

CP17/7 – Insurance Distribution Directive (IDD) Implementation: Consultation Paper 1

Introduction

In 2010 the European Commission began a review of the Insurance Mediation Directive (IMD), which came into force in the UK in January 2005. This review resulted in a proposal for a revised directive – the Insurance Distribution Directive (IDD), which UK firms are required to comply with by 23rd February 2018.

The European Commission is still to adopt delegated acts and technical standards, which are subject to technical advice and consultation by EIOPA (European Insurance and Occupational Pensions Authority) – including the implementation of the standardised Insurance Product Information Document (IPID) and changes to CASS. Therefore the FCA has split the consultation into two stages and the second consultation paper is expected to be released later this year.

Key findings

The scope of the IDD is wider than the previous directive and introduces requirements in new areas. The first consultation covers the following areas:

1) Scope and application–

- The IDD applies to firms that sell, advise on, or conclude insurance contracts, and those who assist in the administration and/or performance of insurance contracts.
- The IDD also introduces a new category of firm called an *ancillary insurance intermediary (AI)*: where the primary business function is not insurance distribution and where the sale of insurance is secondary to the other goods/services provided.
- To align the Handbook with the IDD, all references to insurance mediation will be amended to insurance distribution.
- Large risks: general principles and cross-selling requirements to apply. Disclosure requirements also applicable to consumers (retail customers).
- Where there is no customer contact: general principles requirements to apply.
- Customer categorisation: conduct requirements to apply to both consumers and commercial customers.

2) Professional and organisational requirements –

- Introduction of a minimum of 15 hours CPD per year for insurance distributors and their employees who are directly involved in insurance distribution, covering topics listed in the IDD, e.g. product and market knowledge and insurance regulation.
- Firms will need to be able to demonstrate compliance with the CPD requirement and retain records for a minimum of 3 years.
- Increase to minimum PII cover levels to €1.25m per claim per year and €1.85m per year in aggregate, and retention of existing income-based aggregate requirements.

3) Complaints handling and out-of-court redress –

- Application of DISP 1 to insurance and reinsurance distributors;
- Application of rules to insurance complaints concerning business carried on by UK firms in other EEA states;
- The FCA does not propose to expand the definition of eligible complainant to larger SMEs but will keep this position under review.

4) Changes to conduct of business rules (for non-investment insurance contracts) –

- **Introduction of General Principles (ICOBS 2) similar to FCA's Principles for Businesses (PRIN):**
 - o *Distributors must act honestly, fairly and professionally in the best interests of their customers.*
 - o *Distributors must communicate in a way, which is clear, fair and not misleading, including ensuring that marketing materials are clearly identifiable as such.*
 - o *Remuneration of a distributor or its employees, and performance management of employees, must not conflict with the duty to act in the customer's best interests - here remuneration includes commission, fee, charge or other payment such as an economic benefit or other financial advantage/incentive.*
 - o Addition of an 'in the customer's best interests' rule to ICOBS – applicable to all firms conducting relevant activities in the distribution chain, e.g. price comparison websites.
 - o All marketing communications to be clearly identifiable as such;
 - o Amendment of SYSC to prohibit remuneration and performance management practices that would conflict with the customer's best interests rule – reference to relevant FCA guidance (links below) is made here.
- **General pre-contract disclosures (ICOBS 4):**
 - o Application of the pre-contract disclosure regime to insurance undertakings.
 - o Firms must state what type of firm they are (an intermediary or an undertaking).
 - o Firms must state whether they provide a personal recommendation.
 - o Insurance intermediaries must state whether they are acting on behalf of the customer or the insurance undertaking.
- **Disclosures relating to conflicts of interest and transparency for both advised and non-advised sales (ICOBS 4):**
 - o Intermediaries must disclose if they have 10% or more voting rights or capital in an insurer, or vice versa. Currently the requirement is "more than 10%".
 - o Intermediaries must disclose if they give advice based on "a fair and personal" analysis of the market.
 - o Where an intermediary is contractually bound to place business with a specific insurer or insurers it must provide the names of these insurers.

- o Where an intermediary is not contractually bound to place business with specific insurers but does not provide advice on the basis of a fair and personal analysis of the market, it must name the insurers with whom it may place business.
- o Disclosure of the nature (type) and basis (source) of the remuneration they receive in relation to the insurance contract – see examples in Table 1 of Chapter 5.
- o Disclosure of the exact amount of fee the customer is required to pay, or the method of calculation if the exact amount cannot be provided. This also includes all post-contract fees a customer may incur during the life of a policy.
- **Means of providing information (ICOBS 4) –**
 - o In a clear, accurate and comprehensible manner.
 - o In the language of the member state.
 - o Free of charge.
 - o Firms should offer customers the choice of how information is provided, where this is not paper-based or through a website.
- **Standards for advised and non-advised sales (ICOBS 5) – also see Table 2 of Chapter 5 –**
 - o Identify the customer’s demands and needs, and match them to the available products.
 - o State the customer’s demands and needs to assist them in making an informed decision.
 - o Where advice is provided, explain why a contract best meets the customer’s needs.
 - o For non-advised sales, firms should still identify a customer’s demands and needs and ensure proposed contracts meet them.
 - o Firms must only offer contracts that meet the customer’s identified demands and needs. If the firm does not offer one it should say so.
- **Cross-selling (ICOBS 6A): these provisions do not apply where insurance is sold ancillary to other financial products –**
 - o In packages where insurance is the primary product, information must be given on whether the different components of the package can be bought separately.
 - o The distributor must provide an adequate description of the component products, explain any interactions between them, and provide separate information on the costs and charges.
 - o In packages where insurance is ancillary to other goods or services the customer must be able to buy the primary product or service without the insurance.

5) Regulatory regime for Alls: also see summary Table 3 in Chapter 6 –

- Three types of Alls have been identified – those in scope; connected travel insurance providers; and those out of scope.

March 2017

- For in-scope AIs and CTIs most of the IDD requirements apply, although there is a reduced information disclosure regime.
- For out of scope AIs, it is the responsibility of the insurers and intermediaries using these firms to ensure they comply with the requirements in paragraph 6.7 of chapter 6.

Next steps

The consultation period for the first CP closes on 5th June 2017 and the FCA aims to publish a policy statement by September 2017. It is not known at this stage whether it will be a combined policy statement for both consultations.

The FCA has said they will keep the proposals under review in case of changes to the UK regulatory framework, including as result of Brexit negotiations.

Relevant Links

- [Full text of the Insurance Distribution Directive](#)
- [CP17/7 - Insurance Distribution Directive \(IDD\) Implementation: Consultation Paper 1](#)
- [FCA's Incentives Guidance - FG13/01](#)
- [FCA's performance management guidance - FG15/10](#)

This note is intended as a summary only. It is not full and/or firm specific advice and it is the responsibility of each regulated firm to ensure they fully consider relevant FCA publications.

For further information, please contact Gem Compliance Consulting Ltd.