



New Insurance Distribution Rules: Are you compliant?

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The Insurance Distribution Directive (“Directive”), which entered into force on 23 February 2016, will supersede the current Insurance Mediation Directive (“IMD”).

The Directive seeks to:

- ensure a minimum harmonization of the laws of the various European countries, without precluding Member States from maintaining or introducing more stringent provisions in order to protect customers;
- improve retail insurance regulation by creating a level playing field between participants in insurance sales in order to improve consumer protection, market integration and competition;
- extend the scope of application to all distribution channels and establish the conditions necessary for fair competition between distributors of insurance products;
- guarantee that consumers benefit from the same level of protection despite the difference in distribution channels;
- strengthen policyholder protection, particularly with regards to life insurance products with an investment element, and enhance the suitability and objectiveness of the insurance advice provided; and
- strengthen the administrative sanctions and measures to be applied in the event of a breach of key provisions.

The main changes to the IMD

1. Inclusion of Insurance and Reinsurance Companies



The most important change brought about by the Directive is the inclusion of insurance and reinsurance companies (“companies”) within the scope of the distribution of insurance or reinsurance products (“products”). While the existing IMD regime applies to insurance and reinsurance intermediaries (“intermediaries”), the Directive will apply to all distributors of insurance and reinsurance products (“distributors”), including companies that sell directly to clients.

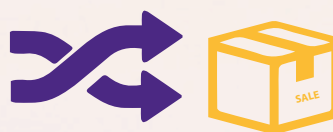
The Directive also captures certain activities conducted via price comparison and aggregator websites, which are becoming very common.

2. Single Information Point



Member States should establish a single information point which gives access to their insurance, reinsurance and ancillary insurance intermediaries’ registers. This single information point should also provide links to each relevant competent authority in every Member State.

3. Cross-selling and packaged sales



When a product is sold as part of a package, the distributor must inform the customer whether it is also possible to buy the product as a standalone as opposed to buying the product as part of a package. The components must be adequately described to the consumer and provide a breakdown of the costs of the standalone product with the aim of improving transparency of products and prices for the consumer.

4. Minimum Training Requirements and Competence



There is an increased emphasis on the high-level of professionalism and competence required of employees of insurance companies involved in insurance and reinsurance distribution.

It is therefore important that intermediaries and companies, and their respective employees, possess and demonstrate an appropriate level of knowledge and competence in relation to the distribution activity.

Companies and their employees are required to complete at least 15 hours of professional training or personal development per year, taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor.

A certificate proving successful completion of training and personal development requirements is mandatory.

5. Standardised Insurance Product Information Document



Prior to the conclusion of an insurance or reinsurance contract (“contract”) and where no advice is provided, the distributor shall provide the customer with objective information about the product in a comprehensive form to allow the customer to take an informed decision. This contract should be consistent with the customer’s insurance demands and needs.

Where advice is provided prior to the conclusion of any specific contract, the distributor shall provide the customer with a personalized recommendation explaining why a particular product would best meet the customer’s demands and needs.

6. Passporting



Member States are required to publish the following on their website:

- the ‘general good’ provisions that will apply in their territories;
- a single electronic register; and
- information on all Member States’ ‘general good’ rules applicable to insurance and reinsurance distribution.

The Directive provides clarity on the role of the home and host state regulators in the context of the freedom of services and freedom of establishment.

The IMD does not include provisions on the split of jurisdiction between the home and host Member State regulator. Under the Directive, any breaches of the Directive will need to be referred back to the regulator of the home Member State, in the first instance.

7. Product oversight and governance



The distributors shall maintain, operate and review an approval process of each product, or significant adaptations of an existing product, before it is marketed or distributed to customers.

8. Disclosure of remuneration



The Directive requires companies and intermediaries to clearly communicate the nature of their employees' remuneration to their respective customers. This applies to all forms of remuneration, be it fee-based, commission-based, a combination of fees and commission or a form other than fees or commission. While the amount of any fees must be disclosed, it is not required to disclose the amount of commission.

9. Conduct of business rules



Distributors shall always act honestly, fairly, and professionally in accordance with the best interest of their customers. Companies and intermediaries will need to review their customer-facing practices in order to ensure that they have considered the demands and needs of the consumer before proposing a product. Reasonable steps should also be taken to prevent conflicts of interest from adversely affecting the interests of customers.

10. What companies should do next?



The Directive is relevant to all companies and intermediaries that sell directly to customers (whether consumer or commercial). The companies and intermediaries in many highly regulated markets, such as the UK, are likely to have less to do in terms of adaptation to meet the new Directive requirements. However, the new regime will have an impact on:

- i) professional requirements;
- ii) the management of incentives and conflicts, and
- iii) the scope of product governance requirements.

Furthermore, the Directive introduces the following more stringent sanctions for breach of its requirements:

a. For a legal person:

- i) a maximum penalty of at least €5m, or
- ii) up to 5 per cent of total annual gross written premiums, or
- iii) twice the amount of profits gained from the breach;

b. For a natural person:

- i) a penalty of at least €700,000, or
- ii) twice the amount gained from the breach.

As noted above, there are differences between the old and the new directives and companies and intermediaries should review and adjust their business processes to ensure compliance with the new requirements.

Member States are required to transpose the laws, regulations and administrative provisions necessary to comply with this Directive by 23 February 2018.

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