2 Communication to clients and financial promotions

... 

Clear, fair and not misleading rule

2.2.2 R When a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate ensure that it in a way that is clear, fair and not misleading.

[Note: article 17(2) of the IDD]

Marketing communications

2.2.2A R A firm must ensure that, in relation to insurance distribution, marketing communications are always clearly identifiable as such.

[Note: article 17(2) of the IDD]
The reasonable steps defence

2.2.5 R If, in relation to a particular communication or financial promotion, a firm takes reasonable steps to ensure it is fair, clear and not misleading then:

(1) the firm will not contravene ICOBS 2.2.2R where:

(a) the recipient is a customer that does not make the arrangements preparatory to the conclusion of the contract of insurance; or

(b) the communication is made in relation to activities other than insurance distribution; and

(2) a contravention of the clear, fair and not misleading rule (ICOBS 2.2.2R) does not give rise to a right of action under section 138D of the Act.

2.3 Inducements

2.3.1 G (1) Principle 8 requires a firm to manage conflicts of interest fairly, both between itself and its customers and between a customer and another client. This principle extends to soliciting or accepting inducements where this would conflict with a firm’s duties to its customers. A firm that offers such inducements should consider whether doing so conflicts with its obligations under:

(a) Principles 1 and 6 to act with integrity and treat customers fairly; and

(b) the customer’s best interests rule.

2.5 Acting honestly, fairly and professionally, Exclusion of liability, conditions, and warranties, and reliance on others

The customer’s best interests rule

2.5.-1 R A firm must act honestly, fairly and professionally in accordance with the best interests of its customer.

[Note: article 17(1) of the IDD]
Exclusion of liability and conditions

...

Reliance on others

2.5.3  G (1) Where it is compatible with the nature of the obligation imposed by a particular rule, including the customer’s best interests rule, and with the Principles, in particular Principles 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), firms may rely on third parties in order to comply with the rules in this sourcebook.

...

Other requirements

2.5.4  G Firms are reminded of their obligations in SYSC 19F.2 to ensure remuneration arrangements do not conflict with their duty to act in the customer’s best interests.

After ICOBS 2.5 (Acting honestly, fairly and professionally, exclusion of liability, conditions and warranties) insert the following new section ICOBS 2.6. The text is not underlined.

2.6  Distribution of connected contracts through exempt persons

2.6.1  R (1) Where an insurance distributor is distributing through a person relying on the connected contracts exemption in article 72B of the Regulated Activities Order, the insurance distributor must ensure that the requirements in (2) are met.

(2) The requirements referred to in (1) are:

(a) SYSC 19F.2 (Remuneration and insurance distribution activities);

(b) ICOBS 2.2.2R and ICOBS 2.2.2AR (Clear, fair and not misleading rule and marketing communications);

(c) ICOBS 2.5.-1R (Customer’s best interests);

(d) ICOBS 4.1.2R(1)(a) and (c) (Status disclosure: general information provided by insurance intermediaries or insurers);

(e) ICOBS 5.2 (Demands and needs);

(f) ICOBS 6.1.5R(4) (Ensuring customers can make an informed
2.6.2 G To comply with the relevant chapter of SYSC or Principle 3, an insurance distributor will need to have appropriate arrangements in place to ensure compliance with ICOBS 2.6.1R.

Amend the following as shown.

3 Distance communications

3.1 Distance marketing

... Guidance on the Distance Marketing Directive

3.1.2 G Guidance on expressions derived from the Distance Marketing Directive and on the Directive’s application in the context of insurance mediation activity insurance distribution activity can be found in ICOBS 3 Annex 1G.

... 3.1.4 G The rules setting out the responsibilities of insurers and insurance intermediaries for producing and providing information apply to requirements in this section to provide information (see ICOBS 6.1.1R ICOBS 6.-1.1R).

... 3 Annex 1G Guidance on the Distance Marketing Directive

This Annex belongs to ICOBS 3.1.2G

... Q7. How does the Directive apply to insurance intermediaries services?
The FCA expects the Distance Marketing Directive to apply to insurance intermediaries’ services only in the small minority of cases where:

- the firm concludes a distance contract with a consumer covering its insurance mediation activities insurance distribution activities which is additional to any insurance contract which it is marketing; and

- …

Q8. Can you give examples of when the Directive would and would not apply to insurance intermediaries services?

The rules implementing the Distance Marketing Directive will not apply in the typical case where an insurance intermediary sells an insurance contract to a consumer on a one-off basis, even if the insurance intermediary is involved in the renewal of that contract and handling claims under it. Nor will the Directive apply if an insurance intermediary, in its terms of business, makes clear that it does not, in conducting insurance mediation activities insurance distribution activities, act contractually on behalf of, or for, the consumer.

…

…

4 Information about the firm, its services, and remuneration

4.1 General requirements for insurance intermediaries and insurers

Application: who?

4.1.1 R This section chapter applies to an insurance intermediary and to an insurer carrying on insurance distribution activities.

Interaction with the customer’s best interests rule and Principle 7

4.1.1A G To comply with the customer’s best interests rule and Principle 7 (Communications with clients) a firm should include consideration of the information needs of the customer including:

(1) what a customer needs in order to understand the relevance of any information provided by the firm; and

(2) at which point in the sales process will the information be most useful to the customer to enable them to make an informed decision.

Status disclosure: general information provided by insurance intermediaries or insurers
4.1.2 Prior to In good time before the conclusion of an initial contract of insurance and, if necessary, on its amendment or renewal:

(1) A firm must provide the customer with at least the following information:

(a) its name and identity, address and whether it is an insurance intermediary or an insurance undertaking;
(b) whether it provides a personal recommendation about the insurance products offered;
(c) the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers; and

(2) An insurance intermediary must also provide the customer with the following information:

(a) the fact that it is included in the Financial Services Register or if it is not on the Financial Services Register, the register in which it has been included) and the means for verifying this;
(b) whether it has a direct or indirect holding representing more than 10% or more of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer);
(c) whether a given insurance undertaking (that is not a pure reinsurer) or its parent undertaking has a direct or indirect holding representing more than 10% or more of the voting rights or capital in the firm; and
(d) whether it is representing the customer or is acting for and on behalf of the insurer; and

(3) Paragraph (2) does not apply in relation to a connected travel insurance contract.
Status disclosure exemption: introducers

4.1.3 R A firm whose contact with a customer is limited to effecting introductions (see PERG 5.6) need only provide its name and identity, address and whether it is a member of the same group as the firm to which it makes the introduction.

4.1.4 G If a firm goes further than putting a customer in contact with another person (for example, by advising him the customer on a particular policy available from the firm) the full status disclosure requirements will apply.

Status disclosure exemption: connected travel insurance

4.1.5 R In relation to a connected travel insurance contract, a firm need only provide the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers.

Scope of service: insurance intermediaries

4.1.6 R (1) Prior to Where an insurance intermediary proposes or advises on a contract of insurance then in good time before the conclusion of an initial contract of insurance (other than a connected travel insurance contract) and, if necessary, on its amendment or renewal, a firm an insurance intermediary must tell provide the customer with at least information on whether the firm:

(a) it gives advice a personal recommendation, on the basis of a fair and personal analysis of the market; or

(b) it is under a contractual obligation to conduct insurance mediation business insurance distribution exclusively with one or more insurance undertakings, in which case it must provide the names of those insurance undertakings; or

(c) (i) it is not under a contractual obligation to conduct insurance mediation business insurance distribution exclusively with one or more insurance undertakings; and

(ii) does not give advice a personal recommendation on the basis of a fair and personal analysis of the market; in which case it must provide its customer with the name of those insurance undertakings with which the insurance
intermediary may and does conduct business.

(2) A firm that does not advise on the basis of a fair analysis of the market must inform its customer that they have the right to request the name of each insurance undertaking with which the firm may and does conduct business. A firm must comply with such a request.

[deleted]

[Note: article 12(1) of the Insurance Mediation Directive article 19(1)(c) of the IDD]

4.1.7 R Prior to Where the firm has given information in ICOBS 4.1.6R(1)(b) and (c), then in good time before the conclusion of an initial contract of insurance with a consumer a firm must also state whether it is giving:

(1) a personal recommendation but not on the basis of a fair and personal analysis;

(2) other advice on the basis of a fair analysis of the market;

(3) other advice not on the basis of a fair analysis of the market; or

(4) just information.

Guidance on using panels to advise on the basis of a fair analysis

4.1.8 G (1) One way a firm may give advice on a fair analysis basis is by using ‘panels’ of insurance undertakings which are sufficient to enable the firm to give advice on a fair analysis basis and are reviewed regularly.

(2) A firm which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a firm should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better premium, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market. A firm is also required to ensure that the analysis is of a sufficiently large number of contracts of insurance available on the market (see ICOBS 5.3.3R).

(3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the ‘fair analysis’ criteria. Selection should be based on product features, premiums and services offered to customers, not solely on the benefit offered to the firm.

(4) Where a firm also provides personal recommendations based on a fair and personal analysis, paragraphs (1) to (3) may also be relevant to that part of the service which involves a fair analysis of
Means of communication to customers

4.1.9  R (1)  All information to be provided to a customer in accordance with this chapter must be communicated: [deleted]

(a) on paper or on any other durable medium available and accessible to the customer;
(b) in a clear and accurate manner, comprehensible to the customer; and
(c) in an official language of the State of the commitment or in any other language agreed by the parties.

(2) The information may be provided orally where the customer requests it, or where immediate cover is necessary.

(3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14R).

(4) If the information is provided orally, it must be provided to the customer in accordance with (1) immediately after the conclusion of the contract of insurance.

[Note: article 13 of the Insurance Mediation Directive]

After ICOBS 4.1 (General requirements for insurance intermediaries and insurers) insert the following new section ICOBS 4.1A. This new section amends the text formerly in ICOBS 4.1.9R and also adds new provisions. All the text is re-stated in this position or is new and not underlined.

**4.1A  Means of communication to customers**

**Application**

4.1A.1  R  This section applies to all information required to be provided to a customer in this chapter and in other chapters or sections where stated.

Means of communication to customers; non-telephone sales

4.1A.2  R  (1)  A firm must communicate information to a customer using any of the following:

(a) paper; or

(b) a durable medium other than paper; or
(c) a website (where it does not constitute a *durable medium*)
where the *website conditions* are satisfied.

(2) The *firm* must communicate the information in (1):

(a) in a clear and accurate manner, comprehensible to the
*customer*;

(b) in an official language of the *State of the risk* or in any other
language agreed by the parties; and

(c) free of charge.

[Note: article 23(1), (2), (4) and (5) of the *IDD*]

4.1A.3 R Where the information is communicated using a *durable medium* other
than paper or by means of a website, the *firm* must, upon request and free
of charge, also send the *customer* a paper copy.

[Note: article 23(3) of the *IDD*]

4.1A.4 R A *firm* must ensure that a *customer’s* choice or consent to receive the
information by means of a website (whether a *durable medium* or where
the *website conditions* are satisfied) is an active and informed choice or
consent.

4.1A.5 G (1) For the purposes of *ICOBS* 4.1A.4R for example an option to allow
a change to the e-mail address to be used or an option to allow
information to be provided by means of a website should be
presented in a way that is clear, fair and not misleading.

(2) The following are examples of circumstances not evidencing active
or informed choice or consent:

(a) a pre-ticked box (suggesting that option has been selected)
which appears in a more prominent place than an un-ticked box
allowing another option to be selected; and

(b) the *customer* electing to be informed by a website without
being first given other options.

4.1A.6 R On *renewal* of a *policy* a *firm* may rely on a *customer’s* previous choice or
consent as appropriate where:

(1) there is evidence that the *customer* has regular access to the internet;

(2) the provision of information in that medium is appropriate in the
context in which the business between the *firm* and the *customer* is
carried on; and

(3) the *customer* is made aware, for example in the renewal
documentation, of the option to receive the information on paper in a
way that is clear, fair and not misleading.
Means of communications to customers: telephone sales

4.1A.7  R  In the case of telephone selling:

(1)  the information must be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14R); and

(2)  if prior to the conclusion of the contract the information is provided:

   (a)  orally; or

   (b)  on a durable medium other than paper;

   the firm must also provide the information to the customer in accordance with ICOBS 4.1A.2R immediately after the conclusion of the contract of insurance.

[Note: article 23(7) of the IDD]

Amend the following as shown.

4.2  Additional requirements for protection policies for insurance intermediaries and insurers

... Ensuring customers can make an informed decision

4.2.2  G  In considering a customer's information needs for the purposes of Principle 7, a firm should have regard to the importance of information for a customer's purchasing decision when deciding when and how to give it. [deleted]

4.2.3  G  If a firm provides elements of status disclosure information orally as part of an interactive dialogue, it should do so for all elements of the information. In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14R). [deleted]

Disclosing the limits of the service provided

4.2.4  R  (1)  In a sale that does not involve a personal recommendation, a firm must take reasonable steps to ensure a customer (C) understands he is that C is responsible for deciding whether a policy meets his C's demands and needs.

(2)  If this is done orally, the information must be provided to the customer in writing or any other durable medium no later than immediately after the conclusion of the contract. [deleted]
Status disclosure for insurers

4.2.5 R  (1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or renewal, an insurer must disclose to the customer at least:

(a) the statutory status disclosure statement (see GEN 4);

(b) whose policies it offers; and

(c) whether it is providing a personal recommendation or information.

(2) If this is done orally, the disclosure must be provided in writing or any other durable medium no later than immediately after the conclusion of the contract. [deleted]

4.2.6 G Insurers cannot carry on an insurance mediation activity in respect of a third party’s products unless they can show a natural fit or necessary connection between their insurance business and the third party’s products. Insurers are reminded that they are not permitted to carry out business which does not directly arise from their insurance business (see the restriction of business in INSPRU 1.5.13R and rule 9 of the PRA Rulebook: Solvency II firms: Conditions Governing Business).

4.3 Fee Remuneration disclosure

Remuneration disclosure: insurance intermediaries

4.3-7 R In good time before the conclusion of the initial contract of insurance and, if necessary, on its amendment or renewal an insurance intermediary must provide the customer with information:

(1) on the nature of the remuneration received in relation to the contract of insurance:

(2) about whether in relation to the contract it works on the basis of:

(a) a fee, that is remuneration paid directly by the customer; or

(b) a commission of any kind, that is the remuneration included in the premium; or

(c) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract; or

(d) on the basis of a combination of any type of remuneration set out
above in (a), (b) and (c).

[Note: article 19(1)(d) and (e) of the IDD]

Remuneration disclosure: insurers

4.3.-6  R  In good time before the conclusion of a contract of insurance, an insurance undertaking must provide its customer with information on the nature of the remuneration received by its employees in relation to the contract of insurance.

[Note: article 19(4) of the IDD]

Remuneration disclosure: general

4.3.-5  R  The remuneration referred to in this section includes remuneration that is not guaranteed or which is contingent on meeting certain targets.

4.3.-4  G  The information required to be disclosed by ICOBS 4.3.-7R and ICOBS 4.3.-6R includes the type of remuneration and, taking into account the clear, fair and not misleading rule (ICOBS 2.2.2R), should also include the source of the remuneration.

4.3.-3  G  When considering what information to provide about the remuneration, a firm should include all remuneration which the insurance intermediary or the employee of an insurance undertaking receives, or may receive in relation to the distribution of the contract of insurance. This includes remuneration:

(1) provided indirectly by the insurer or another firm within the distribution chain; or

(2) provided by way of a bonus (whether financial or non-financial) paid to the firm by the insurer or another firm, or provided by the firm to its employees, where this bonus is contingent on the achievement of a target to which the distribution of the particular contract of insurance could contribute. For example, this can include cash bonuses paid for achieving a sales target and additional annual leave for achieving a high customer service score on sales calls, profit share arrangements, overrides or other enhanced commissions.

4.3.-2  R  If any payments, other than ongoing premiums and scheduled payments, are made by the customer under the contract of insurance after its conclusion, a firm must make the disclosures under this section, for each such payment.

[Note: articles 19(3) and (5) of the IDD]

4.3.-1  G  Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Fee disclosure: additional requirements

4.3.1  R  (1) A Where a fee is payable, the firm must provide inform its customer with
details of the amount of any fees other than premium monies for an insurance mediation activity the fee.

(2) The details information in (1) must be given before the customer incurs liability to pay the fee, or before conclusion of the contract of insurance, whichever is earlier.

(3) To the extent that an actual fee cannot it is not possible for an amount to be given, a firm must give the basis for its calculation.

[Note: articles 19(2) and (5) of the IDD]

4.3.2 The fee disclosure requirement extends to all such fees that may be charged during the life of a policy.

[Note: article 19(3) of the IDD]

... 5 Identifying client needs and advising ...

5.2 Statement of demands Demands and needs

Application: who? what?

5.2.1 This section applies to: an insurance distributor when carrying on insurance distribution activities.

(1) an insurance intermediary in relation to any policy (other than a connected travel insurance contract); and

(2) an insurer when it has given a personal recommendation to a consumer on a payment protection contract or a pure protection contract.

Statement of demands Demands and needs

5.2.2 (1) Prior to the conclusion of a contract of insurance, a firm must specify, in particular on the basis of information provided by obtained from the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on that policy.

(2) The details must be modulated according to the complexity of the policy contract of insurance proposed and the type of customer.

(3) A statement of the demands and needs must be communicated to the customer prior to the conclusion of a contract of insurance.

[Note: article 12(3) of the Insurance Mediation Directive articles 20(1) and
20(2) of the IDD]

5.2.2A G A firm may obtain information from the customer in a number of ways including, for example, by asking the customer questions in person or by way of a questionnaire prior to any contract of insurance being proposed.

5.2.2B R When proposing a contract of insurance a firm must ensure it is consistent with the customer’s insurance demands and needs.

[Note: recital 44 to, and article 20(1) of, the IDD]

5.5.2C G ICOBS 5.2.2BR applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, in connection with another contract of insurance, or in connection with other goods or services.

5.2.2D R The sale of a contract of insurance must always be accompanied by a demands and needs test on the basis of information obtained from the customer.

[Note: recital 44 to, and article 20(1) of, the IDD]

Means of communication to customers

5.2.3 R (1) A statement of demands and needs must be communicated:

(a) on paper or on any other durable medium available and accessible to the customer;

(b) in a clear and accurate manner, comprehensible to the customer; and

(c) in an official language of the State of the commitment or in any other language agreed by the parties.

(2) The information may be provided orally where the customer requests it, or where immediate cover is necessary.

(3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14R).

(4) If the information is provided orally, it must be provided to the customer in accordance with (1) immediately after the conclusion of the contract of insurance. [deleted]

[Note: article 13 of the Insurance Mediation Directive]

Statement Format of the statement of demands and needs: non-advised sales

5.2.4 G The firm has obtained information from the customer and ensured the contract of insurance is consistent with the demands and needs, the format of a statement of demands and needs is flexible. Examples of
approaches that may be appropriate where a personal recommendation has not been given include:

…

(2) producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy the product, for whose demands and needs the contract is consistent. For example, “This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future”; and

(3) giving a customer a record of all his demands and needs that have been discussed; and

(4) providing a key features document.

Means of communication to customers

5.2.5 R The information to be provided to customers in ICOBS 5.2 must be given in accordance with ICOBS 4.1A (Means of communication to customers).

[Note: article 23(1) of the IDD]

5.3 Advised sales

Suitability

5.3.1 R A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment.

Suitability guidance for protection policies

5.3.2 G (1) In taking reasonable care to ensure the suitability of advice on a payment protection contract or a pure protection contract a firm should:

(a) establish the customer’s demands and needs. It should do this by using information readily available and accessible to the firm and by obtaining further relevant information from the customer, including details of existing insurance cover; it need not consider alternatives to policies nor customer needs that are not relevant to the type of policy in which the customer is interested;

…

…
Advice on the basis of a fair analysis

5.3.3 R If an insurance intermediary informs a customer that it gives:

(1) advice on the basis of a fair analysis, it must give that advice on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market to enable it to make a recommendation; or

(2) a personal recommendation on the basis of a fair and personal analysis, it must give that personal recommendation on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation;

and in each case, it must be in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer’s needs.

[Note: article 12(2) of the Insurance Mediation Directive, article 20(3) of the IDD]

Personalised explanation

5.3.4 R Where a firm provides a personal recommendation (other than in relation to a connected travel insurance contract) the firm must, in addition to the statement of demands and needs, provide the customer with a personalised explanation of why a particular contract of insurance would best meet the customer’s demands and needs.

[Note: article 20(1) third paragraph of the IDD]

Means of communication

5.3.5 R A firm must provide the information in this section in accordance with ICOBS 4.1A (Means of communication to customers).

[Note: article 23(1) of the IDD]

Insert, as the first section of Chapter 6 (Product Information), the following new section ICOBS 6.-1. The new section amends the text formerly in ICOBS 6.1.1R to ICOBS 6.1.4R. The text is not underlined.

6 Product Information

6.-1 Producing and providing product information

Responsibilities for producing and providing information as between insurers and
6.-1.1 R An insurer is responsible for producing, and an insurance intermediary for providing to a customer, the information required by this chapter and by the distance communication rules (see ICOBS 3.1). However, an insurer is responsible for providing information required on mid-term changes, and an insurance intermediary is responsible for producing price information if it agrees this with an insurer.

6.-1.2 R If there is no insurance intermediary, the insurer is responsible for producing and providing the information.

6.-1.3 R An insurer must produce information in good time to enable the insurance intermediary to comply with the rules in this chapter, or promptly on an insurance intermediary’s request.

6.-1.4 R These general rules on the responsibilities of insurers and insurance intermediaries are modified by ICOBS 6 Annex 1 if one of the firms is not based in the United Kingdom, and in certain other situations.

Responsibility for producing the standardised insurance product information document

6.-1.5 R The IPID must be drawn up by the manufacturer of the policy.

[Note: article 20(6) of the IDD]

Amend the following as shown.

6.1 General Providing product information to customers: general

Responsibilities of insurers and insurance intermediaries

6.1.1 R An insurer is responsible for producing, and an insurance intermediary for providing to a customer, the information required by this chapter and by the distance communication rules (see ICOBS 3.1). However, an insurer is responsible for providing information required on mid-term changes, and an insurance intermediary is responsible for producing price information if it agrees this with an insurer. [deleted]

6.1.2 R If there is no insurance intermediary, the insurer is responsible for producing and providing the information. [deleted]

6.1.3 R An insurer must produce information in good time to enable the insurance intermediary to comply with the rules in this chapter, or promptly on an insurance intermediary’s request. [deleted]
6.1.4 R These general rules on the responsibilities of insurers and insurance intermediaries are modified by ICOBS 6 Annex 1 if one of the firms is not based in the United Kingdom, and in certain other situations. [deleted]

Ensuring customers can make an informed decision: the appropriate information rule

6.1.5 R (1) A firm must take reasonable steps to ensure that a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.

(2) The information must be provided to the customer:

(a) whether or not a personal recommendation is given; and

(b) irrespective of whether a policy is offered as part of a package with:

   (i) a non-insurance product or service (see ICOBS 6A.3 (Cross-selling)); or

   (ii) another policy.

(3) Appropriate information is both objective and relevant information, and includes IPID information.

(4) Where the firm is proposing a policy (including if appropriate on renewal) ‘in good time’ means in good time prior to the conclusion of the policy.

[Note: articles 20(1) first paragraph and 20(4) of the IDD]

6.1.6 G The appropriate information rule applies:

(1) at all of the different stages of a contract and includes pre-conclusion and post-conclusion, and so includes matters such as and also when mid-term changes and renewals are proposed. It also applies to the price of the policy.

(2) in the same way to any policy, regardless of whether that policy is sold on its own, in connection with another policy, or in connection with other goods or services; and

(3) to the price of the policy.

6.1.6A G The appropriate information rule applies in the same way to any policy, regardless of whether that policy is sold on its own, in connection with another policy, or in connection with other goods or services. [deleted]
What level of information needs to be provided?

6.1.6B R A firm must ensure that the level of appropriate information provided takes into account the complexity of the policy and the type of customer.

[Note: article 20(4) of the IDD]

6.1.7 G The level of information required will vary according to matters such as:

1. the knowledge, experience and ability of a typical customer for the policy;
2. the policy terms, including its main benefits, exclusions, limitations, conditions and its duration;
3. the policy’s overall complexity;
4. whether the policy is bought in connection with other goods and services including another policy (also see ICOBS 6A.3 (cross selling));
5. distance communication information requirements (for example, under the distance communication rules less information can be given during certain telephone sales than in sales made purely by written correspondence (see ICOBS 3.1.14R); and
6. whether the same information has been provided to the customer previously and, if so, when.

Appropriate information for commercial customers

6.1.7A G A firm dealing with a commercial customer:

1. may choose to provide some of or all of the appropriate information in an IPID (see ICOBS 6.1.10AR), a policy summary or a similar summary if it considers this to be a comprehensible form in which to provide that information; and
2. should include the IPID information (regardless of whether an IPID itself is provided).

6.1.8 G In determining what is “in good time”, a firm should consider the importance of the information to the customer’s decision-making process and at the point at which the information may be most useful. Distance communication timing requirements are also relevant (for example the distance communication rules enable certain information to be provided post-conclusion in telephone and certain other sales (see ICOBS 3.1.14R and ICOBS 3.1.15R)). [deleted]
6.1.10 G A firm dealing with a consumer may wish to provide information in a policy summary or as a key features document (see ICOBS 6 Annex 2). [deleted]

How must IPID information be provided?

6.1.10A R A firm, when dealing with a consumer must provide the IPID information by way of an IPID for each policy (other than a pure protection contract).

[Note: articles 20(4) and 20(5) of the IDD]

6.1.10B G The IPID information:

(1) needs to be provided on paper or on another durable medium;

(2) in the case of telephone selling, a firm may provide the IPID in accordance with the distance communication timing requirements and provide the IPID to the customer immediately after the conclusion of the policy,

in accordance with ICOBS 6.6 (Means of communication).

[Note: article 23(7) of the IDD]

How must appropriate information other than IPID information be provided?

6.1.10C G (1) Appropriate information other than IPID information includes, among other matters, any other information required by the appropriate information rule (ICOBS 6.1.5R), specific price disclosure requirements (ICOBS 6.1.13R), Solvency II Directive disclosure requirements (ICOBS 6.2.2R), renewals (ICOBS 6.5) and guaranteed assets protection (GAP) products (ICOBS 6A.1.4R).

(2) A firm needs to consider the form in which it provides appropriate information (see ICOBS 6.1.5R).

(3) A firm can provide the other information in (1) together with the IPID as long as the IPID remains a stand-alone document.

[Note: article 20(4) and article 20(7) last paragraph of the IDD]

Providing evidence of cover Interaction between information provision requirements and the customer’s best interests rule and Principle 7

6.1.11 G To comply with the customer’s best interest rule and Principle 7 (communication with clients) a firm should:

(1) include consideration of the information needs of the customers including:

(a) what they need to understand the relevance of any information
provided by the firm; and

(b) at which point in the sales process will the information be most useful to the customer to enable them to make an informed decision;

(2) Under Principle 7 a firm should provide evidence of cover promptly after inception of a policy. Firms will need to take into account the type of customer and the effect of other information requirements, for example those under the distance communication rules (ICOBS 3.1). Taking into account the type of customer and the effect of other information requirements, for example, those under the distance communication rules (ICOBS 3.1); and

(3) in relation to a group policy, provide appropriate information to the customer, telling the customer to pass it on to each policyholder.

Group policies

6.1.12 G Under Principle 7, a firm that sells a group policy should provide appropriate information to the customer to pass on to other policyholders. It should tell the customer that he should give the information to each policyholder. [deleted]

[Editor's note: The renewal provisions in ICOBS 6.1.12AR and ICOBS 6.1.12BG are moved to a new section, ICOBS 6.5.]

Renewals

6.1.12A R (4) This rule applies when a firm proposes to a consumer the renewal of a general insurance contract, which is not a group policy, and which has a duration of 10 months or more. [deleted]

(2) In this rule, ‘renewal’ means carrying forward a policy, at the point of expiry and as a successive or separate operation of the same nature and duration as the policy, with the same insurance intermediary or the same insurer.

(3) The firm must provide to the consumer the following information in good time before the renewal:

(a) the premium to be paid by the consumer on renewal;

(b) in a way that is consistent with the presentation of (a) so that they can be easily compared:
(i) except where (ii) applies, the premium for the policy which the firm proposes to renew, as set out at the inception of that policy;

(ii) where one or more mid-term changes were made to the policy which the firm proposes to renew, an amount calculated by annualising (or otherwise adjusting as appropriate to the duration of the proposed policy) the premium in effect following the most recent mid-term change, excluding all fees or charges associated with those mid-term changes;

(c) a statement alongside (a) and (b) indicating that the consumer:

(i) should check that the level of cover offered by the renewal is appropriate for their needs; and

(ii) is able, if they so wish, to compare the prices and levels of cover offered by alternative providers.

(4) Where the proposed renewal will be the fourth or subsequent renewal the consumer has entered into in respect of the policy, the firm must include the following statement, to appear alongside the matters required by (3)(a), (b) and (c)(i) (but omitting (c)(ii)): “You have been with us a number of years. You may be able to get the insurance cover you want at a better price if you shop around.”

(5) The firm must communicate the information in (3) and (4):

(a) clearly and accurately;

(b) in writing or another durable medium; and

(c) in a way that is accessible and which draws the consumer’s attention to it as key information.

6.1.12B A firm should have regard to the record-keeping obligations referred to in ICOBS 2.4.1B and ensure that it has appropriate systems and controls in place with respect to: [deleted]

(a) the adequacy of its records so it may fulfil its regulatory and statutory obligations; and

(b) the sufficiency of its records to enable the FCA to monitor the firm’s compliance with the requirements under the regulatory system.

Price disclosure: connected goods and services What additional information must be disclosed for packaged products and other relevant requirements?
6.1.13 R (1) If a policy is bought by a consumer in connection with other goods or services a firm must, before conclusion of the contract, disclose its premium separately from any other prices and whether buying the policy is compulsory.

(2) In the case of a distance contract, disclosure of whether buying the policy is compulsory may be made in accordance with the timing requirement under the distance communication rules (see ICOBS 3.1.8R, ICOBS 3.1.14R and ICOBS 3.1.15R).

(3) This rule does not apply to policies bought in connection with other goods or services provided as part of a packaged bank account.

6.1.13A G Firms In addition to the requirements in ICOBS 6.1 (Product information) firms are reminded that:

(1) when offering a policy as part of a packaged bank account the firm may be subject to the requirements of regulation 13 (payment accounts packages with another product or service) of the Payment Accounts Regulations;

(2) ICOBS 6A.3 (Cross-selling) contains rules in relation to packages which include both insurance and non-insurance products or services.

Exception to the timing rules: distance contracts and voice telephony communications

6.1.14 R Where a rule in this chapter requires information to be provided in writing or another durable medium before the conclusion of a contract, a firm may instead provide that information in accordance with the distance communication timing requirements (see ICOBS 3.1.14R and ICOBS 3.1.15R). [deleted]

6.4 Pre- and post-contract information: protection policies

Policy summary

6.4.4 R A firm must provide a consumer with a policy summary in good time before the conclusion of a contract pure protection contract.

Complaints and compensation information

6.4.4A R In relation to a payment protection contract, a firm must provide a consumer with information about:

(1) how the consumer can complain to the insurance undertaking and that complaints may subsequently be referred to the Financial Ombudsman
Service (or other applicable named complaints scheme); and

(2) the consumer’s entitlement to compensation from the compensation scheme (or other applicable compensation scheme), or that there is no compensation scheme, in the event where the insurance undertaking is unable to meet its liabilities;

in good time before the conclusion of the policy.

...

After ICOBS 6.4 (Pre-and post-contract information: protection policies) insert the following new section ICOBS 6.5. The new section amends the text formerly in ICOBS 6.1.12AR and ICOBS 6.1.12BG.

6.5 Renewals

Renewals

6.5.1 R (1) This section applies when a firm proposes to a consumer the renewal of a general insurance contract, which is not a group policy, and which has a duration of 10 months or more.

(2) In this section, ‘renewal’ means carrying forward a policy, at the point of expiry and as a successive or separate operation of the same nature and duration as the policy, with the same insurance intermediary or the same insurer.

(3) The firm must provide to the consumer the following information in good time before the renewal:

(a) the premium to be paid by the consumer on renewal;

(b) in a way that is consistent with the presentation of (a) so that they can be easily compared:

(i) except where (ii) applies, the premium for the policy which the firm proposes to renew, as set out at the inception of that policy;

(ii) where one or more mid-term changes were made to the policy which the firm proposes to renew, an amount calculated by annualising (or otherwise adjusting as appropriate to the duration of the proposed policy) the premium in effect following the most recent mid-term change, excluding all fees or charges associated with those mid-term changes;
(c) a statement alongside (a) and (b) indicating that the consumer:

(i) should check that the level of cover offered by the renewal is appropriate for their needs; and

(ii) is able, if they so wish, to compare the prices and levels of cover offered by alternative providers.

(4) Where the proposed renewal will be the fourth or subsequent renewal the consumer has entered into in respect of the policy, the firm must include the following statement, to appear alongside the matters required by (3)(a), (b) and (c)(i) (but omitting (c)(ii)): “You have been with us a number of years. You may be able to get the insurance cover you want at a better price if you shop around.”

(5) The firm must communicate the information in (3) and (4):

(a) clearly and accurately;

(b) in writing or another durable medium; and

(c) in a way that is accessible and which draws the consumer’s attention to it as key information.

6.5.2 A firm should have regard to the record-keeping obligations referred to in ICOBS 2.4.1G and ensure that it has appropriate systems and controls in place with respect to:

(1) the adequacy of its records so it may fulfil its regulatory and statutory obligations; and

(2) the sufficiency of its records to enable the FCA to monitor the firm’s compliance with the requirements under the regulatory system.

6.5.3 A firm should ensure it complies with the other requirements in ICOBS that are relevant, such as providing product information to customers (see ICOBS 6.1), including the requirement to provide an IPID (see ICOBS 6.1.10AR).

After ICOBS 6.5 (Renewals) insert the following new section ICOBS 6.6. The text is not underlined.

6.6 Means of communication

Means of communication

6.6.1 The information in ICOBS 6, unless modified in this chapter, must be given in accordance with ICOBS 4.1A (Means of communication to customers).
Amend the following as shown.

6 Annex 1R Responsibilities of insurers and insurance intermediaries in certain situations

This annex belongs to ICOBS 6.1.4R ICOBS 6.1.4R

The table in this annex modifies the general rule on the responsibilities of insurers and intermediaries for producing and providing to a customer the information required by this chapter. The table does not include the responsibilities of insurers and intermediaries for producing the IPID (ICOBS 6.1.5R).

<table>
<thead>
<tr>
<th>Situation</th>
<th>Insurance intermediary’s responsibility</th>
<th>Insurer’s responsibility</th>
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<tbody>
<tr>
<td>(1) …</td>
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<tr>
<td>(2) Insuranc...</td>
<td>None</td>
<td>Production and providing (but for pure protection contracts no policy summary is required unless the insurance intermediary does not operate from a UK establishment)</td>
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<td>…</td>
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<tr>
<td>(6) Where ICOBS 6.1.12AR ICOBS 6.5.1R applies</td>
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<td>…</td>
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</table>

6 Annex 2R Policy summary for consumers (pure protection contracts and / or commercial customers)
After ICOBS 6 Annex 2 (Policy summary (pure protection contracts and / or commercial customers)) insert the following new Annex. The text is not underlined.

6 Annex Providing product information by way of a standardised insurance information document:

[Note: the IDD IPID Regulation is directly applicable to IDD insurance intermediaries, IDD insurance undertakings and IDD ancillary insurance intermediaries.]

This annex belongs to ICOBS 6.1.10AR.

1 Effect of provisions marked ‘EU’

1.1 R (1) Provisions in this section marked “EU” apply in relation to a firm to which the IPID Regulation is not directly applicable, as if they were rules.

(2) In this annex, a word or phrase found in a provision marked “EU” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
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<tr>
<td>“Directive (EU) 2016/97”</td>
<td>IDD</td>
</tr>
<tr>
<td>“durable medium”</td>
<td>durable medium</td>
</tr>
</tbody>
</table>
What information needs to be contained in the IPID?

2.1 R The IPID must contain the following information:

   (1) information about the type of insurance;
   (2) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and summary of excluded risks;
   (3) the means of payment of premium and the duration of payments;
   (4) main exclusions where claims cannot be made;
   (5) obligations at the start of the contract;
   (6) obligations during the term of the contract;
   (7) obligations in the event that a claim is made;
   (8) the term of the contract including the start and end dates of the contract;
   (9) the means of terminating the contract.

[Note: article 20(8) of the IDD]

2.2 G A firm, when providing the information in the IPID, should consider:

   (1) the rules and guidance on providing appropriate information to customers in ICOBS 6.1;
   (2) the order of the information and priority of the information to be provided; and
   (3) the information needs of the firm’s typical customer for the policy.
2.3 **G** A firm that manufactures the policy should, when drawing up the IPID, have regard to the target market and intended distribution strategy.

Name and company logo of the manufacturer

2.4 **EU** 1(1) The name of the manufacturer of the non-life insurance product, the Member State where that manufacturer is registered, its regulatory status, and, where relevant, its authorisation number shall immediately follow the title ‘insurance product information document’ at the top of the first page.

2.5 **EU** 1(2) The manufacturer may insert its company logo to the right of the title.

[Note: article 1 of the IDD IPID Regulation]

Reference to complete pre-contractual and contractual information

2.6 **EU** 2 The insurance product information document shall state prominently that complete pre-contractual and contractual information about the non-life insurance product is provided to the customer in other documents. That statement shall be placed immediately below the name of the manufacturer of the non-life insurance product.

[Note: article 2 of the IDD IPID Regulation]

3 How must the IPID be presented and formatted?

3.1 **R** The IPID must:

(1) be a short and stand-alone document;

(2) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;

(3) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;

(4) be written in the official languages, or in one of the official languages, used in the part of the Member State where the policy is offered or, if agreed by the consumer and the insurance distributor, in another language;

(5) be accurate and not misleading;

(6) contain the title ‘insurance product information document’ at the top of the first page;
include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

[Note: article 20(7)(a) to (g) of the **IDD**]

Length

3.2 EU 3 The insurance product information document shall be set out on two sides of A4-sized paper when printed. Exceptionally, if more space is needed, the insurance product information document may be set out on a maximum of three sides of A4-sized paper when printed. Where a manufacturer uses three sides of A4-sized paper, it shall, upon request by the competent authority, be able to demonstrate that more space was needed.

[Note: article 3 of the **IDD IPID Regulation**]

Presentation and order of content

3.3 EU 4(1) The information of the insurance product information document listed in Article 20(8) of Directive (EU) 2016/97 shall be presented in different sections and in accordance with the structure, lay-out, headings and sequence as set out in the standardised presentation format in the Annex to this Regulation, using a font size with an x-height of at least 1.2 mm.

3.4 EU 4(2) The length of the sections may vary, depending on the amount of information that is to be included in each section. Information about add-ons and optional covers shall not be preceded by ticks, crosses or exclamation marks.

3.5 EU 4(3) Where the insurance product information document is presented using a durable medium other than paper, the size of the components in the layout may be changed, provided that the layout, headings and sequence of the standardised presentation format, as well as the relative prominence and size of the different elements, are retained.

3.6 EU 4(4) Where the dimensions of the durable medium other than paper are such that a layout using two columns is not feasible, a presentation using a single column may be used, provided that the sequence of the sections is as follows:

(a) ‘What is this type of insurance?’

(b) ‘What is insured?’

(c) ‘What is not insured?’

(d) ‘Are there any restrictions on cover?’
3.7 EU 4(5) The use of digital tools, including layering and pop-ups shall be permitted, provided that all the information referred to in Article 20(8) of Directive (EU) 2016/97 is provided in the main body of the insurance product information document and that the use of such tools does not distract the customer’s attention from the content of the main document.

Information provided through layering and pop-ups shall not include marketing or advertising material.

[Note: article 4 of the IDD IPID Regulation]

Plain language

3.8 EU 5 The insurance product information document shall be drafted in plain language, facilitating the customer’s understanding of the content of that document, and shall focus on key information which the customer needs to make an informed decision. Jargon shall be avoided.

[Note: article 5 of the IDD IPID Regulation]

Headings and information thereunder

3.9 EU 6(1) The sections of the insurance product information document shall have the following headings and the following information thereunder:

(a) the information on the type of insurance referred to in Article 20(8)(a) of Directive (EU) 2016/97 shall be included under the heading ‘What is this type of insurance?’, at the top of the document;

(b) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’. Each piece of information listed in this section shall be preceded by a green ‘tick’ symbol;

(c) the information on the insured sum referred to in Article
20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’;

d) the information on geographical scope, where applicable, referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘Where am I covered?’. Each piece of information listed in this section shall be preceded by a blue ‘tick’ symbol;

e) the information on a summary of the excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is not insured?’. Each piece of information in this section shall be preceded by a red ‘X’ symbol;

f) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be included under the heading ‘Are there any restrictions on cover?’. Each piece of information listed in this section shall be preceded by an orange exclamation mark symbol;

g) the information on the relevant obligations referred to in points (e), (f) and (g) of Article 20(8) of Directive (EU) 2016/97 shall be included under the heading ‘What are my obligations?’;

h) the information on the means and duration of payment of premiums referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be included under the heading ‘When and how do I pay?’;

i) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be included under the heading ‘When does the cover start and end?’;

j) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be included under the heading ‘How do I cancel the contract?’.

6(2) The use of sub-headings is permitted, where necessary.

[Note: article 6 of the IDD IPID Regulation]

Use of icons

3.10 EU 7(1) Each section shall further be headed by icons that visually represent the content of the respective section heading, as follows:

(a) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed
by an icon of an umbrella, which shall be white on a green background or green on a white background;

(b) the information on the geographical scope of the insurance cover referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of a globe, which shall be white on a blue background or blue on a white background;

(c) the information on excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an X symbol within a triangle, which shall be white on a red background or red on a white background;

(d) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be headed by an icon of an exclamation mark (‘!’) within a triangle, which shall be white on an orange background or orange on a white background;

(e) the information on the obligations at the start of the contract, during the term of the contract and in the event that a claim is made, referred to in points (e), (f) and (g) of 20(8) of Directive (EU) 2016/97, respectively, shall be headed by an icon of a handshake, which shall be white on a green background or green on a white background;

(f) the information on the means and duration of payments referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be headed by an icon of coins, which shall be white on a yellow background or yellow on a white background;

(g) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be headed by an icon of an hourglass, which shall be white on a blue background or blue on a white background;

(h) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be headed by an icon of a hand with an open palm on a shield, which shall be white on a black background, or black on a white background.

3.11 EU 7(2) All icons shall be displayed in a manner consistent with the standardised presentation format in the Annex.

3.12 EU 7(3) The icons referred to in paragraphs 1 and 2 may be presented in black and white where the insurance product information document is printed or photocopied in black and white.

[Note: article 7 of the IDD IPID Regulation]
**Xxxxxx Insurance**

*Insurance Product Information Document*

**Company:** <Name> Insurance Company  
**Product:** <Name> Policy

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]

**What is this type of insurance?**

[Description of Insurance]

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<tr>
<th>What is insured?</th>
<th>What is not insured?</th>
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<th>How do I cancel the contract?</th>
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[Note: Annex to the *IDD IPID Regulation*]
6A Product specific rules

6A.1 Guaranteed asset protection (GAP) contracts

...

Ensuring the customer can make an informed decision

6A.1.4 R (1) …

(2) This information must be communicated in a clear and accurate manner and in writing on paper or another durable medium, and made available and accessible to the customer in accordance with ICOBS 4.1A.

...

After ICOBS 6A.2 (Optional additional products) insert the following new section ICOBS 6A.3. The text is not underlined.

6A.3 Cross-selling

Requirements where insurance is the primary product

6A.3.1 R When offering a non-insurance ancillary product or service as part of a package or the same agreement with an insurance product, a firm must:

(1) inform the customer whether it is possible to buy the different components separately and, if so must provide the customer with an adequate description of:

(a) the different components;

(b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and

(2) provide the customer with separate evidence of the costs and charges of each component.

[Note: articles 24(1) and (2) of the IDD]

Requirements where insurance is the ancillary product

6A.3.2 R When offering an insurance product ancillary to and as part of a package or in the same agreement with a non-insurance product or service, a firm must
offer the *customer* the option of buying the non-insurance goods or services separately.

6A.3.3 R  *ICOBS* 6A.3.2R does not apply where the non-insurance product or service is any of the following:

1. *investment services or activities*;
2. a credit agreement as defined in point 3 of article 4 of the *MCD* which is:
   1. an *MCD credit agreement*; or
   2. an *exempt MCD credit agreement*; or
   3. a *CBTL credit agreement*; or
   4. a credit agreement referred to in articles 72G(3B) and (4) of the *Regulated Activities Order*;
3. a payment account as defined in regulation 2(1) of the *Payment Accounts Regulations*.

[Note: article 24(3) of the *IDD*]

General

6A.3.4 R This section does not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[Note: article 24(5) of the *IDD*]

6A.3.5 G In addition to the *rules* in *ICOBS* 6A.3 firms should still comply with the other *rules* in *ICOBS* relating to the offer and sale of insurance products that form part of the package or agreement, such as those applying to price disclosure (*ICOBS* 6.1.13R), optional additional products (*ICOBS* 6A.2) and specifying the demands and needs of the *customer* (*ICOBS* 5.2.1R).

[Note: article 24(6) of the *IDD*]
1 Application and general provisions

... 

1.2 General application: who? what?

...

1.2.5 R The insurance client money chapter does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, which are insurance mediation activities insurance distribution activities, if:

(1) the firm’s designated professional body has made rules which implement article 4.10.6 of the Insurance Mediation Directive IDD;

...

1.2.5A G (1) In the client money chapter and the insurance client money chapter,
an insurance undertaking acts as such when it carries on the business of effecting or carrying out contracts of insurance.

(2) An insurance undertaking does not act as such when it enters into a reinsurance contract as a client of the reinsurer.

5 Client money: insurance mediation distribution activity

5.1 Application

Application

5.1.1 R (1) CASS 5.1 to CASS 5.6 apply, subject to (2), (3) and CASS 5.1.3R to CASS 5.1.6R, to a firm that receives or holds money in the course of or in connection with its insurance mediation activity insurance distribution activity.

(2) CASS 5.1 to CASS 5.6 do not, subject to (3), apply:

... to a firm in carrying on an insurance mediation activity which is in respect of a reinsurance contract, or [deleted]

... with respect to money held by a firm which:

(i) is an approved bank; and

(ii) has requisite capital under article 4(4)(b) 10(6)(b) of the Insurance Mediation Directive IDD;

... (3) A firm may elect to comply with:

(a) CASS 5.1 to CASS 5.6 in respect of client money which it receives in the course of carrying on insurance mediation activity in respect of reinsurance contracts; and [deleted]

(b) CASS 5.1, CASS 5.2 and CASS 5.4 to CASS 5.6 in respect of money which it receives in the course of carrying on an activity which would be insurance mediation activity insurance distribution activity, and which money would be client money, but for article 72D of the Regulated Activities Order (Large risks contracts where risk situated outside the EEA);

but the election must be in respect of all the firm’s business which consists of that activity.
Purpose

5.1.7 G (1) The rules in CASS 5.1 to CASS 5.6 also give effect to the requirement in article 4.4.10.6 of the Insurance Mediation Directive (IDD) that all necessary measures should be taken to protect clients against the inability of an insurance intermediary to transfer premiums to an insurance undertaking or to transfer the proceeds of a claim or premium refund to the insured.

(2) There are two particular approaches which firms can adopt which reflect options given in article 4.4.10.6 …

5.1.8 G Firms which carry on designated investment business which may, for example, involve them handling client money in respect of life assurance business should refer to the non-directive client money chapter which includes provisions enabling firms to elect to comply solely with that chapter or with the insurance client money chapter in respect of that business. Firms that also carry on MiFID or equivalent third country business may elect to comply solely with the MiFID client money chapter with respect of client money in respect of which the non-directive client money chapter or the insurance client money chapter apply. A firm which carries on MiFID business or designated investment business in relation to life assurance business may, in accordance with CASS 7.10.3R and in relation to that business only, either comply with CASS 7 or elect to comply with the insurance client money chapter.

5.2 Holding money as agent of an insurance undertaking

Requirement for written agreement before acting as agent of an insurance undertaking

5.2.3 R (1) A firm must not agree to:

(a) deal in investments as agent for an insurance undertaking in connection with insurance mediation an insurance distribution activity; or

…
5.8 Safe keeping of client’s documents and other assets

5.8.1 R Application

(1) CASS 5.8 applies to a firm (including in its capacity as trustee under CASS 5.4) which in the course of insurance mediation activity insurance distribution activity takes into its possession for safekeeping any client title documents (other than documents of no value) or other tangible assets belonging to clients.

(2) CASS 5.8 does not apply to a firm when:

(a) carrying on an insurance mediation activity insurance distribution activity which is in respect of a reinsurance contract, or

...

...

7 Client money rules

...

7.10 Application and purpose

...

‘Opt-outs’ for non-MiFID IDD business

7.10.11 G For a firm whose business is not governed by the Insurance Mediation Directive IDD, it is possible to ‘opt out’ on a one-way basis. However, in order to maintain a comparable regime to that applying to MiFID business, all ‘MiFID type’ business undertaken outside the scope of MiFID should comply with the client money rules or be ‘opted out’ on a two-way basis.

...

9 Information to clients

...

9.4 Information to clients concerning custody assets and client money

9.4.1 G (1) …

(2) COBS 6.1 (Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)) applies to a firm in relation to its designated investment business, other than MiFID, equivalent third country or optional exemption business or insurance distribution activities, for a retail client.
9.4.2A (1) Firms to which COBS 6.1ZA applies are reminded of the requirements under article 49 of the MiFID Org Regulation (which are directly applicable to some firms and which are also applied to firms in other circumstances under COBS 6.1ZA.3R) to provide certain information to a client when the firm is holding the client’s financial instruments or funds (see COBS 6.1ZA.9EU) and the requirement under COBS 6.1ZA.10AR when a firm doing insurance distribution activities is holding client money and has elected to comply with the client money chapter.

(2) COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions)) applies to a firm in relation to its MiFID, equivalent third country or optional exemption business or its insurance distribution activities for a client.

TP 1 Transitional Provisions

TP 1.1

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<td>Apply in relation to money (and where appropriate designated investments) held by a firm on 14 January 2005 (being money or designated investments to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such money (or designated investments) relate to business carried on before 14 January 2005 and which would, if conducted on or after 14 January 2005, be an</td>
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| **3A** | **CASS 5.1 to CASS 5.6** | **R** | **Indefinitely**
|   |   | **Apply in relation to money** (and where appropriate designated investments) held by a firm on 1 October 2018 (being money or designated investments to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such money (or designated investments) relate to business carried on before 1 October 2018 and which would, if conducted on or after 1 October 2018, be reinsurance distribution. | **1 October 2018** |
Annex N

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

After PROD 1.3 (Application of PROD 3) insert the following new section PROD 1.4. The text is not underlined.

1.4 Application of PROD 4

1.4.1 R PROD 4 applies to:

(1) an insurance intermediary; and

(2) an insurer,

with respect to:

(3) manufacturing insurance products; and

(4) distributing insurance products.

[Note: articles 1(2) and 25 of the IDD]

1.4.2 G In PROD an insurance product may be read as being a reference to the product for distribution to customers generally and is not intended to refer to each individual contract of insurance being sold or underwritten (unless the context indicates otherwise).

1.4.3 R PROD 4 does not apply in relation to the manufacturing or distributing of:

(1) a contract of large risks, or

(2) a reinsurance contract.

[Note: article 25(4) of the IDD]

When an intermediary may be considered to be manufacturing

1.4.4 EU 3(1) For the purposes of Article 25(1) of Directive (EU) 2016/97, insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.

3(2) A decision-making role shall be assumed, in particular, where insurance intermediaries autonomously determine the essential features and main elements of an insurance product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the
insurance undertaking providing coverage for the insurance product.

3(3) Personalisation of and adaptation of existing insurance products in the context of insurance distribution activities for individual customers, as well as the design of tailor-made contracts at the request of a single customer, shall not be considered manufacturing.

[Note: article 3 of the IDD POG Regulation]

1.4.5 G The effect of PROD 1.4.3EU and PROD 1.4.6R is that an insurance intermediary needs to consider if it is manufacturing an insurance product and, if so, should comply with PROD 4.2 (Manufacture of insurance products).

Effect of provisions marked “EU”

1.4.6 R (1) Subject to (2) and PROD 1.4.3R, provisions in this section and in PROD 4 marked “EU” apply to firms manufacturing or distributing insurance products, but to whom the IDD POG Regulation does not apply, as if they were rules.

(2) For the purposes of (1), a word or phrase used in the IDD POG Regulation and referred to in column (A) has the meaning indicated in Column (B) of the table below:

<table>
<thead>
<tr>
<th>(a)</th>
<th>(b)</th>
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<tbody>
<tr>
<td>“Article 17(1) of Directive (EU) 2016/97”</td>
<td>ICOBS 2.5.-1R, in relation to a non-investment insurance contract, or COBS 2.1.1R, in relation to a life policy</td>
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<td>“Article 25(1) of Directive (EU) 2016/97”</td>
<td>PROD 4.2.1R and PROD 4.2.2R</td>
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<td>“Article 8(2)”</td>
<td>PROD 4.2.30EU</td>
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<td>“competent authorities”</td>
<td>FCA</td>
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<td>“customer” and “potential customer”</td>
<td>customer</td>
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<td>“Directive (EU) 2016/97”</td>
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<td>“insurance-based investment products”</td>
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<td>“insurance distribution activities” and “distribution activities”</td>
<td>insurance distribution activities</td>
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<tr>
<td>“insurance distributor”</td>
<td>distributor</td>
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Where?

1.4.7 R  **PROD** 4 applies to a firm with respect to activities carried on from an establishment maintained by it, or its appointed representative, in the United Kingdom.

[Note: article 7(2) of the **IDD**]

EEA territorial scope rule: compatibility with European law

1.4.8 R  (1) The territorial scope of **PROD** 4 is modified to the extent necessary to be compatible with European law.

(2) This rule overrides every other rule in this sourcebook.

Electronic Commerce Directive: effect on territorial scope

1.4.9 G  The rules and guidance on the E-Commerce Directive in ICOBS 1 Annex 1, Part 3, paragraph 1.2R and Part 4 paragraph 8, and in COBS 1 Annex 1, Part 2, paragraph 1.2R and Part 3, paragraph 7, apply equally in relation to the rules in **PROD** 4.

Interaction of PROD 4 and the RPPD Guide

1.4.10 G  A firm to which **PROD** 4 applies need not apply the guidance in RPPD for matters covered by **PROD** if the firm has complied with **PROD** 4 (see also **PROD** 4.4.2G). **PROD** 4.4 includes guidance based on the RPPD which firms subject to **PROD** 4 should apply.

After **PROD** 3.3 (Distribution of products and investment services) insert the following new chapter **PROD** 4. The text is not underlined.
4 Product governance: IDD

4.1 General

Other requirements under the IDD

4.1.1 R This chapter does not affect the application of other requirements in the FCA Handbook applying to firms in relation to their insurance distribution activities including but not limited to:

(1) disclosure (ICOBS 2.2, ICOBS 6.1, COBS 4 and COBS 14.2);
(2) suitability (COBS 9 or 9A);
(3) appropriateness (COBS 10A);
(4) identification and management of conflicts of interest (SYSC 10.1 for intermediaries or SYSC 3.3 for insurers); and
(5) inducements (COBS 2.3A).

[Note: article 25(3) of the IDD]

4.2 Manufacture of insurance products

Product governance arrangements

4.2.1 R A firm which manufactures any insurance product must maintain, operate and review a process for the approval of:

(1) each insurance product; and
(2) significant adaptations of an existing insurance product,

in each case before it is marketed or distributed to customers.

[Note: first subparagraph of article 25(1) of the IDD]

4.2.2 R The product approval process referred to in PROD 4.2.1R must be proportionate and appropriate to the nature of the insurance product.

[Note: second subparagraph of article 25(1) of the IDD]

4.2.3 G Manufacturers should take into account the following when considering whether the product approval process is proportionate and appropriate:

(1) the complexity of the insurance product;
(2) the degree to which publicly available information can be obtained;
(3) the nature of the insurance product and the risk of consumer detriment related to it;
(4) the characteristics of the target market; and
(5) the scale and complexity of the relevant business of the manufacturer or distributor.

[Note: recital 2 to the IDD POG Regulation]

4.2.4 G For the purposes of PROD 4.2.2R proportionality means that the product approval process should be relatively simple for straightforward and non-complex products that are compatible with the needs and characteristics of the mass retail market. On the other hand, in the case of more complex products with a higher risk of consumer detriment more exacting measures should be required.

[Note: recital 2 to the IDD POG Regulation]

Product approval process

4.2.5 EU 4(1) Manufacturers shall maintain, operate and review a product approval process for newly developed insurance products and for significant adaptations of existing insurance products. That process shall contain measures and procedures for designing, monitoring, reviewing and distributing insurance products, as well as for corrective action for insurance products that are detrimental to customers. The measures and procedures shall be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the manufacturer.

[Note: article 4(1) of the IDD POG Regulation]

4.2.6 EU 4(2) The product approval process shall be set out in a written document ("product oversight and governance policy"), which shall be made available to the relevant staff.

[Note: article 4 (2) of the IDD POG Regulation]

4.2.7 EU 9 Relevant actions taken by manufacturers in relation to their product approval process shall be duly documented, kept for audit purposes and made available to the competent authorities upon request.

[Note: article 9 of the IDD POG Regulation]

4.2.8 EU 4(3) The product approval process shall

(a) ensure that the design of insurance products:
(i) takes into account the objectives, interests and characteristics of customers;

(ii) does not adversely affect customers;

(iii) prevents or mitigates customer detriment;

(b) support a proper management of conflicts of interest.

[Note: article 4(3) of the IDD POG Regulation]

4.2.9 4(4) The manufacturers’ body or structure responsible for the manufacturing of insurance products shall:

(a) endorse and be ultimately responsible for establishing, implementing and reviewing the product approval process;

(b) continuously verify internal compliance with that process.

[Note: article 4(4) of the IDD POG Regulation]

4.2.10 EU 5(4) Manufacturers shall ensure that staff involved in designing and manufacturing insurance products has the necessary skills, knowledge and expertise to properly understand the insurance products sold and the interests, objectives and characteristics of the customers belonging to the target market.

[Note: article 5(4) of the IDD POG Regulation]

4.2.11 EU 4(5) Manufacturers designating a third party to design products on their behalf shall remain fully responsible for compliance with the product approval process.

[Note: article 4(5) of the IDD POG Regulation]

4.2.12 EU 4(6) Manufacturers shall regularly review their product approval process to ensure that that process is still valid and up to date. They shall amend the product approval process where necessary.

[Note: article 4(6) of the IDD POG Regulation]

Manufacture by more than one firm

4.2.13 EU 3(4) An insurance intermediary and an insurance undertaking that are both manufacturers within the meaning of Article 2 of this Delegated Regulation, shall sign a written agreement which specifies their collaboration to comply with the requirements for manufacturers referred to in Article 25(1) of Directive (EU) 2016/97, the procedures through which they shall agree on the identification of the target market and their respective roles in the product approval process.
4.2.14 R In circumstances other than PROD 4.2.13EU, when firms collaborate to manufacture an insurance product, they must outline their mutual responsibilities in a written agreement.

Target market

4.2.15 R For each insurance product the product approval process must:

(1) specify an identified target market;

(2) ensure that all relevant risks to the identified target market are assessed;

(3) ensure that the intended distribution strategy is consistent with the identified target market; and

(4) require the manufacturer to take reasonable steps to ensure that the insurance product is distributed to the identified target market.

[Note: third subparagraph of article 25(1) of the IDD]

4.2.16 EU 5(1) The product approval process shall for each insurance product identify the target market and the group of compatible customers. The target market shall be identified at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the insurance product.

[Note: article 5(1) of the IDD POG Regulation]

4.2.17 EU 5(2) Manufacturers may, in particular with regard to insurance-based investment products, identify groups of customers for whose needs, characteristics and objectives the insurance product is generally not compatible.

[Note: article 5(2) of the IDD POG Regulation]

4.2.18 EU 5(3) Manufacturers shall only design and market insurance products that are compatible with the needs, characteristics and objectives of the customers belonging to the target market. When assessing whether an insurance product is compatible with a target market, manufacturers shall take into account the level of information available to the customers belonging to that target market and their financial literacy.

[Note: article 5(3) of the IDD POG Regulation]

4.2.19 G The identification of the target market by the manufacturer should be understood as describing a group of customers sharing common characteristics at an abstract and generalised level in order to enable the manufacturer to adapt the features of the product to the needs,
characteristics and objectives of that group of customers.

4.2.20 G The identification of the target market should be distinguished from the individual assessment at the point of sale to determine whether a product meets the demands and needs and, where applicable, whether an insurance-based investment product is suitable or appropriate for the individual customer.

[Note: recital 5 to the IDD POG Regulation]

4.2.21 G The level of granularity of the target market and the criteria used to define the target market and determine the appropriate distribution strategy should be relevant for the product and should make it possible to assess which customers fall within the target market. For simpler, more common products, the target market should be identified with less detail while for more complicated products or less common products, the target market should be identified with more detail taking into account the increased risk of consumer detriment associated with such products.

[Note: recital 6 to the IDD POG Regulation]

Product testing

4.2.22 EU 6(1) Manufacturers shall test their insurance products appropriately, including scenario analyses where relevant, before bringing that product to the market or significantly adapting it, or in case the target market has significantly changed. That product testing shall assess whether the insurance product over its lifetime meets the identified needs, objectives and characteristics of the target market.

Manufacturers shall test their insurance products in a qualitative manner and, depending on the type and nature of the insurance product and the related risk of detriment to customers, quantitative manner.

[Note: article 6(1) of the IDD POG Regulation]

4.2.23 G For the purposes of PROD 4.2.22EU, manufacturers should include assessments of the performance and risk/reward profile of their insurance product where appropriate.

[Note: recital 8 to the IDD POG Regulation]

4.2.24 EU 6(2) Manufacturers shall not bring insurance products to the market if the results of the product testing show that the products do not meet the identified needs, objectives and characteristics of the target market.

[Note: article 6(2) of the IDD POG Regulation]

4.2.25 R Manufacturers must consider the charging structure proposed for each insurance product, including examination of the following:
(1) whether the costs and charges of the insurance product are compatible with the needs, objectives and characteristics of the target market;

(2) where relevant, whether the charging structure of the insurance product is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand; and

(3) where relevant, whether the charges undermine the return expectations of the insurance product, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a life policy.

4.2.26 G (1) PROD 4.2.25R does not affect the manufacturer’s freedom to set premiums.

(2) In relation to a non-investment insurance contract a firm should consider whether, as a result of the charging structure it has put in place, the overall cost for the customer is consistent with its obligations under the Principles and ICOBS.

(3) PROD 4.2.25R should be read in light of a firm’s wider obligations under the Handbook which impose specific restrictions or requirements around what costs and charges may be permissible. For example, the rules in COBS 20.2 govern what may be charged to a with-profits policy when considering its charging structure under PROD 4.2.25R.

Distribution channels and information disclosure to distributors

4.2.27 EU 8(1) Manufacturers shall carefully select distribution channels that are appropriate for the target market, thereby taking into account the particular characteristics of the relevant insurance products.

[Note: article 8(1) of the IDD POG Regulation]

4.2.28 G To ensure appropriate information for customers, manufacturers should select distributors that have the necessary knowledge, expertise and competence to understand the features of an insurance product and the identified target market.

[Note: recital 9 to the IDD POG Regulation]

4.2.29 R A firm which manufactures an insurance product, must make available to a distributor:

(1) all appropriate information on the insurance product

(2) all appropriate information on the product approval process; and
(3) the identified target market of the insurance product.

[Note: fifth subparagraph of article 25(1) of the IDD]

4.2.30 EU 8(2) Manufacturers shall provide insurance distributors with all appropriate information on the insurance products, the identified target market and the suggested distribution strategy, including information on the main features and characteristics of the insurance products, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the customer. That information shall be clear, complete and up to date.

[Note: article 8(2) of the IDD POG Regulation]

4.2.31 EU 8(3) The information referred to in paragraph 2 shall enable the insurance distributors to:

(a) understand the insurance products;

(b) comprehend the identified target market for the insurance products;

(c) identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives;

(d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in Article 17(1) of Directive (EU) 2016/97.

[Note: article 8(3) of the IDD POG Regulation]

4.2.32 R (1) A manufacturer must make available to any distributor information about the target market assessment.

(2) The information made available under (1) must be of an adequate standard to enable distributors to:

(a) comprehend the identified target market for the insurance products; and

(b) be able to identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives.

(3) A manufacturer is not required to disclose specific information objectively considered to be commercially sensitive if the information it does make available would still allow distributors to meet (2)(a) and (b).
Monitoring and review of insurance products

4.2.33 R A firm must understand the insurance products it offers or markets.

[Note: fourth subparagraph of article 25(1) of the IDD]

4.2.34 R A firm must regularly review the insurance products it offers or markets taking into account any event that could materially affect the potential risk to the identified target market. In doing so, the firm must assess at least the following:

1. whether the insurance product remains consistent with the needs of the identified target market; and

2. whether the intended distribution strategy remains appropriate.

[Note: fourth subparagraph of article 25(1) of the IDD]

4.2.35 EU 7(1) Manufacturers shall continuously monitor and regularly review insurance products they have brought to the market, to identify events that could materially affect the main features, the risk coverage or the guarantees of those products. They shall assess whether the insurance products remain consistent with the needs, characteristics and objectives of the identified target market and whether those products are distributed to the target market or is reaching customers outside the target market.

[Note: article 7(1) of the IDD POG Regulation]

4.2.36 EU 7(2) Manufacturers shall determine the appropriate intervals for the regular review of their insurance products, thereby taking into account the size, scale, contractual duration and complexity of those insurance products, their respective distribution channels, and any relevant external factors such as changes to the applicable legal rules, technological developments, or changes to the market situation.

[Note: article 7(2) of the IDD POG Regulation]

4.2.37 EU 7(3) Manufacturers that identify during the lifetime of an insurance product any circumstances related to the insurance product that may adversely affect the customer of that product shall take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event. Manufacturers shall promptly inform concerned insurance distributors and customers about the remedial action taken.

[Note: article 7(3) of the IDD POG Regulation]

4.2.38 EU 8(4) Manufacturers shall take appropriate steps to monitor that insurance distributors act in accordance with the objectives of the manufacturers’ product approval process. They shall in particular
verify on a regular basis whether the insurance products are distributed on the identified target market. That monitoring obligation shall not extend to the general regulatory requirements with which insurance distributors have to comply when carrying out insurance distribution activities for individual customers. The monitoring activities shall be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.

[Note: article 8(4) of the IDD POG Regulation]

4.2.39 EU 8(5) Manufacturers considering that the distribution of their insurance products is not in accordance with the objectives of their product approval process shall take appropriate remedial action.

[Note: article 8(5) of the IDD POG Regulation]

4.3 Distribution of insurance products

4.3.1 R Where a firm distributes insurance products which it does not manufacture it must have in place adequate arrangements to obtain the information in PROD 4.2.29R from the manufacturer.

[Note: sixth sub-paragraph of article 25(1) of the IDD]

4.3.2 R Where a firm distributes insurance products which it does not manufacture, it must have in place adequate arrangements to understand:

(1) the characteristics of each insurance product; and

(2) the identified target market of each insurance product.

[Note: sixth sub-paragraph of article 25(1) of the IDD]

4.3.3 R A distributor must take all reasonable steps to obtain the information in PROD 4.2.29R when distributing insurance products manufactured by any person to which IDD manufacturer product governance requirements (PROD 4.2, equivalent requirements of another EEA State or directly applicable requirements of the IDD POG Regulation) do not apply.

4.3.4 G To comply with PROD 4.3.2R, distributors should put in place effective arrangements to ensure that they obtain sufficient, adequate and reliable information from the manufacturer about the insurance products to ensure that they will be distributed in accordance with the characteristics, objectives and needs of the target market.

4.3.5 EU 10(1) Insurance distributors shall have in place product distribution arrangements containing appropriate measures and procedures to obtain from the manufacturer all appropriate information on the insurance products they intend to offer to their customers and to
fully comprehend those insurance products, taking into account the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the distributor.

[Note: first sub-paragraph of article 10(1) of the IDD POG Regulation]

4.3.6 EU 10(2) The product distribution arrangements shall:

(a) aim to prevent and mitigate customer detriment;
(b) support a proper management of conflicts of interest;
(c) ensure that the objectives, interests and characteristics of customers are duly taken into account.

[Note: article 10(2) of the IDD POG Regulation]

4.3.7 EU 10(3) The product distribution arrangements shall ensure that the insurance distributors obtain from the manufacturer the information to be communicated under Article 8(2).

[Note: article 10(3) of the IDD POG Regulation]

4.3.8 EU 10(4) Any specific distribution strategy set up or applied by insurance distributors shall be in accordance with the distribution strategy set up and the target market identified by the manufacturer.

[Note: article 10(4) of the IDD POG Regulation]

4.3.9 EU 10(5) The insurance distributors’ body or structure responsible for insurance distribution shall endorse and be ultimately responsible for establishing, implementing and reviewing the product distribution arrangements and continuously verify internal compliance with those arrangements.

[Note: article 10(5) of the IDD POG Regulation]

4.3.10 EU 10(6) Insurance distributors shall regularly review their product distribution arrangements to ensure that those arrangements are still valid and up to date. They shall amend product distribution arrangements where appropriate. Insurance distributors that have set up or apply a specific distribution strategy shall, where appropriate, amend that strategy in view of the outcome of the review of the product distribution arrangements. When reviewing their product distribution arrangements, insurance distributors shall verify that the insurance products are distributed to the identified target market. Insurance distributors shall determine the appropriate intervals for the regular review of their product distribution arrangements, thereby taking into account the size, scale and complexity of the different insurance products involved.
To support product reviews carried out by manufacturers, insurance distributors shall upon request provide manufacturers with relevant sales information, including, where appropriate, information on the regular reviews of the product distribution arrangements.

[Note: article 10(6) of the IDD POG Regulation]

4.3.11 EU 11 Insurance distributors becoming aware that an insurance product is not in line with the interests, objectives and characteristics of its identified target market or becoming aware of other product-related circumstances that may adversely affect the customer shall promptly inform the manufacturer and, where appropriate, amend their distribution strategy for that insurance product.

[Note: article 11 of the IDD POG Regulation]

4.3.12 G Manufacturers and distributors should take appropriate action in order to avert the risk of consumer detriment when they consider that the insurance product is not, or is no longer, aligned with the interests, objectives and characteristics of the identified target market.

[Note: recital 12 to the IDD POG Regulation]

4.3.13 EU 12 Relevant actions taken by insurance distributors in relation to their product distribution arrangements shall be duly documented, kept for audit purposes and made available to the competent authorities upon request.

[Note: article 12 of the IDD POG Regulation]

4.3.14 EU 10(1) Insurance distributors shall set out the product distribution arrangements in a written document and make it available to their relevant staff.

[Note: second sub-paragraph of article 10(1) of the IDD POG Regulation]

4.4 Additional expectations for manufacturers and distributors of insurance products

4.4.1 G In addition to PROD 4.1, PROD 4.2 and PROD 4.3, firms should also consider what needs to be done to comply with obligations found elsewhere in the FCA Handbook, including under the Principles and in SYSC. In considering this firms should consider any relevant guidance.

4.4.2 G PROD 1.4.10G provides that, where PROD 4 applies, a firm need not apply the guidance in RPPD for matters covered by PROD, if that firm has complied with PROD 4. However, PROD 4 and the IDD POG Regulation does not cover all parts of the RPPD or wider obligations in the FCA Handbook and the following guidance, some of which is reproduced from
the RPPD, remains relevant.

4.4.3 G Manufacturers should consider whether the design of an insurance product is driven by features that benefit the customer and not by a business model which relies on poor customer outcomes to be profitable.

4.4.4 G When providing information to distributors, a manufacturer should:

(1) make it clear if that information is not intended for customer use;

(2) ensure the information is sufficient, appropriate and comprehensible in substance and form, including considering whether it will enable distributors to understand it enough to give suitable advice (where advice is given) and to extract any relevant information and communicate it to the end customer. As part of meeting this standard, the manufacturer may wish to consider, with regard to each distribution channel or type of distributor what information distributors of that type already have, their likely level of knowledge and understanding, their information needs and what form or medium would best meet those needs (which could include discussions, written material or training as appropriate).

4.4.5 G When reviewing the insurance products it manufactures, a firm should communicate to the customer and/or distributor contractual “breakpoints” such as the end of a long tie-in period that may have a material impact on a customer that the customer cannot reasonably be expected to recall or know about already.

4.4.6 G Manufacturers should act fairly and promptly when handling claims or when paying out on an insurance product that has been surrendered or reached maturity. In doing this, the manufacturer should meet any reasonable customer expectations that it may have created with regard to the outcomes or how the process would be handled.

4.4.7 G In ensuring that they have obtained sufficient information about the insurance products they distribute and in ensuring they understand the insurance products distributed, distributors:

(1) should consider whether they understand the materials provided by the manufacturer or distributor earlier in the sales chain;

(2) should ask the manufacturer to supply additional information or training where this seems necessary to understand the insurance product adequately;

(3) should not distribute the insurance product if they do not understand it sufficiently; and

(4) when providing information to another distributor in a distribution chain, should consider how the further distributor will use the information, such as whether it will be given to customers. Firms should consider what information the further distributor requires
and the likely level of knowledge and understanding of the further *distributor* and what medium may suit it best for the transmission of information.
Annex O

Amendments to the Supervision manual (SUP)

Part 1: Handbook changes

In this Annex, underlining indicates new text and strikethrough indicates deleted text, unless otherwise stated.

For “Insurance Mediation Directive”, substitute “IDD” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

| 11.8.1R(4) | one instance |

For “IMD”, substitute “IDD” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

| 11.8.1R(4) | one instance |

For “mediation”, substitute “distribution” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

| 10A.1.16R(2)(a) | one instance |
| 10A.1.18R(5) | one instance |
| 10A.6.5G | one instance |
| 10A.7.5G | two instances |
| 10A.7.6G | two instances |
| 10A.9.14G | two instances |
| 10A.9.15G | two instances |
| 10C.5.7G heading | one instance |
| 10C.5.7G | one instance |

Amend the following as shown.

3 Auditors

3.1 Application

... 

3.1.2 R Applicable sections (see SUP 3.1.1R)

<table>
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<tr>
<th>(1) Category of firm</th>
<th>(2) Sections applicable to the firm</th>
<th>(3) Sections applicable to its auditor</th>
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<td>(10)</td>
<td><em>Insurance intermediary</em> (other than an <em>exempt insurance intermediary</em>) to which the <em>insurance client money chapter</em> (except for CASS 5.2 (Holding money as agent)) applies (see Note 4)</td>
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Note 4 = The *client money* audit requirement in *SUP 3.1.2R(10)* therefore applies to all *insurance intermediaries* except:

- those which do not hold *client money* or other client assets in relation to *insurance mediation activities insurance distribution activities*; or
- those which only hold up to, but not exceeding, £30,000 of *client money* under a statutory trust arising under *CASS 5.3*.

*Insurance intermediaries* which, in relation to *insurance mediation activities insurance distribution activities*, hold no more than that amount of *client money* only on a statutory trust are *exempt insurance intermediaries*.

…

### 12 Appointed representatives

…

### 12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?
Appointed representative carrying on insurance mediation distribution

Good repute

12.4.8A R Before a firm appoints a person as an appointed representative to carry on insurance mediation activity insurance distribution activity, it must in relation to insurance mediation activity insurance distribution activity ensure that the person will comply on appointment, and will continue to comply with, the provisions of MIPRU 2.3.1R and MIPRU 2.3.3R (Knowledge and ability, and good repute) SYSC 28.3 (Good repute) as if the appointed representative were a firm.

[Note: article 10(3) of the IDD]

12.4.8A A R A firm that has appointed an appointed representative to carry on insurance distribution activity must ensure that the appointed representative:

(1) establishes, maintains and keeps appropriate records to demonstrate compliance with SYSC 28.3 (Good repute); and

(2) provides the name of the person responsible for the record-keeping requirement in (1) to the firm.

Knowledge and ability requirements

12.4.8A G SYSC 28.1 (Minimum knowledge and ability requirements for carrying out insurance distribution activities), SYSC 28.2 (Knowledge and ability requirements) and SYSC 28.4 (Record-keeping requirements) apply in relation to a firm’s relevant employees. This includes its appointed representatives and their employees.

[Note: articles 10(1), 10(2) and last paragraph of article 10(8) of the IDD]

12.4.8B G In assessing, under SUP 12.4.8AR, whether an appointed representative, or prospective appointed representative, has established the knowledge and ability requirements for persons within its management structure and for those directly involved in its insurance distribution activity, a firm should refer to TC. [deleted]

Close links

12.4.8C R Before a firm appoints an appointed representative who does not already appear on the Financial Services Register ("A") to carry on insurance distribution activity, it must obtain from A the following information:

(1) the identities of shareholders or members, whether natural or legal persons, that have a holding in A that exceeds 10% and the amount of those holdings:
(2) the identities of persons who have close links with A; and

(3) that those holdings or close links do not prevent the effective supervision of A by the firm.

[Note: article 3(6) of the IDD]

12.4.9 G (1) An appointed representative must not commence an insurance mediation activity insurance distribution activity until he is they are included on the Financial Services Register as carrying on such activities (see SUP 12.5.2G(3)).

(2) If an appointed representative’s scope of appointment is to include an insurance mediation activity insurance distribution activity, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see SUP 12.7.1R(1)).

(3) As an exception, pre-notification is not required if the appointed representative is already included on the Financial Services Register as carrying on insurance mediation activities insurance distribution activities in another capacity (for example, as the appointed representative of another principal).

12.4.10 G (1) The FCA has the power to decide not to include on the Financial Services Register (or to remove from the Financial Services Register) an appointed representative whose scope of appointment includes an insurance mediation activity insurance distribution activity, if it appears to the FCA that he is not a fit and proper person to carry on those activities (article 95 of the Regulated Activities Order).

...  

12.5 Contracts: required terms

...  

12.5.2 G ...  

(3) If the scope of appointment covers, in relation to a contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments, regulation 3(4) of the Appointed Representatives Regulations makes it a requirement that the contract between the firm and the appointed representative contains a provision providing that the appointed representative is not permitted or required to carry on such business unless included in the Financial Services Register as carrying on insurance mediation activities insurance distribution activities.
12.5.10 R …

Required contract terms for appointed representatives carrying on insurance distribution activity

12.5.11 R A firm must ensure that, if appointing an appointed representative to carry on insurance distribution activity, its written contract requires the appointed representative to inform the firm of any change to the information obtained by the firm from the appointed representative in accordance with SUP 12.4.8CR.

[Note: second paragraph of article 3(6) of the IDD]

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

…

Obligations of firms under the approved persons regime

12.6.8 G (1) Some of the controlled functions, as set out in SUP 10A.4.1R, apply to an appointed representative of a firm, other than an introducer appointed representative, just as they apply to a firm (see SUP 10A.1.15R). These are the governing functions and the customer function. In the case of an appointed representative that also has a limited permission, an FCA required function may apply to it. As explained in SUP 10A.1.16R and SUP 10A.3.2G respectively:

…

(b) although the customer function applies to an appointed representative, the descriptions of the functions themselves do not extend to home finance mediation activity, insurance mediation activity, insurance distribution activity or credit-related regulated activity;

…

(2) The approved persons regime applies differently to an appointed representative whose scope of appointment includes insurance mediation activity, insurance distribution activity in relation to non-investment insurance contracts or credit-related regulated activity but no other regulated activity and whose principal purpose is to carry on activities other than regulated activities. These appointed representatives need only one person performing one of the governing functions. This means that only one director (or equivalent) of these appointed representatives must be approved
under section 59 of the *Act* for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see *SUP* 10A.1.16R).

...

Obligations of firms under the training and competence rules

12.6.10 G (1) The *rules* and *guidance* relating to training and competence in SYSC 3 and SYSC 5 and in *TC* for a *firm* carrying on retail business extend to any *employee* of the *firm* in respect of whom the relevant *rules* apply. For these purposes, an *employee* of a *firm* includes:

(2) The specific knowledge and ability requirements in SYSC 28.2 and *TC* 4.2 for a *firm* with *Part 4A permission* to carry on *insurance distribution activities* apply to a relevant employee (as defined in SYSC 28.1.2R and *TC* 4.2.3R) of the *firm*.

(3) For the purposes of (1) and (2), an *employee* or a relevant employee of a *firm* includes an individual who is:

(1) an individual who is an *appointed representative* of a *firm*; and

(a)

(2) an individual who is employed or appointed by an *appointed representative* of a *firm* (whether under a contract of service or for services) in connection with the business of the *appointed representative* for which the *firm* has accepted responsibility.

...

12.6.11 G A *firm* should take reasonable care to ensure that:

(1) it has satisfied:

(a) SYSC 3 or SYSC 4 to 9 and where applicable, SYSC 28.2; and

(b) *TC*;

in respect of the relevant staff of the *appointed representative*; and

(2) ...

...

12.7 Notification requirements

Notification of appointment of an appointed representative
12.7.1 R (1) This rule applies to a firm which intends to appoint:

(a) an appointed representative to carry on insurance mediation activities insurance distribution activities; or

... 

...

12.7.2 G A firm's notice under SUP 12.7.1R should give details of the appointed representative and the regulated activities which the firm is, or intends to, carry on through the appointed representative, including:

... 

(4) any restrictions imposed on the regulated activities for which the firm has accepted responsibility; and

(5) where the appointed representative is not an individual, the name of the individuals who are responsible for the management of the business carried on by the appointed representative so far as it relates to insurance mediation activity insurance distribution activity.

...

Notification of changes in information given to the FCA

12.7.7 R (1) If:

(a)

(i) the scope of appointment of an appointed representative is extended to cover insurance mediation activities insurance distribution activities for the first time; and

(ii) the appointed representative is not included on the Financial Services Register as carrying on insurance mediation activities insurance distribution activities in another capacity; or

(b) the scope of appointment of an appointed representative ceases to include insurance mediation activity insurance distribution activity:

the appointed representative's principal must give written notice to the FCA of that change before the appointed representative begins to carry on insurance mediation activities insurance distribution activities under the contract (see SUP 12.4) or as soon as the scope of appointment of the appointed representative ceases to include
12.8 Termination of a relationship with an appointed representative or EEA tied agent

... Removal of an appointed representative from the Register

12.8.5 The FCA has the power to remove from the Financial Services Register an appointed representative, whose scope of appointment covers insurance mediation activities insurance distribution activities (see SUP 12.4.9G and SUP 12.4.10G).

13 Exercise of passport rights by UK firms

13.3 Establishing a branch in another EEA State

The conditions for establishing a branch

13.3.2 A UK firm cannot establish a branch in another EEA State for the first time under an EEA right unless the relevant conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the Act are satisfied. It is an offence for a UK firm which is not an authorised person to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). These conditions are that:

... (3) (a) if the UK firm’s EEA right derives from the Insurance Mediation Directive or the MCD, one month has elapsed beginning on the date on which the UK firm received notice that the appropriate UK regulator had given a consent notice as described in SUP 13.3.6G(1) (see SUP 13.3.2AG);

(aa) if the UK firm’s EEA right derives from the IDD, either:

(i) the Host State regulator has notified the appropriate UK regulator of the applicable provisions; or

(ii) one month has elapsed beginning with the date on which the appropriate UK regulator gave the consent notice as described in SUP 13.3.5G(2);
If the UK firm is passporting under the Insurance Mediation Directive and the EEA State in which the UK firm is seeking to establish a branch has not notified the European Commission of its wish to be informed of the intention of persons to establish a branch in its territory in accordance with article 6(2) of that directive, SUP 13.3.2G(2) and SUP 13.3.2G(3) do not apply. Accordingly, the UK firm may establish the branch to which its notice of intention relates as soon as the conditions referred to in SUP 13.3.2G(1) are satisfied. The list of EEA States that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the Insurance Mediation Directive is published on the FCA’s website at www.fca.org.uk. [deleted]

An appointed representative appointed by a firm to carry on insurance mediation activity insurance distribution activity on its behalf may establish a branch in another EEA State under the Insurance Mediation Directive IDD. In this case, the notice of intention in SUP 13.3.2G(1) should be given to the appropriate UK regulator by the firm on behalf of the appointed representative.

An exempt professional firm which is included in the record of unauthorised persons carrying on insurance mediation activity insurance distribution activity maintained by the FCA under article 93 of the Regulated Activities Order may establish a branch in another EEA State under the Insurance Mediation Directive IDD (see PROF 7.2).

If the UK firm’s EEA right derives from the Insurance Mediation Directive IDD and SUP 13.3.2G(2) applies, the appropriate UK regulator will give the Host State regulator a consent notice within one month of the date on which it received the UK firm’s notice of intention unless it has reason to doubt the adequacy of the UK firm’s resources or its administrative structure. In cases where SUP 13.3.2G(2) does not apply (see SUP 13.3.2AG), the UK firm may establish a branch as soon as it satisfies the conditions referred to in SUP 13.3.2G. The Host State regulator then has a further one month to notify the applicable provisions.

If Save where (1A) applies, if the appropriate UK regulator gives a consent notice, it will inform the UK firm in writing that it has done so.
(1A) If the UK firm’s EEA right derives from the IDD, where the appropriate UK regulator has given a consent notice and the Host State regulator has acknowledged receipt of that notice, the appropriate UK regulator must give written notice to the UK firm concerned that the Host State regulator has received the consent notice.

…

(6) Where a consent notice is given under the IDD, it will include the following information:

(a) the name, address and, where applicable, the registration number of the insurance intermediary;

(b) the EEA State within the territory of which the insurance intermediary plans to establish a branch;

(c) the category of insurance intermediary and, if applicable, the name of the insurer represented;

(d) the relevant classes of insurance, if applicable;

(e) the address within the Host State from which documents may be obtained; and

(f) the name of any person responsible for the management of the branch.

13.3.7 G …

(2) If the appropriate UK regulator decides to refuse to give a consent notice, then paragraph 19(12) of Part III of Schedule 3 to the Act requires the appropriate UK regulator to give the UK firm a decision notice within three months of the date on which it received the UK firm’s notice of intention (two months in the case of a UK firm which is a UCITS management company or an AIFM and one month in the case of a UK firm which is an insurance intermediary). The UK firm may refer the matter to the Tribunal.

…

13.4 Providing cross border services into another EEA State

…

The conditions for providing cross border services into another EEA State

13.4.2 G A UK firm or an AIFM exercising an EEA right to market an AIF under AIFMD, cannot start providing cross border services into another EEA
State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from AIFMD, MiFID or the UCITS Directive, paragraph 20(4B) of Part III of Schedule 3 to the Act. If a UK firm derives its EEA right from the MCD, it cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and paragraph 20(4BB) of Part III of Schedule 3 to the Act. It is an offence for a UK firm which is not an authorised person to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). The conditions are that:

... 

(3) if the UK firm is passporting under the Insurance Mediation Directive IDD, and the EEA State in which the UK firm is seeking to provide services has notified the European Commission of its wish to be informed of the intention of persons to provide cross border services in its territory in accordance with article 6(2) of that directive, one month has elapsed beginning with the date on which the UK firm has received written notice from the appropriate UK regulator as described in SUP 13.4.5G SUP 13.4.5AG (paragraph 20(3B)(c) (b) of Schedule 3 to the Act); or

... 

13.4.2A G An appointed representative appointed by a firm to carry on insurance mediation activity insurance distribution activity on its behalf may provide cross border services in another EEA State under the Insurance Mediation Directive IDD. In this case, the notice of intention in SUP 13.4.2G(1) should be given to the appropriate UK regulator by the firm on behalf of the appointed representative.

13.4.2B G An exempt professional firm which is included in the record of unauthorised persons carrying on insurance mediation activity insurance distribution activity maintained by the FCA under article 93 of the Regulated Activities Order may provide cross border services in another EEA State under the Insurance Mediation Directive IDD (see PROF 7.2).

... 

Issuing a consent notice or notifying the Host State regulator

13.4.4 G ... 

(2A) (a) If the UK firm’s EEA right derives from the Insurance Mediation Directive, and the EEA State in which the UK firm is seeking to provide services has notified the European Commission of its wish to be informed of the intention of persons to provide cross border services in its territory in accordance with article 6(2) of that directive, IDD, paragraph 20(3B)(a) of Part III of Schedule 3 to the Act requires the
appropriate UK regulator to send a copy of the notice of intention to the Host State regulator within one month of receipt. Otherwise, the UK firm may start providing cross border services as soon as it satisfies the relevant conditions (see SUP 13.4.2G).

(b) The list of the EEA States that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the Insurance Mediation Directive is published on the FCA's website at www.fca.org.uk.

…

13.4.5 G When Save where SUP 13.4.5AG applies, when the appropriate UK regulator sends a copy of a notice of intention, or if it gives a consent notice to the Host State regulator, it must inform the UK firm in writing that it has done so (paragraphs 20(3B)(b), 20(3D)(a)(iii) and (4) and 20C(9) of Schedule 3 to the Act).

13.4.5A G If a UK firm’s EEA right derives from the IDD, when the Host State regulator has acknowledged receipt of the copy of the notice of intention, the appropriate UK regulator must:

(a) inform the UK firm in writing that the Host State regulator has received the notice of intention and that the firm may begin providing the services to which the notice of intention relates; and

(b) notify the firm of the applicable provisions (if any).

[Note: paragraph 20 (3B)(b) of Schedule 3 to the Act]

…

13.5 Notices of intention

…

Specified contents: notice of intention to provide cross border services

13.5.2 R A UK firm wishing to provide cross border services into a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice in the form set out in:

…

(3) SUP 13 Annex 5R if the UK firm is passporting under the Insurance Mediation Directive IDD

…
13.6 Changes to branches

13.6.1 G (1) Where a UK firm is exercising an EEA right, other than under the Insurance Mediation Directive (see SUP 13.6.9AG) or the CRD, and has established a branch in another EEA State, any changes to the details of the branch are governed by the EEA Passport Rights Regulations.

...  

Firms passporting under the Insurance Mediation Directive IDD

13.6.9A G A UK firm exercising its EEA right under the Insurance Mediation Directive to establish a branch in another EEA State is not required to supply a change to the details of branches notice.

(1) If a UK firm has exercised an EEA right under the IDD and established a branch in another EEA State, the UK firm must not make any material change to the relevant details of the branch (see SUP 13 Annex 1R), unless it has satisfied the requirements in regulation 17(C)(2).

(2) The requirements in regulation 17(C)(2) are that:

(a) the UK firm has given a notice to the appropriate UK regulator stating the details of the proposed change; and

(b) the period of one month, beginning with the date on which the UK firm gave the notice, has elapsed.

...  

Changes arising from circumstances beyond the control of a UK firm

13.6.10 G ...  

(3) This guidance is not applicable to MiFID investment firms, firms passporting under the MCD or IDD or AIFMs.

The process

13.6.11 G When the appropriate UK regulator receives a notice from a UK firm other than a MiFID investment firm (see SUP 13.6.5G(1) and SUP 13.6.7G(1)), a UK firm exercising an EEA right under the MCD (see SUP 13.6.9DG), a UK firm exercising an EEA right under the IDD (see SUP 13.6.9AG) or an AIFM (see SUP 13.6.9CG) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one month from
the day on which it received the notice.

...

The process: the IDD

13.6.20 G (1) When the **appropriate UK regulator** receives a notice from a **UK firm exercising an EEA right** under the **IDD** it will, under regulation 17(C)(3), inform the **Host State regulator** of the proposed change as soon as reasonably practicable, and in any event, within one **month** of receiving the notice from the **UK firm**.

(2) The **UK firm** may make the change once a period of one **month** has elapsed beginning with the **day** on which it gave notice.

13.7 Changes to cross border services

13.7.1 G (1) Where a **UK firm** is exercising an **EEA right** under the **UCITS Directive, MiFID, the Insurance Directives, or AIFMD or the IDD** and is providing **cross border services** into another **EEA State**, any changes to the details of the services are governed by the **EEA Passport Rights Regulations**.

...
13.8 Changes of details: provision of notices to the appropriate UK regulator

13.8.1 R (1) A firm must complete and submit the following notices in accordance with the procedures in SUP 13.5 for notifying the establishment of a branch or the provision of cross border services:

(a) a notice of a change to a branch or a tied agent referred to in SUP 13.6.5G(1), SUP 13.6.5BG(1), SUP 13.6.5DG, SUP 13.6.5EG, SUP 13.6.5FG, SUP 13.6.7G(1), SUP 13.6.8G, SUP 13.6.9AG, SUP 13.6.9BR, SUP 13.6.9CG, 13.6.9DG and SUP 13.6.10G(1); or

(b) a notice of change to cross border services referred to in SUP 13.7.3G(1), SUP 13.7.3AG(1), SUP 13.7.3DG, SUP 13.7.3EG, SUP 13.7.3GR, SUP 13.7.5G(1), SUP 13.7.6G, SUP 13.7.11AG, SUP 13.7.13BG, SUP 13.7.14G and SUP 13.7.15G.

After SUP 13.11 (Record keeping) insert the following new section SUP 13.11A. The text is not underlined.

13.11A Enhanced supervision of UK firms exercising rights under the IDD

13.11A. G (1) Under article 7(2) of the IDD, ensuring compliance with the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance-based investment products) of the IDD by a UK firm exercising an EEA right under the IDD to establish a branch is the responsibility of the Host State. Ensuring compliance with all other obligations is the responsibility of the UK. Ensuring compliance with the obligations in the IDD by UK firms providing cross border services is the responsibility of the UK.

(2) However, article 7(1) of the IDD provides that responsibility for compliance can be altered in a particular situation. That is where an IDD insurance intermediary’s primary place of business is located in a Host State. In that case, the Home State and Host State regulators may agree that the Host State regulator will act as the Home State regulator in relation to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance-based investment products) and VII (Sanctions and other measures) of the IDD.

13.11A. G If a UK firm is exercising an EEA right derived from the IDD in a Host...
State which is its primary place of business, the FCA can enter into a special agreement with the Host State regulator. The agreement can subject the UK firm to enhanced supervision by the Host State regulator. Section 203B of the Act enables the FCA’s ability to enter into this sort of agreement (an “Article 7(1) Agreement”).

Amend the following as shown.

13A Qualifying for authorisation under the Act

13A.1 Application and purpose

...  

13A.1.3 G (1) Under the Gibraltar Order made under section 409 of the Act, a Gibraltar firm is treated as an EEA firm under Schedule 3 to the Act if it is:

...  

(c) authorised in Gibraltar under the Insurance Mediation Directive IDD; or

...  

...  

13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

13A.4.1 G (1) Before an EEA firm (other than an EEA pure reinsurer or an EEA firm that has received authorisation under article 18 of the auction regulation) exercises an EEA right to establish a branch in the United Kingdom other than under the Insurance Mediation Directive, the Act requires it to satisfy the establishment conditions, as set out in paragraph 13(1) of Part II of Schedule 3 to the Act.

...  

13A.4.2 G Where an EEA firm exercises its EEA right to establish a branch in the United Kingdom under the Insurance Mediation Directive, the Act requires it to satisfy the establishment conditions, as set out in paragraph 13(1A) of Part II of Schedule 3 to the Act. [deleted]
The notification procedure

13A.4.4 G 

(2) Although the appropriate UK regulator is not required to notify the applicable provisions to an EEA firm passporting under the Insurance Mediation Directive, MIFID or AIFMD, these provisions are set out in SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).

13A.4.4 G

When the appropriate UK regulator receives a consent notice from the EEA firm’s Home State regulator in respect of an EEA firm within paragraph 5(e) of Part I of Schedule 3 to the Act, it will, under paragraph 13(3C):

(1) acknowledge receipt; and

(2) notify the EEA firm’s Home State regulator of the applicable provisions (if any),

before the end of the period of one month beginning with the day on which the appropriate UK regulator received the consent notice.

13A.5 EEA firms providing cross border services into the United Kingdom

The notification procedure

13A.5.4 G 

(1) Unless the EEA firm (other than an EEA firm that received authorisation under article 18 of the auction regulation) is passporting under the Insurance Mediation Directive IDD, if the appropriate UK regulator receives a regulator’s notice or, where no notice is required, is informed of the EEA firm’s intention to provide cross border services into the United Kingdom, the appropriate UK regulator will, under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the Act, notify the EEA firm of the applicable provisions (if any) within two months of the day on which the appropriate UK regulator received the regulator’s notice or was informed of the EEA firm’s intention.

(1A) When the FCA receives a regulator’s notice from the EEA firm’s Home State regulator that the EEA firm intends to exercise its EEA right to provide cross border services under the IDD, it will, under paragraph 14(3AZA) of Part II to Schedule 3 to the Act:
(a) acknowledge receipt; and

(b) notify the EEA firm’s Home State regulator of the applicable provisions (if any).

(2) Although the appropriate UK regulator is not required to notify the applicable provisions to an EEA Firm passporting under the Insurance Mediation Directive, MIFID or AIFMD these provisions are set out in SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).

…

13A.6 Which rules will an incoming EEA firm be subject to?

13A.6.2 G An incoming EEA firm (other than an EEA pure reinsurer or an EEA firm that has received authorisation under article 18 of the auction regulation and only provides services in the United Kingdom) or incoming Treaty firm carrying on business in the United Kingdom must comply with the applicable provisions (see SUP 13A.4.4G, SUP 13A.4.4-BG, SUP 13A.4.6G, and SUP 13A.5.4G) and other relevant UK legislation. For example where the business includes:

…

After SUP 13A.6 (Which rules will an incoming EEA firm be subject to?) insert the following new section SUP 13A.6A. The text is not underlined.

13A.6A Enhanced supervision of EEA firms passporting under the IDD

13A.6A. G (1) The split of responsibility (between Home and Host States) for ensuring compliance with IDD requirements is as follows.

(a) For incoming EEA branches:

(i) the Host State is responsible in relation to the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance-based investment products) (see article 7(2) of the IDD); and

(ii) the Home State is responsible in relation to all other obligations.
(b) For EEA firms providing cross border services, the Home State is responsible in relation to all IDD obligations.

(2) However, under article 7(1) of the IDD, if an IDD insurance intermediary’s primary place of business is in a Host State, the Host and Home State regulators may agree that the Host State regulator will act as if it were the Home State regulator with regard to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance-based investment products) and VII (Sanctions and other measures) of the IDD. This sort of Home and Host State regulator agreement is referred to as an Article 7(1) IDD Agreement.

13A.6A. G Where the FCA is a Host State regulator it may enter into an article 7(1) IDD Agreement in respect of an incoming EEA firm. The FCA is given this power by section 203A of the Act subject to the conditions set out in that section. If the FCA enters into such an agreement, the EEA firm will be subject to enhanced supervision by the FCA to the extent specified in the agreement.

Amend the following as shown.

13A Application of the Handbook to Incoming EEA Firms
Annex 1G

<table>
<thead>
<tr>
<th>(1) Module of Handbook</th>
<th>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
<th>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC</td>
<td>…</td>
<td>SYSC 19A, 19B, 19C do not</td>
</tr>
<tr>
<td>SYSC 19A, 19B, 19C, 19D and 19E and</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>
SYSC 19F applies to a *MiFID investment firm* unless it is a *UCITS investment firm* or an *AIFM investment firm*.

SYSC 19F.2 applies to insurance *distribution activities* carried on from an establishment in the United Kingdom.

SYSC 28 does not apply.

**MIPRU**

*MIPRU 2 (Responsibility for insurance mediation activity distribution and MCD credit intermediation) does not apply unless the firm has a top-up permission.*

*MIPRU 5 (Insurance undertakings distributors and mortgage lenders home finance providers using insurance distribution or mortgage home finance mediation services) does not apply unless the firm has a top-up permission.*

**SUP**

*SUP 12 (Appointed representatives) Applies only if the firm has permission to carry on designated investment business, insurance mediation distribution activity or*
mortgage mediation activity and wishes to appoint, or has appointed, an appointed representative (SUP 12.1.1R(1)).

| ... | COMP | Applies, except in relation to the passported activities of a MiFID investment firm, an IMD IDD insurance intermediary, a UCITS management company carrying on non-core services under article 6.3 of the UCITS Directive, an MCD mortgage credit intermediary and an incoming AIFM carrying on either AIFM management functions for an unauthorised AIF or non-core services under article 6.4 of AIFMD (see the definition of “participant firm”). However, a firm specified above may be able to apply for top-up cover in relation to its passported activities (see COMP 14 (Participation by EEA Firms)). |
| --- | --- | Does not apply in relation to the passported activities of a MiFID investment firm, an IMD IDD insurance intermediary, an MCD mortgage credit intermediary or a UCITS management company carrying on non-core services under article 6.3 of the UCITS Directive or an incoming EEA AIFM regarding AIFM management functions carried on for an unauthorised AIF or non-core services under article 6.4. Applies in relation to the passported activities of a UCITS management company in relation to the management of a UCITS scheme and of an AIFM in relation to the management of an authorised AIF. Otherwise, COMP may apply, but the coverage of the compensation scheme is limited for non-UK activities (see COMP 5). |

13A Matters reserved to a Home State regulator
Annex 2G

Requirements in the interest of the general good

2. The Single Market Directives and the Treaty (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the Home State regulator. To summarise, the FCA or PRA, as Host State regulator, is entitled to impose requirements with respect to activities carried on within the United Kingdom if these can be justified in the interests of the “general good” and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the Single Market Directives:
the Single Market Directives expressly reserve responsibility for the prudential supervision of a MiFID investment firm, CRD credit institution, UCITS management company, AIFM or passporting Solvency II firm to the Firm’s Home State regulator in respect of prudential matters within the scope of the respective Single Market Directives. The Insurance Mediation Directive IDD and the MCD reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the FCA, as Host State regulator, is entitled to regulate only the conduct of the firm’s business (in the case of the IDD, business conducted through a branch) within the United Kingdom;

Requirements under the MCD

...  

11M ...

Requirements under the IDD

11N Under article 7(2) of the IDD, ensuring compliance with the obligations in Chapter V (articles 17 – 25) and Chapter VI (articles 27 – 30) of the IDD by incoming EEA branches is the responsibility of the Host State. Subject to article 7(1) (see 11P below), ensuring compliance with all other obligations is the responsibility of the Home State.

11O Subject to article 7(1) (see 11P below), ensuring compliance with the obligations in the IDD by EEA firms providing cross border services is the responsibility of the Home State.

11P Under article 7(1) of the IDD, if an IDD insurance intermediary’s primary place of business is in a Host State, the Home and Host State regulators may agree that the Host State regulator will act as if it were the Home State regulator. This is only with regard to the provisions of Chapters IV, V, VI and VII of the IDD (see guidance in SUP 13A.6A).

...
14  Incoming EEA firms changing details, and cancelling qualification for authorisation

14.1  Application and purpose

... 

14.1.3  (1)  Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

... 

(c)  authorised in Gibraltar under the *Insurance Mediation Directive IDD*; or

... 

14.2  Changes to branch details

14.2.1  Where an *incoming EEA firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive*, and has established a *branch* in the United Kingdom, the *EEA Passport Rights Regulations* govern any changes to the details of that *branch*. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly. All references to regulations in *SUP 14* are to the *EEA Passport Rights Regulations*.

... 

14.2.21  ... 

Firms passporting under the IDD

14.2.22  As required by regulation 7C(1), where an *incoming EEA firm* passporting under the *IDD* has established a *branch* in the *UK*, it must not make a material change to any of the matters referred to regulation 2(9) unless it has complied with the relevant requirements in regulation 7C(4).

14.2.23  The relevant requirements in regulation 7C(4) are that:

(1)  the *incoming EEA firm* has given notice to its *Home State regulator* stating the details of the proposed change; and

(2)  the period of one month, beginning the day on which the *incoming EEA firm* gave the notice under (1), has elapsed.
14.3 Changes to cross border services

14.3.1 Where an incoming EEA firm passporting under the MiFID, UCITS Directive, MCD, or AIFMD or IDD is exercising an EEA right and is providing cross border services into the United Kingdom, the EEA Passport Rights Regulations govern any changes to the details of those services. Where an incoming EEA firm has complied with the EEA Passport Rights Regulations, then the firm’s permission under Schedule 3 to the Act is to be treated as varied.

14.3.14 Firms passporting under the IDD

14.3.15 As required by regulation 7C(1), where an incoming EEA firm is providing cross border services under the IDD in the UK, it must not make a material change to any of the matters referred to regulation 3(4) unless it has complied with the relevant requirements in regulation 7C(4).

14.3.16 The relevant requirements in regulation 7C(4) are that:

(1) the incoming EEA firm has given notice to its Home State regulator stating the details of the proposed change; and

(2) the period of one month, beginning the day on which the incoming EEA firm gave the notice under (1), has elapsed.

15 Notifications to the FCA

15.3 General notification requirements

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 A firm must notify the FCA of:

(1) a breach of any directly applicable EU regulation made under AIFMD; or

(i) a breach of a directly applicable EU regulation made under the IDD;
Appendix 3

Guidance on passporting issues

App 3.3 Background

App 3.3.6 The European Commission has not produced an interpretative communication on the Insurance Mediation Directive IDD, AIFMD, the MCD or the UCITS Directive.

App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and Insurance Mediation Directive IDD to the Regulated Activities Order

App 3.9.1 The following Tables 1, 2, 2ZA, 2A and 2B provide an outline of the regulated activities and specified investments that may be of relevance to firms considering undertaking passported activities under the CRD, MiFID, AIFMD, the UCITS Directive, the MCD and the Insurance Mediation Directive IDD. The tables may be of assistance to UK firms that are thinking of offering financial services in another EEA State and to EEA firms that may offer those services in the United Kingdom.

App 3.9.2 The tables provide a general indication of the investments and activities specified in the Regulated Activities Order that may correspond to categories provided for in the CRD, MiFID, AIFMD, the UCITS Directive, the MCD or the Insurance Mediation Directive IDD. The tables do not provide definitive guidance as to whether a firm is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a firm is carrying on a passported activity will depend on the particular circumstances of the firm. If a firm’s activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

App 3.9.7 Activities set out in Article 2(3) of the IMD, articles 2.1(1) and 2.1(2) of the IDD
<table>
<thead>
<tr>
<th>Table 2B: Insurance Mediation Distribution Directive Activities/Examples</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance.</td>
<td>Articles 25, 53(1) and 64</td>
<td>Articles 75, 89 (see Note 1)</td>
</tr>
<tr>
<td>1A. Advising on contracts of insurance or reinsurance</td>
<td>Articles 53(1) and 64</td>
<td>Articles 75, 89</td>
</tr>
<tr>
<td>2. Concluding contracts of insurance or reinsurance</td>
<td>Articles 21, 25, 53(1) and 64</td>
<td>Articles 75, 89</td>
</tr>
<tr>
<td>3. Assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim.</td>
<td>Articles 39A, 64</td>
<td>Articles 75, 89</td>
</tr>
<tr>
<td>4. Provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.</td>
<td>Articles 21, 25, (where this involves the provision of advice) 53(1), and 64.</td>
<td>Articles 75, 89</td>
</tr>
</tbody>
</table>

Note 1. Rights to or interests in life policies are specified investments under Article 89 of the Regulated Activities Order, but rights to or interests in general insurance contracts are not.

Note 2. Row 4 in Table 2B includes text that appears in article 2.1(1) of the IDD. These activities are not considered to be separate, discrete activities under the IDD but rather are included by way of an example of what constitutes insurance distribution. They have been included in this table for completeness, together with an indication of the Part II RAO activities and Part III RAO investments that may be relevant. This is to indicate, including for firms considering undertaking passport activities under the IDD, how these examples may
<table>
<thead>
<tr>
<th>Table 2B: Insurance Mediation Distribution Directive Activities/Examples</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>relate to <em>regulated activities</em> and <em>specified investments</em>.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Part 2: Form amendments

Amend the following text as shown.

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

…

6 Annex 5D Variation of permission application form

This annex consists only of one or more forms.

…

Variation of Permission Application – Home Finance & General Insurance Mediation Activities Home Finance Mediation and General Insurance Distribution Activities

…
The form (Variation of Permission Application – Home Finance and General Insurance Distribution Activities) referred to in SUP 6 Annex 5D is amended as shown.

...  

**Variation of Permission (VOP) Application**

**Home Finance Mediation and General Insurance Mediation Distribution Activities**

...  

**Purpose of this form**

This form is only for firms wishing to change the scope of their permission for Home Finance Mediation and/or General Insurance Mediation Distribution Business. You must answer all sections.

...  

If the appropriate regulator is the FCA send to:  

Variation of Permission Team  
The Financial Conduct Authority  
25 The North Colonnade  
12 Endeavour Square  
Canary Wharf  
London  
E14 5HS  
E20 1JN  

...  

**Variation of Permission – Home Finance Mediation and General Insurance Mediation Distribution activities**

Tell us what it is you wish to do to change your firm’s permission.

2.1 Answer this section if you wish to do the following:  

...  

**Variation of Permission – Home Finance Mediation and General Insurance Mediation Distribution activities (cont’d)**

Tell us what it is you wish to do to change your firm’s permission.

**Limitation(s) on your firm’s activity(ies)**
3 Variation of Permission – Client Money
Tell us what it is you wish to do to change your firm’s client money permission.

3.1 ...

3.2 What is the firm able to do now, and how does it wish to change its permission for client money?

<table>
<thead>
<tr>
<th>Firm is currently able to:</th>
<th>Firm wishes to be able to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hold and control client money for home finance business only</td>
<td>Hold and control client money for home finance business only</td>
</tr>
<tr>
<td>Hold and control client money for Insurance Mediation Distribution only</td>
<td>Hold and control client money for Insurance Mediation Distribution only</td>
</tr>
<tr>
<td>Control but not hold client money</td>
<td>Control but not hold client money</td>
</tr>
<tr>
<td>Not hold and not control client money</td>
<td>Not hold and not control client money</td>
</tr>
</tbody>
</table>

3.3 ...

- Or, if you are applying to cease holding client money for Insurance Mediation Distribution as you have Risk Transfers in place, and you have NEVER held or controlled client money, please tick here to confirm the Risk Transfer Agreement in place with your Insurer covers ALL Client Money. This includes any claims monies received by your firm and any refund of premiums. □

5 Threshold Conditions
We need to know whether the firm will continue to satisfy the threshold conditions as a result of the change in its permission.

5.7 Conduct of Business Requirements – Mortgage Business (MCOB) and Insurance Mediation Distribution (ICOBS) Sourcebooks

5.7.1 Is the firm ready, willing and organised to comply with the relevant provisions in MCOB and/or ICOBS (delete as appropriate), and, if relevant to this application, does the firm have in place the relevant customer documentation, such as Key Facts, and Initial Disclosure Requirements Documentation and the Insurance Product Information Document, for the permission you are applying for?

- Yes > Continue to next question.
- No > Explain why below.

Insurance Mediation Distribution Applications only:
5.9 Firms A firm carrying on insurance mediation business distribution activities are required to establish on reasonable grounds that must ensure that certain people are of good repute. These are all the people in its management structure and any staff directly involved in their insurance mediation distribution activity(ies) and those within the management structure responsible for any staff directly involved in those activities are of good repute. And they must It must also ensure that a reasonable proportion of people within their certain employees and persons possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately. These are persons and employees within the management structure who are responsible for its insurance mediation activity distribution activities and all other employees and other persons that are directly involved in it, demonstrate the knowledge and ability necessary to perform their duties and those within the management structure responsible for such employees and persons. Is the firm compliant with the Insurance Mediation Distribution Directive requirements?

5A Insurance Distribution Activities: shareholders and close links

We are required by the Insurance Distribution Directive to collect information about shareholders and close links

This section applies only where a firm applies to add an insurance distribution activity for the first time.

5A.1 You must provide the following information for any individual shareholder or member who has a holding in the firm that exceeds 10%.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>National Insurance Number</th>
<th>Address</th>
<th>% Holding</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

5A.2 You must provide the following information for any legal person who has a holding in the firm that exceeds 10%.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Incorporation details</th>
<th>Is the entity regulated?</th>
<th>% Holding</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ Yes □ No</td>
<td></td>
</tr>
</tbody>
</table>
5A.3 Does the firm have close links?
☐ No ▶ Continue to Section 6
☐ Yes ▶ Continue to Question 5A.4

5A.4 You must provide the information about the close links below and provide a structure chart which shows the nature of the relationship between the firm and each close link (please include details of the business of the close links).

☐ Structure chart provided on separate sheet

Natural persons

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>National Insurance Number</th>
<th>Address</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>
Legal persons

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Incorporation details</th>
<th>Is the entity regulated?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ Yes □ No</td>
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<tr>
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<td></td>
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<td>□ Yes □ No</td>
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<td>□ Yes □ No</td>
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<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

5A.5 Are you aware of any information to suggest that any holding (identified in 5A.1 and 5A.2 above) or close link is likely to prevent our effective supervision of the firm?

☐ No
☐ Yes ▶ Give details below

Approved Persons

If a firm changes its permission it may need new Controlled Functions and Approved Persons or it may no longer require certain Controlled Functions.

6

6.1 Each firm that carries on Insurance Mediation Distribution business must appoint an approved person who will be responsible for insurance mediation distribution at the firm. This responsibility must be allocated to a director or senior manager performing a governing function; or the apportionment and oversight function; or the significant management (other business operations) function.

What is the name of the individual the firm has appointed to be responsible for insurance mediation distribution?

6.2 Have any individual(s) proposed to perform a new role, for the firm’s Home Finance business or Insurance Mediation Distribution business, been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the activities without supervision? And do they have the necessary qualifications (where relevant) and experience?
The form (Waiver Application Form) referred to in SUP 8 Annex 2D (see SUP 8.3.3D) is amended as shown.

Waiver Application number
(for FCA/PRA use only)

Waiver -
Application Form

The Central Waivers Team
The Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom
Telephone +44 (0) 20 7066 1000
Facsimile +44 (0) 20 7066 1099
Email: centralwaiversteam@fca.org.uk

Additional Details

Section A1

3 Group applications

4 What types of client would be affected if we granted your application? (tick all that apply)†

- Retail Clients
- Professional Clients
- Eligible Counterparty
- Retail Customers (insurance mediation distribution activities only)
- Commercial Customers (insurance mediation distribution activities only)

...
Amend the following text as shown.

...

10A Annex 4D Form A: Application to perform controlled functions under the approved person regime

This annex consists only of one or more forms. Note that there are separate forms for Solvency II firms, large and small non-directive insurers, incoming EEA firms, applicants for a Part 4A permission or variation of permission that would result in an initial authorisation under MiFID, applicants for a Part 4A permission that would result in the applicant becoming exempt under article 3 of MiFID and other firms.

...

[Editor’s Note: General notes for completion of Form A are located below the list of forms.]

Form A: Notes for completion for Long Form A – UK and Overseas Firms (not Incoming EEA) for MiFID authorisations/authorisation applications (January 2017)

Long Form A - UK and Overseas Firms (not Incoming EEA)

...

Short Form A for Solvency II firms (excluding incoming EEA firms and large non-directive insurers):

Short Form A - Solvency II firms only

Short Form A: UK and Overseas Firms (not incoming EEA) (March 2016)

Short Form A: Incoming EEA firms (March 2016)

...

Firm Specific questions

...

you will be asked to select a box if the individual is responsible for insurance mediation distribution.

This is not a controlled function in its own right. However, every firm that carries on insurance mediation activities and insurance distribution activities must appoint an approved person(s) who will be responsible for insurance mediation activities and insurance distribution activities at the firm (as detailed in MIPRU 2.2).
Please note that insurance mediation insurance distribution is not applicable to appointed representatives.

Insurance Mediation Distribution

This is not a controlled function in its own right. However, every firm that carries on insurance mediation activities insurance distribution activities must appoint an approved person(s) who will be responsible for insurance mediation activities insurance distribution activities at the firm (MIPRU 2.2).

Please note that insurance mediation insurance distribution is not applicable to appointed representatives.

Where a firm has appointed an appointed representative appointed representative to carry on insurance mediation activity insurance distribution activities on its behalf, the person responsible for the firm’s insurance mediation activity insurance distribution activities will also be responsible for the insurance mediation activity insurance distribution activities carried on by an appointed representative.
The form (Form A: Notes for completion for Long Form A – UK and Overseas Firms (not Incoming EEA) for MiFID authorisation applications) referred to in SUP 10A Annex 4D is amended as shown.

Application for Authorisation

... 

Apply for controlled functions
this section contains the notes you will need for Section 3 – Arrangement and controlled functions.

... 

**Insurance mediation distribution**

This is not a controlled function in its own right. However, every firm that carries on insurance mediation distribution activities must appoint an approved person(s) who will be responsible for insurance mediation distribution activities at the firm (as detailed at MIPRU 2.2: https://www.handbook.fca.org.uk/handbook/MIPRU/2/2.html).

... 

Please note that insurance mediation distribution is not applicable to appointed representatives.

Where a firm has appointed an appointed representative to carry on insurance mediation distribution activity on its behalf, the person responsible for the firm’s insurance mediation distribution activity will also be responsible for the insurance mediation distribution activity carried on by an appointed representative.

...
The form (Long Form A – UK and Overseas Firms (not Incoming EEA)) referred to in SUP 10A Annex 4D is amended as shown.

... 

**Long Form A – UK and Overseas Firms (not Incoming EEA)**

**Application to perform controlled functions under the approved persons regime**

*FCA Handbook Reference: SUP 10A Annex 4D*  
*PRA Handbook Rulebook Reference: SUP 10B Annex 4D*

21 March 2016 1 October 2018

... 

**Arrangements and controlled functions**

Section 3

... 

3.04 Job title (mandatory for controlled functions 28 & 29)  
Please refer to notes on the requirements for submitting a CV

**Insurance mediation distribution**  
Will the candidate be responsible for insurance mediation distribution at the firm?†

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

YES ☐ NO ☐
The form (Long Form A – Solvency II firms only) referred to in SUP 10A Annex 4D is amended as shown.

Long Form A – Solvency II firms only

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D
PRA Rulebook Reference: Solvency II firms: Senior Insurance Managers Regime - Applications and Notifications

Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom

New arrangements and controlled functions

3.03 Job title

Insurance mediation distribution
Will the candidate be responsible for mediation distribution at the firm? YES □ NO □
The form (Short Form A – Solvency II firms only) referred to in SUP 10A Annex 4D is amended as shown.

...  

**Short Form A – Solvency II firms only**

**Application to perform controlled functions**

*FCA Handbook Reference: SUP 10A Annex 4D*

*PRA Rulebook Reference: Solvency II firms: Senior Insurance Managers Regime - Applications and Notifications*

...  

Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom

...  

**Arrangements and controlled functions**

**Section 3**

...  

*3.03 Job title*

**Insurance mediation distribution**

Will the *candidate* be responsible for mediation *distribution* at the *firm*?  

YES [ ]  

NO [ ]  

...
The form (Short Form A: UK and Overseas Firms (not incoming EEA)) referred to in SUP 10A Annex 4D is amended as shown.

... 

Short Form A – UK and Overseas Firms (not Incoming EEA) 
Application to perform controlled functions under the approved persons regime

FCA Handbook Reference: SUP 10A Annex 4D
PRA Handbook Rulebook Reference: SUP 10B Annex 4D

21 March 2016 1 October 2018

... 

Financial Conduct Authority

Arrangements and controlled functions Section 3

3.04 Job title (mandatory for controlled function 28 & 29)†

Please refer to notes on the requirements for submitting a CV

Insurance mediation distribution

Will the candidate be responsible for Insurance mediation distribution at the firm?

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

... 

YES ☐ NO ☐
The form (Short Form A: Incoming EEA firms) referred to in SUP 10A Annex 4D is amended as shown.

...  

Short Form A - Incoming EEA Only Application to perform controlled function under the approved persons regime

_FCA Handbook Reference: SUP 10A Annex 4D_  
21 March 2016 1 October 2018

...  

Financial Conduct Authority  
25 The North Colonnade 12 Endeavour Square  
Canary Wharf  
London,  
E14 5HS E20 1JN  
United Kingdom

...  

Arrangements and controlled functions Section 3

...  

3.04 Job title (mandatory for controlled functions 29)  
Please refer to notes on the requirements for submitting a CV  

Insurance mediation distribution  
Will the candidate be responsible for Insurance mediation distribution at the firm? 1  
(Note: Yes can only be selected if the individual is applying for (CF29)  
...  

...
The form (Long Form A – large non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

... 

**Long Form A – Large non-directive insurers only:**

Application to perform controlled functions

*FCA Handbook Reference: SUP 10A Annex 4D*  
*PRA Rulebook Reference: Large Non-Solvency II Firms: Senior Insurance Managers Regime – Applications and Notifications* 

7 March 2017 - 1 October 2018

... 

Financial Conduct Authority  
25 The North Colonnade  
12 Endeavour Square  
Canary Wharf  
London, E14 5HS  
E20 1JN 
United Kingdom

... 

**New arrangements and controlled functions**  
**Section 3**

... 

3.03 Job title 

**Insurance mediation distribution**

Will the candidate be responsible for insurance mediation distribution at the firm?  
YES ☐  NO ☐  ☐ 

...
The form (Short Form A – large non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

... 

**Short Form A – Large non-directive insurers only**

Application to perform controlled functions

*FCA Handbook Reference: SUP 10A Annex 4D*

*PRA Rulebook Reference: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications*

7 March 2017 - 1 October 2018

... 

Financial Conduct Authority

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12 Endeavour Square

Canary Wharf

London, E14 5HS

E20 1JN

United Kingdom

... 

**New arrangements and controlled functions**  
**Section 3**

... 

3.03 Job title

**Insurance mediation distribution**

Will the candidate be responsible for Insurance mediation distribution at the firm? YES □ NO □

...
The form (Long Form A – small non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

**Long Form A – Small non-directive insurers only**

Application to perform controlled functions

*FCA Handbook Reference: SUP 10A Annex 4D*

*PRA Rulebook Reference: Non-Solvency II Firms - Senior Insurance Managers Regime - Application and Notifications*

7 March 2016 1 October 2018

...

New arrangements and controlled functions  Section 3

...

3.03 Job title

**Insurance mediation distribution**

Will the candidate be responsible for Insurance mediation distribution at the firm? YES ☐ NO ☐

...
The form (Short Form A – small non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

... 

**Short Form A – Small non-directive insurers only**

**Application to perform controlled functions**

*FCA Handbook* Reference: *SUP 10A Annex 4D*  
*PRA Rulebook* Reference: *Non-Solvency II Firms - Senior Insurance Managers Regime - Applications and Notifications*

7 March 2016 1 October 2018

... 

Financial Conduct Authority  
25 The North Colonnade 12 Endeavour Square  
Canary Wharf  
London, E14 5HS E20 1JN  
United Kingdom

... 

**Arrangements and controlled functions**

... 

3.03 Job title

**Insurance mediation distribution**

Will the candidate be responsible for Insurance mediation distribution at the firm? YES ☐ NO ☐

...
The form (Long Form A – Incoming EEA only) referred to in SUP 10A Annex 4D is amended as shown.

...  

Long Form A – Incoming EEA only

Application to perform controlled functions under the approved person regime
FCA Handbook Reference: SUP 10A Annex 4D

21 March 2016 1 October 2018

...  

Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom

...  

Arrangements and controlled functions  Section 3

...  

3.04  

Job title (mandatory for controlled function 28 & 29)  
Please refer to notes on the requirements for submitting a CV  

Insurance mediation distribution  
Will the candidate be responsible for Insurance mediation distribution at the firm? †  
(Note: Yes can only be selected if the individual is applying for (CF29)  
...  

YES ☐ NO ☐
Amend the following text as shown.

... 10A Annex 8D

Form E: Internal transfer of an approved person

This annex consists only of one or more forms. Note that there are separate forms for Solvency II firms, large and small non-directive insurers and other firms.

... Form E for Solvency II firms:

... Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers (and are not Relevant Authorised persons):

Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers (and are not Relevant Authorised persons):

... SECTION 4 – ARRANGEMENTS AND CONTROLLED FUNCTIONS

...

4.04 Insurance mediation distribution

This is not a controlled function in its own right. However, every firm that carries on insurance mediation activities must appoint an approved person(s) who will be responsible for insurance mediation activities at the firm (as detailed at MIPRU 2.2).

...

Where a firm has appointed an appointed representative to carry on insurance mediation activity on its behalf, the person responsible for the firm’s insurance mediation activity will also be responsible for the insurance mediation activity carried on by an appointed representative.
The form (Form E – Internal transfer of an approved person (for Solvency II firms only)) referred to in SUP 10A Annex 8D is amended as shown.

... 

Form E  
Internal transfer of an approved person (for Solvency II firms only) ¹

FCA Handbook Reference: SUP 10A Annex 8D

PRA Rulebook Reference: Solvency II firms: Senior Insurance Managers Regime – Applications and Notifications

... 

New arrangement arrangements and controlled functions  Section 4

... 

4.03  Job title
Insurance mediation distribution
Will the candidate be responsible for Insurance mediation distribution at the firm? YES □  NO □  □
The form (Form E – small non-directive insurers) referred to in SUP 10A Annex 8D is amended as shown.

... 

**Form E**

**Internal transfer of an approved person (small non-directive insurers only)**

*FCA Handbook Reference: SUP 10A Annex 8D*

*PRA Rulebook Reference: Non-Solvency II Firms - Senior Insurance Managers Regime - Applications and Notifications*

... 

Financial Conduct Authority

25 The North Colonnade 12 Endeavour Square

Canary Wharf

London, E14 5HS E20 1JN

United Kingdom

... 

**New arrangements and controlled functions**  
**Section 4**

... 

4.03 Job title

**Insurance mediation distribution**

Will the candidate be responsible for Insurance mediation distribution at the firm? YES ☐ NO ☐
The form (Form E – large non-directive insurers) referred to in SUP 10A Annex 8D is amended as shown.

... 

**Form E**

**Internal transfer of an approved person (for large non-directive insurers only)**

*FCA Handbook Reference: SUP 10A Annex 8D*

*PRA Rulebook Reference: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications*

... 

Financial Conduct Authority

25 The North Colonnade, 12 Endeavour Square

Canary Wharf

London, E14 5HS, E20 1JN

United Kingdom

... 

**New arrangements and controlled functions Section 4**

... 

4.03 Job title

**Insurance mediation distribution**

Will the *candidate* be responsible for *insurance mediation distribution* at the firm? YES ☐ NO ☐
The form (Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers (and are not Relevant Authorised persons)) referred to in SUP 10A Annex 8D is amended as shown.

... Form E Internal transfer of an approved person

FCA Handbook Reference: SUP 10A Annex 8D
PRA Handbook Rulebook Reference: SUP 10B Annex 8D

21 March 2016 1 October 2018

Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom

4.04 Job title (mandatory for controlled function 28 & 29)†
Insurance mediation distribution
Will the candidate be responsible for Insurance mediation distribution at the firm?
(Note: Yes can only be selected if the individual is applying for (CF1.3-8 or 29)

YES ☐ NO ☐
The form (Long Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only) referred to in SUP 10C Annex 2D is amended as shown.

…

Long Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only

Application to perform senior management functions
FCA Handbook Reference: SUP 10C Annex 2D
PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

12 November 2017 1 October 2018

…

Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom

…

Arrangement Arrangements and Senior Management Functions
Section 3

…

3.03 Job title
Insurance mediation distribution
Will the candidate be responsible for Insurance mediation distribution at the firm? YES  NO  

…
The form (Short Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only) referred to in SUP 10C Annex 2D is amended as shown.

... 

**Short Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only**

Application to perform senior management functions  
*FCA Handbook Reference: SUP 10C Annex 2D*  
*PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications*

23 February 1 October 2018

...

Financial Conduct Authority  
25 The North Colonnade 12 Endeavour Square  
Canary Wharf  
London, E14 5HS E20 1JN  
United Kingdom

...

**Arrangement Arrangements and Senior Management Functions**

**Section 3**

...

3.03 Job title

**Insurance mediation distribution**

Will the candidate be responsible for Insurance mediation distribution at the firm?  
YES [ ]  
NO [ ]

...
The form (Short Form A (EEA Relevant Authorised Persons only) referred to in SUP 10C Annex 2D is amended as shown.

Short Form A – EEA Relevant Authorised Persons Only
Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

23 February 1 October 2018

Arrangements and Senior Management Functions Section 3

3.03 Job title

Insurance mediation distribution
Will the candidate be responsible for Insurance mediation distribution at the firm? YES ☐ NO ☐ ☐
The form (Long Form A (EEA Relevant Authorised Persons only) referred to in SUP 10C Annex 2D is amended as shown.

...

**Long Form A – EEA Relevant Authorised Persons only**

**Application to perform senior management functions**

*FCA Handbook Reference: SUP 10C Annex 2D*

7 March 2017 - 1 October 2018

...

Financial Conduct Authority

25 The North Colonnade 12 Endeavour Square
Canary Wharf
London,
E14 5HS  E20 1JN
United Kingdom

...

**Arrangement Arrangements and senior management functions**

Section 3

...

3.03 Job title

**Insurance mediation distribution**

Will the candidate be responsible for Insurance mediation distribution at the firm? YES ☐ NO ☐

...
Amend the following text as shown.

…

12 Annex 3R  Appointed representative appointment form

This annex consists of only one or more forms form. Forms can be completed online now by visiting:
https://www.fca.org.uk/firms/authorisation

The forms form are can also to be found through the following address:
Appointed representative appointment form – Add an appointed representative or tied agent form - SUP 12 Annex 3
The form (Add an appointed representative or tied agent form) referred to in SUP 12 Annex 3R is amended as shown.

Add an appointed representative or tied agent form

Notification under SUP 12.7.1R (i.e. the form in SUP 12 Ann 3R)

Please return the form to:
Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom

New Appointed Representative Details

9 Date of appointment (if an appointed representative carrying on insurance mediation distribution activities or a tied agent) or commencement of activities (if any other kind of appointed representative) † §

13 Is the application in respect of: †§
(1) an appointed representative who will carry on insurance mediation distribution activities?

...
Amend the following text as shown.

12 Annex 4R

**Appointed representative or tied agent – change details**

This annex consists of only one or more forms. Forms can be completed online now by visiting:

https://www.fca.org.uk/firms/authorisation

The forms can also be found through the following address:

Appointed representative or tied agent – change details - SUP 12 Annex 4
The form (Appointed representative or tied agent form – change details) referred to in SUP 12 Annex 4R is amended as shown.

... 

**Appointed representative or tied agent - change details**

Notification under *SUP 12.7.7R* (i.e. the form in *SUP 12 Ann 4R*)

... 

Financial Conduct Authority
25 The North Colonnade 12 Endeavour Square
Canary Wharf
London, E14 5HS E20 1JN
United Kingdom

... 

<table>
<thead>
<tr>
<th>Change Details of an Existing Appointed Representative</th>
<th>Section B</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 Is the change in respect of an appointed representative who is carrying on mediation distribution activities or a tied agent?</td>
<td>□ □</td>
</tr>
</tbody>
</table>

...
The form (Passporting: Notification of intention to establish a branch in another EEA state) referred to in SUP 13 Annex 1R is amended as shown.

... 

**Passporting**

*Notification of intention to establish a branch in another EEA state (excluding the Payment Services Directive and Electronic Money Directive)*

(SUP 13 Annex 1R – Notification under SUP 13.5.1R)

... 

If solo regulated send to: ... 

Please return the form to: 

Financial Conduct Authority 

25 The North Colonnade 12 Endeavour Square 

Canary Wharf 

London, E14 5HS E20 1JN 

United Kingdom 

...

**3 Insurance Mediation Distribution Directive (IMD IDD)**

3.1 Please confirm that the UK firm wishes to passport under the IMD IDD by ticking the box below. 

The firm intends to carry on insurance mediation distribution in the EEA State identified in section 2 by establishing a branch. 

... 

3.2 Intermediary’s details* 

Name 

Address 

Registration number (if applicable)
3.3 Please indicate the firm’s category of intermediary

- Insurance intermediary
- Ancillary insurance intermediary
- Reinsurance intermediary

3.4 Please give the name of any insurer or reinsurer represented

3.5 Please list the relevant classes of insurance in relation to which insurance distribution is carried on (if applicable)

[Note: see annexes 1 and 2 of Solvency II Directive]

...  

12 Declaration

...  

I enclose the following sections (mark the appropriate section)

...  

Section 3 – Insurance Mediation Distribution Directive  

...  

...
Amend the following text as shown.

…


This annex consists of only one or more forms. Forms can be completed online now by:

http://www.fsa.gov.uk/Pages/doing/index.shtml

The forms are also to be found through the following address:


only the  *Passporting Notification of intention to provide cross border services in another EEA State Insurance Distribution Directive (SUP 13 Annex 5R - Notification under SUP 13.5.2R)* form

…
The form (Passporting Notification of intention to provide cross border services in another EEA state Insurance Distribution Directive (SUP 13 Annex 5R – Notification under SUP 13.5.2R) referred to in SUP 13 Annex 5R is amended as shown.

EEA IMD IDD Cross Border Services Form

Passporting Notification of intention to provide cross border services in another EEA state INSURANCE MEDIATION DISTRIBUTION DIRECTIVE (SUP 13 Annex 5R – Notification under SUP 13.5.2R)

Purpose of this form

You should complete this form if you are a UK firm that wishes to exercise a passport right to provide cross border services in another EEA State under the Insurance Mediation Directive. You should also use this form if you are a UK firm that wishes to notify us – the regulator – of changes to the details of your current cross border services.

If you are an Appointed Representative (‘AR’) then this form must be completed by the sponsoring firm on your behalf.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to provide cross border services into another EEA State subject to the conditions of the Insurance Mediation Directive Insurance Distribution Directive (see Schedule 3 of the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take legal advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

3 Insurance Mediation Distribution Directive (IMD IDD)

3.1 You must confirm that the UK firm wishes to passport under the IMD IDD by ticking the box below.

The firm intends to carry on insurance mediation distribution in the EEA State(s) identified in section 2 by providing cross border services.

3.2 Intermediary’s details*

Name

Address

Registration number (if applicable)
3.3 Please indicate the firm’s category of intermediary *

<table>
<thead>
<tr>
<th>Category</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance intermediary</td>
<td></td>
</tr>
<tr>
<td>Ancillary insurance intermediary</td>
<td></td>
</tr>
<tr>
<td>Reinsurance intermediary</td>
<td></td>
</tr>
</tbody>
</table>

3.2 3.4 If this form is in respect of one or more Appointed Representative(s) of the firm then please list below the name(s) and firm reference number(s) of those Appointed Representatives

<table>
<thead>
<tr>
<th>Firm reference number</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Company</td>
<td></td>
</tr>
<tr>
<td>Registration number (if applicable)</td>
<td></td>
</tr>
<tr>
<td>Address Line 1</td>
<td></td>
</tr>
<tr>
<td>Address Line 2</td>
<td></td>
</tr>
<tr>
<td>Address Line 3</td>
<td></td>
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<tr>
<td>Address Line 4</td>
<td></td>
</tr>
<tr>
<td>County</td>
<td></td>
</tr>
<tr>
<td>Town</td>
<td></td>
</tr>
<tr>
<td>Postcode/Zip</td>
<td></td>
</tr>
<tr>
<td>EEA State</td>
<td></td>
</tr>
</tbody>
</table>
3.5 Please give the name of any insurer or reinsurer represented*

3.6 Please list the relevant classes of insurance in relation to which insurance distribution is carried on (if applicable) *

[Note: see annexes 1 and 2 of Solvency II Directive]

4 Declaration

... I enclose the following sections (mark the appropriate section)*

... Section 3 – Insurance Mediation Distribution Directive
Amend the following text as shown.

…

16 Annex 9R Annual questionnaire for authorised professional firms

This annex consists only of one or more forms. Forms are to be found through the following address: the Annual Questionnaire for Authorised Professional Firms -

…
The form (Annual questionnaire for authorised professional firms) referred to in SUP 16 Annex 9R is amended as shown.

**FIN –APF – Authorised Professional Firms Questionnaire**

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Please indicate the percentage of the total income from the firm’s regulated activities generated from the following activities:</td>
<td>Investment management</td>
<td>Corporate finance</td>
<td>Retail investment</td>
<td>Home finance mediation</td>
<td>Insurance mediation distribution</td>
<td>Credit-related regulated</td>
</tr>
<tr>
<td></td>
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</tr>
</tbody>
</table>
The form (Guidance notes for completion of annual questionnaire for authorised professional firms in SUP 16 Annex 9R) referred to in SUP 16 Annex 9AG is amended as shown.

...
The form (Retail Mediation Activities Return (‘RMAR’) referred to in SUP 16 Annex 18AR is amended as shown.

... SECTION C: Client money and assets

11 Does your firm receive or hold money in the course of or in connection with its insurance mediation distribution activity?

... CASS 5 client money

13 How does your firm hold money received in the course of or in connection with its insurance mediation distribution activity? (select all that apply)

... SECTION E: PII Self-Certification

... 4 Professional Indemnity Insurance Details

... IMD firms insurance intermediaries should state their indemnity limits in Euros

<table>
<thead>
<tr>
<th>Indemnity Limit (Single) in:</th>
<th>Limit of Indemnity: Single</th>
<th>Indemnity Limit (Aggregate) in:</th>
<th>Limit of Indemnity: Aggregate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Euros/Sterling/Unlimited</td>
<td></td>
<td>Euros/Sterling/Unlimited</td>
<td></td>
</tr>
</tbody>
</table>
Notes for completion of the Retail Mediation Activities Return (‘RMAR’)

Introduction: General notes on the RMAR

1. ...

...

5. The following table summarises the key abbreviations that are used in these notes:

<table>
<thead>
<tr>
<th>...</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>IDD</td>
<td>The Insurance Distribution Directive</td>
</tr>
<tr>
<td>IMD</td>
<td>The Insurance Mediation Directive</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

Scope

6. The following **firms** are required to complete the sections of the RMAR applicable to the activities they undertake as set out in SUP 16.12:

(a) **firms** with permission to carry on **insurance mediation activity**
    **insurance distribution activity** in relation to **non-investment**
    **insurance contracts**.

...

EEA firms

...

11. **Firms** that only carry on reinsurance mediation distribution are not required to complete sections C or K.

Authorised professional firms

12. **Authorised professional firms** (‘APFs’) that are subject to IPRU-INV 2.1.3R (for their investment activity) or MIPRU 4.1.10R (for **insurance mediation activity**, **insurance distribution activity** or **home finance mediation activity**) are not required to complete sections A, B2 or D. APFs that are members of the Law Society of England and Wales, the Law Society of Scotland or the Law Society of Northern Ireland are also not required to complete section C (see below).

13. The application of the capital requirements to APFs is set out in IPRU-INV 2.1.2R (for **retail investment activity**) and MIPRU 4.1.10R (for
... 

NOTES FOR COMPLETION OF THE RMAR
...

Section B: Profit & loss account
...

Guide for completion of individual fields
...

| Regulated business revenue | This is the total of the firm’s income during the reporting period in relation to its relevant regulated activities.
|                           | For an insurance intermediary or a home finance intermediary, this should be calculated in the same way as ‘annual income’, as specified in MIPRU 4.3.3R (although in this context the period is not generally annual).
|                           | This rule states: “For a firm which carries on [insurance mediation activity, insurance distribution activity or home finance mediation activity], annual income… is the amount of all brokerage, fees, commissions and other related income (for example, administration charges, overrides, profit shares) due to the firm in respect of or in relation to those activities”.

Section C Client money and assets
...

Note 2: firms that only carry on insurance mediation activity in respect of reinsurance contracts are exempt from the client money rules, and are not therefore required to complete section C of the RMAR. However, a firm may make an election under CASS 5.1.1R(3) to comply with CASS 5.1 to CASS 5.6 in respect of client money it receives in the course of carrying on insurance mediation activity in relation to reinsurance contracts. Where a firm has made

such an election it should also complete section C of the RMAR. [deleted]

**Note 3:** a firm that receives or holds money for its MiFID business or designated investment business that is not MiFID business and holds money to which CASS 5 applies, may make an election under CASS 7.10.3R(1) or (2) to comply with CASS 7 for money it receives in the course of, or in connection with, its insurance mediation activity insurance distribution activities. Where a firm has made such an election, it should not complete section C of the RMAR, except to confirm that it holds money in connection with insurance mediation activities insurance distribution activities and has elected to comply with CASS 7.

... 

Guide for completion of individual fields

<table>
<thead>
<tr>
<th>Question</th>
<th>Guidance notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does your firm receive or hold money in the course of, or in connection with, its insurance mediation activity insurance distribution activity?</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>How does your firm hold money received in the course of, or in connection with, its insurance mediation activity insurance distribution activity?</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

**Section D Regulatory Capital**

... 

‘Higher of’ requirements

In this section there are separate calculations of regulatory capital and capital resources requirements for the different types of business covered by the data requirements. The calculations are the same, however, for both home finance mediation activity and insurance mediation activity insurance distribution activity relating to non-investment insurance contracts.

(i) The left column of the form covers the appropriate capital resources and connected requirements in MIPRU 4 for firms carrying on home finance mediation activity (save for firms carrying on home finance mediation activities exclusively in relation to second charge regulated mortgage contracts or legacy CCA mortgage contracts, or both) or insurance mediation activity insurance distribution activity relating to non-investment insurance contracts (the requirements have to be completed...
for all applicable categories), or both.

…

Guide for completion of individual fields

| Is the firm exempt from these capital resources requirements in relation to any of its retail mediation or distribution activities? | The firm should indicate here if any Handbook exemptions apply in relation to the capital resources requirements in MIPRU or IPRU-INV 13. Examples of firms that may be subject to exemptions include:
- Lloyd’s managing agents (MIPRU 4.1.11R);
- solo consolidated subsidiaries of banks or building societies;
- small credit unions (as defined in MIPRU 4.1.8R); and
- investment firms not subject to IPRU-INV 13 (unless they additionally carry on home finance mediation activity or insurance mediation activity relating to non-investment insurance contracts). |

<table>
<thead>
<tr>
<th>Home finance mediation and non-investment insurance mediation distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base requirement</strong></td>
</tr>
<tr>
<td>5% of annual income (firms holding client money)</td>
</tr>
<tr>
<td>2.5% of annual income (firms not holding client money)</td>
</tr>
</tbody>
</table>
### Capital resources per MIPRU 4 (home finance mediation activity and non-investment insurance intermediation distribution activity)

### Section E Professional indemnity insurance

The PII requirements for authorised professional firms (‘APFs’) that carry on retail investment activities are set out in IPRU-INV 2.3. APFs that carry on home finance mediation activity or insurance mediation activity insurance distribution activity are subject to the full requirements of MIPRU 3.
Guide for completion of individual fields

Part 1

| Does your firm hold a comparable guarantee or equivalent cover in lieu of PII, or is it otherwise exempt from holding PII in respect of any regulated activities (tick as appropriate)? | This question will establish whether a firm is exempt from the requirements and so is not required to hold PII. The conditions for comparable guarantees and exemptions from the PII requirements for firms carrying on insurance distribution or home finance mediation are set out in MIPRU 3.1.1R paragraphs (3) to (6). |

Part 2

| Limit of indemnity | You should record here the indemnity limits on the firm’s PII policy or policies, both in relation to single claims and in aggregate. Those firms subject to the Mortgage Credit Directive (MCD) (see MIPRU 3.2.9AR) or the Insurance Mediation Directive (IMD IDD) requirements should state their limit in Euros; those that are not subject to the MCD or IMD IDD should select ‘Sterling’ from the drop-down list. |

Section F Threshold conditions

Close links

Sole traders, firms which have permission to carry on retail investment activities only, firms with permission only to advise on P2P agreements (unless that activity is carried on exclusively with or for professional clients) or firms which have permission to carry on only one, or only both of:
(a) insurance mediation activity, insurance distribution activity; or

(b) home finance activity;

and are not subject to the requirements of SUP 16.4 or SUP 16.5 (requirement to submit annual controllers report; or annual close links reports), will submit these reports in RMAR section F instead.

... Section G Training and competence...

... Section G: guide for completion of individual fields

<table>
<thead>
<tr>
<th>General information</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>20</th>
<th>Which types of non-investment insurance advice were provided by the firm in the reporting period?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For each type of advice, the firm should indicate whether or not advice has been provided on that basis / business type.</td>
</tr>
</tbody>
</table>

**Fair Analysis of the Market**

If an insurance intermediary informs a customer that it gives advice (including a personal recommendation) on the basis of a fair analysis of the market, it must give that advice (including a personal recommendation) on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market to enable it to make a recommendation, in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer’s needs. (See ICOBS 5.3.3R, ICOBS 4.1.6R, ICOBS 4.1.7R and ICOBS 4.1.8G).

| ... |
| ... |

| ... |

**Section H Conduct of business Business (‘COBS’) Data**

... Guide for completion of individual fields
### General COBS data

<table>
<thead>
<tr>
<th>Of which, number of ‘secondary’ ARs as at the end of the reporting period</th>
<th>An AR is a secondary AR if:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• the activities for which it is exempt are limited to <strong>insurance mediation activities</strong> <strong>insurance distribution activities</strong> only; and</td>
</tr>
<tr>
<td></td>
<td>• its principal purpose is to carry on activities other than <strong>insurance mediation activities</strong> <strong>insurance distribution activities</strong>.</td>
</tr>
</tbody>
</table>

### Section J: Data required for calculation of fees

... 

*Personal investment firms* and firms whose regulated activities are limited to one or more of: insurance mediation activity, **insurance distribution activity**, home finance mediation activity, or retail investment activity, are required to complete section J of the RMAR.

... 

The form (Data items for SUP 16.12) referred to in SUP 16 Annex 24R is amended as shown.

**FSA031**

**Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)**

... 

**Part 4** (Regulatory capital test to be completed by all firms)

29 ... 

... 

Professional Indemnity Insurance

33 ... 

34 Does your firm conduct insurance **mediation** **distribution** activities?

...
FSA032

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

…

Professional Indemnity Insurance

…

34 Does your firm conduct insurance mediation distribution activities?

…
The form (Guidance notes for data items in SUP 16 Annex 24R) referred to in SUP 16 Annex 25G is amended as shown.

**FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)**

...  
**Defined Terms**  
...

<table>
<thead>
<tr>
<th>Description</th>
<th>Data element</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 4</td>
<td>Regulatory capital test to be completed by all firms</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does your firm conduct insurance mediation distribution activities?</td>
<td>34A</td>
<td>Insurance mediation distribution activities are defined in the Handbook glossary.</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)**

...  
**Defined Terms**  
...

<table>
<thead>
<tr>
<th>Description</th>
<th>Data element</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulatory capital test(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does your firm conduct insurance mediation distribution activities?</td>
<td>34A</td>
<td>This is either ‘Yes’ or ‘No’, and enables us to check that the PII cover meets the minimum requirements.</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The form (Guidance notes for the data item in SUP 16 Annex 29R) referred to in SUP 16 Annex 29AG is amended as shown.

**Client Money and Asset Return (CMAR)**

...

**General**

...

A *firm* is reminded that the effect of *SUP* 16.14.4R is that in relation to a *firm* to which *CASS 5* (Client money: insurance mediation distribution activity) and *CASS 7* (Client money rules) apply, that *firm* should not report in the *data item* shown in *SUP* 16 Annex 29R any *client money* that it holds in accordance with *CASS 5*.

...
Annex P

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Treating complainants fairly

1.1 Purpose and application

... 

1.1.8 R An insurance intermediary, that is not also an insurer, must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not an eligible complainant.

[deleted]

[Note: article 10 of the Insurance Mediation Directive]

... 

Additional requirements for insurance and reinsurance distribution business in the UK

1.1.10-A R Where insurance distribution activities are carried on from an establishment maintained by it or its appointed representative in the United Kingdom, a firm must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not an eligible complainant.

[Note: article 14 of the IDD]

Additional IDD requirements for EEA branches of UK firms

1.1.10-B R Where insurance distribution or reinsurance distribution is carried on from a branch maintained by a UK firm or its appointed representative in another EEA State, the firm must:

(1) have in place and operate appropriate and effective procedures for registering and responding to complaints from a customer; and

(2) solely in relation to its insurance distribution business, adhere to one or more relevant ADR entities in that EEA State in respect of consumer disputes.

[Note: articles 7(2), 14 and 15(1) of the IDD]

Application to payment services providers that are not firms

1.1.10A R ...
Annex Q

Amendments to the Compensation sourcebook (COMP)

In this Annex, striking through indicates deleted text and underlining indicates new text, unless otherwise indicated.

1 Introduction and Overview

... 

1.3 Claimants

... 

1.3.3 G Areas of particular interest to claimants (see COMP 1.1.3G).

This Table belongs to COMP 1.1.3G.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>A2</td>
<td></td>
</tr>
<tr>
<td>(5)</td>
<td>a claim in connection with protected non-investment insurance mediation protected non-investment insurance distribution.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>A3</td>
<td></td>
</tr>
<tr>
<td>(5)</td>
<td>a claim in connection with protected non-investment insurance mediation protected non-investment insurance distribution.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

... 

3 The qualifying conditions for compensation

... 

3.2 The qualifying conditions for paying compensation

... 

3.2.4 R The FSCS may also pay compensation to a firm, who makes a claim in
connection with protected non-investment insurance mediation protected non-investment insurance distribution on behalf of its customers, if the FSCS is satisfied that:

...

4 Eligible claimants

...

4.2 Who is eligible to benefit from the protection provided by the FSCS?

...

Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

4.2.2 This table belongs to COMP 4.2.1R

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(17)</td>
<td>Where the claim is in relation to protected non-investment insurance mediation protected non-investment insurance distribution, bodies corporate, partnerships, mutual associations and unincorporated associations which are not small businesses.</td>
</tr>
</tbody>
</table>

...

4.3 Exceptions: Circumstances where a person coming within COMP 4.2.2R may receive compensation

...

Liability subject to compulsory insurance

4.3.6 A person who comes within COMP 4.2.2R is eligible to claim compensation in respect of a liability subject to compulsory insurance if the claim is in connection with protected non-investment insurance mediation protected non-investment insurance distribution.

...

5 Protected claims

...

5.2 What is a protected claim?

5.2.1 A protected claim is:
(5) a claim in connection with protected non-investment insurance mediation protected non-investment insurance distribution (see COMP 5.7); or

...

5.7 Protected non-investment insurance mediation distribution

5.7.1 R Protected non-investment insurance mediation Protected non-investment insurance distribution is an insurance mediation activity insurance distribution activity where the investment concerned is a relevant general insurance contract or a pure protection contract but which is not a long-term care insurance contract or a reinsurance contract, provided that the conditions in COMP 5.7.2R are satisfied.

5.7.2 R COMP 5.7.1 R only applies if the conditions in (1) and (2) are satisfied

(1) the protected non-investment insurance mediation protected non-investment insurance distribution was carried on from:

(a) an establishment of the relevant person in the United Kingdom; or

(b) a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IMD IDD; and

(2) ...

...

(b) a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IMD IDD.

...

5.7.4 G The FSCS will not cover a claim in respect of an intermediary that is not a relevant person, for example a retailer selling extended warranties that are connected contracts. However, COMP 5.7.2R has the effect that a claim in respect of a relevant person further up the chain carrying on protected non-investment insurance mediation protected non-investment insurance distribution in accordance with COMP 5.7.2R(1)(a) may be covered by the FSCS if the claimant dealt initially with a UK intermediary that is not a relevant person.

...

8 Rejection of application and withdrawal of offer
8.2 Rejection of application for compensation

8.2.4 R For claims made in connection with protected investment business, protected home finance mediation or protected non-investment insurance mediation protected non-investment insurance distribution, the FSCS may disregard a defence of limitation where the FSCS considers that it would be reasonable to do so.

8.2.5 R For claims made in connection with protected investment business or protected non-investment insurance mediation protected non-investment insurance distribution, if a relevant person (or, where applicable, a successor), incorporated as a company, has been dissolved with the result that its liability to the claimant has been extinguished by operation of law, the FSCS must treat the claim, for the purposes of paying compensation, as if the relevant person or a successor, as appropriate, had not been dissolved.

10 Limits on the amount of compensation payable

10.2 Limits on compensation payable

10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

<table>
<thead>
<tr>
<th>Type of claim</th>
<th>Level of cover</th>
<th>Maximum payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protected non-investment insurance mediation Protected non-investment insurance distribution</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
12 Calculating compensation

12.3 Quantification date

Protected non-investment insurance mediation distribution

12.3.8 R For a claim made in connection with protected non-investment insurance mediation protected non-investment insurance distribution, the FSCS must determine a specific date as the quantification date, and this date may be either on, before or after the date of determination of default.

12.4 The compensation calculation

Protected non-investment insurance mediation distribution

12.4.20 R The FSCS may pay compensation for any claim made in connection with protected non-investment insurance mediation protected non-investment insurance distribution only to the extent that the FSCS considers that the payment of compensation is essential in order to provide the claimant with fair compensation.

12.4.21 R The FSCS may decide to reduce the compensation that would otherwise be payable for a claim made in connection with protected non-investment insurance mediation protected non-investment insurance distribution if it is satisfied that:

…

14 Participation by EEA Firms

14.1 Application and Purpose

…

14.1.2 R This chapter also applies to an incoming EEA firm which is a MiFID investment firm, an IMD insurance intermediary IDD insurance intermediary, a UCITS management company, an MCD mortgage credit intermediary or an AIFM.

Purpose

14.1.3 G This chapter provides supplementary rules and guidance, and contains a
broad summary, in guidance, of FSCS cover, for an incoming EEA firm which is an IMD insurance intermediary, IDD insurance intermediary, a MiFID investment firm, a UCITS management company, an MCD mortgage credit intermediary or an AIFM. It reflects in part the implementation of the Investor Compensation Directive and UCITS Directive.

14.1.4 G (1) An incoming EEA firm, which is an IMD insurance intermediary, IDD insurance intermediary, an MCD mortgage credit intermediary or a MiFID investment firm is not a participant firm in relation to its passported activities unless it “tops-up” into the compensation scheme. This reflects section 213(10) of the Act (The compensation scheme) and regulation 2 of the Electing Participants Regulations (Persons not to be regarded as relevant persons). If an incoming EEA firm also carries on non-passported activities for which the compensation scheme provides cover, it will be a participant firm in relation to those activities and will be covered by the compensation scheme for those activities in the usual way.

14.1.5 G In relation to an incoming EEA firm’s passported activities, its Home State compensation scheme must provide compensation cover in respect of business within the scope of the Investor Compensation Directive, article 6(3) of the UCITS Directive and article 6(4) of AIFMD, whether that business is carried on from a UK branch or on a cross border services basis. Insurance mediation activity, Insurance distribution activity is not within the scope of the Investor Compensation Directive.

14.2 Obtaining top-up cover

14.2.3 G A notice under COMP 14.2.1R should include details confirming that the incoming EEA firm falls within a prescribed category. In summary:

(1) the firm must be:

- …

(b) an IMD insurance intermediary, IDD insurance intermediary;

or

- …
Annex R

Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

For “insurance mediation”, substitute “insurance distribution” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

| 1.1.2G(2)   | one instance |
| 1.1.2G(3)   | one instance |
| 10.1.3G     | two instances |

10  Application of other parts of the Handbook to Credit unions

10.1  Application and purpose

...  

10.1.3  G  

<table>
<thead>
<tr>
<th>Module</th>
<th>Relevance to Credit Unions</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>Insurance: Conduct of Business sourcebook (ICOBS)</td>
<td>ICOBS applies to any credit union carrying on non-investment insurance distribution activities, such as arranging or advising on general insurance contracts to be taken out by members. But ICOBS does not apply to a credit union taking out an insurance policy for itself, such as a policy policy against default by members on their loans where the credit union is the beneficiary of the policy policy, since in this circumstance the credit union would not be acting as an insurance intermediary, but would itself be the customer. Credit unions are reminded that they are subject to the requirements of the appropriate legislation, including the Credit Unions Act 1979, relating to activities a credit union may carry on.</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>
Annex S

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Professional Firms

1.1 Application and Purpose

Application

1.1.1 R This sourcebook applies as follows:

... 

(4) PROF 7 applies to every designated professional body and every exempt professional firm that is carrying on, or proposing to carry on, insurance mediation activity insurance distribution activity.

...

1.1.4 G This sourcebook outlines:

...

(6) the arrangements made by the FCA for complying with its obligations under the Insurance Mediation Directive IDD in relation to:

(a) maintaining a record of unauthorised persons, including exempt professional firms, that carry on, or are proposing to carry on, insurance mediation activity insurance distribution activity; and

(b) exempt professional firms that wish to passport under the Insurance Mediation Directive IDD.

...

1.1.6 G The rules and guidance in this sourcebook are intended to:

...

(4) explain the background to and the arrangements made by the FCA for:

(a) the registration of unauthorised persons, including exempt professional firms, that carry on, or are proposing to carry on, insurance mediation activity insurance distribution
activity; and

(b) authorised professional firms and exempt professional firms that wish to exercise their EEA right under the Insurance Mediation Directive IDD to establish a branch or provide cross border services in another EEA State.

3 The FCA’s duties and powers

3.1 The FCA’s duty to keep itself informed

3.1.2 The FCA keeps itself informed in a number of ways. A designated professional body has a duty under section 325(4) of the Act to cooperate with the FCA. Article 94 of the Regulated Activities Order requires each designated professional body to provide the FCA with the information it needs to maintain a public record of persons that are registered with the FCA to conduct insurance mediation activity insurance distribution activity. The FCA has made arrangements with each of the designated professional bodies about the information they provide to it, to include information about:

(6) the names and addresses of each of their exempt professional firms that carry on, or are proposing to carry on, insurance mediation activity insurance distribution activity, together with the details of the individuals within the management of the exempt professional firms who are responsible for the insurance mediation activity insurance distribution activity and, where relevant, the passporting information required by the FCA for the purposes of paragraph 25 of Schedule 3 to the Act (EEA Passport Rights).

3.2 The FCA’s power to make a direction

3.2.5 Second, the FCA may exercise its direction power under section 328(6)(b) of the Act if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the Insurance Mediation Directive IDD. For example, the FCA might wish to do so if it was not receiving from a designated professional body the information it needs to maintain the Financial Services Register (see PROF 7.1).
4 Disclosure

4.1 Disclosure rules

4.1.3 R (1) An exempt professional firm must, before it provides a service which includes the carrying on of a regulated activity in the United Kingdom, other than an insurance mediation activity insurance distribution activity, with or for a client, disclose in writing to the client in a manner that is clear, fair and not misleading that it is not authorised under the Act.

(2) An exempt professional firm, must, before it provides a service which includes the carrying on of an insurance mediation activity insurance distribution activity with or for a client, make the following statement in writing to the client in a way that is clear, fair and not misleading and no less prominent than any other information provided to the client at the same time:

“This firm is/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity insurance distribution activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by [DPB]. The register can be accessed via the Financial Conduct Authority website at www.fsa.gov.uk/register/home.do www.fca.org.uk/firms/financial-services-register.”

4.1.4 G ...

(2) The FCA considers that it is important that clients understand the implications for them of receiving services from an exempt professional firm that is not authorised under the Act. It is also important that clients understand the implications of the difference between authorisation under the Act and being on the register maintained by the FCA, so that the exempt professional firm can conduct insurance mediation activity insurance distribution activity, in relation to which activity the regulatory protections established by the Act for the benefit of consumers will not apply. The FCA therefore expects designated professional bodies to make rules covering the information to be provided to clients. These rules should require exempt professional firms to make a disclosure to clients containing the following elements:

(a) where the exempt professional firm conducts a regulated activity other than an insurance mediation activity insurance
distribution activity, a statement that the exempt professional firm is not an authorised person;

…

(e) where the regulated activity consists of insurance mediation activity insurance distribution activity, the statement contained at PROF 4.1.3R(2).

(3) Exempt professional firms should also ensure that any statement that makes reference to the FCA does not lead a client to suppose that the FCA has direct regulatory responsibility for the exempt professional firm. This could be a breach of PROF 4.1.2R. This consideration is particularly important in relation to insurance mediation activity insurance distribution activity, where clients may well fail to appreciate the difference between authorisation under the Act and being included on the register maintained by the FCA so as to permit the exempt professional firm to carry on insurance mediation activity insurance distribution activity.

…

5 Non-mainstream regulated activities

…

5.3 Reference to other sourcebooks and manuals

…

Conduct of business Business sourcebook

5.3.2 G COBS 18.11 provides that COBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except for:

(1) …

(2) (where these are insurance mediation activities) COBS 7 (Insurance mediation) insurance distribution activities) the parts of COBS set out in COBS 18.11.2R(3)(a) to (i) which implement the IDD apply unless:

(a) the designated professional body of the firm has made rules which implement some or all of articles 42 and 13 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the Insurance Mediation Directive IDD:

…
Senior Management Arrangements, Systems and Controls

5.3.4 G SYSC 3.2.6AR to SYSC 3.2.6JG and SYSC 6.3 (Financial crime), in relation to money laundering, does not apply to authorised professional firms when carrying on non-mainstream regulated activities.

... 

Client Assets

5.3.8 ... 

Insurance: Conduct of Business sourcebook

5.3.10 G (1) ICOBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities (see ICOBS 1 Ann Annex 1, Part 1, paragraph 3.1R, except for:

... 

(d) provisions in ICOBS which implement articles 12 and 13 1(4), 17, 18, 19, 20, 23, and 24 of the Insurance Mediation Directive IDD (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) and, ICOBS 5.2.3R 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 firm is subject to equivalent rules of its designated professional body which have been approved by the FCA.

...
7 Insurance mediation distribution activity

7.1 Register of persons carrying on insurance mediation distribution activity

Background


The FCA’s obligation to maintain a record

7.1.2 Article 93 of the amended Regulated Activities Order requires the FCA to maintain an up-to-date record of every unauthorised person, whether an appointed representative or an exempt professional firm that carries on, or is proposing to carry on, insurance mediation activity insurance distribution activity and to whom the general prohibition does not apply in relation to the carrying on of such an activity. In relation to exempt professional firms the general prohibition does not apply by virtue of section 327 of the Act.

7.1.3 The FCA is not to include an exempt professional firm in the register relating to unauthorised persons if:

1. under a direction given by the FCA under section 328(1) of the Act, section 327(1) of the Act does not apply in relation to the carrying on by it of insurance mediation activity insurance distribution activity; or

2. the FCA has made an order under section 329(2) of the Act disapplying section 327(1) of the Act in relation to the carrying on by the exempt professional firm of insurance mediation activity insurance distribution activity.

Provision of information to the FCA

7.1.4 Article 94 of the Regulated Activities Order obliges a designated professional body to provide the FCA with the information it needs to maintain the record referred to in PROF 7.1.2G of every unauthorised person that carries on, or proposes to carry on, insurance mediation activity insurance distribution activity and keep it up to date. This information needs to include the details referred to in PROF 7.1.7G. This is the responsibility of the designated professional body and not each exempt professional firm.

Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227)

7.1.5 The attention of exempt professional firms is drawn to the
significance of The Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227), as amended by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476). The effect of these amendments is that exempt professional firms may not carry on certain regulated activities which relate to a contract of insurance in reliance on the Part XX exemption unless the exempt professional firm is included in the record of unauthorised persons carrying on insurance mediation activity insurance distribution activity maintained by the FCA under article 93 of the Regulated Activities Order.

(2) Each exempt professional firm carrying on, or proposing to carry on, insurance mediation activity insurance distribution activity should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the FCA. Any such exempt professional firm carrying on, or proposing to carry on, insurance mediation activity insurance distribution activity whose name does not appear in the record maintained by the FCA is likely to be breaching the general prohibition which is a criminal offence under section 23 of the Act.

Financial Services Register

7.1.6 G In order to comply with its obligations to maintain a record of unauthorised persons that carry on, or are proposing to carry on, insurance mediation activity insurance distribution activity, the FCA has established an appropriate record which forms part of the record maintained by the FCA under section 347 of the Act. The record maintained by the FCA under section 347 of the Act is known as the Financial Services Register. The Financial Services Register therefore contains a record of each authorised and unauthorised person that carries on, or proposes to carry on, insurance mediation activity insurance distribution activity.

7.1.7 G The information to be included on the record in relation to exempt professional firms will, as required by the Insurance Mediation Directive IDD, include details of:

(1) the name and address of each exempt professional firm that carries on, or is proposing to carry on, insurance mediation activity insurance distribution activity;

(2) where the exempt professional firm is not an individual, the names of the individuals within the management of the exempt professional firm who are responsible for the insurance mediation activity insurance distribution activity; and

(3) each EEA State in which the exempt professional firm under an EEA right derived from the Insurance Mediation Directive IDD:...

Page 340 of 401
7.2 Passorting under the Insurance Mediation Directive IDD

7.2.1 G All persons that are on the register maintained by the FCA in accordance with article 3 of the Insurance Mediation Directive IDD, and so permitted to conduct insurance mediation activity insurance distribution activity, are entitled to exercise the EEA right conferred upon them by article 4 (freedom to provide services) and 6 (freedom of establishment) of the Insurance Mediation Directive IDD to establish a branch or provide services relating to insurance mediation activity insurance distribution activity in another EEA State. Both authorised professional firms and exempt professional firms that are so registered by the FCA get the benefit of these passporting rights.

7.2.2 G Any authorised professional firm or exempt professional firm that is contemplating the exercise of rights under article 4 (freedom to provide services) or 6 (freedom of establishment) of the Insurance Mediation Directive IDD to establish a branch or provide services relating to insurance mediation activity insurance distribution activity in another EEA State is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both authorised professional firms and exempt professional firms are UK firms for the purposes of the Handbook, including SUP 13.

7.2.3 G A UK firm proposing to establish a branch in another EEA State for the first time under an EEA right derived from the Insurance Mediation Directive IDD must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the Act (EEA Passport Rights). These include the requirement that the firm must at the outset give the FCA a notice in the required form of its intention to establish the branch. SUP 13.3.2G to SUP 13.3.2CG and SUP 13.3.5G detail the procedure to be followed once such a notice of intention has been received by the FCA. SUP 13.5.1R (Specified contents: notice of intention to establish a branch) and SUP 13.6.9AG (Firms passporting under the Insurance Mediation Directive IDD) will also be relevant.

7.2.4 G A UK firm proposing to provide cross border services into another EEA State for the first time under an EEA right derived from the Insurance Mediation Directive IDD must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the Act (EEA Passport Rights). The UK firm must at the outset give the FCA a notice in the required form of its intention to provide the cross border services into another EEA State. In this instance, the relevant procedure to be followed is outlined in SUP 13.4.2G, SUP 13.4.4G and SUP 13.4.5G SUP 13.4.5AG, SUP 13.5.2R (Specified contents: notice of intention to provide cross border services) and SUP 13.7.11G SUP 13.7.11AG will also be relevant.

…
Annex T

Amendments to the Enforcement Guide (EG)

In this Annex, striking through indicates deleted text and underlining indicates new text.

3 Use of information gathering and investigation powers

... 3.8B Information requests and investigations under the enhanced supervision of EEA firms under the Insurance Distribution Directive

3.8B.1 Under the IDD, where an EEA firm’s primary place of business is located in the United Kingdom rather than in its home member state, section 203A allows the FCA to enter into an agreement with that firm’s Home State regulator to exercise certain functions as if the firm were a UK firm. This same power but in reverse allows by virtue of section 203B the FCA to agree that an EEA regulator can exercise certain functions in respect of a UK firm whose primary place of business is in that EEA member state (see also SUP 13.11A.2G). A firm will be notified of such an agreement without delay.

... 8 Variation and cancellation of permission and imposition of requirements on the FCA’s own initiative and intervention against incoming firms

... 8.6 Exercising the power under section 55Q to vary or cancel a firm’s Part 4A permission or to impose requirements on a firm in support of an overseas regulator: the FCA’s policy

... 8.6.2 Relevant Community obligations which the FCA may need to consider include those under the Capital Requirements Directive, the Solvency II Directive, the Investment Services Directive/Markets in Financial Instruments Directive, the Insurance Mediation Directive, Insurance Distribution Directive (IDD) and the Market Abuse Regulation. Each of these legislative acts imposes general obligations on the relevant EEA competent authority to cooperate and collaborate closely in discharging their functions under the legislative acts.

... 19 Non-FSMA powers

... 19.6 Regulated Activities Order 2001 (RAO)
19.6.1 The RAO sets out those activities which are regulated for the purposes of the Act. Part V of the RAO also requires the FCA to maintain a register of all those people who are not authorised by the FCA but who carry on insurance mediation distribution activities. Under article 95 RAO, the FCA has the power to remove from the register an appointed representative who carries on insurance mediation distribution activities if it considers that he is not fit and proper. The FCA will give the person a warning notice informing him that it proposes to remove his registration and a decision notice if the decision to remove his registration is taken. The decisions to give a warning notice or a decision notice will be taken by the RDC following the procedures set out in DEPP 3.2 or, where appropriate, DEPP 3.3. A person who receives a decision notice under article 95 RAO may refer the matter to the Tribunal.
Annex U

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction to the Perimeter Guidance manual

1.4 General guidance to be found in PERG

1.4.2 Table: list of general guidance to be found in PERG.

<table>
<thead>
<tr>
<th>Chapter:</th>
<th>Applicable to:</th>
<th>About:</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>any person who needs to know whether they carry on insurance mediation activities and insurance distribution activities</td>
<td>the scope of relevant orders (in particular, the Regulated Activities Order) as respects activities concerned with the sale or administration of insurance</td>
</tr>
<tr>
<td>PERG 5:</td>
<td>insurance mediation distribution activities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>insurance brokers insurance advisers insurance undertakings other persons involved in the sale or administration of contracts of insurance, where these activities are secondary to their main business.</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1.5 What other guidance about the perimeter is available from the FCA?

1.5.1 General guidance on the perimeter is also contained in various FCA documents (mainly fact sheets and frequently asked questions) that are available on the FCA website at www.fca.org.uk. …

…

(7) guidance about the position under the Insurance Mediation
Directive and the Regulated Activities Order of the company appointed to manage a PPP or similar construction and operation project - https://www.fca.org.uk/your-fca/documents/fsa-ppp-forum-letter;

(8) guidance about the position under the Insurance Mediation Directive and the Regulated Activities Order of property managing agents - www.fca.org.uk/firms/insurers-insurance-intermediaries; [deleted]

…

1.5.1A G The guidance under PERG 1.5.1G(7) and (12) relates to the Insurance Mediation Directive, which has been repealed and replaced by the Insurance Distribution Directive (IDD). The guidance relates to whether the regulated activities in question are carried on for remuneration and by way of business under the Insurance Mediation Directive. The FCA does not view the changes under the IDD as having affected the analysis of remuneration and the ‘by way of business’ test set out in this guidance and so it continues to be relevant (see also PERG 5.4).

…

2 Authorisation and regulated activities

…

2.3 The business element

…

2.3.2 G …

(2A) A person who carries on an insurance mediation activity insurance distribution activity will not be regarded as doing so by way of business unless he takes up or pursues that activity is taken up or pursued for remuneration. PERG 2.3.3G gives guidance on the factors that are relevant to the meaning of ‘by way of business’ in section 22 of the Act. PERG 5.4 (The business test) gives further guidance on the business element as applied to insurance mediation activities insurance distribution activities.

…

2.5 Investments and activities: general

…

Modification of certain exclusions as a result of MiFID, the Insurance Mediation Directives IDD and the Mortgage Credit Directive

2.5.3 G The application of certain of the exclusions considered in PERG 2.8
(Exclusions applicable to certain regulated activities) and PERG 2.9
(Regulated activities: exclusions applicable to certain circumstances) is
modified in relation to persons who are subject to MiFID, the Insurance
Mediation Directive IDD and the MCD. The reasons for this and the
consequences of it are explained in PERG 2.5.4G for MiFID, PERG 5
(Insurance Guidance on insurance mediation distribution activities), for the
Insurance Mediation Directive IDD, and PERG 4.10A for the MCD.

…

Insurance mediation distribution or reinsurance mediation distribution

2.5.6 G The Insurance Mediation Directive IDD has is, in part, been implemented
through various amendments to the Regulated Activities Order. These
include article 4(4A) (Specified activities: general) which precludes a
person who, for remuneration, takes up or pursues insurance mediation
insurance distribution or reinsurance mediation reinsurance distribution,
in relation to a risk or commitment situated in an EEA State, from making use
of certain exclusions. In other cases, some of the exclusions provided in
relation to particular regulated activities are unavailable where the activity
involves a contract of insurance. This is explained in more detail in PERG
5 (Insurance Guidance on insurance mediation distribution activities).

…

2.6 Specified investments: a broad outline

…

2.6.7 G The Regulated Activities Order uses two further terms in relation to
contracts of insurance to identify those contracts under which rights are
treated as contractually based investments.

…

(2) The second term is ‘relevant investments’. This term applies to:

…

This term is used in connection with the treatment, under various parts of
the Regulated Activities Order, of persons carrying on insurance mediation
activities insurance distribution activities (see further PERG 5 (Insurance
Guidance on insurance mediation distribution activities) for further
guidance on such activities).

…

2.7 Activities: a broad outline

…

Effecting or carrying out contracts of insurance as principal
2.7.3 G  The activities of *effecting a contract of insurance* or *carrying out a contract of insurance* are separate regulated activities, each requiring authorisation. But this only applies where they are carried on by a *person* who is acting as principal. This means that the activities of agents, such as loss adjusters, will not constitute this regulated activity. The activities of some agents may, however, be regulated as insurance mediation activities insurance distribution activities (see PERG 5 (Guidance on insurance mediation distribution activities)).

2.7.4 G  …

PERG 5 (Insurance Guidance on insurance mediation distribution activities) has more guidance on these regulated activities where they are insurance mediation activities insurance distribution activities.

…

Assisting in the administration and performance of a contract of insurance

2.7.8A G  The activity of *assisting in the administration and performance of a contract of insurance* is a regulated activity that is identified in the Insurance Mediation Directive IDD. Further guidance on this activity is in PERG 5.7 (The regulated activities: assisting in the administration and performance of a contract of insurance).

…

2.8 Exclusions applicable to particular regulated activities

…

Dealing in investments as agent

2.8.5 G  …

(4)  …

More detailed guidance on the exclusions that relate to contracts of insurance is in PERG 5 (Insurance Guidance on insurance mediation distribution activities).

…

Arranging deals in investments and arranging a home finance transaction

…

2.8.6A G  The exclusions in the Regulated Activities Order that relate to the various arranging activities are as follows:

…
(6) Under article 30, arranging investment transactions in connection with lending on the security of contracts of insurance is excluded, from article 25(1) and (2) but only where a person is not carrying on insurance mediation insurance distribution or reinsurance mediation reinsurance distribution.

…

(10A) (1) Under article 33B, the mere provision of certain information is excluded from article 25(1) and (2). The information must be:

(a) about a potential policyholder, and provided to either a relevant insurer (as defined in article 39B(2) of the Regulated Activities Order), an insurance intermediary (as defined in article 2(1)(3) of the IDD) or an IDD reinsurance intermediary, or

(b) about certain insurance products or providers, and provided to a potential policyholder.

(2) This is on the condition that the provider of the information takes no step other than to provide this information to assist in the conclusion of a contract of insurance.

…

(13) …

The exclusions referred to in (a), (b), (g), (h), (m) and (n) also apply to arranging activities related to home finance transactions (in that context, the exclusion in (n) covers any activity which is carried on by a local authority). More detailed guidance on the exclusions that relate to contracts of insurance is in PERG 5 (Insurance Guidance on insurance mediation distribution activities).

…

Managing investments

2.8.7 G The activities of persons appointed under a power of attorney are excluded under article 38 of the Regulated Activities Order from the regulated activity of managing investments, if specified conditions are satisfied. The exclusion only applies where a person is not carrying on insurance mediation insurance distribution or reinsurance mediation reinsurance distribution and is subject to further limitations discussed below. In addition, the following exclusions (outlined in PERG 2.9) apply in specified
circumstances where a person manages assets:

...

Advising on investments

...

2.8.12A G ...

(2) ...

More detailed guidance on certain of these exclusions is in PERG 4 (Regulated Guidance on regulated activities connected with mortgages), PERG 5 (Insurance Guidance on insurance mediation distribution activities), PERG 14.3 (Activities relating to home reversion plans), PERG 14.4 (Activities relating to home purchase plans) and PERG 14.4A (Guidance on home reversion, home purchase and Activities relating to regulated sale and rent back agreement activities agreements).

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Trustees, nominees or personal representatives

2.9.3 G This group of exclusions applies, in specified circumstances, to the regulated activities of:

...

The exclusion is, however, disapplied where a person is carrying on insurance mediation, insurance distribution or reinsurance mediation reinsurance distribution, or the person would be an MCD firm. This is due to article 4(4A) and 4(4B) of the Regulated Activities Order. Guidance on exclusions relevant to insurance mediation activities insurance distribution activities is in PERG 5 (Insurance Guidance on insurance mediation distribution activities) and guidance on activities and exclusions relevant to the MCD is in PERG 4.10A (Activities regulated under the Mortgage Credit Directive).

...

Professions or business not involving regulated activities

2.9.5 G This group of exclusions applies, in specified circumstances, to the regulated activities of:
The exclusion is, however, disapplied where a person is carrying on insurance mediation insurance distribution or reinsurance mediation reinsurance distribution. This is due to article 4(4A) of the Regulated Activities Order. Guidance on exclusions relevant to insurance mediation activities insurance distribution activities is in PERG 5 (Insurance Guidance on insurance mediation distribution activities). The exclusion is also disapplied for persons who, when carrying on the relevant regulated activity, are MiFID investment firms or third country investment firms (see PERG 2.5.4G to PERG 2.5.5G (Investment services and activities)).

Group and joint enterprises

These exclusions apply to intra-group dealings and activities and to dealings or activities involving participators in a joint enterprise which take place for the purposes of, or in connection with, the enterprise. The general principle here is that, as long as activities that would otherwise be regulated activities take place wholly within a group of companies, then there is no need for authorisation. The same principle applies to dealings or activities that take place wholly within a joint enterprise entered into for commercial purposes related to the participators’ unregulated business. The exclusions in PERG 2.9.9G(2), (3), (4) and (7) are disapplied where they concern a contract of insurance. Guidance on exclusions relevant to insurance mediation activities insurance distribution activities is in PERG 5 (Insurance Guidance on insurance mediation distribution activities). The exclusions are also disapplied for persons who, when carrying on the relevant regulated activity, are MiFID investment firms or third country investment firms (see PERG 2.5.4G to PERG 2.5.5G (Investment services and activities)).

Sale of body corporate

These exclusions also apply to transactions that are entered into for the purposes of the above transactions (such as transactions involving the offer of securities in the offeror as consideration or part consideration for the sale of the shares in the body corporate). These exclusions do not have effect in relation to shares in an open-ended investment company. The exclusions in PERG 2.9.11G(2), (3) and (4) are disapplied where they concern a contract
Insurance mediation distribution activities

2.9.19 G The exclusions in this group apply to certain regulated activities involving certain contracts of insurance. The exclusions and the regulated activities to which they apply are as follows.

(1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services, or services related to travel in connection with general insurance contracts only that satisfy a number of conditions.

(a) The contracts must:

(i) be for five years duration or less and have an annual premium of no more than 500.

(A) 600 euro or less (calculated on a pro rata annual basis); or

(B) 200 euro or less, where the contracts of insurance are complementary to a service being provided by the provider and the duration of that service is equal to or less than three months,

or equivalent amounts of sterling or another currency;

(ii) The contract must cover:

(A) breakdown or loss of or damage to non-motor goods supplied by the provider; or

(B) loss of or damage to baggage and other risks linked to certain travel services booked with the provider; or

(C) the non-use of services supplied by the provider.

(b) The travel services must be the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation, or must relate to attendance at an event organised or managed by
the provider.

(c) Where the travel services relate to an event, the exclusion does not apply if the party seeking insurance is an individual (acting in his/her private capacity) or a small business. A small business is a sole trader, body corporate, partnership or unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where it is a member of a group, the combined turnover of the group is used). Turnover means the amounts derived from the provision of goods and services falling within the business’s ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on those amounts.

(d) There must not be any liability risk cover other than (in relation to travel risk) where this is ancillary to the main risk covered in a travel policy.

(e) The insurance must be complementary to the goods or services being supplied by the provider in the course of his/the provider’s carrying on a business or profession not otherwise consisting of regulated activities, and the policy must be in standard form.

(f) This exclusion applies where the regulated activities concerned are:

(a) (i) dealing in investments as agent;

(b) (ii) arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;

(c) (iii) assisting in the administration and performance of a contract of insurance; and

(d) (iv) advising on investments.

(2) …

…

(4) The fourth exclusion applies where specified information is provided to a potential policyholder, or to a relevant insurer (as defined in article 39B(2) of the Regulated Activities Order), an insurance intermediary (as defined in article 2(1)(3) of the IDD) or an IDD reinsurance intermediary, by a person who does not take any other step to assist in the conclusion of a contract of insurance (see PERG 2.8.6A(10A)G and PERG 5.6.4B-EG).

Guidance on these and other exclusions relevant to insurance mediation activities insurance distribution activities is in PERG 5 (Insurance
Guidance on insurance mediation distribution activities).

...  

2.10 Persons carrying on regulated activities who do not need authorisation  

...  

Appointed representatives  

2.10.5 G With one exception, a person is exempt if he is they are an appointed representative of an authorised person. In some circumstances, however, a person may be an appointed representative and not be exempt, if the person has a limited permission for certain credit-related regulated activities. See SUP 12 (Appointed representatives). But where an appointed representative carries on insurance mediation insurance distribution or reinsurance mediation reinsurance distribution, he that person will not be exempt unless he is they are included on the register kept by the FCA under article 93 of the Regulated Activities Order (Duty to maintain a record of unauthorised persons carrying on insurance mediation distribution activities) (see PERG 5.13 (Appointed representatives)).

...  

Members of the professions  

...  

2.10.16 G A person carrying on regulated activities under the regime for members of the professions will be subject to rules made by the professional body designated by the Treasury. Such bodies are obliged to make rules governing the carrying on by their members of those regulated activities that they are able to carry on without authorisation under the Act. Where such a person is carrying on insurance mediation insurance distribution or reinsurance mediation reinsurance distribution, he that person must also be included on the register kept by the FCA under article 93 of the Regulated Activities Order (Duty to maintain a record of unauthorised persons carrying on insurance mediation distribution activities) (see PERG 5.10 (Exemptions)).

...  

2 Annex Regulated activities and the permission regime  

2  

...  

2 Table

| Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1] |
Regulated activity | Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
--- | ---

...  

**Insurance mediation distribution activity [see note 5A to Table 1]**

(pb) *dealing in investments as agent*  
(article 21)  
*life policy* [see note 5B to Table 1]

...  

3 Table

**Notes to Table 1**

...  

**Note 1B:**

*Life policies are contractually based investments. Where the regulated activities listed as designated investment business in (e) to (g) and (j) are carried on in relation to a life policy, these activities also count as ‘insurance mediation activities’. The full list of insurance mediation activities is set out in (pb) to (pf). The regulated activities of agreeing to carry on each of these activities will, if carried on in relation to a life policy, also come within both designated investment business and insurance mediation activities.***

...  

**Note 5A:**

*Where they are carried on in relation to a life policy, the activities listed as insurance mediation activities in (pb) to (pf) (as well as the regulated activity of agreeing to carry on those activities) are also designated investment business.*

...  

4  
**Guidance on regulated activities connected with mortgages**

4.1  
**Application and purpose**
Guidance on other activities

4.1.6 G A person may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or ISA to repay an interest-only mortgage. Such a person should also consult the guidance in PERG 2 (Authorisation and regulated activities), PERG 5 (Guidance on insurance mediation distribution activities) and PERG 8 (Financial promotion and related activities). In addition, PERG 14 (Guidance on home reversion, and home purchase and regulated sale and rent back agreement activities) has guidance on regulated activities relating to home reversion plans, home purchase plans and regulated sale and rent back agreements.

...

4.10A Activities regulated under the Mortgage Credit Directive

...

The effect of article 4(4B) on arrangers: Remuneration under the MCD

4.10A.1 7 G PERG 5.4 (The business test for insurance mediation distribution) has guidance on the meaning of remuneration in the Insurance Mediation Directive IDD. That guidance is also applicable to the meaning of remuneration for the purpose of PERG 4.10A.12G.

...

5 Guidance on insurance mediation distribution activities

5.1 Application and purpose

5.1.1 G This chapter applies principally to any person who needs to know whether he carries on insurance mediation activities insurance distribution activities and is thereby subject to FCA regulation. As such it will be of relevance among others to:

(1) insurance brokers;

(2) insurance advisers;

(3) insurance undertakings; and

(4) other persons involved in the sale and administration of contracts of insurance, even where these activities are secondary to their main business.

...

5.1.6 G The purpose of this guidance is to help persons consider whether they need authorisation or a variation of their Part 4A permission. Businesses new to regulation who act only as introducers of insurance business are directed in
particular to PERG 5.6.2G (article 25(1): arranging (bringing about) deals in investments) to PERG 5.6.9G (Exclusion: Article 72C (Provision of information on an incidental basis)) and PERG 5.15.6G (Flow chart: Introducers) to help consider whether they require authorisation. This guidance also explains the availability to persons carrying on insurance mediation activities insurance distribution activities of certain exemptions from regulation, including the possibility of becoming an appointed representative (see PERG 5.13.1G to PERG 5.13.6G (Appointed representatives)).

5.2 Introduction


Questions to be considered to decide if authorisation is required

5.2.3 G A person who is concerned to know whether his their proposed insurance mediation activities insurance distribution activities may require authorisation will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flow chart in PERG 5.15.2G (Flow chart: regulated activities related to insurance mediation — do you need authorisation?):

1. will the activities relate to contracts of insurance (see PERG 5.3 (Contracts of insurance))?
2. if so, will I be carrying on any insurance mediation activity insurance distribution activity (see PERG 5.5 (The regulated activities: dealing in contracts as agent) to PERG 5.11 (Other aspects of exclusions))?
(3) if so, will I be carrying on my activities by way of business (see PERG 5.4 (The business test))?  

(4) if so, is there the necessary link with the United Kingdom (see PERG 5.12 (Link between activities and the United Kingdom))?  

(5) if so, will any or all of my activities be excluded (see PERG 5.3.7G (Connected contracts of insurance) to PERG 5.3.8G (Large risks); PERG 5.6.5G PERG 5.6.4AG (Exclusion: article 72C Exclusions for the provision of information: article 33B and 72C on an incidental basis) to PERG 5.6.23G (Other exclusions); PERG 5.7.7G (Exclusions); PERG 5.8.24G (Exclusion: periodical publications, broadcasts and web-sites) to PERG 5.8.26G (Other exclusions); PERG 5.11 (Other aspects of exclusions) and PERG 5.12.9G to PERG 5.12.10G (Overseas persons))?  

(6) if it is not the case that all of my activities are excluded, am I a professional firm whose activities are exempted under Part XX of the Act (see PERG 5.14.1G to PERG 5.14.4G (Professionals))?  

(7) if not, am I exempt as an appointed representative (see PERG 5.13 (Appointed representatives))?  

(8) if not, am I otherwise an exempt person (see PERG 5.14.5G (Other exemptions))?

If a person gets as far as question (8) and the answer to that question is ‘No’, that person requires authorisation and should refer to the FCA website page “How to Apply apply for authorisation”: www.fca.org.uk/firms/authorisation/apply-authorisation for details of the application process. The order of these questions considers firstly whether a person is carrying on insurance mediation activities insurance distribution activities before dealing separately with the questions ‘will I be carrying on my activities by way of business?’ (3) and ‘if so, will any or all of my activities be excluded?’ (5).

5.2.4 G It is recognised pursuant to section 22 of the Act that a person will not be carrying on regulated activities in the first instance, including insurance mediation activities insurance distribution activities, unless he is the person is carrying on these activities by way of business. Similarly, where a person’s activities are excluded he that person cannot, by definition, be carrying on regulated activities. To this extent, the content of the questions above does not follow the scheme of the Act. For ease of navigation, however, the questions are set out in an order and form designed to help persons consider more easily, and in turn, issues relating to:

(1) the new regulated activities;  
(2) the business test; and  
(3) the exclusions.
Approach to implementation of the IMD IDD

5.2.5 G The IMD IDD imposes requirements upon EEA States relating to the regulation of insurance distribution and reinsurance distribution. The IMD IDD defines “insurance mediation” and “reinsurance mediation” as including the activities of introducing advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance and reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. It includes the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media. Reinsurance distribution is similarly defined (excluding the price comparison website activities). (The text of IDD article 2.3 articles 2.1(1), 2.1(2) and 2.2 IMD is reproduced in full in PERG 5.16.2G (article 2.3 of the Insurance Mediation Directive)).

5.2.6 G The United Kingdom’s approach to implementing IMD IDD (and the IMD before it) by domestic legislation is, in part, through secondary legislation, which will apply pre-existing regulated activities (slightly amended) in the Regulated Activities Order to the component elements of the insurance mediation definition insurance distribution and reinsurance distribution definitions in the IMD IDD (see PERG 5.2.5G and the text of article 2.3 IMD IDD articles 2.1(1), 2.1(2) and 2.2 in PERG 5.16.2G (article 2.3 of the Insurance Mediation Directive)).

5.2.7 G The effect of the IMD and its implementation described in PERG 5.2.5G to PERG 5.2.6G is to vary the application of the existing regulated activities set out in PERG 5.2.8G(1) to PERG 5.2.8G(3), PERG 5.2.8G(5) and PERG 5.2.8G(6), principally by applying these regulated activities to general insurance contracts and pure protection contracts and by making changes to the application of the various exclusions to these regulated activities. These regulated activities applied prior to 14 January 2005 to qualifying contracts of insurance (as defined by article 3 of the Regulated Activities Order and referred to in the Handbook as life policies (which includes pension policies)). The legislation implementing the IMD introduced a new regulated activity set out in PERG 5.2.8G(1), which potentially applies to all contracts of insurance. [deleted]

5.2.8 G It follows that As a result, each of the regulated activities below potentially apply to any contract of insurance:

... 

5.2.9 G It is the scope of the Regulated Activities Order rather than the IMD IDD
which will determine whether a person requires authorisation or exemption. However, the scope of the IMD IDD is relevant to the application of certain exclusions under the Regulated Activities Order (see, for example, the commentary on article 67 in PERG 5.11.9G (Activities carried on in the course of a profession or non-investment business)).

Financial promotion

5.2.10 G An unauthorised person who intends to carry on activities connected with contracts of insurance will need to comply with section 21 of the Act (Restrictions on financial promotion). This guidance does not cover financial promotions that relate to contracts of insurance. Persons should refer to the general guidance on financial promotion in PERG 8 (Financial promotion and related activities). (See in particular PERG 8.17A (Financial promotions concerning insurance mediation distribution activities) for information on financial promotions that relate to insurance mediation activities insurance distribution activities.)

5.3 Contracts of insurance

... 5.3.5 G The Regulated Activities Order does not define a reinsurance contract. The essential elements of the common law description of a contract of insurance are also the essential elements of a reinsurance contract. Whilst the IMD IDD addresses insurance and reinsurance separately, throughout this guidance the term ‘contract of insurance’ (italicised or otherwise) also applies to contracts of reinsurance.

... Connected contracts of insurance 5.3.7 G Article 72B of the Regulated Activities Order (Activities carried on by a provider of relevant goods or services) excludes from FCA regulation certain regulated activities carried on by providers of non-motor goods or services and services related to travel in relation to contracts of insurance that satisfy a number of conditions. Details about the scope of this exclusion can be found at PERG 5.11.13G to PERG 5.11.15G PERG 5.11.14G (Activities carried on by a provider of relevant goods or services).

... Specified investments 5.3.9 G For an activity to be a regulated activity, it must be carried on in relation to 'specified investments' (see section 22 of the Act (Regulated activities) and Part III of the Regulated Activities Order (Specified investments)). For the purposes of insurance mediation activity insurance distribution activity, specified investments include the following 'relevant investments' defined
in article 3(1) of the Regulated Activities Order (Interpretation):

…

5.3.10 G A person will have rights under a contract of insurance when he is a policyholder. The question of whether a person has rights under a contract of insurance may require careful consideration in the case of group policies (with reference to the Glossary definition of policyholder). In the case, in particular, of general insurance contracts and pure protection contracts, the existence or otherwise of rights under such policies may be relevant to whether a person is carrying on insurance mediation activities insurance distribution activities.

…

5.4 The business test

5.4.1 G A person will only need authorisation or exemption if he is carrying on a regulated activity ‘by way of business’ (see section 22 of the Act (Regulated Activities)).

5.4.2 G There is power in the Act for the Treasury to specify the circumstances in which a person is or is not to be regarded as carrying on regulated activities by way of business. The Business Order has been made using this power (partly reflecting differences in the nature of the different activities). As such, the business test for insurance mediation activity insurance distribution activity is distinguished from the standard test for ‘investment business’ in article 3 of the Business Order. Under article 3(4) of the Business Order, a person is not to be regarded as carrying on by way of business any insurance mediation activity insurance distribution activity unless he takes up or pursues that activity for remuneration. Accordingly, there are two principal elements to the business test in the case of insurance mediation activities insurance distribution activities:

(1) does a person receive remuneration for these activities?

(2) if so, does he take up or pursue these activities by way of business?

5.4.3 G (1) As regards PERG 5.4.2G(1), the Business Order does not provide a definition of ‘remuneration’, but, however ‘remuneration’ is defined in the IDD. Article 2(1)(9) of the IDD defines ‘remuneration’ to mean any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.

(2) In the FCA’s view, ‘remuneration’ in the Business Order follows the meaning of the IDD definition of remuneration, and:

(a) it has a broad meaning and covers both monetary and non-monetary rewards. This is regardless of who makes them. For example, where a person pays discounted premiums for
his their own insurance needs in return for bringing other business to an insurance undertaking, the discount would amount to remuneration for the purposes of the Business Order.

(b) Remuneration it can also take the form of an economic benefit which the person expects to receive as a result of carrying on insurance mediation activities insurance distribution activities.

(c) In the FCA’s view, the remuneration it does not have to be provided or identified separately from remuneration for other goods or services provided. Nor is there a minimum level of remuneration.

5.4.4 As regards PERG 5.4.2G(2), in the FCA’s view, for a person to take up or pursue insurance mediation activity insurance distribution activity by way of business, he the person will usually need to be carrying on those activities with a degree of regularity. The person will also usually need to be carrying on the activities for commercial purposes. That is to say, he the person will normally be expecting to gain a direct financial benefit of some kind. Activities carried on out of friendship or for altruistic purposes will not normally amount to a business. However, in the FCA’s view:

5.4.5 It follows that whether or not any particular person is acting ‘by way of business’ for these purposes will depend on his that person’s individual circumstances. However, a typical example of where the applicable business test would be likely to be satisfied by someone whose main business is not insurance mediation activities insurance distribution activities, is where a person recommends or arranges specific insurance policies in the course of carrying on that other business and receives a fee or commission for doing so.

5.4.6 Some typical examples of where the business test is unlikely to be satisfied, assuming that there is no direct financial benefit to the arranger, include:

1. arrangements which are carried out by a person for himself for their own benefit, or for members of his the person’s family;
2. where employers provide insurance benefits for staff; and
3. where affinity groups or clubs set up insurance benefits for members.

5.4.7 PERG 5.4.8G contains a table that summarises the main issues surrounding the business test as applied to insurance mediation activities insurance distribution activities and that may assist persons to determine whether they will need authorisation or exemption. The approach taken in the table involves identifying factors that, in the FCA’s view, are likely to play a part
in the analysis. Indicators are then given as to the significance of each factor to the person’s circumstances. By analysing the indicators as a whole, a picture can be formed of the likely overall position. The table provides separate indicators for the two elements of remuneration and by way of business. As a person has to satisfy both elements, a clear overall indication against either element being satisfied should mean that the test is failed. This approach cannot be expected to provide a clear conclusion for everyone. But it should enable persons to assess the relevant aspects of their activities and to identify where changes could, if necessary, be made so as to make their position clearer. The person to whom the indicators are applied is referred to in the table as ‘P’.

5.4.8 G Table: Carrying on insurance mediation distribution activities ‘for remuneration’ and ‘by way of business’

| Carrying on insurance mediation distribution activities ‘for remuneration’ and ‘by way of business’ |
| Factor | Indicators that P does not carry on activities ‘for remuneration’ | Indicators that P does carry on activities ‘for remuneration’ |
| Direct remuneration, whether received from the customer or the insurer/broker (cash or benefits in kind such as tickets to the opera, a reduction in other insurance premiums, a remission of a debt or any other benefit capable of being measured in money’s worth) | P does not receive any direct remuneration specifically identified as a reward for P’s carrying on insurance mediation activities insurance distribution activities. | P receives direct remuneration specifically identified as being a reward for P’s carrying on insurance mediation activities insurance distribution activities. |
| Indirect remuneration (such as any form of economic benefit as may be explicitly or implicitly agreed between P and the insurer/broker or P’s customer – including, for example, through the acceptance of P’s terms and conditions or mutual recognition of the economic benefit that is likely to accrue to P). An | P does not obtain any form of indirect remuneration through an economic benefit other than one which is not likely to have a material effect on P’s ability to make a profit from P’s other activities. | P obtains an economic benefit that: (a) is explicitly or implicitly agreed between P and the insurer/broker or P’s customer; and (b) has the potential to go beyond mere cost recovery through fees or other benefits received for providing a package |
indirect economic benefit can include expectation of making a profit of some kind as a result of carrying on insurance mediation activities insurance distribution activities as part of other services.

of services that includes insurance mediation activities insurance distribution activities but where no particular part of the fees is attributable to insurance mediation activities insurance distribution activities. This could include where insurance mediation activities insurance distribution activities are likely to:

- play a material part in the success of P’s other business activities or in P’s ability to make a profit from them; or
- provide P with a materially increased opportunity to provide other goods or services; or
- be a major selling point for P’s other business activities; or
- be essential for P to provide other goods or services.

P charges his customers a greater amount for other goods or services than would be the case if P were not also carrying on insurance mediation activities insurance distribution activities for those customers and this:
is explicitly or implicitly agreed between P and the insurer/broker or P’s customer; and has the potential to go beyond mere cost recovery.

| Recovery of costs | P receives no benefits of any kind (direct or indirect) in respect of his insurance mediation activities insurance distribution activities beyond the reimbursement of his actual costs incurred in carrying on the activity (including receipt by P of a sum equal to the insurance premium that P is to pass on to the insurer or broker). | P receives benefits of any kind (direct or indirect) in respect of his insurance mediation activities insurance distribution activities which go beyond the reimbursement of his actual costs incurred in carrying on the activity. |

---

### ‘By way of business’

<table>
<thead>
<tr>
<th>Factor</th>
<th>Indicators that P does not carry on activities “by way of business”</th>
<th>Indicators that P does carry on activities “by way of business”</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

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### Holding out

| P does not hold himself him or herself out as providing a professional service that includes insurance mediation activities insurance distribution activities (by ‘professional’ is meant meaning ‘not the services of a layman’). | P holds himself him or herself out as providing a professional service that includes insurance mediation activities insurance distribution activities. |

---

### Relevance to other activities/business

<table>
<thead>
<tr>
<th>Insurance mediation activities Insurance distribution activities: have no relevance to</th>
<th>Insurance mediation activities Insurance distribution activities:</th>
</tr>
</thead>
<tbody>
<tr>
<td>P’s other activities; or have some relevance but could easily be ceased without causing any difficulty in carrying on their main activities; or would be unlikely to result in a material reduction in income from P’s main activities if ceased.</td>
<td>are essential to P in carrying on his their main activities; or would cause a material disruption to P carrying on his their main activities if ceased; or would be likely to reduce P’s income by a material amount.</td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Commercial benefit</td>
<td>P receives no direct or indirect pecuniary or economic benefit. P is a layman and acting in that capacity. P would not obtain materially less income from his P’s main activities if they did not include insurance mediation activities insurance distribution activities.</td>
</tr>
</tbody>
</table>

5.6 The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance

5.6.4 G …

Exclusions for provision of information: article 33B and 72C

5.6.4A G Articles 33B and 72C of the Regulated Activities Order provide exclusions relating to the provision of information from the regulated activity of
**Exclusion: article 33B (Provision of information – contracts of insurance)**

5.6.4B **G** In broad terms, article 33B of the *Regulated Activities Order* excludes from article 25 (*arranging*) activities that consist of:

(1) the provision of information about a potential policyholder to:

   (a) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or

   (b) an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or

   (c) an *IDD reinsurance intermediary*; or

(2) the provision of information to a potential policyholder about:

   (a) a *contract of insurance*; or

   (b) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or *IDD reinsurance intermediary*,

where the provider of the information does not take any step other than the provision of information to assist in the conclusion of a *contract of insurance*.

5.6.4C **G** The exclusion in *PERG* 5.6.4BG will be of assistance to persons who would otherwise be carrying on the *regulated activity of arranging*. This exclusion is intended to give effect to article 2.2 of the *IDD* (the text of which is reproduced in *PERG* 5.16.2G(2)) which refers to the ‘mere’ provision of this information without taking any additional steps not being considered to constitute *insurance distribution*. In the FCA’s view, the effect of this, and the reference in article 2.2(c) of the *IDD* to ‘data and information on potential policyholders’, is that the exclusion in *PERG* 5.6.4BG covers those situations where a *person* provides existing information they hold on potential policyholders (for example their name and contact details) but does not extend to information they obtain from other means such as pre-purchase questioning.

5.6.4D **G** A *person* seeking to rely on article 33B cannot provide information other than the information specified in that article. That person also cannot take a step other than the provision of the specified information where such a step would assist in the conclusion of a *contract of insurance*. For example, a *person* who forwards a proposal form to an *insurance undertaking* would not be able to benefit from the exclusion. Similarly, where a *person* does more than provide information (for example, by helping a potential policyholder fill in an application form) they would be unable to rely on
5.6.4G This exclusion does not cover the activity of advising a customer under article 53(1) of the Regulated Activities Order (Advising on investments (other than P2P agreements)) (see PERG 5.8 and PERG 8.24).

Exclusion: article 72C (Provision of information on an incidental basis)

5.6.5G The Article 72C of the Regulated Activities Order provides an important another potential exclusion in relation to article 25, however, only for persons whose principal business is other than insurance mediation activities insurance distribution activities. In contrast to article 33B, article 72C also provides an exclusion for regulated activities other than arranging.

5.6.8G This exclusion applies to a person whose profession or business does not otherwise consist of regulated activities. In the FCA’s view, the fact that a person may carry on regulated activities in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of regulated activities. This is provided that the main focus of the profession or business does not involve regulated activities and that the regulated activities that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. So, the exclusion may be of relevance to exempt professional firms. It might also, for example, be relied on by doctors, vets and dentists as well as many businesses in the non-financial sector, even if they have permission to carry on regulated activities or are appointed representatives. This is assuming that their activities for which they are seeking to use the exclusion in article 72C are limited to providing information in a way which is incidental to their main profession or business. The In contrast to article 33B, this exclusion only extends to information given to the policyholder or potential policyholder and not to the insurance undertaking. Unlike article 33B, article 72C does not specify what information may be provided within the scope of the exclusion. An intermediary who forwards a proposal form to an insurance undertaking would not be able to take the benefit of the exclusion. Similarly, where a person does more than provide information (for example, by helping a potential policyholder fill in an application form), they cannot take the benefit of this exclusion. Nor does it cover the activity of advising a customer under article 53 of the Regulated Activities Order (Advising on investments).

5.6.9G The exclusion will be of assistance to introducers who would otherwise be carrying on the regulated activity of making arrangements with a view to transactions in investments (assuming, as mentioned in PERG 5.6.8G, that they provide information only to policyholders or potential policyholders, and not to the intermediary or insurance undertaking to whom they introduce these policyholders or potential policyholders). In order to assist such introducers determine whether or not they are likely to require authorisation, a simplified flowchart is included in
PERG 5.15.6G (Flow chart: introducers). Introducers may also find the guidance at PERG 5.9.2G (The regulated activities: agreeing to carry on a regulated activity) and PERG 5.6.4BG to PERG 5.6.4EG helpful. PERG 5.6.17G (Exclusion from article 25(2) for introducing) has guidance to assist persons to determine whether their introducing activities amount to making arrangements with a view to transactions in investments.

Exclusion from article 25(2): arrangements enabling parties to communicate

5.6.11 G In the FCA’s view, the crucial element of the exclusion in article 27 is the inclusion of the word ‘merely’. When a publisher, broadcaster or internet website operator goes beyond what is necessary for him to provide his service of publishing, broadcasting or otherwise facilitating the issue of promotions, he may well bring himself within the scope of article 25(2). Further detailed guidance relating to the scope of the exclusion in article 27 is contained in PERG 2.8.6G(2) (Arranging deals in investments and arranging a home finance transaction) and PERG 8.32.6G to PERG 8.32.11G (Arranging deals in investments).

Exclusion from article 25(2): transactions to which the arranger is a party

5.6.15 G In some cases, a person may make arrangements to enter into a contract of insurance as policyholder on its own behalf and also arrange that another person become a policyholder under the same contract of insurance. If so, the person should be aware that the effect of the narrower exclusion in article 28 as part of implementation of the IMD IDD is that he may be arranging on behalf of the other policyholder. This may be relevant, for example, to a company which arranges insurance for itself (not arranging) as well as other companies in a group or loan syndicate (potentially arranging).

Exclusion from article 25(2) for introducing

5.6.17 G Article 33 of the Regulated Activities Order (Introducing) excludes arrangements which would otherwise fall under article 25(2) where:

(2) the person to whom introductions are to be made is:

(a) an authorised person; or

(b) an exempt person acting in the course of business comprising a regulated activity in relation to which he is they are exempt; or
(c) a person who is not unlawfully carrying on regulated activities in the United Kingdom and whose ordinary business involves him the person in engaging in certain activities;

...

5.6.18 G The effect of PERG 5.6.17G(4) is that some persons who, in making introductions, are making arrangements with a view to transactions in investments under article 25(2) of the Regulated Activities Order, cannot use the introducing exclusion. This is usually the case if, in general terms, the arrangements for making introductions relate to contracts of insurance (PERG 5.6.19G has further guidance on when arrangements for introductions may be regarded as relating to contracts of insurance). However, this does not mean that all introducers whose introductions relate directly or indirectly to contracts of insurance will necessarily require authorisation if they cannot use the exclusion exclusions in article articles 33B or 72C of the Regulated Activities Order for merely passing information. For this to be the case, a person to need authorisation, they must first be carrying on the business of making arrangements with a view to transactions in investments. In the FCA’s view, the following points will be relevant in determining whether this is the case.

...

5.8 The regulated activities: advising on contracts of insurance

...

5.8.3 G Each of these aspects is considered in greater detail in the table in PERG 5.8.5G. Where an activity is identified as not amounting to advising on investments (except P2P agreements) it could still form part of another regulated activity. This will depend upon whether a person’s activities, viewed as a whole, amount to arranging. Additionally, it should be borne in mind that the provision of advice or information may involve the communication of a financial promotion (see PERG 8 (Financial promotion and related activities)).

...

Advice given to a person in his their capacity as an investor or potential investor

5.8.6 G For the purposes of article 53(1), advice must be given to a person in his that person’s capacity as an investor or potential investor (which, in the context of contracts of insurance, will mean as policyholder or potential policyholder). So, article 53(1) will not apply where advice is given to persons who receive it as:
(1) an adviser who will use it only to inform advice given by him they give to others; or

(2) a journalist or broadcaster who will use it only for journalistic purposes.

5.8.7 Advice will still be covered by article 53(1) even though it may not be given to any particular policyholder (for example, advice given in a periodical publication or on a website). Such advice would, however, be unlikely to be a personal recommendation (see PERG 5.8.3AG, PERG 8.24.1G and PERG 8.30BG).

Advice must relate to the merits (of buying or selling a contract of insurance)

5.8.13 The requirements imposed by the IMD IDD (see PERG 5.2.5G (Approach to implementation of the IMD IDD)) and the text of article 2.3 IMD IDD are narrower than the scope of the Regulated Activities Order (see PERG 5.2.7G (Approach to implementation of the IMD IDD)). This is that, unlike the Regulated Activities Order, they do not relate to the assignment of contracts of insurance. This is of relevance to, amongst others, persons involved in the ‘second-hand’ market for contracts of insurance such as traded endowment policies and certain viatical instruments (that is, arrangements by which a terminally ill person can obtain value from their life policy) (see also PERG 5.6.12G (Exclusion from article 25(2): transactions to which the arranger is a party)). Persons advising on or arranging assignments of these contracts of insurance are therefore potentially carrying on regulated activities although they may be able to take the benefit of article 67 of the Regulated Activities Order (Activities carried on in the course of a profession or non-investment business) in certain circumstances (see PERG 5.11.9G to PERG 5.11.12G (Activities carried on in the course of a profession or non-investment business)).

Medium used to give advice

5.8.20 With the exception of:

(1) periodicals, broadcasts and other news or information services (see PERG 5.8.24G to PERG 5.8.25G (Exclusion: periodical publications, broadcasts and web-sites)); and

(2) situations involving an overseas element (see, generally, PERG 5.12 (Link between activities and the United Kingdom) and, in particular, PERG 5.12.8G (Where is insurance mediation distribution carried...
the use of the medium itself to give advice should make no material
difference to whether or not the advice is caught by article 53(1).

...  

5.9  

The Regulated Activities: agreeing to carry on a regulated activity

...  

5.9.2  

To the extent that an exclusion applies in relation to a regulated activity,
‘agreeing’ to carry on an activity within the exclusion will not be a
regulated activity. This is the effect of article 4(3) of the Regulated
Activities Order (Specified activities: general). So, for example, a vet can,
without carrying on a regulated activity, enter into an agreement with an
insurance undertaking to distribute marketing literature provided that the
vet can rely on the exclusion in article 72C (Provision of information on an
incidental basis) or article 33B (Provision of information – contracts of
insurance) in relation to the activity of distributing the literature (see also
PERG 5.6.6G PERG 5.6.4AG and to PERG 5.6.9G which cover exclusions
(Exclusion: article 72C (Provision for the provision of information on an
incidental basis))). However, to be able to rely on the exclusion in article
72C, the vet must not be viewed as providing information to the insurance
undertaking. More specifically, an unauthorised introducer can enter into
standing arrangements with insurance undertakings or brokers to make
introductions, provided that these arrangements do not envisage subsequent
provision of information to these insurance undertakings or brokers with a
view to arranging (bringing about) deals in investments or making
arrangements with a view to transactions in investments.

5.10  

Renewals

5.10.1  

It must be emphasised that activities which concern invitations to renew
policies and the subsequent effecting of renewal of policies are likely to fall
within insurance mediation activity insurance distribution activity. Those
considering the need for authorisation or variation of their permissions will
wish to consider whether a process of tacit renewal operates: that is, where
a policyholder need take no action if he wishes they wish to maintain his
their insurance cover by having his their policy ‘renewed’. This process will
typically result in the issue of a new contract of insurance, not an extension
of the period of the existing one. It may involve the activities of advising on
investments, arranging and dealing in investments as agent. More
specifically, preparing a ‘tacit renewal’ letter on behalf of an insurance
undertaking is likely to amount to arranging. Where it contains a
recommendation to renew existing cover this is likely to constitute advising
on investments (except P2P agreements) (under article 53(1) of the
Regulated Activities Order). If the contract takes effect on the date
stipulated in the renewal letter, a contract is concluded with the effect that
the letter writer may be dealing in investments as agent. The process may also involve a regulated activity under article 64 (Agreeing to carry on a regulated activity).

5.11 Other aspects of exclusions

5.11.1 G This part of the guidance deals with:

…

(2) exclusions which are disapplied where a person carries on insurance mediation distribution; and

…

5.11.2 G There are a number of ‘pre IMD’ exclusions that would have the effect of restricting the scope of the regulated activities referred to in this guidance. Several of these are disapplied or modified as part of implementation of the IMD in order to properly implement IDD.

Exclusions disapplied where activities relate to contracts of insurance

5.11.3 G The exclusions outlined in (1) to (7) were available to intermediaries (and in some cases insurance undertakings) acting in connection with life policies before 14 January 2005. In essence, however, the following exclusions do not apply if they concern transactions relating to contracts of insurance:

…

5.11.4 G The restrictions placed on the exclusions listed in PERG 5.11.3G on 14 January 2005 have the following effects:

…

(2) Unauthorized persons may, however, be able to rely on the exclusion exclusions for the provision of information in article 33B or provision of information on an incidental basis in article 72C to continue to avoid the need for authorisation (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G which cover exclusions (Exclusion: article 72C (Provision for the provision of information on an incidental basis))).

(3) Authorized persons who themselves introduce clients or customers to others for the purposes of buying or selling any kind of contract of insurance are likely to require a variation of their permission to carry out arranging activities, as neither article 33 nor, generally, article 72C (see PERG 5.6.5G to PERG 5.6.9G (Exclusion: article 72C (Provision of information on an incidental basis))) will apply where this activity amounts to
arranging. Article 33B could apply, but the authorised person would need to be merely providing information and taking no additional steps to assist in the conclusion of the contract of insurance.

5.11.5 G Insurance undertakings are referred to MIPRU 5 (Insurance undertakings distributors and mortgage lenders home finance providers using insurance distribution or mortgage home finance mediation services) as regards their obligations relating to the use of intermediaries generally.

5.11.6 G (1) The removal of the exclusion for groups and joint enterprises in article 69 of the Regulated Activities Order (Groups and joint enterprises) does not apply to transactions relating to contracts of insurance. This will affect may have implications for a company providing services for:

(a) other members of its group; or

(b) other participants in a joint enterprise of which it is a participant.

(3) In the FCA’s view, particular issues arise in applying the ‘by way of business’ test to group companies. Recital 11 of the Insurance Mediation Directive IDD states that the Directive should apply to persons whose activity consists in providing insurance mediation or reinsurance distribution services to third parties for remuneration. This Recital 11 suggests that the Directive is intended to apply only where the service is provided to a third party. The expression ‘third party’ is not defined in the Directive. The FCA considers that a group company that is providing services solely for the benefit of other group companies would not normally be regarded as providing services to a third party. The group company also needs to be receiving remuneration for the activities (see PERG 5.4.2G(1)). The FCA also considers that, as a result, a group company providing services solely for the benefit of other group companies should not normally be regarded as satisfying the requirement that it be remunerated for providing insurance mediation distribution services to third parties. Were a group company to be remunerated other than by another group company, however, the situation may be different. For example, if the group company receives commission from an insurer or broker, the fact would tend to suggest that the company has been rewarded for providing a service to the insurer or broker. In the FCA’s view, it is appropriate to apply this principle to a group as defined in section 421 (Group) of the Act.

(4) The FCA considers that similar principles to those applied to a group company in (2) may be applied to the participants in a joint enterprise. This would be where one participant in the joint enterprise is providing services solely for the benefit of another
participant and for the purposes of the joint enterprise and who provides insurance mediation distribution services to one or more participants for the purposes of or in connection with the joint enterprise.

Exclusions disapplied in connection with insurance mediation distribution

5.11.7 G Article 4(4A) of the Regulated Activities Order (Specified activities: general) disapplies certain exclusions where a person, for remuneration, takes up or pursues insurance mediation distribution or reinsurance distribution (as defined in article 2.3 articles 2.1(1), 2.1(2) and 2.2 of the IMD IDD (see PERG 5.2.5G (Approach to implementation of the IMD IDD) and PERG 5.16.2G (Text of article 2.3 of the Insurance Mediation Directive)) in relation to a risk or commitment located in an EEA State. The relevant exclusions which are disapplied are:

...

Activities carried on in the course of a profession or non-investment business

...

5.11.10 G Although the article 67 exclusion is disapplied (by article 4(4A) of the Regulated Activities Order (Specified investments: general)) when a person takes up or pursues insurance mediation insurance distribution or reinsurance mediation reinsurance distribution as defined by articles 2.3 2.1(1), 2.1(2) and 2.5 2.2 of the IMD IDD, there may be cases where a person is not carrying on activities that amount to insurance mediation insurance distribution. For example, where a person’s activities amount simply to the provision of information on an incidental basis in the context of another professional activity, these may fall outside the scope of article 2.3 2.1(1) and 2.1(2) of the IMD IDD (see PERG 5.16.2G (article 2.3 of the Insurance Mediation Directive)) and the exclusion in article 67 may then operate to exclude these activities. Also, it is possible that a professional person’s activities may not amount to a regulated activity at all. For example, a doctor who provides a medical report to an insurer may be regarded as making arrangements with a view to providing an expert medical opinion rather than with a view to transactions in contracts of insurance. In such cases, article 67 will not be needed.

5.11.11 G Article 67 may also apply to activities relating to assignments of insurance policies, as, in the FCA’s view, article 2.3 2.1(1) of the IMD IDD applies essentially to the creation of new contracts of insurance and not the assignment of rights under existing policies. As such, where a solicitor or licensed conveyancer arranges an assignment of a contract of insurance, the exclusion in article 67 remains of potential application. For similar reasons, trustees advising on or arranging assignments of contracts of insurance may, in certain circumstances, be able to rely on the exclusions in article 66 of the Regulated Activities Order.
5.11.12 G For article 67 to apply in these cases, in addition to PERG 5.11.9G(1) and (2), the activity in question must not be remunerated separately from other services (article 67(2) of the Regulated Activities Order).

Activities carried on by a provider of relevant goods or services

5.11.13 G Article 72B (see also PERG 5.3.7G (Connected contracts of insurance)) may be of relevance to persons who supply non-motor goods or services or provide services related to travel in the course of carrying on a profession or business which does not otherwise consist of carrying on regulated activities. In the FCA’s view, the fact that a person may carry on regulated activities in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of regulated activities. This is provided that the main focus of the profession or business does not involve regulated activities and that the regulated activities that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. For example, a travel agent might carry on insurance mediation activities insurance distribution activities in relation to some contracts of insurance that satisfy the conditions of article 72B and some that do not. The former contracts will be excluded from regulation even though the travel agent must seek authorisation or become an appointed representative to be permitted to sell the latter contracts. The exclusion applies to insurance mediation activities insurance distribution activities when carried on in relation to ‘connected contracts of insurance’. In broad terms, a ‘connected contract of insurance’ is a contract of insurance which:

1. is not a contract of long-term insurance (as defined by article 3 of the Regulated Activities Order (Interpretation));

2. has a total duration (including rights to renewal) of five years or less; [deleted]

3. has an annual premium (or the equivalent of annual premium) of:

   (a) €500 600 euro or less (calculated on a pro rata annual basis); or

   (b) 200 euro or less, where the contract of insurance is complementary to a service being provided by the provider and the duration of that service is equal to or less than three months,

or equivalent amounts of sterling or another currency;

4. covers:

   (a) the risk of breakdown, loss of, or damage to, non-motor goods supplied by the provider; or

   (b) travel risks; or
(c) the risk of the non-use of services;

(5) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract); and

(6) is complementary to the non-motor goods being supplied or service being provided by the provider; and

(7) is of such a nature that the only information that a person requires in order to carry on one of the insurance mediation activities is the cover provided by the contract. [deleted]

5.11.15 G In the FCA’s view, the condition in PERG 5.11.13G (7) is likely to be satisfied where the insurance mediation activities relate to a standard form contract of insurance, the terms of which (other than the cost of the premium) are not subject to negotiation. [deleted]

5.12 Link between activities and the United Kingdom

Introduction

... 5.12.3 G The table in PERG 5.12.4G is a very simplified summary of territorial issues relating to overseas insurance intermediaries carrying on the business of insurance mediation activities insurance distribution activities in or into the United Kingdom for remuneration.

5.12.4 G Table: Territorial issues relating to overseas insurance intermediaries carrying on insurance mediation activities insurance distribution activities in or into the United Kingdom

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For EEA-based intermediaries this table assumes that the insurance mediation activities insurance distribution activities are within the scope of the Insurance Mediation Directive IDD.

Where are insurance mediation distribution activities carried on?

5.12.5 G Persons carrying on insurance mediation activities insurance distribution activities from a registered office or head office in the United Kingdom will clearly be carrying on regulated activities in the United Kingdom. However, a person may be considered to be carrying on regulated activities in the United Kingdom even where not carrying on the activity from a registered office or head office in the United Kingdom. This is explained further in
PERG 5.12.6G to PERG 5.12.8G.

…

5.12.8 G Otherwise, where the cases in PERG 5.12.7G(1) do not apply, it is necessary to consider further the nature of the activity in order to determine where insurance mediation insurance distribution is carried on. Persons that arrange contracts of insurance will usually be considered as carrying on the activity of arranging in the location where these activities take place. As for dealing activities, the location of the activities will depend on factors such as where the acceptance takes place, which in turn will depend on the method of communication used. In the case of advising, this is generally considered to take place where the advice is received.

Overseas persons

5.12.9 G Article 72 of the Regulated Activities Order (Overseas persons) provides a potential exclusion for persons with no permanent place of business in the United Kingdom from which regulated activities are conducted or offers to conduct regulated activities are made. Where these persons carry on insurance mediation activities insurance distribution activities in the United Kingdom, they may be able to take advantage of the exclusions in article 72 of the Regulated Activities Order. In general terms, these apply where the overseas person either:

…

5.12.10 G The overseas person exclusion is available to persons who do not have a permanent place of business in the United Kingdom and so is of relevance to third country intermediaries (that is, non EEA-based intermediaries) who carry on insurance mediation activities insurance distribution activities in, or into, the United Kingdom (for example with or through authorised insurance brokers and insurance undertakings operating in the Lloyd’s market).

How should persons be authorised?

5.12.11 G UK-based persons must obtain Part 4A permission in relation to their insurance mediation activities insurance distribution activities in the United Kingdom as one of the following:

(1) a body corporate whose registered office is situated in the United Kingdom; or

(2) a partnership or unincorporated association whose head office is situated in the United Kingdom; or

(3) an individual (that is, a sole trader) whose residence is situated in the United Kingdom.

The United Kingdom will, in each case, be the Home State for the purposes of the IMD IDD for insurance or reinsurance intermediaries (see further in
connection with the *E-Commerce Directive* in PERG 5.12.15G to PERG 5.12.17G (E-Commerce Directive)).

5.12.12 G Non-UK-based persons wishing to carry on insurance mediation activities insurance distribution activities in the United Kingdom must:

...  

Passporting

5.12.13 G The effect of the *IMD IDD* is that any EEA-based insurance intermediaries doing business within the Directive’s scope must first be registered in their home EEA State before carrying on insurance mediation insurance distribution in that EEA State or other EEA States. For these purposes, an EEA-based insurance intermediary is either:

(1) a legal person with its registered office or head office in an EEA State other than the United Kingdom; or

(2) a natural person resident in an EEA State other than the United Kingdom.

Registered EEA-based insurance intermediaries wishing to establish branches in the United Kingdom or provide services on a cross-border basis into the United Kingdom can do so by notifying their Home State regulator which in turn notifies the FCA. This enables the intermediary to acquire passporting rights for business within the Directive’s scope (so excluding insurance mediation activities insurance distribution activities relating to connected contracts or connected travel insurance contracts) under Schedule 3 to the Act (EEA passporting rights) (see Schedule 3(13) and (14) of the Act as amended by the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003). SUP 13A (Qualifying for authorisation under the Act) has general guidance on the exercise of passporting rights by EEA firms.

5.12.14 G On the other hand, non-EEA-based insurance intermediaries wishing to establish a branch in the UK for the purpose of carrying on insurance mediation activities insurance distribution activities may only do so with Part 4A permission.

E-Commerce Directive

5.12.15 G ...  

5.12.16 G The *E-Commerce Directive* does not remove the *IMD IDD* requirement for persons taking up or pursuing insurance mediation insurance distribution for remuneration to be registered in their Home State. Nor does it remove the requirement for EEA-based intermediaries to acquire passporting rights in order to establish branches in the United Kingdom (see PERG 5.12.7G (Where is insurance mediation carried on?) in relation to electronic commerce activity carried on from an establishment in the United Kingdom) or provide services on a cross-border basis into the United
An example of electronic commerce activity provided on a cross-border basis into the United Kingdom could be a recommendation in a (solicited) e-mail from an EEA-based intermediary to a UK-based customer to buy a particular contract of insurance.

5.12.17 G Put shortly, the E-Commerce Directive relates to services provided into the United Kingdom from other EEA States and from the United Kingdom into other Member States. In broad terms, such cross-border insurance mediation distribution services provided by an EEA firm into the United Kingdom (via electronic commerce activity or distance means) will generally be subject to IMD IDD registration in, and conduct of business regulation of, the intermediary’s EEA State of origin. By contrast, insurance mediation distribution services provided in the United Kingdom will be subject to UK conduct of business regulation, although the requirement for registration will again depend upon the intermediary’s EEA State of origin.

5.13 Appointed representatives

Business for which an appointed representative is exempt

5.13.3 G An appointed representative can carry on only those regulated activities which are specified in the Appointed Representatives Regulations. The regulated activities set out in the table in PERG 5.13.4G are included in those regulations. As set out in the table, the insurance mediation activities insurance distribution activities that can be carried on by an appointed representative differ depending on the type of contracts of insurance in relation to which the activities are carried on.

5.13.4 G Insurance mediation distribution activities able to be carried on by an appointed representative. This table belongs to PERG 5.13.3G.

Persons who are not already Becoming an appointed representatives representative

5.13.5 G A person who is not already an appointed representative may wish to become one an appointed representative in relation to one or more of the regulated activities insurance distribution activities specified in the Appointed Representatives Regulations (see table in PERG 5.13.4G). If so, the person must be appointed under a written contract by an authorised person, who has permission to carry on those regulated activities and who accepts responsibility for the appointed representative’s actions when acting for him them. SUP 12.4 (What must a firm do when it appoints an appointed representative or an EEA tied agent?) and SUP 12.5 (Contracts: required terms) set out the detailed requirements that must be met for an
appointment to be made. In particular, an appointed representative will not be able to commence an insurance mediation activity insurance distribution activity until he is that appointed representative is included on the Financial Services Register for such activities.

Persons who are already appointed representatives

5.13.6 G Where a person (A), who is already an appointed representative, and he proposes to start to carry on any insurance mediation activities insurance distribution activities, he A will need to consider the following matters.

(1) He A must become authorised if his the proposed insurance mediation activities insurance distribution activities that A proposes to carry on include activities that do not fall within the table in PERG 5.13.4G (for example, dealing as agent in pure protection contracts) and he wishes to carry on these activities. The Act does not permit any person to be exempt for some activities and authorised for others (although a person with only a limited permission for certain credit-related regulated activities may also be an appointed representative for other regulated activities specified in the Appointed Representatives Regulations (see SUP 12.2.3G)). He A will, therefore, need to apply for permission to cover all the regulated activities that he A proposes to carry on.

(2) If he A proposes to carry on other regulated activities that are specified in the Appointed Representatives Regulations in relation to contracts of insurance (see the table in PERG 5.13.4G), he A may be able to do so as an appointed representative bearing in mind the following.

(a) He A will need to be appointed by an authorised person prepared to accept responsibility for his A’s insurance mediation activities insurance distribution activities when acting for him the authorised person. The authorised person must have permission to carry on these regulated activities.

(b) If these insurance mediation activities insurance distribution activities are to be carried on for the same authorised person who has already appointed him A for his other regulated activities, the contract between them will need to be amended to reflect the additional activities. Other amendments to the contract will be required (see SUP 12.5.6AR).

(c) The effect of amendments to the Appointed Representatives Regulations is that an A appointed representative cannot commence an insurance mediation activity insurance distribution activity until he A is included on the Financial Services Register as carrying on such activities.
(d) ...  

(e) If the A’s activities of the appointed representative are limited to introducing, he A should consider the specific Handbook provisions relating to introducer appointed representatives (see SUP 12 (What must a firm do when it appoints an appointed representative or an EEA tied agent?)).

5.14 Exemptions

Professionals

5.14.1 G Professional firms (broadly firms of solicitors, accountants and actuaries) may carry on insurance mediation activities insurance distribution activities in the course of their professional activities. Exempt professional firms carrying on insurance mediation activities insurance distribution activities may continue to be able to use the Part XX exemption to avoid any need for authorisation. PROF 2 (Status of exempt professional firm) contains guidance on the Part XX exemption. They will, however, need to be shown on the Financial Services Register as carrying on insurance mediation activities insurance distribution activities, in order to benefit from this exemption. The task of registration is the responsibility of the designated professional bodies who will need to inform the FCA both of member firms carrying on insurance mediation activities insurance distribution activities and individuals within firms’ management responsible for these activities.

...  

5.14.3 G Professional firms should be aware of the disapplication of the exclusions for trustees (article 66) and activities carried on in the course of a profession or non-investment business (article 67) outlined in PERG 5.11.7G (Exclusions disapplied in connection with insurance mediation distribution) where their activities would amount to insurance mediation insurance distribution. Where they do not, they will still be able to rely upon article 67. Otherwise, the Nonexempt Activities Order Non-Exempt Activities Order imposes limitations on the extent to which professional firms can give advice to individuals. In particular, a professional firm cannot recommend make a recommendation to a private client that he to buy a life policy, unless he it is endorsing a corresponding recommendation given to the client. The recommendation he it endorses must be one given by an authorised person permitted to advise on life policies, or an exempt person for these purposes. No such restrictions apply, however, in relation to contracts of insurance other than life policies.

...
Other exemptions

5.14.5 G In addition to certain named persons exempted by the Exemption Order from the need to obtain authorisation, the following bodies are exempt in relation to insurance mediation activities, insurance distribution activities that do not relate to life policies:

...

5.15 Illustrative tables

5.15.1 G This flow chart sets out the matters a person will need to consider to see if he will need authorisation for carrying on insurance mediation activities. It is referred to in PERG 5.2.3G (Questions to be considered to decide if authorisation is required). [deleted]

5.15.2 G Flow chart: regulated activities related to insurance mediation activities - do you need authorisation? [deleted]

[Editor’s note: the flow chart that follows is deleted but is not shown struck through]
Regulated activities related to insurance mediation activities - do you need authorisation?

- **Are you, or will you be, carrying on a regulated activity that involves insurance mediation?**
  - **No**
  - **Yes**
    - **Will you be carrying these regulated activities by way of business?**
      - **No**
      - **Yes**
        - **Are you, or will you be, carrying on a regulated activity in the United Kingdom?**
          - **No**
          - **Yes**
            - **Are your activities excluded in full under the Regulated Activities Order?**
              - **No**
              - **Yes**
                - **Are your activities exempt under Part XX of the Act because you are a member of the professions?**
                  - **No**
                  - **Yes**
                    - **Are you an exempt person under section 38 or 39 of the Act?**
                      - **No**
                      - **Yes**
                        - **Authorisation required**
                          - **Yes**
                          - **Authorisation not required**

- **Are you a firm established in another EEA state which has obtained registration in that state in relation to the regulated activity?**
  - **No**
  - **Yes**
    - **Contact the Home State regulator who will then contact the appropriate UK regulator, with a view to your authorisation under Schedule 3 of the Act (see PERG 5).**
    - **Apply for Part 4A permission under Part 4A of the Act.**
    - **Where relevant, obtain exemption under the Act as an appointed representative (section 39).**

5.15.3 **G** The table in PERG 5.15.4G is designed as a short, user-friendly guide but should be read in conjunction with the relevant sections of the text of this guidance. It is not a substitute for consulting the text of this guidance or seeking professional advice as appropriate (see PERG 5.1.6G on the effect...
of this guidance). References in this table to articles are to articles of the Regulated Activities Order. In this table, it is assumed that each of the activities described is carried on by way of business (see PERG 5.4). Save where otherwise indicated, it is assumed that the intermediary is carrying on activities in respect of policies where he the intermediary is not the policyholder. Also, that this table does not provide an exhaustive list of all of the exclusions or exemptions that are of relevance to each type of activity. For a full explanation of the exclusions and exemptions under the Regulated Activities Order and their applicability see generally PERG 5.3.7G to PERG 5.3.8G, PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.23G, PERG 5.7.7G, PERG 5.8.24G to PERG 5.8.26G, PERG 5.11, PERG 5.12.9G to PERG 5.12.10G, PERG 5.13 and PERG 5.14. This table Table is referred to in PERG 5.7.5G (The regulated activities: assisting in the administration and performance of a contract of insurance).

5.15.4 G Types of activity – are they regulated activities and, if so, why?

<table>
<thead>
<tr>
<th>Type of activity</th>
<th>Is it a regulated activity?</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARKETING AND EFFECTING INTRODUCTIONS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passive display of information - for example, medical insurance brochures in doctor’s surgery (whether or not remuneration is received for this activity)</td>
<td>No.</td>
<td>Merely displaying information does not constitute making arrangements under article 25(2) (see PERG 5.6.4G).</td>
</tr>
<tr>
<td><strong>Recommending a broker/insurance undertaking and providing</strong> Providing a customer with contact details or information about a broker / insurance undertaking (whether by phone, fax, e-mail, face-to-face or any other means of communication)</td>
<td>Yes, but article 33B or 72C may be available.</td>
<td>This will constitute making arrangements under article 25(2). But, the exclusion exclusions in article 72C articles 33B and 72C will apply if all the intermediary does is supply information to the customer and the relevant conditions of article 72C those exclusions are otherwise met (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G). Generally, this will not amount to advice under article 53(1) unless there is an implied recommendation of a particular policy (see PERG 5.8.4G), in which case article 72C articles 33B and 72C would not be available.</td>
</tr>
<tr>
<td>Activity Description</td>
<td>Yes/No/Yes, but article 33B may be available</td>
<td>Notes</td>
</tr>
<tr>
<td>----------------------</td>
<td>---------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Providing an insurance undertaking/broker with contact details of customer</td>
<td>Yes, but article 33B may be available</td>
<td>This will constitute making arrangements under article 25(2) when undertaken in the context of regular or ongoing arrangements for introducing customers. Article 72C will not apply because the information is supplied to someone other than the policyholder or potential policyholder. Article 33B applies to the provision of information about a potential policyholder to an insurance undertaking or an insurance or reinsurance intermediary, and so may apply here if the relevant conditions are met. It will only apply if the provider of the customer information does not take any step other than providing the information to assist in the conclusion of a contract of insurance.</td>
</tr>
<tr>
<td>Marketing on behalf of insurance undertaking to intermediaries only (for example, broker consultants)</td>
<td>Yes</td>
<td>This amounts to work preparatory to the conclusion of contracts of insurance and so constitutes making arrangements under article 25(2). Article 33B does not apply because the information provided to the intermediary doesn’t relate to a potential policyholder, and isn’t provided to a policyholder. Article 72C is not available because this activity does not involve provision of information to the policyholder or potential policyholder only.</td>
</tr>
<tr>
<td>Telemarketing services (that is, companies specialising in marketing an insurance undertaking’s products/services to prospective customers)</td>
<td>Yes</td>
<td>This amounts to introducing and/or other work preparatory to the conclusion of contracts of insurance and so constitutes making arrangements under article 25(2). This could also involve article 25(1) arranging where the telemarketing company actually sells a particular policy, and could involve advising on investments. Article 33B is unlikely to apply, as the telemarketing company is likely to be actively persuading the customer rather than merely providing information. Article 72C will not be available where the provision of information is more than incidental to</td>
</tr>
</tbody>
</table>
the telemarketing company’s main business or, Articles 33B and 72C will not be available where the telemarketing company is advising on investments.

## PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE

<table>
<thead>
<tr>
<th>Discussion with client about need for insurance generally/need to take out a particular type of insurance</th>
<th>Generally, no. Article Articles 33B or 72C available if needed.</th>
<th>Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to arranging. If so, article articles 33B or 72C might be of application (see PERG 5.6.5G to PERG 5.6.9G).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advising on the level of cover needed</td>
<td>Generally, no. Article Articles 33B or 72C available if needed.</td>
<td>Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to making arrangements under article 25(2) (see PERG 5.8.3G). If so, article articles 33B or 72C might be of application (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G).</td>
</tr>
<tr>
<td>Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several policies which suit the answers given)</td>
<td>Yes. Subject to article 72C exclusion where available.</td>
<td>This will constitute arranging although article 72C may be of application (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G). If there is no express or implied recommendation of a particular policy, this activity will not amount to advice under article 53(1) (see PERG 5.8.15G to PERG 5.8.19G).</td>
</tr>
</tbody>
</table>
| Explanation of the terms of a particular policy or comparison of the terms of different policies | Possibly. Article 72C available. | This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve advising on investments (except P2P agreements) (see PERG 5.8.8G (Advice or information)). Where the explanation is provided to the potential policyholder, and does not involve advising on investments (except P2P agreements), article 72C may be of application (see PERG 5.6.5G to PERG 5.6.9G), and where
<table>
<thead>
<tr>
<th>Activity</th>
<th>Yes/No</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advising that a customer take out a particular policy</td>
<td>Yes.</td>
<td>This amounts to advice on the merits of a particular policy under article 53(1) (see PERG 5.8.4G to PERG 5.8.5G).</td>
</tr>
<tr>
<td>Advising that a customer does not take out a particular policy</td>
<td>Yes.</td>
<td>This amounts to advice on the merits of a particular policy under article 53(1) (see PERG 5.8.4G to PERG 5.8.5G).</td>
</tr>
<tr>
<td>Advice by journalists in newspapers, broadcasts etc.</td>
<td>Generally, no because of the article 54 exclusion.</td>
<td>Article 54 provides an exclusion for advice given in newspapers etc (see PERG 5.8.24G to PERG 5.8.25G).</td>
</tr>
<tr>
<td>Giving advice to a customer in relation to his buying a consumer product</td>
<td>Not necessarily but depends on the circumstances.</td>
<td>Where the advice relates specifically to the merits of the consumer product, it is possible that references to the accompanying insurance may be seen to be information and not advice. If, however, the advice relates, in part, to the merits of the insurance element, then it will be regulated activity.</td>
</tr>
</tbody>
</table>

**ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Possibly. Subject to article 67 or 72C and article 33B, exclusions where available.</th>
<th>This activity may amount to arranging although the exclusions in article 67 (see PERG 5.11.9G to PERG 5.11.12G) and article 72C (see PERG 5.6.5G to PERG 5.6.9G) may be of application. Article 33B could also apply, depending on the type of information provided.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Providing information to customer who fills in application form</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Helping a potential policyholder fill in an</td>
<td>Yes.</td>
<td>This activity amounts to arranging. Article Articles 33B and 72C will not apply because this activity goes .....................................................</td>
</tr>
<tr>
<td><strong>application form</strong></td>
<td>beyond the mere provision of information to a policyholder or potential policyholder (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G).</td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Receiving completed proposal forms for checking and forwarding to an insurance undertaking (for example, an administration outsourcing service provider that receives and processes proposal forms)</td>
<td>Yes. This amounts to arranging. Article 33B and 72C does do not apply because this activity goes beyond the mere provision of information to a policyholder or potential policyholder (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G).</td>
<td></td>
</tr>
<tr>
<td>Assisting in completion of proposal form and sending to insurance undertaking</td>
<td>Yes. This activity amounts to arranging. Article 33B and 72C does do not apply because this activity goes beyond the mere provision of information (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G).</td>
<td></td>
</tr>
</tbody>
</table>

**NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE**

5.15.5 G The flow chart in PERG 5.15.6G sets out the matters a person whose introducing activities potentially amount to making arrangements with a view to transactions in investments will need to consider if he can use the exclusion in article 72C (Provision of information on an incidental basis). It is referred to in PERG 5.1.6G (Purpose of guidance) and PERG 5.6.9G (Exclusion: article 72C (Provision of information on an incidental basis)).

[deleted]

5.15.6 G Flow Chart: Introducers. [deleted]

[Editor’s note: the flow chart that follows is deleted but is not shown struck through]
5.15.7 The flow chart in PERG 5.15.8G sets out the questions a person needs to consider in determining whether or not his regulated activities are carried on 'in the United Kingdom'. [deleted]

5.15.8 Flow chart: am I carrying on regulated activities in the United Kingdom? [deleted]
5.16 Meaning of 'insurance mediation' ‘insurance distribution’ and ‘reinsurance’
5.16.1 PERG 5.16.2G sets out the text of article 2.3 2.1(1), 2.1(2) and 2.2 of the Insurance Mediation Directive IDD. It is referred to in PERG 5.2.5G and PERG 5.2.6G (Approach to implementation of the IMD IDD), PERG 5.8.13G (Advice must relate to the merits of buying or selling a contract of insurance), PERG 5.11.7G (Exclusions disapplied in connection with insurance mediation distribution) and PERG 5.11.10G (Activities carried on in the course of a profession or non-investment business).

5.16.2 Text of article 2.3 2.1(1) of the Insurance Mediation Distribution Directive

“‘Insurance mediation distribution’ means the activities of introducing advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”

(2) Text of article 2.1(2) of the Insurance Distribution Directive

“‘Reinsurance distribution’ means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim”.

(3) Text of article 2.2 of the Insurance Distribution Directive

“For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:
(a) the provision of information on an incidental basis in the context of another professional activity where:

(i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;

(ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;

(b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;

(c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;

(d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.”

8 Financial promotion and related activities

...  

8.7 Engage in investment activity

...

8.7.2 G ...

(3) contracts of insurance other than life policies (see PERG 8.17A (Financial promotions concerning insurance mediation distribution activities)).

...

8.13 Exemptions applying to financial promotions concerning deposits and certain contracts of insurance
8.13.4 G Intermediaries involved with arranging and advising on deposits may be unauthorised persons as such activities do not amount to regulated activities (other than where they involve giving basic advice on a stakeholder product (article 52A of the Regulated Activities Order (Giving basic advice on a stakeholder product))) and so do not require authorisation under section 19 of the Act. However, the combination of the exemptions in Part V together with certain of the exemptions in Part IV (such as generic promotions – see PERG 8.12.14G – and follow-up communications – see PERG 8.12.10G) should mean that it will often be possible for such persons to avoid any need to seek approval for their financial promotions from an authorised person. Guidance on the application of these exemptions to financial promotions is in PERG 8.17A (Financial promotions concerning insurance mediation distribution activities).

8.17A Financial promotions concerning insurance mediation distribution activities

8.17A.1 G The application of section 21 of the Act and of exemptions in the Financial Promotion Order to invitations or inducements about insurance mediation activities insurance distribution activities will vary depending on the type of activity. The implementation of the Insurance Mediation Directive IDD has not led to any changes in the definitions of a controlled investment or a controlled activity under the Financial Promotion Order. So:

8.31 Exclusions for advising on investments

8.31.5 G Certain of the exclusions in the Regulated Activities Order that apply to the regulated activity of advising on investments are not available where the advice either relates to a contract of insurance or amounts to insurance mediation insurance distribution or reinsurance mediation reinsurance distribution. This results from the requirements of the Insurance Mediation Directive IDD and is explained in more detail in PERG 5 (Insurance Guidance on insurance mediation distribution activities).

8.32 Arranging deals in investments

8.32.12 G Where persons are making arrangements concerning contracts of insurance
or are carrying on insurance mediation insurance distribution or reinsurance mediation reinsurance distribution, certain exclusions to article 25 are not available. This results from the requirements of the Insurance Mediation Directive IDD and is explained in more detail in PERG 5.6 (Insurance mediation activities: The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

8.33 Introducing

...

8.33.6 G The exclusions in Articles 29 and 33 of the Regulated Activities Order are not available where the investment is a contract of insurance (unless, as regards article 33, the relevant arrangements meet the requirements of article 33B). However, certain other exclusions do apply. This results from implementation of the requirements of the Insurance Mediation Directive IDD and is explained in more detail in PERG 5.6 (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

...

8.34 The business test

...

8.34.3 G The ‘by way of business’ test for insurance distribution activities is distinguished from the standard test for ‘investment business’ in article 3 of the Business Order. The business test for persons carrying on insurance distribution activities is in article 3(4) of the Business Order. See PERG 5.4 (The business test).

...

10 Guidance on activities related to pension schemes

10.1 Background

Q1. What is the purpose of these questions and answers (‘Q&As’) and who should be reading them?

...

The Q&As complement the general guidance on regulated activities in Chapter 2 of our Perimeter Guidance Manual (‘PERG’), the general guidance on insurance mediation distribution activities in Chapter 5 of PERG (PERG 5), the guidance about the scope of the Markets in Financial Instruments Directive in Chapter 13 of PERG (PERG 13) and the relevant legislation. In addition, Chapter 12 of PERG (PERG 12) has further guidance about the regulated activities relating to
the operation and sale of personal pension schemes that came into force on 6 April 2007.

10.2 General issues

Q6. How do I know if I am carrying on activities by way of business?

In addition, article 3(4) of the Business Order provides that any person who carries on an insurance mediation activity insurance distribution activity by way of business must be remunerated for doing so. Guidance on the application of the ‘by way of business’ test to insurance mediation distribution activities is in Chapter 5.4 of PERG.

10.4 Pension scheme service providers other than trustees

Q34. When will regulated activities form a necessary part of my pension administration services so that I can use the exclusion in article 67?

There are further conditions that must be met for the exclusion to apply:

- you must not be remunerated for the regulated activity separately from the remuneration you get from providing pension administration services; and
- you must not be a person who is required to be regulated by the Insurance Mediation Directive IDD.

Q35. I provide pension administration services to a corporate pension scheme trustee who is a member of the same group as me. Does this mean that the exclusion for services provided to other group members in article 69 will apply to me?

Yes, provided the services:

- may properly be regarded as being provided solely to the trustee (as will be the case where the trustee has delegated or outsourced the carrying out of regulated activities to you but remains responsible to the members for the performance of those activities) and not to the members; and
- do not relate to contracts of insurance.

If the services do relate to contracts of insurance, you are
still unlikely to need authorisation because you will only be carrying out insurance mediation activities insurance distribution activities by way of business if you are remunerated for providing services to third parties. Members of your group are not considered to be third parties.

... 

10.4A The application of EU Directives

... 

Q41C. As a professional trustee of a pension scheme, am I affected by the implementation of the Insurance Mediation Directive IDD?

No. A pension scheme trustee may perform tasks on behalf of the other trustees (such as signing proposal forms or giving dealing instructions to insurers or brokers or notifying claims on the death of a scheme member). But he that trustee will not be providing an insurance mediation distribution service to them. This is because, under the policy, he the trustee will share equal rights and equal responsibility with his co-trustees and so may be regarded as acting solely in the capacity of policyholder rather than intermediary. Also, the pension scheme trustee will not be providing an insurance mediation distribution service on behalf of the members as the members will not be policyholders.

Q41D. As a pension scheme administration service provider, am I affected by the implementation of the Insurance Mediation Directive IDD?

You may be. Detailed guidance about the potential effect of the Insurance Mediation Directive IDD on the normal activities of administration service providers is in Q31 to Q41 and the table in PERG 10 Annex 3.

... 

10.5 Employers and affinity groups (such as trade unions)

... 

Q44. As an employer, I may offer my staff a stakeholder pension scheme or a personal pension scheme. If I do so, will I satisfy the ‘by way of business’ test?

... 

In addition, if your scheme is an insurance-based scheme, such as a group personal pension scheme, your activity will potentially involve insurance mediation activity insurance distribution activity. If so, to satisfy the by way of business ‘by way of business’ test, you would also need to be remunerated.

...
## Table summarising regulatory position of pension scheme trustees and service providers

<table>
<thead>
<tr>
<th>Potential regulated activity</th>
<th>When will such regulated activities be carried on?</th>
</tr>
</thead>
</table>
| ...                         | ...
| **Dealing in investments as agent** (article 21 of the Regulated Activities Order) | Article 67 of the Regulated Activities Order provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who deal in investments as agent as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on insurance mediation, insurance distribution or reinsurance distribution. Service providers may be able to make limited use of this exclusion - for instance, where providing payroll services (see Q34). |
| **Arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments** (article 25 of the Regulated Activities Order) | Article 69 of the Regulated Activities Order excludes persons who are dealing in investments other than contracts of insurance as agent for other members of their group. However, service providers who are carrying on insurance mediation activities, insurance distribution activities solely for, and are remunerated solely by, another group member, will not satisfy the ‘by-way-of-business’ test (see Q35). |
of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on insurance mediation, insurance distribution, or reinsurance distribution. Service providers may be able to make limited use of this exclusion – for instance, where providing payroll services (see Q34).

…

However, service providers who are carrying on insurance mediation activities, insurance distribution activities, and are remunerated solely by, another group member will not satisfy the ‘by-way-of-business’ test (see Q35).

…

Assisting in the administration and performance of a contract of insurance (article 39A of the Regulated Activities Order)

Where a person is assisting in the administration and performance of a contract of insurance solely for, and is remunerated solely by, another group member, that person will not satisfy the ‘by-way-of-business’ test because they are not carrying on insurance mediation activities, insurance distribution activities for a third party and so does not require to be authorised or exempt (see Q35).

…

Advising on investments (except P2P agreements) (article 53(1) of the Regulated Activities Order)

Trustees of pension schemes will not be advising on investments provided the advice is given only:
- to a fellow trustee for the purposes of the trust; or
- to a member about their interest in the trust fund,
and provided that the trustee:
- does not receive additional
remuneration for advising on investments; and

- is not required to be regulated under the Insurance Mediation Directive **IDD** (which should not be the case either because the trustee does not provide mediation services to his co-trustees or because the trustee is not remunerated specifically for giving advice) (see Q23(5) and Q30).

Service providers would be advising on investments if they provide advice to the trustees on the merits of the trust making particular investments (see Q39 and Q40).

| Article 67 of the Regulated Activities Order **Regulated Activities Order** provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who are advising on investments as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on insurance mediation insurance distribution or reinsurance distribution. Service providers may be able to make limited use of this exclusion – for instance, where providing actuarial advice to the trustees of an occupational pension scheme (see Q34). |

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12 Guidance for persons running or advising on personal pension schemes

12.2 Establishing, operating or winding up a personal pension scheme

Q6. What is my position as an operator of a personal pension scheme if I delegate day-to-day functions such as administration of the scheme or the management or custody of the scheme assets to another person?

Chapter 10.4 of PERG has general guidance about the circumstances in which
persons who administer pension schemes on behalf of the operator or trustees may be carrying on a regulated activity including an insurance mediation activity.

...  

12.3 Rights under a personal pension scheme  

...  

Q21. What exclusions may be available for advising on investments in connection with acquiring or disposing of rights under a personal pension scheme?  

...  

If the rights relate to a contract of insurance, the adviser (A) can still make use of the exclusion so long as he is not carrying on an activity that requires him to be regulated under the Insurance Mediation Directive IDD. And that is only likely to be the case if the advice relates to the merits of his client directly acquiring rights under a contract of insurance (for example, because he is also a trustee of the scheme). Advice about acquiring a beneficial interest in a contract of insurance held under trust will not be subject to regulation under the Directive.  

...  

13 Guidance on the scope of MiFID and CRD IV  

...  

13.6 CRD IV  

...  

Q59. If we are subject to the Insurance Mediation Directive IDD, does this make any difference to the requirements which apply?  

Yes. If the only investment services that you are authorised to provide are investment advice or receiving and transmitting orders or both, without holding client money or securities, you can still be an exempt CAD firm. However, you are subject to different base capital requirements. Broadly speaking, article 31(2) of the CRD requires you to have professional indemnity insurance of euro 1,000,000 1,250,000 for any one claim and euro 1,500,000 1,850,000 in aggregate (this is the IMD IDD requirement), plus coverage in one of the following forms:

• base capital of euro 25,000; or

• professional indemnity insurance of euro 500,000 for any one claim and euro 750,000 in aggregate; or

• a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see the
final paragraph of the answer to Q58.

As mentioned in Q58, when you hold client money or securities for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an exempt CAD firm. This might include, for instance, when you hold client money for those to whom you provide insurance mediation services.

You should also bear in mind that if you are a firm to whom article 2 or article 3 MiFID applies (see PERG 13.5), you are not subject to the CRD.