

Consultation Paper

CP17/7\*\*\*

# Insurance Distribution Directive Implementation – Consultation Paper I



March 2017



# Contents

<b>Abbreviations used in this paper</b>	3
<b>1</b> Overview	5
<b>2</b> Application of the Directive	9
<b>3</b> Professional, organisational and prudential requirements	11
<b>4</b> Complaints handling and out-of-court redress	16
<b>5</b> Conduct of business requirements	18
<b>6</b> Ancillary insurance intermediaries	30
<b>Appendix</b>	
<b>1</b> List of questions	38
<b>2</b> Cost benefit analysis	40
<b>3</b> Compatibility statement	54
<b>4</b> Draft Handbook text	57

We are asking for comments on this Consultation Paper by 5 June 2017.

You can send them to us using the form on our website at:  
<https://www.fca.org.uk/cp17-07-response-form>.

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We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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## Abbreviations used in this paper

<b>AI</b>	Ancillary Insurance Intermediary
<b>ADR</b>	Alternative Dispute Resolution
<b>CASS</b>	Client Assets sourcebook
<b>CBA</b>	Cost-Benefit Analysis
<b>CCE</b>	Connected Contracts Exclusion
<b>COBS</b>	Conduct of Business sourcebook
<b>CP</b>	Consultation Paper
<b>CPD</b>	Continuing Professional Development
<b>CTI</b>	Connected Travel Insurance contract
<b>DISP</b>	Dispute Resolution: Complaints sourcebook
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FOS</b>	Financial Ombudsman Service
<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GAP</b>	Guaranteed Asset Protection
<b>HMT</b>	HM Treasury
<b>ICOBS</b>	Insurance: Conduct of Business sourcebook
<b>IBIPs</b>	Insurance-based Investment Products

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<b>IMD</b>	Insurance Mediation Directive
<b>IDD</b>	Insurance Distribution Directive
<b>IPID</b>	Insurance Product Information Document
<b>IPT</b>	Insurance Premium Tax
<b>IPRU-INV</b>	Interim Prudential sourcebook for Investment Businesses
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>MiFID II</b>	Markets in Financial Instruments Directive II (and associated delegated acts)
<b>PERG</b>	The Perimeter Guidance manual
<b>MIPRU</b>	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
<b>PII</b>	Professional Indemnity Insurance
<b>RAO</b>	Regulated Activities Order 2001
<b>SME</b>	Small to Medium Enterprise
<b>SUP</b>	Supervision manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook
<b>TC</b>	Training and Competence sourcebook
<b>TOBA</b>	Terms of Business Agreement

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# 1. Overview

## Introduction

**1.1** The Insurance Mediation Directive (IMD) was transposed in the UK on 15 January 2005. It specified conditions for the initial authorisation and ongoing regulatory requirements for insurance and reinsurance intermediaries. It was designed to encourage cross-border competition between intermediaries and also to ensure appropriate levels of protection for insurance customers across the European Union (EU).

**1.2** The EU Commission (“the Commission”) completed an IMD implementation check in 2008 which acknowledged the need to review the IMD. This process began in 2010 and resulted in a proposal for a recast directive (then known as the IMD2) in 2012. The Commission stated the objectives of the IMD2 as follows:

*“The revised Directive (IMD2) seeks to improve regulation in the retail insurance market in an efficient manner. It aims at ensuring a level playing field between all participants involved in the selling of insurance products and at strengthening policyholder protection.*

*The overarching objectives of the current review are undistorted competition, consumer protection and market integration. In concrete terms, the IMD2 project should achieve the following improvements: expand the scope of application of IMD1 to all distribution channels (e.g. direct writers, car rentals, etc.); identify, manage and mitigate conflicts of interest; raise the level of harmonisation of administrative sanctions and measures for breach of key provisions of the current Directive; enhance the suitability and objectiveness of advice; ensure sellers’ professional qualifications match the complexity of products sold; simplify and approximate the procedure for cross-border entry to insurance markets across the EU.”<sup>1</sup>*

**1.3** Following the legislative process the IMD2 was amended and renamed the Insurance Distribution Directive<sup>2</sup> (the IDD). The IDD entered into force on 23 February 2016.

**1.4** Like the IMD, the IDD covers the initial authorisation, passporting arrangements and ongoing regulatory requirements for insurance and reinsurance intermediaries. However, the application of the IDD is wider; covering organisational and conduct of business requirements for insurance and reinsurance undertakings. The IDD also introduces requirements in new areas. These include product oversight and governance, and enhanced conduct rules for insurance-based investment products (IBIPs), where its stated intention is to more closely align the customer protections with those provided by the Markets in Financial Instruments Directive II (MiFID II).

**1.5** As part of the IDD implementation process, the Commission is to adopt level 2 delegated acts and implementing technical standards in relation to certain requirements. These are subject

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012PC0360>

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0097&from=EN>

to technical advice and consultation by the European Insurance and Occupational Pensions Authority (EIOPA), and are currently expected to be adopted in mid-2017.

- 1.6** The UK is required to comply with the IDD by 23 February 2018.

### UK implementation of the IDD

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- 1.7** This is the first of two consultation papers (CPs) setting out our proposals for implementing the IDD. This consultation paper covers our proposals for the following areas:
- application of the Directive (Chapter 2)
  - professional and organisational requirements (Chapter 3)
  - complaints handling and out-of-court Redress (Chapter 4)
  - changes to conduct of business rules (for non-investment insurance contracts) (Chapter 5)
  - the regulatory regime for *Ancillary Insurance Intermediaries* (Chapter 6)
- 1.8** These proposals will require changes to the SYSC, TC, MIPRU, IPRU(INV), ICOBS and DISP sourcebooks.
- 1.9** The IDD introduces a requirement for non-life insurance distributors to provide the customer with a standardised Insurance Product Information Document (IPID). We are not consulting on the implementation of the IPID requirements in this CP, as it is one of the areas currently subject to further work by EIOPA and the Commission referred to in paragraph 1.5 above. However, in Chapter 5 we have set out a number of questions in relation to the IPID for initial consideration by respondents to this consultation.
- 1.10** The second consultation paper will be published later this year. As well as our approach to the implementation of the IPID requirements, it will cover our approach to the conduct of business requirements for life business, including insurance-based investment products (IBIPs). It will also cover product oversight and governance. The proposals we implement from both consultations will take effect on 23 February 2018.
- 1.11** HM Treasury (HMT) is also consulting on the IDD implementation. Our second consultation will also consider matters based on the draft legislation in that HMT consultation. These will mainly relate to the areas of registration (including any necessary revisions to our Perimeter Guidance) passporting, and sanctions.
- 1.12** Separate to the implementation of the IDD, HMT has published a consultation paper<sup>3</sup> to amend the definition of 'advice' within the Regulated Activities Order 2001 (the RAO)<sup>4</sup> in line with MiFID II and the IDD. Depending on the outcome of this consultation, we may need to consider the impact of any changes on existing rules.
- 1.13** The IDD replicates many existing UK domestic provisions, and we propose to rely on them to implement the certain provisions of IDD where appropriate. In some cases our existing UK

<sup>3</sup> <https://www.gov.uk/government/consultations/amending-the-definition-of-financial-advice-consultation>

<sup>4</sup> See Article 53 Regulated Activities Order 2001/544



provisions go beyond the IDD minimum requirements. We do not propose to change these. Finally, where the IDD goes beyond our existing rules we have generally proposed to copy out the IDD provisions into our Handbook, although there are some areas where we propose to go beyond the IDD minimum requirements. This is mainly in regards to ancillary insurance intermediaries (see Chapter 6).

### Who does this consultation affect?

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- 1.14** This consultation will interest insurance and reinsurance companies, intermediaries, other firms, and customers in the insurance market, and bodies representing these groups. It will also be of interest to designated professional bodies whose members conduct insurance distribution activities.
- 1.15** This consultation covers the regulatory regime for firms now categorised as ancillary insurance intermediaries (examples include motor vehicle dealers, travel agents and electrical goods retailers). Our proposals for these firms are set out in Chapter 6.
- 1.16** The consultation also proposes a wider change to the definition of ‘durable medium’ with the Handbook. This is likely to be impact most financial services firms.

### Is this of interest to consumers?

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- 1.17** Consumers have a clear interest in financial markets that operate fairly and transparently. The way in which firms implement the new IDD requirements is likely to be of interest to consumers, particularly in relation to the conduct of business requirements. The conduct proposals aim to improve firms’ existing efforts to act in their clients’ best interests.

### Equality and diversity considerations

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- 1.18** We have considered potential equality and diversity issues with our proposals. Overall, we do not think that the proposals in this CP adversely impact any of the groups with protected characteristics.
- 1.19** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome input to this consultation on such matters.

### Next steps

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#### What do you need to do next?

- 1.20** We want to know what you think of our proposals. Please respond to our questions by 5 June 2017. You can find a consolidated list of questions in Appendix 1.

#### How?

- 1.21** You can provide responses through any of the methods set out on page 2.

**What will we do?**

- 1.22** These proposals and our timetable are driven by the requirement to implement the IDD by 23 February 2018. We will consider your feedback and aim to publish our rules in a Policy Statement by September 2017.

**Context**

- 1.23** We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

## 2. Application of the Directive

- 2.1** In this chapter we set out how we propose to apply the requirements of the IDD to different classes of insurance, types of firms and groups of customers.
- 2.2** The IDD applies to persons who conduct insurance distribution to customers. Broadly, this means firms who sell, advise on, or conclude insurance contracts, and those who assist in administering or performing insurance contracts.<sup>5</sup> Typically these are insurers, insurance brokers, and firms such as banks or retailers who provide insurance alongside their primary business. Customers of these firms range from individual consumers to large multinational corporations.
- 2.3** The IDD introduces a new category of firm called an ancillary insurance intermediary (AII). These are firms whose primary business is something other than insurance distribution, and who sell insurance ancillary to the other goods/services they provide. These include firms such as motor vehicle dealers and travel agents. We discuss our proposals for the regulatory regime to apply to these firms in Chapter 6.
- 2.4** In our Handbook, insurance distribution is captured by a group of regulated activities called *insurance mediation activities*.<sup>6</sup> To bring the Handbook into line with the IDD we propose to rename this term *insurance distribution activities*.

### Application to insurance and reinsurance undertakings

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- 2.5** Although the IMD only covered the activities of insurance intermediaries, our current rules also impose requirements on insurance undertakings when they are distributing products directly to customers. This was intended to create a level playing field between firms, and to ensure customers are protected regardless of the firm they choose. As the IDD applies to the distribution of insurance by both intermediaries and undertakings, we propose to maintain the application of these rules to insurers. Where the minimum requirements of the IDD go beyond our existing rules, we will include these requirements in our rules.

### Distributors of insurance for large risks<sup>7</sup> and reinsurance

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- 2.6** The current Insurance Conduct of Business sourcebook (ICOBS) rules exclude reinsurance contracts and only limited rules apply to transactions for contracts covering large risk.<sup>8</sup> We are proposing some changes to this.

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<sup>5</sup> The full definition can be found in Article 2(1)(1) the IDD.

<sup>6</sup> The regulated activities set out in Article 21, Article 25, Article 39A, Article 53 and Article 64 RAO, when carried out in regards to insurance contracts.

<sup>7</sup> Contracts of large risks is defined by reference to Solvency II (2009/138/EC)

<sup>8</sup> ICOBS 1 Annex 1 part 2

- 2.7** The IDD requirements within Article 17 (General Principles) and Article 24 (Cross-Selling) apply to distribution relating to large risks. We propose to implement these requirements through changes to ICOBS. These changes are discussed in Chapter 5. However, the IDD does not apply these requirements to reinsurance transactions.
- 2.8** The IDD information disclosure requirements<sup>9</sup> need not be applied in relation to large risks. We propose to maintain the approach we took under the IMD, which was:
- to rely on the exemption, in its entirety, for distribution of contracts of insurance for large risks where the customer is a commercial customer
  - to not rely on the exemption in relation to large risks transactions with retail customers within the EEA

### Intermediaries not in contact with the customer

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- 2.9** Currently the ICOBS rules apply to any intermediaries who are in contact with the customer. This means that requirements do not apply to other intermediaries in the distribution chain. This approach is consistent with the conduct of business requirements in the IMD, which primarily focus on information disclosure and so only apply to intermediaries that deal directly with customers. However, the IDD contains requirements – specifically the general principles – which are relevant to all intermediaries carrying out insurance distribution activities, regardless of whether they are in direct contact with the end customer. We propose to amend the application provisions of ICOBS accordingly, as set out in Chapter 5.
- 2.10** This approach is also in line with the purpose of the IDD to ensure that consumer protections should be the same, regardless of the differing distribution channels through which insurance contracts are offered.

### Customer categorisation

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- 2.11** In general, the IDD makes no distinction between different types of customer. We therefore intend to apply the conduct requirements to transactions with consumers (any person who is acting for purposes which are outside their trade or profession) and commercial customers.
- 2.12** As the IDD applies to both retail and commercial customers, we believe that our guidance and rules on customer classification in ICOBS 2.1 remain appropriate.

**Q1: Do you have any comments on our proposed approach to the application of the IDD?**

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<sup>9</sup> Those in Articles 18-20 the IDD

## 3. Professional, organisational and prudential requirements

- 3.1** In this chapter we set out our proposals for implementing the professional, organisational and prudential requirements of the IDD. These requirements cover the following areas:
- staff knowledge and ability (including training and competence requirements),
  - prudential requirements – professional indemnity insurance (PII) and Client Assets Sourcebook (CASS)
  - restriction on the use of intermediaries
- 3.2** The staff knowledge and competence requirements apply to insurers and intermediaries. The IDD introduces a minimum of 15 hours continuing professional development (CPD) for staff. Where insurance distributors are not subject to the more detailed requirements of our Training and Competence sourcebook (TC),<sup>10</sup> we propose to apply the 15 hours minimum requirements.
- 3.3** The requirement to hold PII or a comparable guarantee applies only to insurance and reinsurance intermediaries. We propose to increase the minimum cover levels in line with the IDD, and retain our existing additional requirements. We also propose extending to intermediaries the requirement to conduct insurance distribution only through authorised or exempt firms.
- 3.4** This paper is not consulting on changes to our CASS rules. However, we are seeking views on some potential changes. We will formally consult on those in our second Consultation Paper later this year.

### Knowledge and ability

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- 3.5** The IDD requires that insurance distributors and their employees have appropriate knowledge and ability; demonstrated by completing a minimum of 15 hours per year of CPD. The IDD sets out criteria for minimum knowledge, which include areas such as product and market knowledge. Firms are currently required by our Senior Management Arrangements, Systems and Controls sourcebook (SYSC) to ensure their employees have the knowledge, skills and expertise necessary to carry out their responsibilities.<sup>11</sup> We already expect firms to undertake ongoing training, and firms subject to TC must complete 35 hours of CPD.
- 3.6** Our rules and guidance state that when complying with the ‘competent employees’ rules, a firm must take into account the nature, scale and complexity of its business and the nature and

<sup>10</sup> Broadly, the TC requirements apply to firms who provide advice on insurance contracts. Additional minimum qualification requirements apply to those employees who advise on life policies and long term care insurance contracts

<sup>11</sup> SYSC 3.1.6R and SYSC 5.1.1.R

range of financial services and activities undertaken in the course of that business. We consider that these existing requirements are consistent with the IDD.

### **Our proposals**

- 3.7** We propose to implement the IDD requirements in SYSC. For firms subject to the TC regime we will rely on this to implement the IDD.
- 3.8** The IDD minimum knowledge criteria only apply to insurance and reinsurance intermediaries. However, we propose to also apply them to insurance and reinsurance undertakings as well as to intermediaries. The minimum knowledge criteria cover areas such as product coverage, the claims process and insurance regulation. These are areas which are just as relevant to insurers distributing products directly to the customer as they are to intermediaries. In our view, these are areas on which we would expect insurers to train their employees.
- 3.9** The current requirements in TC go beyond the minimum IDD requirements and we propose to maintain these. We consider that this will not have an additional impact on firms and will help firms demonstrate an objective baseline when complying with their IDD obligations and the ‘competent employees’ rules.
- 3.10** We propose to apply the knowledge and competence requirements only to those employees directly involved in insurance distribution. This includes relevant people within the management structure with responsibility for insurance distribution (for example, product or sales managers). The requirements will not apply to employees in ancillary roles such as HR, facilities management and IT. We are also proposing to move knowledge and competence requirements currently in MIPRU 2.3. to SYSC so that they are in the same sourcebook (subject to additional requirements in TC).
- 3.11** We have considered the proportionality of applying minimum CPD requirements to employees such as call centre operatives whose role may be limited to conducting non-advised, script-based sales. We propose to issue guidance that the format and content of the CPD can be modulated according to the nature and complexity of the employee’s role. For example, CPD could include:
- completing eLearning modules relevant to insurance distribution
  - time spent reading insurance product literature or publications from bodies such as the FCA, PRA or Financial Ombudsman Service (FOS)
  - attending internal briefings on insurance distribution practices or market developments.

### **Record-keeping**

- 3.12** The IDD requires insurance and reinsurance undertakings to establish, maintain and keep appropriate records to demonstrate their compliance with the employee knowledge and ability requirements. For consistency we believe it is appropriate to extend record-keeping to all firms. We expect that firms will already maintain records of employee competence as part of compliance with SYSC.
- 3.13** We propose to make it clear in our SYSC and TC record-keeping requirements that a firm must not prevent an employee from obtaining a copy of their IDD CPD records.
- 3.14** The IDD does not prescribe time limits for record-keeping, we propose a minimum requirement that records should be held for not less than three years. This is in line with the requirements for firms subject to TC.

### Certification/qualification discretion

**3.15** Other than as already required by TC, we do not propose to require employees of insurance distributors to obtain a qualification as part of their role. However, we expect firms to consider employees' compliance with their IDD training and development when assessing their competence, and when certifying employees for FCA's significant harm functions under section 63E(5) of the Act.

**Q2: Do you agree with our proposed approach to incorporating the IDD knowledge and competence requirements? If not, please explain why.**

### Professional Indemnity Insurance

**3.16** The IDD requires intermediaries to hold PII or a comparable guarantee against liability arising from professional negligence.<sup>12</sup> Minimum levels of cover are €1,250,000 per claim per year, and €1,850,000 per year in aggregate.

**3.17** Our existing rules are more detailed than the IDD requirements in some respects:

- a requirement for intermediaries to maintain a higher minimum aggregate cover – 10% of annual income up to £30m – where this is greater than the directive minimum amount<sup>13</sup>
- requirements around excess levels<sup>14</sup>
- the need to have specific terms which the PII cover must incorporate (such as cover for legal defence costs and Ombudsman awards)<sup>15</sup>

**3.18** MIPRU 3.1.3G sets out our reasons for our more detailed requirements. These are “to meet the statutory objectives of consumer protection and protecting and enhancing the integrity of the UK financial system by ensuring that firms have adequate resources to protect themselves, and their customers, against losses arising from breaches in its duties under the regulatory system or civil law”

**3.19** PII coverage remains an area of focus for FCA in other areas in addition to the IDD<sup>16</sup> and in December 2016 we announced a broad review of the PII market.<sup>17</sup> Our proposals in this CP and the outcome of this consultation will inform our wider work.

### Our proposals

**3.20** We propose to maintain the existing requirements in MIPRU 3 and IPRU (INV) 13. In our view, the rationale for retaining the existing PII requirements (as set out in MIPRU 3.1.3G) remains correct. We will amend the minimum levels of PII cover in line with the IDD minimum levels. We will retain the additional income-based minimum aggregate requirements. In our view, there has been no material change in circumstances since these were introduced.

<sup>12</sup> Article 10(4) and 10(5) of the IDD

<sup>13</sup> MIPRU 3.2.7R (2); IPRU(INV)

<sup>14</sup> MIPRU 3.2.4R (3) and MIPRU 3.2.10R-12R

<sup>15</sup> MIPRU 3.2.4R

<sup>16</sup> Review of general insurance intermediaries' professional indemnity insurance: TR16/9.

<sup>17</sup> CP16/42 <https://www.fca.org.uk/publication/consultation/cp16-42.pdf>

**Q3: Do you agree with our proposed PII requirements? If not, please explain why.**

### Restriction on the use of intermediaries

**3.21** Under the IDD, insurance and reinsurance undertakings and intermediaries must only use authorised or exempt insurance intermediaries for insurance distribution services. This goes beyond our current rules, which only apply to insurance and reinsurance undertakings.

#### Our proposals

**3.22** We also propose to amend the guidance in MIPRU 5.1.2G to:

- amend the references to IMD to IDD, and
- reflect the fact that the requirements apply to insurance intermediaries as well as insurance undertakings.

**3.23** We do not propose to amend the position in MIPRU 5 in relation to home finance mediation, as this is not connected to the IDD.

### Amendments to CASS – for discussion

**3.24** The IDD requirements relating to client assets are very similar to those in the IMD. The main differences are:

- the minimum intermediary financial capacity amount has increased
- the provisions now apply to reinsurance intermediaries.

**3.25** We will consult formally on our CASS proposals in our second Consultation Paper. The paragraphs below, however, set out our possible approach for your initial views.

**3.26** Currently, the IMD is implemented in CASS, where intermediaries are given the option between risk transfer and segregation of accounts. CASS 5 is optional for reinsurance intermediaries.<sup>18</sup>

**3.27** Given that reinsurance intermediaries are covered by the IDD we are considering amending CASS 5 so that it becomes compulsory in relation to reinsurance contracts. This will mean that money received in the course of reinsurance distribution would be held subject to CASS 5 (or, where available, CASS 7 as an alternative). We are also considering narrowing the scope of available options for reinsurance mediation, for example, making CASS 5 compulsory but allowing only risk transfer.<sup>19</sup> In addition, we are considering whether to apply CASS 5.8, requiring safe keeping of client's documents and other assets, to this business.

**Q4: Do you have any comments on our intended approach to implementing the IDD requirements concerning the protection of client assets, in particular:**

<sup>18</sup> CASS 5.1.1R(2)(b) and CASS 5.1.1R(3)(a)

<sup>19</sup> Article 10(6)(a)



- a. The mandatory application of CASS 5 to reinsurance mediation?
- b. Narrowing the scope available options for reinsurance contracts, for example only allowing risk transfer?
- c. The potential application of CASS 5.8 to reinsurance mediation?

## 4.

# Complaints handling and out-of-court redress

- 4.1** Article 14 of the IDD requires insurance and reinsurance distributors to have a process in place for customers and other eligible parties to register complaints and receive replies. This requirement applies to all types of insurance transaction, whether it involves a retail customer or a commercial customer, including reinsurance transactions.
- 4.2** Article 15 of the IDD requires Member States to have “adequate and effective, impartial and independent out-of-court complaint and redress procedures” relating to customer complaints about insurance distribution activities which come within the scope of the IDD. This chapter sets out our proposals in relation to these requirements.
- 4.3** Our current DISP rules contain the following requirements:
- complaints from *eligible complainants* from insurance mediation/ distribution activities be handled in accordance with the complaints handling rules in DISP 1
  - that insurance and reinsurance intermediaries put in place appropriate and effective processes for dealing with complaints from parties who are not *eligible complainants* (DISP 1.1.8R)
  - that insurance mediation related complaints from eligible complainants can be referred to and dealt with by the Financial Ombudsman Service (FOS)
- 4.4** These existing rules apply to business carried on from establishments in the UK.

### Our proposals

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- 4.5** We propose to implement the requirements of IDD in relation to complaints handling and the availability of out of court redress arrangements by relying on DISP, with amendments where necessary.
- 4.6** For article 14 IDD we will continue to rely on DISP 1 for eligible complainants. We propose to create a new rule which will contain the existing requirement in DISP 1.1.8R and extend it to all insurance and reinsurance distributors when carrying on distribution activities.
- 4.7** We also propose to amend our rules to include complaints about insurance and reinsurance distribution business carried on by UK firms from a branch in another EEA state. This reflects the IDD home state responsibility which applies to article 14. We intend to continue to retain the application of our complaints rules in DISP 1 to UK establishments of EEA firms.
- 4.8** For Article 15 of the IDD we will continue to apply DISP 1 requirements and the existing scope of the Financial Ombudsman Service to firms with establishments in the UK. This will ensure

that eligible complainants are able to refer complaints arising from business carried on from an establishment in the UK to the Financial Ombudsman Service including where this is done by incoming EEA firms.

- 4.9** The requirement for Member States to ensure that there are out of court redress arrangements available in relation to complaints about insurance distribution activities in respect of retail consumer disputes is a home Member State responsibility. Insurance distributors with an establishment in the UK are already covered by the FOS. We propose to introduce a requirement for insurance distribution business conducted by EEA branches of UK (re)insurers and intermediaries to adhere to an Alternative Dispute Resolution (ADR) entity in the EEA state in which they are established to resolve consumer disputes.
- 4.10** We have considered whether the IDD requires the Ombudsman’s jurisdiction to be expanded in scope to include all complaints from commercial customers. Currently the Ombudsman may consider complaints about commercial insurance that are referred to it by *micro-enterprises* and certain trustees. We consider that out-of-court redress arrangements required by the IDD are intended to provide an alternative dispute resolution process for the benefit of retail consumers. This is consistent with acts such as the Alternative Dispute Resolution Directive.<sup>20</sup> Therefore we do not propose to extend the scope of the jurisdiction of the FOS beyond eligible complainants to consider complaints from wider commercial customers.
- 4.11** More widely we are considering whether the definition of an eligible complainant for the purposes of the FOS, which includes micro-enterprises, should be extended to include some larger Small to Medium Enterprises (SMEs).<sup>21</sup> Whilst we do not propose to expand the definition of an eligible complainant in our implementation of the IDD we will keep this position under review.

**Q5: Do you agree with our proposals for implementing the IDD requirements in relation to complaints and out-of-court redress? If not, please explain why.**

<sup>20</sup> Directive 2013/11/EU

<sup>21</sup> DP 15-07 – Our approach to SMEs as users of financial services  
<https://www.fca.org.uk/publication/discussion/dp15-07.pdf>

## 5. Conduct of business requirements

- 5.1** In this chapter we consider the rules on the conduct of non-investment insurance distribution business. These changes will be made to ICOBS, and we have set them out in the order of the chapters we are proposing to amend:
- the IDD General Principles (ICOBS 2)
  - general pre-contract disclosures (ICOBS 4)
  - disclosures relating to conflicts of interest and transparency (ICOBS 4)
  - the means of providing information (ICOBS 4);
  - standards for advised and non-advised sales (ICOBS 5)
  - cross-selling (ICOBS 6A)
- 5.2** We also set out some considerations relevant to the new Insurance Product Information Document (IPID). As the requirements relating to the IPID are subject to ongoing work at EU level, we are not setting out specific proposals here. We have included our early considerations for discussion and comment, which will inform the proposals we will set out in our second Consultation Paper.
- 5.3** As noted above, there is currently a difference between the definition of advice in the IDD and in the RAO. Where the IDD refers to advice we propose to apply the requirements only to the provision of a personal recommendation.

### Amendments to ICOBS 2 – Overarching requirements

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#### The IDD general principles

- 5.4** The IDD introduces *general principles* that apply to all insurance distributors. These are overarching requirements, which apply in a similar way to our Principles for Businesses. In summary, the IDD general principles are:
- Distributors must act honestly, fairly and professionally in the best interests of their customers.
  - Distributors must communicate in a way which is clear, fair and not misleading, including ensuring that marketing materials are clearly identifiable as such.
  - 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.

**5.5** The IDD definition of ‘remuneration’ includes commission, fee, charge or other payment, including an economic benefit of any kind or any other financial advantage or incentive offered or given in respect of the insurance distribution activity.

### ***Our proposals***

**5.6** The existing provisions we have in place and the requirements of the IDD are very similar. However, there are differences which require amendments to the Handbook.

**5.7** We propose to incorporate the IDD requirements by:

- including a new rule in ICOBS requiring insurance distributors to act honestly, fairly and professionally in the best interests of their customers (‘the customer’s best interests rule’)
- amending the current ICOBS rules on communications and financial promotions to require that all marketing communications be clearly identifiable as such
- including a new rule in SYSC to prohibit remuneration and performance management practices that would conflict with the customer’s best interests rule.

**5.8** The existing non-Handbook guidance FG13/1<sup>22</sup> (on incentives) and FG15/10<sup>23</sup> (on performance management) will continue to be relevant and applicable to the proposed new customer’s best interests rule.

**5.9** The guidance within ICOBS 2.3.1G is similar to the proposed new customer’s best interests rule. However, it goes further by including conflicts between customers. We propose to retain this guidance, with an amendment so that it refers to the new customer’s best interests rule.

**5.10** Firms should note that these overarching general principles will apply to all firms carrying out insurance distribution activities, where they have a direct impact on the policyholder. This means that firms conducting insurance distribution activities as part of a distribution chain will be caught by the customer’s best interests rule. This will include, for example, a wholesale intermediary who concludes a policy placed with it by a retail intermediary, or a price comparison website who proposes a contract but directs a customer to another intermediary or insurer.

**5.11** We will also be including in ICOBS 2 the new requirements on authorised firms who distribute policies through ancillary insurance intermediaries exempt from authorisation.<sup>24</sup> These proposals are discussed in Chapter 6.

**Q6: Do you agree with our proposed amendments to ICOBS 2? If not, please explain why.**

## **Amendments to ICOBS 4 – Pre-contract disclosures**

### ***Introduction***

**5.12** ICOBS 4 deals with information that firms must provide about themselves and their services. This needs to be updated to reflect the requirements of the IDD.

<sup>22</sup> <https://www.fca.org.uk/publication/finalised-guidance/fca-fg13-01.pdf>

<sup>23</sup> <https://www.fca.org.uk/publication/finalised-guidance/fg15-10.pdf>

<sup>24</sup> Those whose activities fall within the exemption in Article 72B Regulated Activities Order 2001

**5.13** In line with the new customer’s best interests rule, it is important that firms consider how they make information meaningful to customers. Firms should make sure that the information is provided at an appropriate time and through the right channels. Our work on *Smarter Consumer Communications*<sup>25</sup> has shown that different people engage with information in different ways, and that information alone is not always enough to empower consumers to make informed choices. Firms’ communication is vital to help consumers make decisions but it is only effective when consumers pay attention to the information, have the capacity to interpret it and are willing to incorporate it in their decision-making process. Therefore, we propose to include guidance into ICOBS 4.1 that reminds firms of the importance of meaningful and timely disclosure.

#### **General pre-contract disclosures**

**5.14** The IDD builds on the existing pre-contract information requirements currently in place. The new requirements are:

- The pre-contract disclosure regime now applies to insurance undertakings.
- Firms must state what type of firm they are (an intermediary or an undertaking).
- Firms must state whether they provide a personal recommendation.
- Insurance intermediaries must state whether they are acting on behalf of the customer or the insurance undertaking.

#### ***Our proposals***

**5.15** We propose to amend ICOBS to incorporate the new the IDD requirements.

**5.16** We consider that the guidance referred to in paragraph 5.13 above is particularly relevant to making clear whether or not advice is being provided. Our experience is that customers do not always understand the difference between information and advice.<sup>26</sup> A well-worded and timely disclosure can help the customer understand the scope (and limitations) of the service the firm is providing.

#### **Disclosures relating to conflicts of interest and transparency**

##### ***The IDD requirements and existing provisions relating to links between firms***

**5.17** The IDD builds on the existing conflicts of interest disclosure requirements in ICOBS. The IDD requirements apply only to insurance intermediaries:

- 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%”.
- Intermediaries must disclose if they give advice based on “a fair and personal” analysis of the market.
- Where an intermediary is contractually bound to place business with a specific insurer or insurers it must provide the names of these insurers. Currently this information need only be supplied on request by the customer.

<sup>25</sup> <https://www.fca.org.uk/publications/discussion-papers/smarter-consumer-communications-further-step-journey>

<sup>26</sup> We note that the Financial Advice Market Review Industry Working Group is currently considering the introduction of definitions for terms such as guidance and advice – <https://www.fca.org.uk/publication/thematic-reviews/famr-working-group-terms-of-reference.pdf>

- 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. Currently this information need only be supplied on request by the customer.

**5.18** We propose to amend the existing rules in ICOBS 4 to align with the IDD.

**5.19** These requirements apply to both advised and non-advised sales. Intermediaries who conduct non-advised sales will always need to disclose the names of the insurers with whom they may place business.

***The IDD requirements relating to disclosure of remuneration arrangements of firms***

**5.20** The IDD introduces new requirements for the pre-contract disclosure of information about an insurance distributor's remuneration. The IDD requires insurance intermediaries to disclose the nature and basis of the remuneration they receive in relation to the insurance contract. Insurers must likewise disclose the "nature" of the remuneration paid to their employees. Where the remuneration is in the form of a fee paid by the customer, the amount of that fee must be disclosed. Firms are permitted to disclose the method of calculation instead of the actual amount, but only if the amount cannot be calculated at the time.

***Our proposals – nature and basis of remuneration***

**5.21** We propose to incorporate these IDD requirements into ICOBS.

**5.22** The terms 'nature' or 'basis' are both capable of being applied differently by different firms. We propose including guidance in ICOBS to ensure there is consistency across the market and to clarify our expectations. A summary of our proposed guidance is set out below:

- We view 'nature' as requiring firms to disclose the **type of remuneration**<sup>27</sup> they will receive or pay. This could be a basic commission, bonus, profit share or other financial incentive.
- We view 'basis' as requiring firms to disclose the **source of the remuneration** they receive, which is specified in the requirements of Article 19(1)(e) of the IDD. It is also consistent with insurers not being required to disclose the basis of the remuneration paid to their employees, as by definition it comes from the insurer as the employer.

**5.23** The IDD states the information disclosed must be about remuneration "in relation to the contracts proposed". Firms therefore need to consider whether the remuneration is in relation to the insurance contract being proposed. Firms should disclose information about remuneration which has a direct connection to the insurance contract being sold. This is likely to include bonuses for hitting a sales target (where the specific contract sold will count directly towards that target) but may not include measures such as rewards for adherence to quality standards.

**5.24** When designing their disclosure documents or scripts, firms should always consider their customer's information needs. The purpose of these requirements is to highlight potential conflicts of interest and to promote transparency. Firms should ensure they disclose the information in a way that is useful to their customers in showing the relationship between firms in the distribution chain, and in highlighting potential conflicts of interest.

<sup>27</sup> Recital 40 of the IDD states that firms should provide information on the type of remuneration they receive

**5.25** The table below sets out some scenarios and whether they are likely to be compliant with our proposed rules and guidance.

**Table 1: Illustrative examples concerning remuneration disclosure**

<b>Scenario</b>	<b>Likely compliant?</b>	<b>Comments</b>
We arrange the policy with the insurer on your behalf. You do not pay us a fee for doing this. We receive commission from the insurer which is a percentage of the total annual premium.	Yes	This gives a disclosure of the type of remuneration the intermediary received. It also explains the source of the remuneration.
We receive commission from the insurer for selling this policy.	No	This does not state that the source of the commission is that it is included within the premium.
When you take out a policy with us we charge you a fee of £50. In addition, the insurer pays us a percentage of the annual premium 14 days after the policy starts.	Yes	This provides the amount of the fee payable by the customer, and also gives an explanation of the other remuneration.
Insurers pay us commission to sell policies on their behalf. They also provide us with periodic incentives (such as bonus payments) if we meet certain sales targets.	No	This does not state that the source of the commission is that it is included within the premium.
When we sell you a policy the insurer pays us a percentage commission from the total premium. If the type of policy we sell reaches specific profit targets the insurer also pays us an additional bonus.	Yes	This gives an explanation of both types of remuneration the firm receives (or may receive).
The insurer pays us a flat fee per policy to deal with claims on their behalf.	Yes	This gives an explanation of the type of remuneration and who pays it. However, it would be insufficient if the firm received more remuneration than just the flat fee.
The insurer pays us a flat fee per policy to deal with claims on their behalf. Every month the insurer calculates the profit made on policies we administer. If this is above a certain amount they also pay us a share of this.	Yes	This gives an explanation of both types of remuneration the firm receives (or may receive).

**5.26** We have considered other possible approaches. These include:

- requiring an explanation of the work the intermediary does in *earn* their remuneration
- requiring a detailed explanation of the remuneration (such as an explanation of the methodology)
- requiring firms to disclose the amount of remuneration paid/received



- 5.27** We do not consider that any of these alternatives fit with the recitals or wording of the IDD as appropriately as our proposed approach.
- 5.28** In accordance with ICOBS 4.4, insurance intermediaries are required to disclose the amount of commission they receive in relation to an insurance policy, on request by the commercial customer. Guidance in ICOBS 4 indicates a similar obligation in regards to retail customers. These requirements are unaffected by the IDD and we do not propose to amend them.
- 5.29** Our proposals in this CP are only concerned with giving effect to the remuneration disclosure requirements under IDD. They do not impact any other obligations relevant to remuneration arising from the general law. This includes, for example, section 140A of the Consumer Credit Act 1974 concerning the fairness of a relationship between a lender and a borrower under a credit agreement, which was considered by the Supreme Court Judgement in *Plevin v Paragon Personal Finance Limited* in the context of a failure to disclose commission. Firms should continue to ensure they comply with all their legal obligations and take account of the general law.
- 5.30** Following the judgement in *Plevin* we stated in our Feedback Statement FS16/01<sup>28</sup> that we did not plan to consult on changes to the commission disclosure rules for non-investment insurance at that stage. We continue to monitor developments in this area and will engage with relevant stakeholders should we decide to propose any changes in the future.

#### ***Our proposals – fee disclosure***

- 5.31** ICOBS 4.3 currently requires firms to disclose the amount of any fees payable by the customer. We propose to rely on this to implement the IDD. However, we are proposing to amend the definition of ‘fee’ within the Handbook Glossary to align with the IDD definition. Firms should consider the following points when implementing these requirements:
- Firms must provide the exact amount of the fee, or the method of calculation if the exact amount cannot be provided. Merely providing a range of possible fees (for example, “up to £50”) without more information is unlikely to be compliant with our rules.
  - It is only permissible to provide the method of calculation if the exact amount cannot be calculated at the time. If the exact amount is known it must be disclosed. Firms should bear in mind the requirement to communicate in a manner which is clear, fair and not misleading. This means that the ‘method of calculation’ should be expressed in a way that the consumer can understand, and by reference to information available to them. In practice, we believe that if firms can set out the method of calculation adequately, they will also be able to state the actual amount of the fee.
  - The requirements of the IDD apply to all post-contract fees that the customer *may* incur during the life of the policy. This includes administration fees for matters such as mid-term adjustments.

#### **Means of providing information**

- 5.32** The IDD sets out new provisions on how information must be provided to customers. In summary, the requirements are:
- All the information required must be provided;
    - in a clear, accurate and comprehensible manner;

<sup>28</sup> <https://www.fca.org.uk/publication/feedback/fs16-01.pdf>

- in an official language of the Member State, and;
- free of charge
- Information may be provided on paper, a durable medium other than paper or a website (where it is not a durable medium and satisfies certain conditions). Where information is provided through a medium other than paper, the option to have the information on paper must be available and free of charge.
- There is no provision for the information to be provided orally at the request of the customer.
- Telephone sales should comply with existing EU law in relation to distance marketing.

### ***Our proposals***

**5.33** The IDD covers a wider range of information (in particular, product information) to be disclosed by a wider range of firms than is required under the IMD. We propose to incorporate the IDD requirements into ICOBS, and to apply them to the disclosures required by other ICOBS provisions.

**5.34** Where firm wishes to provide the information through a durable medium other than paper or a website (where it is not a durable medium), we expect firms to present the customer with a choice between the available options, rather than simply presenting the customer with one option and asking for their consent. This is in line with the IDD requirements and intention reflected in Recital 50 which states the customer “should be given the option to receive (the information) on paper”.

### ***Our proposals on the definition of durable medium***

**5.35** The notion of durable medium is embedded in several pieces of European legislation which require that a firm must provide certain information to a client in writing, either on paper or in another ‘durable medium’. The core definition of durable medium is consistent across the legislation. The exception has been the IMD. However, the IDD brings the definition into line with other Directives.

**5.36** We propose to amend the definition of ‘durable medium’ in line with the IDD. We are consulting on this proposed change in response to feedback received from stakeholders on our Smarter Consumer Communications Discussion Paper.

**5.37** This initiative aims to encourage better communications in the financial services industry and create a change of mind-set about how to communicate effectively with consumers. Consumer engagement can be best achieved through rethinking not just what is communicated but also how it is communicated and delivered to consumers.

**5.38** In our Feedback Statement (FS 16/10) we committed to undertaking a review of the use of the term ‘durable medium’ in the Handbook and consult on possible changes. As a result of this, in this consultation we are proposing to remove references to floppy disks included in IMD/IDD from our Handbook.

**Q7: Do you agree with our proposed amendments to ICOBS 4? If not, please explain why.**

**Q8: Do you have any comments on the illustrative examples set out in *Table 1* (in relation to remuneration disclosure)?**

**Q9: Do you have any comments on our proposal to amend the Glossary definitions of ‘durable medium’, ‘fee’ and ‘remuneration’?**

**Amendments to ICOBS 5 – Advised and non-advised sales**

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- 5.39** The IDD builds on and amends the existing ICOBS standards for advised and non-advised sales. All firms are required to identify their customers’ insurance demands and needs, and ensure that insurance contracts proposed are consistent with them. Where a firm provides advice, it must explain why a contract best meets the customer’s needs.
- 5.40** Article 20 of the IDD also contains the provisions relating to product information and the Insurance Product Information Document (IPID). We are not consulting on the implementation of the IPID at this stage because of the ongoing work by EIOPA and the Commission. However, we are seeking early views from stakeholders on one particular aspect of the IPID set out below.
- Our proposals – demands and needs***
- 5.41** The IDD makes it clear that firms need to specify the customer’s insurance demands and needs based on information obtained by the firm from the customer. This clarifies that firms must take an active role in identifying the customer’s demands and needs (through asking questions).
- 5.42** In addition the IDD includes an additional provision that “any contract proposed shall be consistent with the customer’s insurance demands and needs” meaning that firms must only offer contracts that meet the customers’ demands and needs. We propose to copy out this new provision into ICOBS 5.
- 5.43** To comply with this additional requirement, firms need to take two steps:
- 1.** Identify the customer’s demands and needs, and match them to the available products, and
  - 2.** State the customer’s demands and needs to assist them in making an informed decision.
- 5.44** We recognise the need to retain a clear distinction between advised and non-advised sales. In relation to non-advised retail sales, we do not expect firms to carry out a detailed investigation of the customer’s circumstances, but they should identify their demands and needs, and ensure that the contracts proposed provide cover that meets those demands and needs. For example we would expect a firm which sells motor insurance on a non-advised basis to ask the customer questions about the level of cover they require, the amount of excess they are prepared to pay, and the type/amount of their driving (amongst other relevant things). They should then limit their product offering to those which would meet these specified demands and needs.
- 5.45** The table below sets out some illustrative examples of practices which we consider are likely to be compliant or non-compliant with the demands and needs requirements:

**Table 2: Illustrative examples concerning insurance demands and needs<sup>29</sup>**

Scenario	Likely compliant?	Comments
The customer is concerned about their cat falling ill. The firm offers only those pet insurance products which cover all vet's bills.	Yes	This is likely to be compliant as the firm has identified the customer's demands and needs, and offered only products which meet them.
The customer is concerned about their cat falling ill. The firm offers all their pet insurance products, including <i>accident only</i> cover.	No	This is unlikely to be compliant as the firm has proposed contracts which are not consistent with the customer's basic need.
The customer is concerned about their car not starting on a cold morning. The firm offers only breakdown insurance which offers cover at the home address.	Yes	This is likely to be compliant as the firm has identified the customer's demands and needs, and offered only products which meet them.
The customer is concerned about their car not starting on a cold morning. The firm offers all its breakdown policies, including those which only cover >¼ mile from home.	No	This is unlikely to be compliant as the firm has proposed contracts which are not consistent with the customer's basic need.
The firm offers the customer all their available products, and provides a generic statement with each product about the type of needs the product will meet.	No	This is unlikely to be compliant. Providing a generic statement may be sufficient to state the customer's demands and needs, but the firm has taken no steps to identify the needs of the specific customer or ensure the products are consistent with those demands and needs.
Offering the customer only motor policies which meet their demands and needs, but then offering add-ons to all customers regardless of whether these add-ons are consistent with those demands and needs.	Yes	This is likely to be compliant for the motor policy but not for the add-ons. This is because the firm has taken no steps to identify the needs of the customer or ensure the add-on products are consistent with those demands and needs.

**5.46** The IDD states that the purpose of the demands and needs requirement is 'to assist the customer in making an informed decision'. Firms should therefore identify demands and needs early on in the sales process, and take this into account when designing their customer journeys.

**5.47** We have considered whether our existing guidance on the format of a statement of demands and needs<sup>30</sup> remains appropriate in light of the IDD wording. We have amended the guidance to make it clear that firms must ensure that they identify and specify the demands and needs of the particular customer. For example, it would not be appropriate to provide a generic statement of demands and needs where the firm has not first taken steps to identify the demands and needs of the actual customer. However, generic statements of demands and needs may be appropriate if the firm has narrowed the product options it offers to only those where the customer's demands and needs match those in the statement.

<sup>29</sup> This table only concerns compliance with the demands and needs requirements. It is not intended to illustrate compliance with other requirements, such as the customer's best interests rule.

<sup>30</sup> ICOBS 5.2.4G

***Our proposals – advised sales***

- 5.48** We propose to include a new requirement for firms which provide a personal recommendation to provide a personalised explanation why the proposed product best meets the customer's insurance demands and needs.
- 5.49** We expect firms to match the customer's demands and needs to the available products, and set out a personalised explanation of why the product proposed best meets those needs. To comply with this and the requirement to act in the customer's best interests, if the firm does not offer a product which meets the customer's needs it should say so.

**Q10: Do you agree with our proposed amendments to ICOBS 5? If not, please explain why.**

**Q11: Do you have any comments on the illustrative examples set out in Table 2 (in relation to requirements concerning the customer's insurance demands and needs)?**

**Amendments to ICOBS 6A – Sales practices****Cross-selling**

- 5.50** The IDD introduces new requirements for the cross-selling of insurance products. These requirements apply where an insurance policy is sold in connection with, or alongside, other goods or services as part of a package or the same agreement. We consider that ancillary has a broad meaning and that these requirements include all instances where insurance is sold to complement other goods or services.
- 5.51** In packages where insurance is the primary product, information must be given on whether the different components of the package can be bought separately. The distributor must also provide an adequate description of the component products, explain any interactions between the components, and provide separate information on the costs and charges. Examples of this type of cross-selling package include car insurance sold with the option to buy a telematics device or private medical insurance sold with a wearable fitness device.
- 5.52** In packages where insurance is ancillary to other goods or service the customer must be able to buy the primary product or service without the insurance. Examples of ancillary insurance packages include insurance sold alongside mobile phones and cars. In these packages the ancillary insurance must be optional.
- 5.53** The IDD cross-selling provisions do not apply where insurance is sold ancillary to certain other financial products (such as payment accounts and mortgages) or ancillary to another insurance product. Our cross-selling proposals do not change our current expectations relating to the sales of multi-risk products or the sales of options/cover extensions offered within the one insurance product (such as accidental damage or baggage cover).

***Our proposals***

- 5.54** We propose to copy out the IDD requirements into ICOBS 6.
- 5.55** Firms are also reminded that our existing ICOBS rules will apply to an insurance policy sold as part of a package, irrespective of whether insurance was the primary or ancillary product in a package. This includes pre-contract disclosure requirements and the prohibition on opt-out selling.

- 5.56** Firms must continue to comply with the existing provisions relating to the sale of guaranteed asset protection (GAP) and insurance as part of a packaged bank account, as well as our rules and guidance on the sale of add-on insurance products.

**Q12: Do you agree with our proposed amendments to ICOBS Chapter 6 to incorporate the IDD cross-selling requirements? If not, please explain why.**

**Product information**

- 5.57** The IDD requires firms to provide customers with objective information about an insurance product in a comprehensible form to allow them to make informed decisions. The information provided should take into account the complexity of the insurance product and the type of customer. We are considering relying on the existing ICOBS 6.1.5R to implement this requirement.

**Matters for discussion – IPID**

- 5.58** For non-life insurance products, the IDD requires that product information be provided in a standardised Insurance Product Information Document (IPID). We intend to consult on IPID related transposition in our second Consultation Paper, after the relevant implementing technical standards have been adopted.

- 5.59** In developing the implementing technical standards for the IPID, EIOPA has focussed on *retail consumers*. They have stated that it will be for Member States to determine whether the IPID should be provided to all customers or just to retail consumers.<sup>31</sup> It is important to bear in mind that the IPID will not be required in relation to the distribution of contracts of insurance for large risks.

- 5.60** We are seeking views on the application of the IPID to commercial customers. We consider that there are three options for this:

- 1. No change.** To the extent possible under the implementing technical standards and the IDD, make no change to our current product information rules as they relate to commercial customers.
- 2. IPID application.** Require the IPID template to be used for commercial customers, with no modification to the requirements as set out for consumers.
- 3. Alternative format.** Develop a modified form of pre-contractual disclosure for commercial customers with the same objectives as IPID and broadly similar technical standards. This could, for example, take the form of an update to our policy summary guidance in ICOBS 6 Annex 2 to better target the information needs of commercial customers and better accommodate the complexity of some products provided to commercial customers.

- 5.61** Although these three options and their feasibility may change following the finalised implementing technical standards, we are seeking early stakeholder views on these options and the overall information requirements of commercial customers.

<sup>31</sup> Available: <https://eiopa.europa.eu/Pages/Consultations/EIOPA-CP-16-007-Consultation-Paper-on-the-proposal-for-the-Implementing-Technical-Standards-on-a-standardised-presentation-.aspx>

- Q13:** What are your views on the provision of an IPID or other form of pre-contractual disclosure for commercial customers? Are there particular commercial customers (such as SME customers) that have different information needs?
- Q14:** What are your views on the practical considerations of format and content if IPID requirements were to apply to some or all commercial customers?

## 6. Ancillary insurance intermediaries

6.1 In this chapter we set out our proposals for regulating Ancillary Insurance Intermediaries (AIs).

### Introduction

6.2 The IDD introduces AIs as a new category of insurance intermediary. These are firms who meet the following requirements:

- The firm's principal professional activity is not insurance distribution, and
- The firm only distributes insurance products which are complementary to goods and services they provide as their primary professional activity.

6.3 The IDD does not require the direct regulation of AIs whose insurance distribution activities are limited to products which meet particular criteria. These criteria relate to the nature of cover provided by the products, the amount of the annual premium and certain other matters.<sup>32</sup> The UK's Connected Contracts Exclusion (CCE)<sup>33</sup> is narrower than this, as it includes motor warranties and connected travel within regulation.<sup>34</sup> HMT is currently consulting on whether any changes are required to the CCE in light of the IDD.

6.4 This chapter sets out our proposals for how the IDD requirements will apply to AIs, and to authorised firms who distribute insurance products through AIs outside the scope of FSMA regulation. For the purposes of this paper we consider three categories of AIs and set out our proposals for each below. These categories are:

- **"In-scope AIs"** – Firms who meet the definition of being an AI and are within the UK's regulatory perimeter. This includes firms within scope of the Directive and firms such as motor vehicle dealers whose insurance distribution activities may be outside of the IDD but who are within the UK regulatory perimeter.
- **"Connected travel insurance (CTI) providers"** – Firms whose primary business is to make travel arrangements for customers, but who distribute insurance that is complementary to those services, such as travel agents, tour operators and airlines. The distribution of CTI contracts was brought into FSMA regulation subsequent to the IMD implementation and is currently subject to a different regulatory regime.
- **"Out-of-scope AIs"** – Firms who are outside the UK regulatory perimeter by virtue of the CCE. Common examples include electronic goods and furniture retailers.

<sup>32</sup> Article 1(3) the IDD

<sup>33</sup> See article 72B Regulated Activities Order 2001 (SI 2001/544)

<sup>34</sup> This is due to the fact that the UK has previously chosen to bring providers of motor goods and most travel services into regulation.



## Our approach to the regime for AIs

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**6.5** To determine which regime to apply to each category of AI, we have considered the insurance distribution activities they undertake and the types of insurance products they sell.

### The IDD requirements

**6.6** For the AIs requiring regulation under the IDD, most requirements apply, although there is a slightly reduced information disclosure regime.<sup>35</sup>

**6.7** For insurers and insurance intermediaries distributing products through out-of-scope AIs, the IDD requires them to ensure that:

- prior to the conclusion of the contract information is made available about the identity and address of the authorised insurer or intermediary, and its complaints procedures
- there are ‘appropriate and proportionate’ measures in place:
  - to comply with the general requirement of acting honestly, fairly and professionally in the customer’s best interests, requirements relating to communications, and the restriction on remuneration practices
  - to comply with the rules concerning cross-selling
  - to consider the customer’s demands and needs. In our view, this means that the firms must identify the customer’s demands and needs, and ensure that contracts proposed are consistent with those demands and needs.

**6.8** In our view, these represent the IDD minimum requirements for AIs. This is because all AIs are required to comply with these requirements, regardless of whether they are in-scope or out-of-scope.

### Our proposals – general approach

**6.9** Our general approach is to align the regime for in-scope AIs with the regime for insurance intermediaries. However, there are some areas where we do not consider that this is necessary for CTI providers. We propose to introduce new rules on firms distributing products through out-of-scope AIs to ensure the minimum IDD requirements outlined above are met.

**6.10** The rationale for this approach is that we believe it is important to have, as far as possible, a single set of standards across the industry. In particular:

- We do not consider that products sold by AIs have a lower risk of customer detriment than others. Indeed, our previous reviews into markets such as Guaranteed Asset Protection (GAP) and mobile phone insurance have found that these types of ancillary insurance products can present a high risk of customer detriment.
- The distinction between AIs and insurance intermediaries is not likely to be well understood by customers. It is unlikely that the firm’s category will be a major factor in influencing customers’ decisions about where to buy their insurance. Having two different standards of conduct would have the effect of lessening customer protections based on a distinction that customers are unlikely to be understand, or see as relevant.

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<sup>35</sup> See Article 21 the IDD

- We are also conscious of the need to avoid market distortions by reducing the regulatory burden on some firms relative to their competitors.

**6.11** A summary of our proposals is set out in *table 3* below. Further details on our specific proposals for each type of All are set out later in this chapter.

**Table 3: Summary of our proposals for Alls**

the IDD Requirement	In-Scope Alls	CTI Providers	Out-of-Scope Alls <sup>36</sup>
<b>SYSC – Professional, Organisational and PII Requirements (Chapter 3)</b>			
Must employee staff with appropriate knowledge and competence	✓	✓	✗
Minimum 15 hours CPD for employees involved in insurance distribution	✓	✓	✗
Minimum PII requirements	✓	✓	✗
Restriction on the use of intermediaries	✓	✓	✗
<b>DISP – Complaints and Out-of-Court Redress (Chapter 4)</b>			
Complaints arrangements	✓	✓	✓ <sup>37</sup>
Out of court redress	✓	✓	✓ <sup>38</sup>
Adhere to appropriate ADR scheme where providing insurance distribution services to customers in another EEA country	✓	✓	✗
<b>ICOBS 2 – Overarching Conduct of Business Requirements (Chapter 5)</b>			
General Principles	✓	✓	✓
<b>ICOBS 4 – Pre-Contract Information Disclosure Requirements (Chapter 5)</b>			
General Pre-Contract Disclosure <ul style="list-style-type: none"> <li>• Identity and address</li> <li>• Complaints procedures</li> <li>• Status disclosure</li> </ul>	✓	✓	✓
General Pre-Contract Disclosure <ul style="list-style-type: none"> <li>• Providing advice or information?</li> <li>• Acting for customer or insurer?</li> </ul>	✓	✓ <sup>39</sup>	✗
Conflicts of Interest and Transparency Disclosure <ul style="list-style-type: none"> <li>• Shareholding links with insurer</li> <li>• Personal recommendation based on fair analysis of the market or place business with a limited panel of insurers – to be named</li> <li>• Contractual obligations to place business with specific insurer(s) – to be named</li> </ul>	✓	✗	✗

<sup>36</sup> Where requirements apply to out-of-scope Alls, responsibility for their compliance rests with the authorised insurer or intermediary who is distributing products through the out-of-scope All.

<sup>37</sup> Against the relevant authorised firm for those rules applying to the distribution done through the out-of-scope All

<sup>38</sup> Against the relevant authorised firm for those rules applying to the distribution done through the out-of-scope All

<sup>39</sup> CTI providers must inform customers whether or not they provide advice, but do not need to state whether they act on behalf of the customer or the insurer.

<b>the IDD Requirement</b>	<b>In-Scope Alls</b>	<b>CTI Providers</b>	<b>Out-of-Scope Alls<sup>36</sup></b>
Conflicts of Interest and Transparency Disclosure <ul style="list-style-type: none"> <li>• Nature and basis of remuneration</li> <li>• Fee disclosure</li> </ul>	✓	✓ <sup>40</sup>	✗
Means of providing information	✓	✓	✓
<b>ICOBS 5 – Standards for Advised and Non-Advised Sales (Chapter 5)</b>			
Identification of demands and needs, and proposing only contracts consistent with these	✓	✓	✓
Personal recommendation explaining why product best meets demands and needs	✓	✗	✗
<b>ICOBS 6 – Product Information (Chapter 5)</b>			
Cross-selling	✓	✓	✓

### The regime for in-scope Alls

**6.12** The activities of in-scope Alls are currently subject to FCA rules in the same way as insurance intermediaries.

#### Professional, organisational and PII requirements

**6.13** The IDD requires that Alls ensure their employees have appropriate knowledge and ability. However, it does not require employees of Alls to undertake a minimum of 15 hours continuing professional development per year.

**6.14** The IDD also provides discretion over the level of PII cover that Alls are required to hold.

**6.15** We propose to require in-scope Alls to comply with the same requirements as insurance intermediaries. This is because:

- We believe it is important that services are provided to customers by competent employees. This is a key customer protection, and we believe it should be in place regardless of the category of firm.
- In discussions with relevant stakeholders, we have been told that staff working for Alls usually have a primary responsibility that is unconnected to insurance (for example, to sell cars or electrical goods which are the firm's primary business). It is understandable that this will be the main focus of their training, and will take up the majority of their working day. However, we believe this increases the risk that sales or other distribution activities will not be performed to the required standard, and supports the need for additional training.
- We believe it is appropriate to continue with the existing requirement for in-scope Alls to hold the same level of PII cover, or comparable guarantee, as insurance intermediaries.

<sup>40</sup> CTI providers need only disclose the amount of any fees payable by the customer, and do not need to disclose the nature and basis of any other remuneration they receive.

**Q15: Do you agree with our proposal to extend the professional, organisational and prudential requirements to in-scope AIs? If not, please explain why.**

**Complaints and out-of-court redress**

- 6.16** We propose to maintain the current position that our DISP rules apply to the activities of all firms within the UK regulatory perimeter; including in-scope AIs and CTI providers. We view this as a key customer protection.

**Conduct of business requirements**

- 6.17** We propose to keep our existing approach which aligns the regime for in-scope AIs with that for insurance intermediaries. This means that in-scope AIs will need to comply with the same conduct of business requirements as other intermediaries. This is for the general reasons set out in paragraphs 6.9 – 6.10. We also note that:

- It is important for customers to know whether they are receiving advice. The distinction between advice and information is often misunderstood by customers, so there is a benefit in firms stating this clearly upfront. This is particularly important in situations such as a vehicle purchase where the customer's attention is likely to be focused on the primary product.
- Conflicts of interest are as relevant in relation to an AI and another party in the distribution chain as they are to an insurance intermediary.

**Q16: Do you agree with our proposal to align the conduct of business regime for in-scope AIs with that for insurance intermediaries? If not, please explain why.**

- 6.18** In-scope AIs should also note the questions in Chapter 5 in relation to the IPID as these IDD requirements will also apply to them.

**CTI providers**

- 6.19** When CTI providers were brought within the UK's regulatory perimeter, the FSA consulted<sup>41</sup> and put in place a regulatory regime where some of the existing ICOBS requirements on disclosure were disapplied.

- 6.20** The rationale for that different regulatory regime was:
- the need to ensure a regulatory regime proportionate to the risks posed by CTI providers relative to the costs of regulation
  - recognition of the fact that CTI providers are outside of the scope of the IMD, which afforded the FSA greater freedom to decide what is appropriate than for other general insurance intermediary business
  - much of the competition to CTI providers in the travel insurance market at the time came from insurers distributing products directly to customers, and these insurers were not subject to the IMD derived requirements. It was considered proportionate to rely on certain

<sup>41</sup> [http://www.fsa.gov.uk/pubs/cp/cp07\\_22.pdf](http://www.fsa.gov.uk/pubs/cp/cp07_22.pdf)

high level rules in ICOBS rather than apply the more detailed ICOBS rules stemming from the IMD to CTI providers.

- 6.21** Since then, the market and regulatory context has changed considerably. For example, the growing use of price comparison websites means that market participants now include more insurance intermediaries, and the IDD requirements now extend to insurers.

#### **Professional, organisational and PII requirements**

- 6.22** For the same reasons as those set out in relation to in-scope AIs (see paragraph 6.15), we propose to extend the requirement for employees to undertake 15 hours of CPD per year to CTI providers, along with the minimum PII levels.

#### **Q17: Do you agree with our proposal to extend the professional and organisational requirements to CTI providers? If not, please explain why.**

#### **Complaints and out-of-court redress**

- 6.23** We propose to maintain the current position that our DISP rules apply to the activities of all firms within the UK regulatory perimeter; including in-scope AIs and CTI providers. We view this as a key customer protection.

#### **Conduct of business requirements**

- 6.24** The FSA's original consultation paper on the regime for CTIs pointed out that when purchasing insurance alongside travel services there is a risk that they will focus less on the quality of the policy than they would if they were buying the insurance directly. To mitigate this risk, we propose requiring CTI providers to inform customers upfront whether they provide advice. This will help consumers be clear on the importance of their role in the decision-making process, given our understanding is that most CTI providers operate on a non-advised basis.
- 6.25** The FSA decided that it would not be proportionate to require CTI providers to make the other pre-contract disclosures required by IMD, other than disclosing the complaints process. We have considered whether there have been any changes in the market that would justify amending this position, and have concluded that there have not. As such, we do not propose to require CTI providers to make the other general information pre-contract disclosures required by the IDD.
- 6.26** We have also concluded that there is no justification for extending most of the IDD conflicts of interest and transparency disclosures to CTI providers. However, CTI providers will continue to be required to disclose fees payable by the customer in the same way as other insurance intermediaries. CTI providers should take note of our expectations set out in paragraph 5.31.
- 6.27** As required by our view of the minimum the IDD requirements, we propose that CTI providers should meet the requirements to identify and specify the customer's insurance demands and needs prior to completion of the contract. They will also be required to ensure that any contracts proposed are consistent with the customer's demands and needs. CTI providers should take note of the illustrative examples set out in *Table 2* of Chapter 5.
- 6.28** We believe that it would not be appropriate to extend to CTIs the requirement to provide a personalised recommendation explaining why a specific product would best meet the customer's needs. This is because our understanding is that most CTI providers sell either a single product or a very limited range, usually on a non-advised basis.

- 6.29** We propose to apply the IDD cross-selling requirements to CTI providers in the same way as they apply to other authorised firms. This is in line with our view that the cross-selling rules form part of the IDD minimum requirements.

**Q18: Do you agree with our proposed conduct of business regime for CTI providers? If not, please explain why?**

- 6.30** In addition to the questions in Chapter 5 on our relevant conduct of business proposals, CTI providers should also note the questions in Chapter 5 in relation to the IPID as this will apply to them.

### Out-of-Scope AIs

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- 6.31** This section sets out our proposals for the requirements described in paragraph 6.7.

#### Our proposals

- 6.32** Our view is that an authorised firm which chooses to distribute products through an out-of-scope AI is responsible for ensuring that the AI complies with the requirements described in paragraph 6.7. This is likely to mean that the authorised firm will need to put in place measures to monitor the activities of the out-of-scope AI's.
- 6.33** We propose to incorporate into ICOBS a requirement on the authorised firm to ensure that customers are provided with information on its identity, address and its complaints procedure.
- 6.34** We consider that the provisions relating to the general principles and cross selling are such that the only appropriate and proportionate standard would be alignment with the requirements applied to all other firms. We do not believe it would be appropriate or desirable that firms distributing through out-of-scope AIs could operate to different standards than those carrying out direct distribution activities. As such, in these areas we propose that authorised firms will be responsible for ensuring any out-of-scope AIs that they use comply with the same standards as insurance intermediaries.
- 6.35** In relation to the standards for advised and non-advised sales, we propose that authorised firms must ensure that the AI complies with the same standards as insurance intermediaries. This includes:
- identifying and specifying the customer's demands and needs
  - only proposing contracts which are consistent with those demands and needs
  - (for sales involving a personal recommendation) providing a personalised explanation of why a particular product would best meet the customer's needs.
- 6.36** Both authorised firms and out-of-scope AIs should take note of the illustrative examples set out in *Table 2* of Chapter 5.
- 6.37** The IDD states that the responsibility for ensuring compliance with these requirements rests either with the insurance undertaking or the insurance intermediary carrying out distribution activity through an out-of-scope AI. We currently expect all authorised firms to have sufficient oversight of their distribution chains to ensure their products are distributed appropriately

through out-of-scope AIs. We consider that these IDD provisions will enhance the oversight requirements that already apply to authorised firms.

**Q19: Do you agree with our proposals for authorised firms distributing through out-of-scope AIs? If not, please explain why.**

# Annex 1

## List of questions

- Q1:** Do you have any comments on our proposed approach to the application of the IDD?
- Q2:** Do you agree with our proposed approach to incorporating the IDD knowledge and competence requirements? If not, please explain why.
- Q3:** Do you agree with our proposed PII requirements? If not, please explain why.
- Q4:** Do you have any comments on our intended approach to implementing the IDD requirements concerning the protection of client assets, in particular:
- a. The mandatory application of CASS 5 to reinsurance mediation?
  - b. Narrowing the scope available options for reinsurance contracts, for example only allowing risk transfer?
  - c. The potential application of CASS 5.8 to reinsurance mediation?
- Q5:** Do you agree with our proposals for implementing the IDD requirements in relation to complaints and out-of-court redress? If not, please explain why.
- Q6:** Do you agree with our proposed amendments to ICOBS 2? If not, please explain why.
- Q7:** Do you agree with our proposed amendments to ICOBS 4? If not, please explain why.
- Q8:** Do you have any comments on the illustrative examples set out in *Table 1* (in relation to remuneration disclosure)?
- Q9:** Do you have any comments on our proposal to amend the Glossary definitions of ‘durable medium’, ‘fee’ and ‘remuneration’?
- Q10:** Do you agree with our proposed amendments to ICOBS 5? If not, please explain why.



- Q11:** Do you have any comments on the illustrative examples set out in *Table 2* (in relation to requirements concerning the customer's insurance demands and needs)?
- Q12:** Do you agree with our proposed amendments to ICOBS Chapter 6 to incorporate the IDD cross-selling requirements? If not, please explain why.
- Q13:** What are your views on the provision of an IPID or other form of pre-contractual disclosure for commercial customers? Are there particular commercial customers (such as SME customers) that have different information needs?
- Q14:** What are your views on the practical considerations of format and content if IPID requirements were to apply to some or all commercial customers?
- Q15:** Do you agree with our proposal to extend the professional, organisational and prudential requirements to in-scope AIs? If not, please explain why.
- Q16:** Do you agree with our proposal to align the conduct of business regime for in-scope AIs with that for insurance intermediaries? If not, please explain why.
- Q17:** Do you agree with our proposal to extend the professional and organisational requirements to CTI providers? If not, please explain why.
- Q18:** Do you agree with our proposed conduct of business regime for CTI providers? If not, please explain why.
- Q19:** Do you agree with our proposals for authorised firms distributing through out-of-scope AIs? If not, please explain why.

# Annex 2

## Cost benefit analysis

### Introduction

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1. The IDD extends the application of EU insurance regulatory requirements to all distributors of insurance products, with the objective of enhancing undistorted competition, consumer protection and market integration.
2. FSMA, as amended by the Financial Services Act (2012), requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I defines this as ‘an analysis of the costs, together with an analysis of the benefits’ that will arise if the proposed rules are made. We are required to include estimates of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.
3. We are consulting on a range of rule changes to implement the IDD and in line with FSMA requirements have conducted a CBA of the proposals. As the discretion we have over implementing the IDD requirements varies, our CBA comprises two distinct sections:
  - **The regime for (re)insurance undertakings and intermediaries**

Our proposed rule changes for (re)insurance undertakings and intermediaries are directly linked to the IDD requirements and are predominantly proposed to be implemented through intelligent copy out of the IDD provisions. As we have taken steps to minimise the impact of the IDD for these firms, including retaining existing rules where appropriate, we have conducted a high-level CBA analysis. We consider that the work required to produce detailed estimates would be disproportionate, and so it is not reasonably practicable to produce detailed estimates. For areas where we are proposing to retain existing rules we consider that there will be little or no impact on firms.
  - **The regime for ancillary insurance intermediaries**

Our proposed requirements for AIs exceed the IDD minimum requirements in certain areas. For these proposed rule changes, which go beyond the IDD minimum requirements or existing requirements on these firms, we have gathered information about expected costs and have conducted a more detailed analysis and estimates of the potential costs and benefits.
4. To inform our CBA we issued a compliance cost survey to firms. The responses to this survey have been taken into account when developing our proposals and in conducting this CBA.

## The regime for (re)insurance undertakings and intermediaries

### *Proposed knowledge and ability requirements*

5. The IDD requires that insurance and reinsurance distributors, and employees of insurance and reinsurance undertakings or intermediaries, possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately. Employees must undertake a minimum of 15 hours CPD, and firms must maintain records of employee competence.
6. We expect the costs of these knowledge and ability requirements to be low for most firms, as the FCA's existing SYSC rules already require employees to be competent. Relevant training requirements are also outlined in our Training and Competence sourcebook (TC) in relation to non-retail and retail investment advisers. Our expectation is that meeting existing SYSC and TC rules will already involve continued training and development of employees and therefore the IDD requirements should not introduce significant additional costs, and a majority of firms informed us that this would be the case. The areas covered by the minimum knowledge criteria are the types of areas on which we would already expect employees of insurance distributors to receive training (such as product and regulatory knowledge). As such, where firms are complying with the requirement to ensure their employees are competent, we do not consider there will be significant costs to adhering to the minimum knowledge criteria.
7. We consider that the guidance to accompany this training requirement will help firms ensure that the training costs are proportionate.
8. The minimum record-keeping requirements of the IDD apply only to insurance and reinsurance undertakings. For consistency and to ensure the CPD requirements are effective, we are proposing to extend this record-keeping requirement to include intermediaries and AIs. Our view is that this is unlikely to produce significant additional cost as firms are already expected to comply with SYSC requirements. Most firms responding to our CBA survey confirmed that there would be no cost or minimal costs associated with this requirement.
9. The benefits we expect are clear requirements for those involved in insurance distribution to meet the knowledge and training requirements, which will lead to on-going and consistent consumer protection benefits across different distribution channels. Ensuring employees are competent and knowledgeable will reduce the likelihood of mis-selling of insurance and reduce misconduct risks, especially for firms who do not consider that they currently meet this proposed requirement.

### *Proposed Professional Indemnity Insurance (PII) requirements*

10. The IDD sets out the minimum requirements for PII and the comparable guarantee which insurance and reinsurance intermediaries are required to hold.
11. Under Article 10 (4) the minimum requirements are at least:
  - €1,250,000 applying to each claim
  - €1,850,000 in aggregate.
12. Our current requirements are already stricter than the minimum requirements of the IMD. The IDD will increase the minimum requirements. The timing of this change may lead to attendant costs if firms have to seek increased cover mid-term, but this has not been raised as an issue by firms who did not identify additional costs in their survey response.

13. Our proposals will continue to give consumers an appropriate degree of consumer protection from access to compensation via PII where a professional liability arises (as set out in MIPRU 3).

***Proposed complaints requirements***

14. The IDD requires that intermediaries and (re)insurers have a process to register and respond to complaints.
15. We expect that in most cases insurance distributors will already have systems in place to register and respond to complaints, including where complaints are from non-eligible complainants. Insurance intermediaries are already required under existing rules to have systems in place to register and respond to complaints, including complaints from non-eligible complainants. None of the insurers who responded to the survey considered that responding to complaints from interested parties would result in additional costs to their business. In respect of complaints about business conducted by EEA branches of UK insurers and intermediaries, we expect that where complaints arise the costs to firms could vary significantly. In CP14/30, firms' estimates for complaints handling costs ranged from £20 to £330.<sup>42</sup>
16. Our proposals will allow previously non-eligible complainants to raise formal complaints with firms, providing increased levels of consumer protection and also improving market confidence and firm accountability. In addition, applying the same requirements to all firms will ensure that there is consistent consumer protection and firm accountability across different insurance distribution channels.

***Out-of-court redress***

17. The IDD requires that there are adequate, effective, impartial and independent out-of-court complaints and redress procedures in relation to insurance distribution. We will continue to rely on the Financial Ombudsman Service to deliver this requirement.
18. We do not expect that our proposals will result in any additional costs to firms, as in the vast majority of cases consumers already benefit from this protection.
19. Our proposal is to require, for insurance distribution business, EEA branches of UK (re)insurers to adhere to an ADR entity in that EEA state to resolve consumer disputes. Where firms do not already adhere to an ADR entity in that EEA state there could be some limited costs for firms. However, this requirement will enable retail customers of EEA branches will have appropriate protection as a result of being able to take complaints to the ADR in the relevant EEA state. In the UK, consumers will continue to have the benefit of being able to take complaints to FOS where applicable.

***The IDD general principles***

20. ICOBS 2 will transpose the provisions of article 17, which sets out general principles requirements for all insurance distributors.
21. The firms with whom we engaged did not identify any significant costs arising from the requirement to act honestly, fairly and professionally in the customer's best interests. All the insurers and intermediaries responding to our survey considered that all of their marketing materials are clearly identifiable as adverts. They did not identify any costs associated with the requirement to ensure that all marketing materials are identified as such.

<sup>42</sup> CP14/30 Improving complaints handling December 2014 Annex 1 (paragraph 11) <https://www.fca.org.uk/publication/consultation/cp14-30.pdf>

22. Firms are already required to ensure that they communicate in a way which is clear, fair and not misleading. As such, we do not believe this IDD requirement will result in increased costs.
23. Where intermediaries identified that they receive higher commission from some insurers, they considered that they already had remuneration or performance management procedures in place to treat customers fairly.
24. The benefits we expect are an enhanced focus on acting in the customer's best interests will deliver increased consumer benefits and protections over time. These may include a reduction of mis-selling and better matching products to the customers' demands and needs.

#### ***Pre-contract disclosures***

25. ICOBS 4 will transpose the requirements of the IDD which cover general information disclosure. Most of the requirements are already in place due to the FSA's implementation of the IMD, although under the IDD the requirements apply to insurers as well as intermediaries.
26. All the insurers who provided responses to our survey considered that they already complied with these requirements and hence would not incur any additional costs. In addition, most intermediaries reported that these requirements would have minimal or no cost implications for their business.
27. We expect that where firms are not already disclosing the proposed information, the additional disclosure requirements will provide greater clarity for customers on the nature and role of the firm with whom they are dealing. This will include improved customer understanding of whether the firm is advising or merely giving information. We believe there are particular benefits to customers of being informed early in the sales process about whether or not advice is being given. The distinction between provision of advice and provision of information is not easily understood by consumers, and we are aware that customers often believe they are being advised when in fact the sale is non-advised. The benefit of our proposals will be particularly noticeable if firms make a clear and upfront disclosure to customers informing them that they will need to make their own decision as to the suitability of the arrangements proposed.

#### ***Conflicts of interest and transparency disclosures***

28. ICOBS 4 will transpose the requirements of article 19 of the IDD, which covers disclosures intended to mitigate potential conflicts of interest between the insurance distributor and other firms.
29. For non-advised sales most intermediaries identified that there would be costs associated with disclosing the name of all insurers they place business with. Typically, firms considered that these costs would be highest if disclosure was made by telephone, although for each firm the costs would vary significantly depending on the mechanism used to disclose the information. With flexibility about the mechanism used to disclose the information the firm costs were significantly lower. Cost estimates for one-off costs ranged from £1,600 to £13,000, and for ongoing costs ranged from £800 to £8,000.
30. Requiring firms to inform customers of the nature and basis of remuneration will result in additional costs for most firms. Firms estimated that disclosing this by telephone would increase the length of sales calls by between 30 seconds and 2 minutes, resulting in estimated one-off costs ranging between £5,000 and £560,000 and ongoing costs ranging between £5,000 and £560,000 for firms who currently conduct telephone sales. The estimates for most firms were at the lower end of the spectrum. However, the way this information is given to customers can be flexible so the estimated costs could be significantly lower. For example, estimated costs for disclosing through web-based sales processes ranged from £1,000 to £50,000 for one-off

costs (per firm) and similar amounts for ongoing costs. Similar costs were identified for relevant changes to the TOBA.

31. For insurers selling directly to customers the potential additional telephone sales time for disclosing the nature of the remuneration their employees receive would increase sales calls by between 30 seconds and 1 minute. Estimates for the potential costs of disclosing this information through the TOBA or within a separate document were between £6,000 and £25,000 for one-off costs with minimal ongoing costs.
32. In addition to the costs identified, there could be further additional costs resulting from the loss of sales due to either the lengthening of sales processes or customers being uncomfortable with the nature of the firm's remuneration. However, it is not reasonably practicable to estimate these costs given they depend on consumers individual responses to this change.
33. The benefits we expect are that where firms do not already provide this information the new requirements will provide greater transparency for customers of the contractual relationships between intermediaries and insurers. This has the potential to highlight conflicts of interest. There will be greater transparency and focus on remuneration within the industry, with the potential incentive for reductions in excessive remuneration (either between firms or by firms to their employees). This can promote competition between firms and drive additional value for consumers.

#### ***Standards for advised and non-advised sales***

34. ICOBS 5 will transpose the requirements of article 20 of the IDD, which covers standards for advised and non-advised sales.
35. Most firms reported that they would incur no additional costs resulting from the requirement that all contracts proposed are consistent with the customer's demands and needs, as they already had mechanisms in place to ensure this. Two firms identified potential costs from this requirement. However, the majority of firms and trade bodies with which we have engaged stated that this change was likely to have minimal cost and we do not believe overall impact will be significant.
36. Most firms we surveyed who provide advice stated that they already provided the customer with a personal recommendation as to why a product would best meet their needs. As such, we believe the costs associated with this change will be minimal.
37. For firms that do not already meet this requirement the proposed changes could result in the benefits of a reduction in mis-selling or fewer customers purchasing products which do not meet their needs. In addition, there will be greater freedom to firms to offer guidance and assistance to customers without fear of straying into advising. This freedom results in a reduced compliance burden for firms and may benefit consumers if firms provide greater guidance and assistance during non-advised sales.

#### ***Requirements on information provision***

38. ICOBS 4 will transpose the requirements of article 23 of the IDD, which covers the means by which information is to be provided to customers.
39. Most firms in our survey confirmed that they do not currently charge customers a fee for providing paper copies of key documents. Where firms do charge the fee is approximately £3 to £5, and the cost of providing paper copies is estimated between 40p and £3.50 per copy. However, for firms who only operate a web-based sales offering, the impact of providing paper copies to all customers could fundamentally change their business model creating significant

costs. In practice firms will not be required to provide paper copies in all cases and therefore we consider that such costs are highly unlikely to arise.

40. The proposed changes will help provide further clarity and choice to customers regarding the means by which they receive documents, and should help them to receive them in the most appropriate way. In addition, there will be cost savings to customers who currently pay for paper copies of key documents, although we recognise that firms may look to offset the loss of such fees with higher charges in other areas.

***Proposed amendment to the definition of ‘durable medium’***

41. We do not envisage that our proposed changes will impose any additional costs on firms or customers.
42. The benefits are that customers are more likely to receive more engaging and meaningful information about their investment as a result of firms thinking carefully about the means through which the information is provided. This means that customers will be increasingly more engaged and more inclined to make the most informed choices.

***Cross selling requirements***

43. The IDD Article 24 covers the cross-selling of non-insurance products alongside insurance products in the same package or agreement. It introduces new obligations on insurance distributors to provide consumers clear information and options when cross-selling, and prohibits mandatory bundling in some cases.
44. We expect some one-off costs where firms need to make changes to their documents, systems and sales processes. There is also potential for reduced sales revenue resulting from the increased transparency and optionality of products. Responses to our survey did not specify costs related to cross-selling requirements.
45. We expect the new requirements will result in improved understanding of cross-sold products, which in turn can lead to more informed purchases and reduced over-consumption. Furthermore, improved product transparency should lead to better claims outcomes for consumers. The increased transparency of price and optionality can enhance competitive pressure in these markets and could reduce the number of low value products sold in packages that currently exploit default biases.
46. In addition to implementing Article 24, we propose to retain current FCA cross-selling rules related to Packaged Bank Accounts,<sup>43</sup> General Insurance Add-Ons<sup>44</sup> and Guaranteed Asset Protection (GAP) insurance.<sup>45</sup>

***The regime for ancillary insurance intermediaries***

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47. In our proposals we set out our intention to broadly align the regulatory regimes for AIs with that for other insurance intermediaries. Our analysis of the costs and benefits of these proposals differs between categories of firms, so our approach to the CBA also differs. However, we expect that the costs for AIs will be similar as for intermediaries in most cases.

43 See Policy Statement 12/22 <https://www.fca.org.uk/publication/policy/ps12-22.pdf>

44 See Policy Statement 15/22 <https://www.fca.org.uk/your-fca/documents/policy-statements/policy-statement-ps15-22>

45 See Policy Statement 15/13 <https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-13>

### General matters applicable to all AIs

48. Our approach to AIs is to align the regulatory regimes for them and other insurance distributors where possible and appropriate. There are benefits from this approach which are applicable to all our specific proposals for AIs. We set these out here, and they should be read in conjunction with the costs and benefits outlined more generally for each proposal:

- Products offered by AIs generally compete directly with products from other providers. For example, travel insurance can be purchased from a travel provider (an AI) and also from an insurance intermediary or undertaking, or as part of a packaged bank account. GAP insurance is often sold by motor dealers but is also available from standalone providers.
- In our 'General Insurance add-ons market study'<sup>46</sup> we found that AIs often have a significant point-of-sale advantage, reducing competition and resulting in poor value products. The extent of this point-of-sale advantage differs significantly between products sold by AIs:
  - Approximately 99% of GAP policies are sold alongside vehicles.<sup>47</sup> Although this figure is from 2012, and the rules on deferred sales (introduced in September 2015) are likely to have impacted this (although the evidence to date is mixed),<sup>48</sup> we believe that sales by motor dealers still represent the vast majority of GAP sales and we have seen no evidence to the contrary.
  - 79% of extended warranties were sold by retailers or product manufacturers, and more than half of mobile phone insurance policies were sold by mobile networks or retailers.<sup>49</sup>
  - Conversely, recent information suggests that only 9% of travel insurance policies are sold through travel providers.
- Our proposals to align the regimes for AIs with other insurance distributors will prevent any unnecessary further distortion of the market by giving AIs the competitive advantage of a lighter-touch regulatory regime. These data above show that benefits to effective competition are most significant in relation to products such as GAP and extended warranty, as opposed to travel insurance, where AIs represent a significantly smaller proportion of the market.
- Our proposals will benefit consumers by ensuring that key consumer protections are consistent regardless of whether the policy is sold by an AI or another distributor, consistent with the intentions of the IDD. Consumers are often unaware of, or disinterested in, the differences between the type of firm from whom they are purchasing and the relationships between firms in a particular distribution channel. For example, in its initial impact assessment of the proposals for the IDD (then called IMD2) the EU Commission identified that 67% of customers buying travel insurance from a travel agent believed that most travel policies were the same.<sup>50</sup>
- A further benefit to consumers from a consistent consumer protection regime could be a reduction in the significant historical problems of the mis-selling of insurance additional to a

46 <https://www.fca.org.uk/publication/market-studies/ms14-01.pdf>

47 General Insurance Add-Ons market study, as above

48 Motor Trader.com reported that add-on GAP sales fell by 11% in September 2015 with prices dropping 3%, although a subsequent article identified that there had been little or no impact on sales. (<http://www.motortrader.com/motor-trader-news/automotive-news/dealer-gap-sales-fell-11-september-new-fca-rules-01-10-2015> and <http://www.motortrader.com/motor-trader-news/automotive-news/new-fca-rules-little-impact-gap-sales-07-10-2015>).

49 Although it should be noted that some of these will relate to sales by firms who are outside of FCA regulation due to the *connected contracts exclusion*.

50 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0191&from=EN> at p.16



primary product.<sup>51</sup> In its annual review published in March 2016, the Financial Ombudsman Service stated on complaints about insurance matters *“the primary issue resulting in complaints to us remains the quality of communication between insurers and their customers...For example, some people who contacted us said they hadn’t ever been told about the policy term that the insurer was now using to turn down their claim. Generally, the root of the problem is communication at the time the policy was sold – in particular, how the policy terms and conditions were explained and understood”*.<sup>52</sup> The most recent data published by the FCA on complaints made to firms shows that 77.2% of complaints about general insurance were to do with *“advising, selling and arranging”*.<sup>53</sup> No other financial services sector had more than 35% of its complaints relating to this issue.

- 49.** In terms of the product categories that our proposals are most likely to impact, the AIs who responded to our survey reported sales for products including GAP, extended warranty, paintwork, alloys, tyres protection and other general insurance products.
- 50.** We have used survey information provided by firms to estimate the costs of our proposals. It is important to note that neither our proposals nor HM Treasury’s planned changes to the RAO will result in firms currently outside the regulatory perimeter being brought within it. Therefore AIs who currently conduct regulated insurance mediation activities are required to comply with all our existing rules and principles. This means that they already have compliance costs associated with adhering to these rules and no further costs are envisaged in those areas. In instances where we propose to maintain an existing requirement beyond the IDD minimum, we have assessed the costs to industry as being either nil or so small as to not require estimation. We expect that the incremental costs for AIs in complying with the new the IDD requirements will be proportionally the same as for other insurance intermediaries, although to conduct the more detailed assessment we have undertaken in this section of the CBA, we have obtained specific information in relation to certain groups of AIs.

#### **In-Scope AIs**

- 51.** In this section we consider the costs and benefits of the regime we propose to apply to AIs brought within the regulatory perimeter by the Regulated Activities Order 2001 (as per HM Treasury’s proposed amendments to comply with the IDD). We will firstly consider AIs who are within the scope of the IDD, and then AIs who are within the regulatory perimeter by the scope of the RAO (including motor dealers and travel providers).

#### **AIs within the scope of the IDD**

- 52.** As noted above, the IDD minimum requirements apply to AIs which do not meet the criteria for exemption under article 1(3).<sup>54</sup> However, we propose to apply the following requirements to AIs within the scope of the IDD:
- the requirement for staff involved in insurance distribution to undertake 15 hours of CPD
  - disclosure of whether the firm gives advice, and whether it acts for the customer or the insurer
  - disclosure of the basis of the firm’s remuneration (including fee disclosure)

<sup>51</sup> For example, PPI, packaged bank accounts and card protection products.

<sup>52</sup> <http://www.financial-ombudsman.org/publications/annual-review-2016/types-of-problems.html#A1>

<sup>53</sup> <https://www.fca.org.uk/firms/complaints-data/aggregate>

<sup>54</sup> Broadly, these criteria are that the insurance covers loss or breakdown of goods, non-use of services, of travel risks linked to goods or services supplied by the AI. There are also limits on the annual premium.

53. Alls are subject to the IDD minimum requirements in all other areas, to the same extent as other insurance distributors.
54. The analysis of the potential costs and benefits of these requirements on other insurance distributors, which we have set out above, applies equally to Alls, and hence we have not analysed these further in this section. Additionally, in line with our overall approach to the CBA where we are implementing the minimum requirements of the IDD, we do not believe it is reasonably practicable to provide an estimate of the benefits.
55. The CBA below covers areas where we have applied requirements to Alls that are beyond minimum the IDD requirements for this type of firm.

#### ***Knowledge and ability requirements***

56. We are proposing to extend knowledge and ability requirements to Alls including the 15-hour CPD requirement and the record-keeping requirements.
57. The IDD requirement for 15 hours of CPD may increase current requirements for Alls depending on their current approach to complying with our current SYSC and TC rules. Our expectation is that meeting our current rules will already involve continued training and development of employees. However, a specific number of hours is not currently required.
58. In order to be proportionate when introducing the requirement for 15 hours CPD, we are proposing to issue guidance stating that the nature of CPD training can be modulated according to the complexity of the insurance being sold and the risk of consumer detriment. Our guidance also proposes that this training can be delivered in a variety of ways.

#### ***Costs***

59. Information received from Alls indicates that the costs of 15 hours of CPD could be one-off costs of between £10,000 and £100,000 and ongoing costs of between £125,000 and £450,000 (per firm). However, we expect that the proposed guidance will help reduce the potential burden on firms, and believe the costs provided are likely to be over-estimated. Furthermore, we expect some firms to rely on existing internal training regimes to meet the 15 hours requirement. In such cases we would expect them to face few additional costs.
60. Relevant training costs will be proportionate to the size of the business and small firms would not be disproportionately affected. We do not consider that requiring a minimum of 15 hours CPD for employees carrying out insurance distribution is likely to go significantly beyond the internal training regimes most firms already have in place.

#### ***Benefits***

61. Recital 28 to the IDD sets out that it is important to guarantee a high level of professionalism and competence among insurance, reinsurance and ancillary insurance intermediaries. We believe customer benefits will come from enhancements to the quality of sales of products which have at times had higher risks of customer detriment. Some industry groups have told us that their members' employees are often focused on matters other than the sale of insurance. The minimum training requirements will help ensure more consistency across the market, and an enhanced focus.
62. Recent figures provided by the Financial Ombudsman Service show that products typically sold by Alls represented approximately 7.5% of the complaints they received. Industry figures show that these products represent around 5.2% of gross written premiums. This suggests a disproportionate rate of complaints to FOS in relation to products sold by Alls, of which, we know approximately 77% will be driven by issues with the sale and communications. Applying the 15

hours' CPD requirement to ancillary insurance intermediaries is likely to improve the quality of the insurance sales process helping to reduce the risks of mis-selling. It is also important to note that the customer detriment arising from mis-selling or customers purchasing inappropriate cover can be substantially greater than in other sectors, owing to the risk of customers being left uninsured and facing substantial losses. For example, industry figures suggest that the average claim payment on a travel insurance policy in 2015 was £739.

### **Information Disclosure**

#### **Costs**

63. We expect that disclosing whether or not the All is providing advice and whether the All is acting for the customer or insurer will not have substantial costs for these firms. It may require one-off changes to documentation, Interactive Voice Response systems or call scripts, but is unlikely to add significant length or complexity to the sales process. The information we have received from intermediaries indicates that the cost for most firms is likely to be nil or minimal. In practice we understand that some Alls already disclose this information, meaning that the cost to these firms will be nil. The majority of firms with whom we have engaged consider the costs associated with this change to be low. Where costs are incurred we do not expect these to be disproportionately higher for certain categories of firms over others.

#### **Benefits**

64. The benefits of this proposal lie in ensuring an appropriate level of protection for consumers, as the proposals will provide them with greater clarity. The FCA has previously found that the distinction between 'advice' and 'information' is not well understood by either firms or customers.<sup>55</sup> Requiring firms to make clear whether or not they are providing advice, or whether the customer will be required to exercise their own judgement based on information, is therefore likely to focus the customer's mind on the purchase decision. Nevertheless, we do not estimate a precise monetary benefit for this proposal.
65. This additional focus is likely to be of particular benefit to customers of Alls where their engagement with financial services products is likely to be reduced due to their focus on the more engaging primary product. In terms of the potential scale of detriment, our GI add-ons market study<sup>56</sup> found that customers were over-paying by approximately £29m for travel insurance sold as an add-on. Figures obtained as part of our recent thematic review into mobile phone insurance suggest a potential cost to customers of £14.1m from purchasing insurance which was unsuitable for their needs. A greater focus by customers on their need to ensure the suitability of the proposed arrangements is likely to help reduce this.
66. In a previous thematic review the FCA found that 68% of SME customers believed the insurance intermediary was acting as their agent.<sup>57</sup> It is likely that a similar or higher number of retail customers will also think this. A clear disclosure will have the benefit of addressing this misperception. This is particularly relevant to Alls, where we understand that the vast majority sales are the basis that they are acting for the insurer rather than the customer, and offer products from a single insurer (or a very limited panel).
67. The final aspect of our proposed in-scope All regime which is beyond the minimum IDD requirements is fee disclosure. Authorised firms are currently required to disclose the amount of any fees payable by the customer. As such, we believe the cost to Alls will be nil. We consider that disclosure of fees is a key customer protection and relaxing the requirements on firms to

55 See, for example, the findings from the *Financial Advice Market Review* [www.fca.org.uk/publication/corporate/famr-final-report.pdf](http://www.fca.org.uk/publication/corporate/famr-final-report.pdf)

56 See findings from the GI Add-ons Market Study [www.fca.org.uk/publication/market-studies/ms14-01.pdf](http://www.fca.org.uk/publication/market-studies/ms14-01.pdf)

57 Commercial insurance intermediaries – Conflicts of interest and intermediary remuneration [www.fca.org.uk/publication/thematic-reviews/tr14-09.pdf](http://www.fca.org.uk/publication/thematic-reviews/tr14-09.pdf)

clearly disclose fees would cause significant customer detriment. Transparency of fees can also increase the demand-side pressure firms face to provide consumers with good value.

### *Providers of Motor Goods*

68. The current regulatory regime goes beyond the minimum requirements of IMD and brings providers of motor goods who also distribute insurance products<sup>58</sup> into the regulatory perimeter. HM Treasury are proposing to retain this position. As a result of this, providers of motor goods carrying out insurance distribution activities will continue to be subject to the existing rules within our Handbook which we do not propose to change as part of the IDD implementation. We consider that the relevant costs and benefits are those which implement the new requirements of the IDD.
69. We propose that providers of motor goods brought into regulation by the UK's 'super-equivalent' position with the IDD should be subject to the same conduct regime as other insurance intermediaries.
70. When assessing the costs to firms of complying with these requirements, it is important to note that AIs who are outside the scope of the IDD must still comply with certain requirements, although accountability for that compliance is given to the insurance undertaking or intermediary using the AI to distribute their products. These requirements are the general principles, pre-contract disclosure of the authorised firm's address, consideration of the customer's demands and needs, and the cross-selling rules.
71. It follows from this that even if providers of motor goods were AIs acting outside the regulatory perimeter they would still be required to comply with these provisions and so would still incur costs. Our view is that these costs and benefits are likely to be the same regardless of whether the providers of motor goods are within or without the regulatory perimeter. We base this on the following considerations:
- The requirements relate to the firm's conduct rather than to costs incurred directly due to FCA authorisation. To be compliant, the firm would need to implement the same measures whether authorised or not. Similarly, the firm's conduct in these areas should be the same regardless of whether they are authorised or not.
  - If the requirements did not attach directly to the provider of motor goods there would instead be a requirement on the authorised firm to oversee the AI, with the attendant costs.
  - The insurer or intermediary taking accountability for the compliance with these rules of the AI would be required to have oversight and governance arrangements. This would be as well as the motor goods provider's own oversight arrangements, so costs could in fact be higher due to duplication and inefficiency.
72. We have also undertaken a specific survey of motor goods providers to identify the costs of our proposals on these firms, which are set out below alongside our assessment of the benefits:
- In respect of **training and competence**, as with other AIs, we already require motor goods providers to ensure their employees have sufficient skill, knowledge and expertise to carry out the regulated activities required by their role.<sup>59</sup> This includes taking into account the regime within TC, even if it is not directly applicable to the firm. We expect firms to have

<sup>58</sup> Typically this will be car dealerships selling GAP, extended warranties and other insurance products alongside new or used vehicles

<sup>59</sup> See SYSC 5.1.1R

training regimes in place for their staff and do not consider that requiring a minimum of 15 hours CPD for employees carrying out insurance distribution is likely to go well beyond what many firms already have in place. Our proposed guidance also allows firms to modulate the format and content of the CPD according to the complexity of the products they offer and the relevant employee's role. In practice we understand that the cost to some firms will be nil because their internal training regimes will already meet the requirement and will not incur additional costs. We believe the benefits to customers will come from enhancements to the quality of sales for products which have had higher risks of customer detriment, and which are subject to a higher proportion of complaints. However, explicit and more accurate assessment of the effectiveness of this proposal in reducing complaints is not available.

- Given the close correlation between the IDD and our own Principles for Business we do not expect a significant impact on the industry from the IDD **general principles**. The benefits of this requirement will be in line with those identified in relation to other insurance distributors.
- In relation to the **proposed cross-selling rules** firms indicated that there would be no material costs. Our current rules relating to the sale of GAP and other add-ons already impose requirements on motor goods providers above the other ICOBS rules. We expect the benefits to be greater in this area as all insurance products sold by providers of motor goods are, by definition, add-ons. The IDD prohibition of compulsory bundling of add-ons is likely to reduce the number of customers purchasing a low value product. It could also drive firms to increase the value of their products in order to make them more attractive to customers.
- In relation to requirements concerning **identifying and stating the customer's demands and needs**, we have set out in Chapter 5 our view that the change proposed clarifies the existing requirement rather than amending it. As such, we believe that the costs to most firms will be nil. However, there would be costs where firms need to amend their systems but evidence available to us does not indicate that this will have significant industry impact. The benefits of this requirement will be in line with those identified in relation to other insurance distributors.
- In relation to the **disclosure of whether or not the motor goods provider gives advice**, and whether it acts for the customer or the insurer, the information we have received from intermediaries indicates that the costs for most firms are likely to be nil or minimal. We expect the benefits of this requirement to be the same as those in relation to other AIs above.
- In relation to the **conflicts of interest disclosure** of the name or names of insurers with whom the motor goods provider places business, it is of note that these firms are already required to provide this information on request.<sup>60</sup> Firms should have the information readily available to be able to comply with customer requests. In practice most providers of motor goods place business with single insurers and so the increased cost of disclosure is likely to be minimal.
- In relation to the **disclosure of the nature and basis of remuneration** (other than fee disclosure which is already required by existing rules), the data we have obtained indicate that, depending on the mechanism used to disclose the information, the range of one-off costs estimated by motor providers ranged between £1,000 and £100,000 and ongoing costs of between nil and £100,000. We expect the benefits to be in line with those identified for other intermediaries. We also note that one of the main reasons behind requiring insurers

<sup>60</sup> ICOBS 4.1.6R(2)

to disclose the nature of remuneration paid to their employees was to prevent distortion of competition between direct and intermediated sales.<sup>61</sup> We believe that this reasoning in the IDD means that similar considerations are applicable to potential distortions between sales by motor dealers and sales by other intermediaries.

**Table 4: Summary of key requirements for providers of motor goods and potential costs**

<b>Requirement</b>	<b>One-off costs</b>	<b>Ongoing costs</b>
15 hours CPD	Where affected firm estimates between £10,000 and £100,000 (although we expect these costs to be lower)	Where affected firm estimates between £125,000 and £450,000 (although we expect these costs to be lower)
the IDD General principles	Minimal costs	Minimal costs
Cross selling	No material costs expected	No material costs expected
Identifying and stating customer's demands and needs	Costs for most firms will be £0 or minimal.	Costs for most firms will be £0 or minimal.
Disclosure about whether advice is given and whether the firm acts for the insurer	Costs for most firms expected to be £0 or minimal. Where changes required cost estimates ranged from £1,000 to £10,000.	Costs expected to be minimal.
Conflicts of interest disclosure of the name or names	Expect costs to be minimal. Alls estimate that the cost could be up to £10,000.	Costs expected to be minimal.
Disclosure of the nature and basis of remuneration	Estimated costs of between £1,000 and £100,000.	Estimated costs between £0 and £100,000.

### **CTI Providers**

- 73.** The UK goes beyond the minimum requirements of IMD/IDD and brings firms who sell travel insurance alongside other travel arrangements into the regulatory perimeter. Our proposals are to align the regime for CTI providers with that of other intermediaries to comply with existing rules and the provisions of article 1(4) of the IDD. These are requirements with which the CTI providers would be required to comply regardless of whether they were themselves within or without the regulatory perimeter. We view these as being minimum requirements of the IDD.
- 74.** There is one area where our proposals for CTI providers go beyond what we interpret as the minimum requirements of the IDD. This is the requirement to inform customers whether or not the firm provides advice.

### **Costs**

- 75.** We have engaged directly with trade bodies to understand the potential costs of our proposals. Our understanding from these discussions is that most CTI providers already comply with the requirements, usually overseen by the underlying insurer or through a principal-appointed representative relationship. Information received from one of the major trade associations indicated that there is already significant cross-over with their own code of conduct, and so firms complying with this are unlikely to have significant additional costs.

<sup>61</sup> See recital 41 IDD

76. We believe that disclosing whether or not the firm is providing advice is likely to have minimal costs. It may require one-off changes to documentation, IVRs or call scripts, but is unlikely to add significant length or complexity to the sales process. The information we have received from AIs indicates that the costs are likely to be between £1,000 and £10,000 per firm, and we believe this will be similar for CTI providers.

#### **Benefits**

77. We have limited information on which to base our assessment of the benefits of our proposals, although we expect them to be the same as for the application of the relevant provisions to other intermediaries, where they are not already complying with the proposed requirements.
78. The benefit of the requirement to disclose whether or not the firm is providing advice will help provide greater clarity to customers. Requiring firms to make clear whether or not they are providing advice, or, perhaps more significantly, whether the customer will be required to exercise their own judgement based on information, is likely to focus the customer's mind on the purchase decision. This additional focus is likely to benefit to customers of CTI providers where their engagement with the travel insurance is likely to be reduced due to focus on the purchase of the holiday itself.<sup>62</sup> The figures from our GI Add-ons market study suggest a potential over-payment in regards to CTI of approximately £29m per year.

#### **Professional Indemnity Insurance**

##### **Costs**

79. The IDD provides discretion on the level of PII cover required of AIs. We estimate that our proposal to align the PII requirements for AIs with those of other intermediaries will not result in significant additional costs to industry. None of the AIs identified any additional costs from the proposed increase in the level of PII required.

##### **Benefits**

80. Customers do not distinguish between the categories of firm when making their purchase decisions. In line with our previous approach to implementing IMD, we believe that that it is a benefit to customers to ensure that they are protected to the same level regardless of the type of firm from whom they choose to purchase.

#### **Out-of-Scope AIs**

##### **Costs**

81. The IDD is clear that those AIs who fall outside the scope of the Directive are still required to comply with various requirements. Accountability for complying with these requirements rests with the authorised insurer or intermediary using the AI to distribute their products. The requirements with which these AIs must comply are set out in paragraph 6.7 in Chapter 6. The costs to the authorised firms will come from their oversight arrangements to ensure the AIs comply with the rules, although we understand that some authorised firms may incur other direct costs (such as the cost of producing their own documents for status disclosure). We also understand that some authorised firms may provide assistance (both financial and non-financial) to the AIs through whom they distribute products, and that this will have a cost to them. As we are imposing only the minimum IDD requirements, and that costs of oversight are both complex to calculate and likely to vary substantially between firms (based on the nature of the relationship between the authorised firm and the AI), we do not believe it is reasonably practicable to provide an estimate of the amount of costs to the industry.

<sup>62</sup> See findings from the GI Add-ons Market Study [www.fca.org.uk/publication/market-studies/ms14-01.pdf](http://www.fca.org.uk/publication/market-studies/ms14-01.pdf)

***Benefits***

- 82.** Our proposals will ensure consistency of consumer protection, and consistency of the standards between competing firms, in the interests of consumers. An example is in the market for mobile phone insurance, where retailers and mobile networks (Alls) compete with independent intermediaries and banks. Our proposals will also mean that the majority of consumer protections will be available regardless of from whom the customer chooses to purchase. We consider this to be a particularly important benefit as customers are unlikely to be aware of the differences between categories of firms when deciding where to make their purchase.



## Appendix 3

# Compatibility statement

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of our reasons for concluding that our proposals are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, we are required by section 138I(2)(d) of FSMA to include an explanation of why we believe making the proposed rules is (a) compatible with our general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with our strategic objective and advances one or more of our operational objectives, and (b) our general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. We are also required by s. 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
4. This Annex explains how we have had regard to the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

### **The FCA's objectives and regulatory principles: Compatibility statement**

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7. The proposals set out in this consultation are primarily intended to advance our operational objective of securing an appropriate degree of protection for consumers. They are also relevant to our operational objective of promoting effective competition in the interests of consumers.
8. The proposals will advance the objective of securing an appropriate degree of protection for consumers by:

- ensuring that insurance distributors act honestly, fairly and in the best interests of their customers
  - prohibiting practices which would conflict with the duty to act in the customer's best interests
  - enhancing disclosure and transparency
  - improving employee knowledge and training across the insurance sector
9. They will also promote effective competition by ensuring consistency of regulation across the market, preventing distortions arising from a lower regulatory burden on some firms.
10. We consider these proposals are compatible with our strategic objective of ensuring that the relevant markets function well because they are aimed at providing appropriate protections for customers, and promoting competition between firms. For the purposes of our strategic objective, "relevant markets" are defined by s. 1F of FSMA.
11. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B of FSMA.
- The need to use our resources in the most efficient and economic way**
12. For the proposals in this CP in the areas where we have discretion in implementing the IDD we have had regard to the burden on us in assessing how best to implement.
- The principle that a burden or restriction should be proportionate to the benefits**
13. As these proposals are primarily intended to implement the requirements of the IDD, we have limited discretion over them. However, where possible we have sought to implement the requirements in a way which is proportionate (for example, by using guidance to provide proportionate ways in which firms can comply with the requirements). We have also limited instances of going beyond the IDD minimum requirements to those where we believe the benefits will outweigh the costs of regulation.
- The general principle that consumers should take responsibility for their decisions**
14. Our proposals include enhancements to the disclosure regime for insurance business. We believe this will enable customers to make more informed decisions about their insurance arrangements.
- The responsibilities of senior management**
15. We do not believe that our proposals impact the responsibilities of senior management.
- The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**
16. We do not believe that our proposals discriminate against any particular business model or approach.
- The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information**
17. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide (EG), we will not normally make public our investigations, findings or conclusions, except in exceptional circumstances.

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**The principle that we should exercise of our functions as transparently as possible**

- 18.** We believe that by consulting on our proposals we are acting in accordance with this principle.
- 19.** In formulating these proposals, we have had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). However, we do not believe these proposals impact these areas.

**Expected effect on mutual societies**

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- 20.** We do not expect the proposals in this paper to have a significantly different impact on mutual societies.

**Equality and diversity**

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- 21.** We are required under the Equality Act 2010 to “have due regard” to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
- 22.** The outcome of the assessment in this case is stated in paragraphs 1.18 – 1.19.

# Appendix 4

## Draft Handbook text

**INSURANCE DISTRIBUTION DIRECTIVE (NON-INVESTMENT INSURANCE  
CONTRACTS CONDUCT OF BUSINESS, KNOWLEDGE AND REDRESS)  
INSTRUMENT 2017**

**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 137A (The FCA’s general rules);
    - (b) section 137R (Financial promotion rules);
    - (c) section 137T (General supplementary powers);
    - (d) section 138C (Evidential provisions);
    - (e) section 138D (Action for damages); and
    - (f) section 139A (Power of the FCA to give guidance); 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 (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 23 February 2018.

**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:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Training and Competence sourcebook (TC)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex E
Insurance: Conduct of Business sourcebook (ICOBS)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G

**Notes**

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

**Citation**

- F. This instrument may be cited as the Insurance Distribution Directive (Non-Investment Insurance Contracts Conduct of Business, Knowledge and Redress) Instrument 2017.

By order of the Board  
[*date*]

[Editor's note: the text in this Annex takes into account changes suggested by CP16/19 *Markets in Financial Instruments Directive II Implementation* (June 2016) as if they were made.]

## Annex A

### Amendments to the Glossary of definitions

For “ <i>IMD</i> ”, substitute “ <i>IDD</i> ” in the following definitions. The text in this section is not underlined.	
<i>EEA authorisation</i> (a)	two instances
<i>EEA firm</i> (e)	three instances
<i>participant firm</i> (1)(a)(v)	two instances
<i>top-up cover</i>	two instances

For “ <i>Insurance Mediation Directive</i> ”, substitute “ <i>IDD</i> ” in the following definitions. The text in this section is not underlined.	
<i>EEA authorisation</i> (a)	one instance
<i>EEA right</i> (b)(i)	one instance
<i>Single Market Directives</i> (d)	one instance

For “ <i>mediation</i> ”, substitute “ <i>distribution</i> ” in the following definitions. The text in this section is not underlined.	
<i>category B3 firm</i> (a)	one instance (first line of (a) only)
<i>charge</i> (2)(b)	one instance
<i>client money</i> (2)	one instance
<i>commission</i> (b)	one instance
<i>connected contract</i> (g)	one instance
<i>director</i> (1)(c)	one instance
<i>exempt insurance intermediary</i> (a); (b); (c)	one instance; one instance; one instance
<i>group policy</i> (b)(ii)	one instance
<i>third party processor</i> (1); (2)	one instance; one instance
<i>UK insurance intermediary</i>	one instance

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

*customer's best interests rule*      *ICOB*S 2.5.-1R

*IDD*      Insurance Distribution Directive, Directive (EU) 2016/97 of

the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

<http://eur-lex.europa.eu/eli/dir/2016/97/oj>

*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
- (c) 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 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 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*]

*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*]

*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]

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~~ IDD *insurance intermediary*, not being the principal place of business, which has no separate legal personality and which provides *insurance ~~mediation~~ distribution* for which the ~~IMD~~ 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~~ IDD *insurance intermediary* with headquarters in another *EEA State* are to be regarded as a single *branch*; and
  - (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~~ *IDD* reinsurance intermediary, not being the principal place of business, which has no separate legal personality and which provides reinsurance ~~mediation~~ *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~~ *IDD* reinsurance intermediary with headquarters in another *EEA State* are to be regarded as a single *branch*; and
  - (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*]

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.37R, *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*) 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* and *CASS 5* and *DISP 1.1.10-BR*) a *client* who is not an *eligible counterparty* for the relevant purposes.

...

(3) (in relation to *SYSC 19F.2*, *ICOBS* and *DISP 1.1.10-BR*) 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.

...

*durable medium*

(a) paper; or

(b) any instrument which enables the recipient to store information addressed personally to ~~him~~ them in a way accessible for future reference 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~~ In relation to *MiFID* or equivalent third country business or collective portfolio management, if the relevant rule implements the *MiFID implementing Directive*, 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:

- (i) the instrument used must be appropriate in the context of the business conducted between the insurance distributor and the customer; and
- (ii) the customer 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) and Recital 20 of the *Distance Marketing Directive*, ~~article 2(12) of the *Insurance Mediation Directive*~~ articles 23(4) and 24 (6) of the *IDD*, articles 2(2), 3(1) and 3(3) of the *MiFID implementing Directive*, 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*]

*fee*

- (1) (except in ICOBS) 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) 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]

[*Editor's note:* This next amendment is based on the assumption that there will be legislative amendments to section 137R of the Financial Services and Markets Act 2000 to take account of article 17(2) of the *IDD*.]

*financial promotion*

...

- (4) (in *ICOBS*), 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*]

*Home State*

...

- (5) (in relation to an ~~*IMD*~~ *IDD insurance intermediary* or an ~~*IMD*~~ *IDD reinsurance intermediary*):
- (a) where the *insurance intermediary intermediary* is a natural person, the *EEA State* in which ~~his~~ their residence is situated ~~and in which he carries on business~~;
- (b) where the *insurance intermediary 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.

	[ <u>Note: article 2(1)(11) of the <i>IDD</i></u> ]
<i>insurance intermediary</i>	a <i>firm</i> carrying on <i>insurance <del>mediation</del> distribution</i> activity other than an <i>insurer</i> .
<i>investment firm</i>	...  (3) <u>(in the definition of <i>IDD ancillary insurance intermediary</i>, and in <i>IFPRU</i> and <i>BIPRU</i> 12) has the meaning in article 4(1)(2) of the <i>EU CRR</i>.</u>  [ <u>Note: article 2(1)(4) of the <i>IDD</i></u> ]
<i>personal recommendation</i>	...  [ <u>Note: article 2(1)(1) of the <i>IDD</i> and article 52 of the <i>MiFID implementing Directive</i></u> ]  ...
<i>remuneration</i>	(1) <u>(except in <i>ICOBS</i>) any form of remuneration, including salaries, <i>discretionary pension benefits</i> and benefits of any kind;</u>  [ <u>Note: article 92(2) of the <i>CRD</i></u> ]  (2) <u>(in <i>ICOBS</i>) any commission, <i>fee</i>, 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 <i>insurance distribution activities</i>.</u>  [ <u>Note: article 2(1)(9) of the <i>IDD</i></u> ]
<i>UK firm</i>	(1) (except in <i>REC</i> ) (as defined in paragraph 10 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) a <i>person</i> <del>whose head office is in the <i>United Kingdom</i></del> <del>and</del> who has an <i>EEA right</i> to carry on activity in an <i>EEA State</i> other than the <i>United Kingdom</i> , and:  (a) <u>in relation to a <i>person</i> with a registered office whose <i>EEA right</i> derives from the <i>IDD</i>, has that registered office in the <i>United Kingdom</i>; and</u>  (b) <u>in relation to any other <i>person</i>, has their head office in the <i>United Kingdom</i>.</u>  ...  ...
<i>website conditions</i>	...



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

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

<i>IMD insurance intermediary</i>	(as defined in article 2(5) of the <i>IMD</i> ) any natural or legal person who, for remuneration, takes up or pursues <i>insurance mediation</i> .
<i>IMD insurance undertaking</i>	(as defined in article 2(1) of the <i>Insurance Mediation Directive</i> ) an undertaking which has received official authorisation in accordance with article 14 of the <i>Solvency II Directive</i> .
<i>IMD reinsurance intermediary</i>	(as defined in article 2(6) of the <i>Insurance Mediation Directive</i> ) any natural or legal person who, for remuneration, takes up or pursues <i>reinsurance mediation</i> .
<i>IMD reinsurance undertaking</i>	(as defined in article 2(2) of the <i>Insurance Mediation Directive</i> ) an undertaking, other than an <i>IMD insurance undertaking</i> or a non-member-country <i>insurance undertaking</i> , the main business of which consists in accepting risks ceded by an <i>IMD insurance undertaking</i> , a non-member country <i>insurance undertaking</i> or other <i>IMD reinsurance undertaking</i> .
<i>Insurance Intermediaries Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) (Insurance Intermediaries) Order 2003 (SI 2003/1476).
<i>insurance mediation</i>	(as defined in article 2(3) of the <i>IMD</i> ) 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 <i>IMD insurance undertaking</i> or an employee of an <i>IMD insurance undertaking</i> who is acting under the responsibility of the <i>IMD insurance undertaking</i> shall not be considered as <i>insurance mediation</i> . 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 <i>IMD insurance undertaking</i> on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as <i>insurance mediation</i> .

- insurance mediation 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).

*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 a *IMD reinsurance undertaking* or an employee of a *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 a *IMD reinsurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *reinsurance mediation*.

[*Editor's note:* The text in this Annex takes into account the changes proposed by CP16/19 *Markets in Financial Instruments Directive II Implementation* (July 2016), CP16/29 *Markets in Financial Instruments Directive II implementation – Consultation Paper III* (September 2016), and CP16/43 *Markets in Financial Instruments Directive II implementation – Consultation Paper IV* (December 2016), as if they were made.]

## Annex B

### 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 indicated otherwise.

## 1 Application and purpose

### 1.1A Application

...

- 1.1A.1 G 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.

Type of firm	Applicable chapters
<i>Insurer</i>	Chapters 2, 3, 12 to 18, <u>19F.2</u> , 21, 22, <u>23</u>
<i>Managing agent</i>	Chapters 2, 3, 11, 12, 18, <u>19F.2</u> , 21, 22, <u>23</u>
<i>Society</i>	Chapters 2, 3, 12, 18, <u>19F.2</u> , 21, 22, <u>23</u>
Every other <i>firm</i>	Chapters 4 to 12, 18, 19D, <u>19F.2</u> , 21, 22, <u>23</u>

...

- 1.1A.1A G 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.

Type of firm	Applicable chapters
<i>Full-scope UK AIFM</i>	Chapters 4 to 10, 12, 18, 19B, <u>19F.2</u> , 21, 22, <u>23</u>
<i>BIPRU firm (including a <u>third-country BIPRU firm</u>)</i>	Chapters 4 to 10, 12, 18, 19C, <u>19F.2</u> , 20, 21, 22, <u>23</u>

<p><i>IFPRU investment firm</i> (including an <i>overseas firm</i> that would have been an <i>IFPRU investment firm</i> if it had been a <i>UK domestic firm</i>)</p>	<p>Chapters 4 to 10, 12, 18, 19A, <u>19F.2</u>, 20, 21, <u>22</u>, <u>23</u></p>
---	--

1.1A.2 G ...

(3) For *Solvency II firms*, the *FCA* considers that the requirements and ~~guidance~~ guidance in Chapters 2, 3, 12 to 18, 19F.2, 21 ~~and~~ 22 and 23 of *SYSC* are not inconsistent with:

...

...

...

**1.4 Application of SYSC 11 to SYSC ~~22~~ 23**

What?

1.4.1 G ...

1.4.1-A G The application of each of chapters SYSC 19F.2, SYSC 22 and SYSC 23 is set out in those chapters.

...

Action 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 23 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).

...

**3 Systems and controls**

**3.1 Systems and controls**

...

Skills, knowledge and expertise

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 G ...

3.1.7A G SYSC 23 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

...

### 3.2 Areas covered by systems and controls

...

Records

...

3.2.21 G ...

3.2.21A G SYSC 23 contains rules and guidance relating to knowledge and competence record keeping requirements in relation to insurance distribution activities undertaken by a firm.

...

## 5 Employees, agents and other relevant persons

### 5.1 Skills, knowledge and expertise

...

Segregation of functions – knowledge and competence

...

5.1.3 G ...

5.1.3A G SYSC 23 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

...

5.1.5A G If a firm requires employees who are not subject to a qualification requirement in TC to pass a relevant examination from the list of ~~recommended examinations~~ appropriate qualifications maintained by the Financial Skills Partnership FCA, the FCA will take that into account when assessing whether the firm has ensured that the employee satisfies the

knowledge component of the *competent employees rule*.

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

9.1.1-AA    G      ...

...

(2) ...

Subject	Applicable rule or guidance
...	...
Guidance on record-keeping	SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G, <u>SYSC 9.1.6AG</u>

...

Guidance on record-keeping

...

9.1.6        G      ...

9.1.6A      G      SYSC 23 contains *rules and guidance* relating to knowledge and competence record keeping requirements in relation to *insurance distribution activities* undertaken by the firm.

...

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

**19F.2        IDD remuneration incentives**

## Application

- 19F.2.1 R This section applies to *insurance distributors* carrying on *insurance distribution activities* in relation to a *non-investment insurance contract* 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 rule*.
- (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.

[**Note:** article 17(3) of the *IDD*]

After SYSC 22 (Regulatory references) insert the following new chapter SYSC 23. The text is not underlined.

## **23 Insurance distribution: specific knowledge requirements**

### **23.1 Minimum knowledge and ability requirements for carrying out insurance distribution activities**

## Application

- 23.1.1 R This chapter applies to a *firm* with *Part 4A permission* to carry on *insurance distribution activities*.
- 23.1.2 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*]

23.1.3 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.

23.1.4 G *Rules* specified in this section 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*.

## 23.2 Knowledge and ability requirements

Knowledge and ability requirements

- 23.2.1 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) A *firm* for the purposes of (3) 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*]

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

[**Note:** recital 29 to the *IDD*]

23.2.3 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*]

### 23.3 Record-keeping requirements

Record-keeping requirements

23.3.1 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*]

23.3.2 R (1) A *firm* must:

- (a) make an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 *month* period;
- (b) retain that record for not less than 3 years after the relevant employee stops carrying on the activity; and
- (c) 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*]

23.3.3 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* 23.1.5R(1) and (2).

### 23.4 Other requirements

23.4.1 G In addition to the requirements in *SYSC* 23:

- (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* in (1) and (2) is that *firms* have to meet requirements additional to those in *SYSC 23*.

Amend the following as shown.

### Sch 1 Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u><i>SYSC 23.3.1R</i></u>	<u>Arrangements made to demonstrate compliance with knowledge and competence requirements in relation to the carrying out of <i>insurance distribution activities</i></u>	<u>As required to demonstrate compliance.</u>	<u>As required to demonstrate compliance</u>	<u>As required to demonstrate compliance</u>
<u><i>SYSC 23.3.2R</i></u>	<u>Matters dealing with knowledge and competence and completed continued professional training and development in relation to the carrying out of <i>insurance distribution activities</i></u>	<u>The <i>firm</i> must record the professional training or development completed by each relevant employee in each 12 month period.</u>	<u>As required to demonstrate compliance</u>	<u>As required to demonstrate compliance but at least 3 years after the relevant employee stops carrying on the activity</u>

[*Editor's note:* The text in this Annex takes into account the changes proposed by CP16/29 *Markets in Financial Instruments Directive II implementation – Consultation Paper III* (September 2016), as if they were made.]

## Annex C

### Amendments to the Training and Competence sourcebook (TC)

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

#### 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* (subject to the limitations set out in *TC App 2* and *TC App 3*):

(a) a *MiFID investment firm* and a *third country investment firm* by the provisions in *TC 4.1*; and

(b) a *firm's insurance distribution activities* by the provisions in *TC 4.2*

(in each case, subject to the limitations set out in *TC App 2* and *TC App 3*).

...

#### 4 Specific modified requirements

Insert the following new chapter after TC 4.1 (Specific modified requirements). All the text is new and 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 chapter, and the provisions in column 1 of TC 4.2.5R, relevant employees are employees and 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).

- 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.

4.2.5 R	Column 1	Column 2
	Relevant rules or guidance	Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1
	TC 2.1.1R(1)	The provision is amended by adding after TC 2.1.1R(1):  'A <i>firm</i> must ensure that a relevant employee's appropriate knowledge and ability includes the requirements set out in SYSC 23.2.3R and is appropriate to the:  (a) role and activity carried out by the relevant employee within the <i>firm</i> ; 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 <i>rules</i> apply as if references to <i>retail investment advisers</i> included 'relevant employees'.
	TC 2.1.15R	(1) For <i>firms</i> whose relevant employees are not also <i>retail investment advisers</i> , the <i>rule</i> applies as if '35 hours' was a reference to '15 hours'.

	(2)	The <i>rule</i> is amended by adding at the end: ‘Where the relevant employee is also a <i>retail investment adviser</i> , the minimum 35 hours appropriate continued professional development requirement in <i>TC 2.1.15R</i> must include a minimum 15 hours covering the requirements in <i>SYSC 23.2.3R</i> .’
<i>TC 2.1.16G</i>		For relevant employees acting in that capacity, the <i>guidance</i> is replaced by the following:  “In order to meet the requirements in <i>TC 2.1.15R</i> (as modified by <i>TC 4.2.5R</i> ) a relevant employee’s continued training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.”
<i>TC 2.1.18G, TC 2.1.19G, and TC 2.1.23G</i>		The <i>guidance</i> applies as if references to <i>retail investment advisers</i> included ‘relevant employees’.
<i>TC 2.1.24R</i>		The rule is amended by adding after <i>TC 2.1.24R(2)</i> : ‘the <i>firm</i> must be in a position to make available to the <i>FCA</i> , on request, the name of the <i>person</i> responsible for this record keeping requirement.’
<i>TC 3.1.1R</i>		The provision is amended by adding after <i>TC 3.1.1R(3)</i> :  “a <i>firm</i> must keep an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 <i>month</i> period,
	(a)	for not less than 3 years after the relevant employee stops carrying out the activity; and
	(b)	the <i>firm</i> must be in a position to provide any version of the record to the <i>FCA</i> 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 23 (Minimum knowledge and competence requirements for carrying out insurance distribution activities).

Amend the following text as shown. Underlining indicates new text.

**TP 1 Designated Investment Business: Assessments of competence before commencement**

1.1	R	(1)	...
			...
1.1A	G	Notwithstanding <i>TC TP 1 1.1R</i> ;	
		<u>(1)</u>	a <i>firm</i> is subject to SYSC 5.1.5AAR in respect of such an <i>employee</i> and should have regard to the guidelines <i>ESMA</i> has issued for <i>MiFID investment firms</i> specifying the criteria for the assessment of knowledge and competence. The <i>ESMA</i> guidelines (published on 17 December 2015) can be found at: <a href="https://www.esma.europa.eu/press-news/esma-news/esma-publishes-translations-its-guidelines-assessment-knowledge-and-competence">https://www.esma.europa.eu/press-news/esma-news/esma-publishes-translations-its-guidelines-assessment-knowledge-and-competence</a> ; <u>and</u>
		<u>(2)</u>	<u>a <i>firm</i>, in relation to its <i>insurance distribution activities</i>, is subject to SYSC 23 (Insurance Distribution: specific knowledge requirements) in respect of such an <i>employee</i>.</u>



## Annex D

**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.

**2 Insurance and MCD mediation activity: responsibility, ~~knowledge, ability~~ and good repute**

...

**2.3 ~~Knowledge, ability and good~~ Good repute**

2.3.1 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*. [deleted]~~

...

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/>]

...

## 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 R 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 G 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 R 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~~ 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~~ 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~~ person only if the *Financial Services Register* indicates that the ~~person~~ person is registered for that purpose may be relied on as tending to establish that:
- (i) the ~~person~~ person, in relation to the activity, has *permission*; or
- (ii) the ~~person~~ person, in relation to *insurance ~~mediation~~ distribution activity*, ~~also~~ is an *exempt person* or an *authorised professional firm*.
- (b) In relation to *insurance ~~mediation~~ 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*.

...

## Annex E

**Amendments to the Interim Prudential sourcebook for Investment Businesses  
(IPRU(INV))**

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

**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~~ 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~~ 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 67(3) of MiFID~~ and 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~~ 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*]

13.1.12 R 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:

...

13.1.13 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:

Relevant income is (£)		Minimum aggregate <i>limit of indemnity</i>
more than	up to	(£)
<del>6,000,000</del>	7,000,000	<del>1,150,000</del> [deleted]
7,000,000	8,000,000	1,300,000 [deleted]
8,000,000	9,000,000	1,450,000 [deleted]
9,000,000	10,000,000	1,600,000 [deleted]
...	...	...

...

...

**13.1A Capital resources and professional indemnity insurance requirements for an exempt CAD firm**

...

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

...



...

13.1A.4 R (1) A *firm* that is also an ~~IMD~~ 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:

...

...

...

[*Editor’s note:* the text in this Annex takes into account changes suggested by CP16/19 *Markets in Financial Instruments Directive II Implementation* (June 2016) as if they were made.]

**Annex F**

**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.

[*Editor’s note:* This section is based on the assumption that there will be legislative amendments to section 137R of the Financial Services and Markets Act 2000 to take account of article 17(2) of the *IDD*.]

**1 Application**

**1.1 The general application rule**

The general application rule

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

- (1) an ~~*insurance 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 1 Application (see ICOBS 1.1.2R)**

<b>Part 1: Who?</b>	
<b>Modifications to the general application rule according to type of firm</b>	
1	Third party processors

1.1	R	(1)	This <i>rule</i> applies where a <i>firm</i> (or its <i>appointed representative</i> ) ("A") has outsourced <del><i>insurance mediation activities</i></del> <i>insurance distribution activities</i> to a <i>third party processor</i> .
		(2)	Any <i>rule</i> in this sourcebook which requires the <i>third party processor</i> , when acting as such, to disclose its identity to a <i>customer</i> must be read as applying to the <i>third party processor</i> only to the extent that it applies to A and as requiring disclosure of A's identity.
2	Managing agents		
2.1	R	(1)	References to an <i>insurer</i> ( <u>including within the reference to <i>insurance distributor</i></u> ) apply equally to a <i>managing agent</i> unless the context requires otherwise.
		...	
3	Authorised professional firms		
3.1	R	This sourcebook (except for <i>ICOBS</i> 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:	
		(1)	the provisions on communications to <i>clients</i> and <i>financial promotions</i> (see <i>ICOBS</i> 2.2);
		(2)	the e-commerce provisions ( <i>ICOBS</i> 3.2);
		(3)	<del>status</del> <u>general information</u> disclosure requirements in relation to the complaints procedures (see <i>ICOBS</i> 4.1); and
		(4)	provisions implementing articles <del>12 and 13</del> 17, 18, 19, 20(1) to (3), 23, and 24 of the <i>Insurance Mediation Directive</i> <u>IDD</u> (see <i>ICOBS</i> 4.1, <i>ICOBS</i> 5.2 <del>and</del> , <i>ICOBS</i> 5.3.3R, <i>ICOBS</i> 6A.3 and <i>SYSC</i> 19F.2), except to the extent that the <i>firm</i> is subject to equivalent rules of its <i>designated professional body</i> approved by the <i>FCA</i> .
...			
4	Appointed representatives		
4.1	R	(1)	An <i>insurer</i> must ensure that its <i>appointed representative</i> complies with this sourcebook as it applies to an <i>insurance intermediary</i> .
		(2)	However, if the <i>appointed representative</i> is acting as the <i>insurer's third party processor</i> then:
		(a)	this <i>rule</i> is subject to the <i>third party processors rule</i> (see paragraph 1.1R); and

		(b)	the <i>insurer</i> is not required to ensure that the <i>appointed representative</i> complies with the <i>rules</i> in this sourcebook on commission disclosure (see <i>ICOBS 4.4</i> ) <del>or, unless they apply to an insurer, the rules on statements of demands and needs (see <i>ICOBS 5.2</i>).</del>						
4.2	G		The cancellation requirements in chapter 7 do not apply to a <i>distance contract</i> entered into by an <i>appointed representative</i> to provide <del>mediation</del> <u>distribution</u> services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the <i>Distance Marketing Regulations</i> apply instead.						
5	Service companies								
5.1	R		This sourcebook does not apply to a <i>service company</i> , except for the provisions on communications to <i>clients</i> and <i>financial promotions</i> (see <i>ICOBS 2.2</i> ).						
...									
<b>Part 2: What?</b>									
<b>Modifications to the general application rule according to activities</b>									
1	Reinsurance								
1.1	R		This sourcebook does not apply to activities carried on in relation to a <i>reinsurance contract</i> .  [ <b>Note:</b> article 12(4) of the <i>Insurance Mediation Directive</i> <u>recital 51 to the <i>IDD</i></u> ]						
2	Contracts of large risks								
2.1	R		Subject to Part 3 of this Annex; <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">(1)</td> <td style="padding-left: 10px;">this sourcebook does not apply to <del>an <i>insurance intermediary</i> mediating a <i>firm</i> distributing a <i>contract of large risks</i></del>;</td> </tr> <tr> <td style="text-align: center;">(4)</td> <td style="padding-left: 10px;">where the risk is located outside the <i>European Economic Area</i>; <del>or</del> <u>and</u></td> </tr> <tr> <td style="text-align: center;">(2)</td> <td style="padding-left: 10px;"><u>only <i>ICOBS 2</i> (General matters) and <i>ICOBS 6A.3</i> (Cross-selling) apply to a <i>firm</i> distributing a <i>contract of large risks</i> for a <i>commercial customer</i> where the risk is located within the <i>European Economic Area</i>.</u></td> </tr> </table> [ <b>Note:</b> article 12(4) of the <i>Insurance Mediation Directive</i> <u>22(1) of the <i>IDD</i></u> ]	(1)	this sourcebook does not apply to <del>an <i>insurance intermediary</i> mediating a <i>firm</i> distributing a <i>contract of large risks</i></del> ;	(4)	where the risk is located outside the <i>European Economic Area</i> ; <del>or</del> <u>and</u>	(2)	<u>only <i>ICOBS 2</i> (General matters) and <i>ICOBS 6A.3</i> (Cross-selling) apply to a <i>firm</i> distributing a <i>contract of large risks</i> for a <i>commercial customer</i> where the risk is located within the <i>European Economic Area</i>.</u>
(1)	this sourcebook does not apply to <del>an <i>insurance intermediary</i> mediating a <i>firm</i> distributing a <i>contract of large risks</i></del> ;								
(4)	where the risk is located outside the <i>European Economic Area</i> ; <del>or</del> <u>and</u>								
(2)	<u>only <i>ICOBS 2</i> (General matters) and <i>ICOBS 6A.3</i> (Cross-selling) apply to a <i>firm</i> distributing a <i>contract of large risks</i> for a <i>commercial customer</i> where the risk is located within the <i>European Economic Area</i>.</u>								
2.2	G		<i>Principle 7</i> continues to apply so a <i>firm</i> should provide evidence of cover promptly after inception of a <i>policy</i> to its <i>customer</i> . In respect of a <i>group</i>						

		<i>policy</i> , a <i>firm</i> should provide information to its <i>customer</i> to pass on to other <i>policyholders</i> and should tell the <i>customer</i> that he should give the information to each <i>policyholder</i> .	
2.3	R	<i>ICOBS</i> 6.2.3R does not apply to <i>contracts of large risks</i> .	
		[ <b>Note:</b> article 184(1) of the <i>Solvency II Directive</i> ]	
...			
4		Chains of insurance intermediaries	
4.1	R	Where there is a chain of <i>insurance intermediaries</i> between the <i>insurer</i> and the <i>customer</i> , this sourcebook, <u>except <i>ICOBS</i> 2</u> , applies <del>only</del> to <u>the any</u> <i>insurance intermediary</i> in contact with the <i>customer</i> .	
4.2	G	<u><i>ICOBS</i> 2 applies to all <i>insurance intermediaries</i>, including those within a chain who are not in contact with the <i>customer</i>.</u>	
<b>Part 3: Where?</b>			
<b>Modifications to the general rule of application according to location</b>			
1		EEA territorial scope rule: compatibility with European law	
1.1	R	(1)	The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for <i>guidance</i> on this).
		(2)	This <i>rule</i> overrides any other <i>rule</i> in this sourcebook.
1.2	R	In addition to the <i>EEA</i> territorial scope <i>rule</i> , the effect of the <i>E-Commerce Directive</i> on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 8 of Part 4 for <i>guidance</i> on this).	
		[ <b>Note:</b> article 3(3) of, and Annex to, the <i>E-Commerce Directive</i> ]	
...			
3		Exemption for insurers: business with non-UK EEA customers	
3.1	R	A <i>rule</i> in this sourcebook which goes beyond the minimum required by <i>EU</i> legislation does not apply to an <i>insurer</i> if the <i>customer</i> is <i>habitually resident</i> in (and, if applicable, the <i>State of the risk</i> is) an <i>EEA State</i> other than the <i>United Kingdom</i> , to the extent that the <i>EEA State</i> in question imposes measures of like effect.	
<b>Part 4: Guidance</b>			

1	The main extensions and restrictions to the general application rule							
1.1	G	The general application <i>rule</i> is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.						
1.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the general application <i>rule</i> , particularly in relation to territorial scope. However, for the majority of circumstances, the general application <i>rule</i> is likely to apply.						
2	The Single Market Directives and other directives							
2.1	G	This <i>guidance</i> provides a general overview only and is not comprehensive.						
2.2	G	<p>When considering the impact of a directive on the territorial application of a <i>rule</i>, a <i>firm</i> will first need to consider whether the relevant situation involves a non-UK element. The <i>EEA</i> territorial scope <i>rule</i> is unlikely to apply if a <i>UK firm</i> is doing business from a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in relation to a <i>UK product</i>. However, if there is a non-UK element, the <i>firm</i> should consider whether:</p> <table border="1" data-bbox="411 952 1449 1176"> <tr> <td>(1)</td> <td>it is subject to the directive;</td> </tr> <tr> <td>(2)</td> <td>the business it is performing is subject to the directive; and</td> </tr> <tr> <td>(3)</td> <td>the particular <i>rule</i> is within the scope of the directive.</td> </tr> </table> <p>If the answer to all three questions is ‘yes’, the <i>EEA</i> territorial scope <i>rule</i> may change the effect of the general application <i>rule</i>.</p>	(1)	it is subject to the directive;	(2)	the business it is performing is subject to the directive; and	(3)	the particular <i>rule</i> is within the scope of the directive.
(1)	it is subject to the directive;							
(2)	the business it is performing is subject to the directive; and							
(3)	the particular <i>rule</i> is within the scope of the directive.							
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.						
3	<del>Insurance Mediation Directive</del> <u>Insurance Distribution Directive</u> : effect on territorial scope							
3.1	G	The <del><i>Insurance Mediation Directive's</i></del> <i>IDD's</i> scope covers most <i>firms</i> carrying on most types of <del><i>insurance mediation</i></del> <u><i>insurance distribution</i></u> . <del>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 <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 5.2</i> (Statement of demands and needs), <i>ICOBS 5.3.3R</i> (Advice on the basis of a fair analysis), <i>ICOBS 6</i> (Product information) and <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision)).</del>						
3.2	G	The <u>rules in this sourcebook within the Directive's scope are those implementing the minimum information and other requirements in articles 12 and 13</u> <del>and 13</del> <u>17, 18, 19, 20, 23 and 24(1) to (4) of the Directive</u> <del>are set out in:</del>						

		<p>(1) <u>ICOB</u>S 2.2.2R (communication to customers and financial promotions), <u>ICOB</u>S 2.2.2AR (marketing communications), <u>ICOB</u>S 2.5.-1R (the customer’s best interests rule), <u>ICOB</u>S 2.6 (Distribution of connected contracts through exempt persons);</p> <p>(2) <u>ICOB</u>S 4.1 (General requirements for insurance intermediaries and insurers), <u>ICOB</u>S 4.1A (Means of communicating to customers), <u>ICOB</u>S 4.3 (remuneration disclosure);</p> <p>(3) <u>ICOB</u>S 5.2 (<del>Statement of demands</del> <u>Demands</u> and needs), <u>ICOB</u>S 5.3.4R (<u>Personalised explanation</u>), <del>and</del> <u>ICOB</u>S 5.3.3R (Advice on the basis of a fair analysis); and</p> <p>(4) <u>ICOB</u>S 6A.1.4R (Ensuring the customer can make an informed decision) and <u>ICOB</u>S 6A.3 (Cross-selling).</p>
3.2A	G	<u>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).</u>
3.2B	G	<p>The additional requirements within the <i>IDD</i>’s scope in this sourcebook are those that:</p> <p>(1) <u>deal with communication to customers and financial promotions, the customer’s best interests rule and additional responsibilities of insurance distributors (see ICOB</u>S 2.2.2R(2), <u>ICOB</u>S 2.5.-1R and <u>ICOB</u>S 2.6); and</p> <p>(2) <u>require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see ICOB</u>S 4 (<u>Information about the firm, its services and remuneration</u>), <u>ICOB</u>S 5.2 (<u>Demands and needs</u>), <u>ICOB</u>S 5.3.3R (<u>Advice on the basis of a fair analysis</u>), <u>ICOB</u>S 6A.1.4R (Ensuring the customer can make an informed decision) and <u>ICOB</u>S 6A.3 (Cross-selling)).</p>
3.3	G	<p><del>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:</del></p> <p>(1) <del>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</del></p>

		the additional <i>rules</i> within the Directive's scope is not modified;
	(2)	for an <i>EEA firm</i> providing <i>passported activities</i> under the Directive in the <i>United Kingdom</i> , <del>the rules implementing the Directive's minimum requirements do not apply</del> , but additional <i>rules</i> within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect;
	(2)	<u>for insurance distribution business carried on by insurers:</u>
	(a)	<u>minimum and additional requirements apply to a <i>UK firm</i> unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the firm's <i>Host State regulator</i>; and</u>
	(b)	<u>paragraph (1), and 3.3AG, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the firm's <i>Home State regulator</i>.</u>
	(3)	<del>an <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> is required to ensure that its <i>appointed representative</i> complies with this sourcebook as it applies to a <i>UK firm</i> that is an <i>authorised person</i>.</del>
3.3A	G	<u>An <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> carrying on insurance distribution activities from an establishment in the UK is required to ensure that its <i>appointed representative</i> complies with this sourcebook.</u>
4		Solvency II Directive non-life business: effect on territorial scope
4.1	G	The <i>Solvency II Directive's</i> scope covers <i>insurers</i> authorised under that Directive conducting <i>general insurance business</i> .
4.2	G	The <i>rules</i> in this sourcebook within the <del>Directive's</del> <i>Solvency II Directive's</i> scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the insurance contract (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <del><i>ICOBS 4</i> (Information about the firm, its services and remuneration)</del> , <i>ICOBS 6</i> (Product information), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 8</i> (Claims handling) except those parts of <i>ICOBS 8.2</i> (Motor vehicle liability insurers) implementing the <i>Consolidated Motor Insurance Directive</i> .
4.3	G	The <del>Directive</del> <i>Solvency II Directive</i> specifies minimum information requirements and permits <i>EEA States</i> to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the <i>Solvency II Directive</i> .)-
4.4	G	If the <i>State of the risk</i> is an <i>EEA State</i> , the <del>Directive</del> <i>Solvency II Directive</i> provides that the applicable information rules shall be determined by that state. Accordingly, if the <i>State of the risk</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the risk</i>



		is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the <del>Directive</del> <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 156 and 180 of the <i>Solvency II Directive</i> .)
5	Solvency II Directive life business: effect on territorial scope	
5.1	G	The <i>Solvency II Directive's</i> scope covers <i>long-term insurers</i> which are <i>Solvency II firms</i> conducting <i>long-term insurance business</i> .
5.2	G	The <i>rules</i> in this sourcebook within the Directive's scope are the cancellation <i>rules</i> (see <i>ICOBS 7</i> ) and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>contract of insurance</i> (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <del><i>ICOBS 4</i> (Information about the firm, its services and remuneration)</del> , <i>ICOBS 6</i> (Product information) and <i>ICOBS 8</i> (Claims handling) except <i>ICOBS 8.2</i> (Motor vehicle liability insurers)).
5.3	G	The Directive specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the <i>policyholder</i> of the essential elements of the commitment.
5.4	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i> .)-
...		
7	Distance Marketing Directive: effect on territorial scope	
7.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive's</i> scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The <i>rules</i> in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 6</i> (Product information), and <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision)), the cancellation <i>rules</i> (see <i>ICOBS 7</i> ) and the other specific <i>rules</i> implementing the Directive (see <i>ICOBS 3.1</i> ).
7.2	G	In the <i>FCA's</i> view, the Directive places responsibility for requirements within the Directive's scope on the <i>Home State</i> except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the

		<i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the <i>Distance Marketing Directive</i> .)
7.3	G	This means that relevant <i>rules</i> in this sourcebook will, in general, apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in the <i>United Kingdom</i> (whether the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA State</i> or <i>non-EEA state</i> ).
7.4	G	Conversely, the territorial scope of the relevant <i>rules</i> in this sourcebook is modified as necessary so that they do not apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA State</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA State</i> .
7.5	G	In the <i>FCA's</i> view:
	(1)	the 'country of origin' basis of the Directive is in line with that of the <i>E-Commerce Directive</i> and the <i>IDD</i> ; (see <u>See</u> recital 6 to the <i>Distance Marketing Directive</i> .)
	(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and cancellation rules derived from the <i>Solvency II Directive</i> apply on a 'country of origin' basis rather than being based on the <i>State of the commitment</i> ; (see <u>See</u> articles 4(1) and 16 of the <i>Distance Marketing Directive</i> .)
	(3)	<del>for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Insurance Mediation Directive</i>, the minimum requirements in the <i>Insurance Mediation Directive</i> continue to be those applied by the <i>Home State</i>, but the minimum requirements in the <i>Distance Marketing Directive</i> and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the <i>Insurance Mediation Directive</i> was adopted after the <i>Distance Marketing Directive</i> and is not expressed to be subject to it.)</del>
8		Electronic Commerce Directive: effect on territorial scope
8.1	G	The <i>E-Commerce Directive's</i> scope covers every <i>firm</i> carrying on an <i>electronic commerce activity</i> . Every <i>rule</i> in this sourcebook is within the Directive's scope.
8.2	G	A key element of the Directive is the ability of a <i>person</i> from one <i>EEA State</i> to carry on an <i>electronic commerce activity</i> freely into another <i>EEA State</i> . Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply at least to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA State</i> .

8.3	G	Conversely, a <i>firm</i> that is a national of the <i>United Kingdom</i> or another <i>EEA State</i> , carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> , need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>E-Commerce Directive</i> .)
8.4	G	The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the <i>FCA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under, and carrying on an <i>electronic commerce activity</i> within, the scope of the <i>Solvency II Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the 'general good'.
8.5	G	Where the derogation applies, the <i>rules</i> on <i>financial promotion</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm's</i> 'country of origin' applies rules of like effect), but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>E-Commerce Directive</i> ; Annex to European Commission Discussion Paper MARKT/2541/03 .)
8.6	G	In the <i>FCA's</i> 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 <i>Distance Marketing Directive</i> and the <i>IDD</i> ;
		(2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
8.7	G	The 'derogations' in the Directive may enable other <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 49 52 to the <del><i>Insurance Mediation Directive</i></del> <i>IDD</i> , recital 6 to the <i>Distance Marketing Directive</i> , article 3 of, and the Annex to, the <i>E-Commerce Directive</i> .)

## 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* business; 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*.

...

**2.4 Record-keeping**

- 2.4.1     R     (1)     The Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) contains high-level record-keeping requirements

(see SYSC 3.2.20R, SYSC 9.1.1R and SYSC 9.1.1AR).

...

...

**2.5 ~~Exclusion of liability, conditions and reliance on others~~ Acting honestly, fairly and professionally**

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) 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**     Where:

- (1)     an *insurance distributor* distributing through a *person* relying on the connected contracts exemption in article 72B of the *RAO*; and
- (2)     except for that exemption the *person* would have been:

- (a) subject to the requirements in *ICOBS 2.6.2R*; and
- (b) *carrying on insurance distribution activities* ;

then the *insurance distributor* must instead ensure that those requirements are met.

[**Note:** article 1(4) first paragraph and sub-paragraphs (a) and (b) of the *IDD*]

- 2.6.2 R The requirements referred to in *ICOBS 2.6.1R* are:
- (1) *SYSC 19F.2* (remuneration and insurance distribution activities);
  - (2) *ICOBS 2.2.2R* and *ICOBS 2.2.2AR* (clear, fair and not misleading rule and marketing communication);
  - (3) *ICOBS 2.5.-1R* (customer's best interests);
  - (4) *ICOBS 4.1.2R(1)(a)* and (c), to provide information about:
    - (a) the *insurance distributor's* identity, address and whether it is an insurance intermediary or an *insurance undertaking*; and
    - (b) its complaints procedures;
  - (5) *ICOBS 5.2* (Demands and needs); and
  - (6) *ICOBS 6A.3* (Cross-selling).
- 2.6.3 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.

#### **4.1 General requirements for insurance intermediaries and insurers**

Application: who?

- 4.1.1 R This section applies to an *insurance intermediary* and 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 they need 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 R ~~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:
  - (1) ~~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:
  - (2) the fact that it is included in the *Financial Services Register* and the means for verifying this;
    - (a) ~~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*);
    - (b) ~~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
    - (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*~~

(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*.

[~~Note: article 12(1) of the *Insurance Mediation Directive* articles 18 and 19(1)(a) and (b) of the *IDD*~~]

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*. [deleted]~~

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* at least with information on whether:

(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) it 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 he has 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; or
- (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* 4.1.6BR).
- (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 the market.

#### 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.~~

~~The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.~~

~~In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see *ICOBS 3.1.14R*).~~

~~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) 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 new and is not underlined.

#### 4.1A.1 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 states.

##### 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 For the purposes of *ICOBS* 4.1A.4R, the following are examples of circumstances not evidencing active or informed choice or consent:
- (1) where the *customer* fails to change the default e-mail address option or default option to be provided with the information by means of a website; and
  - (2) the *customer* electing to be informed by a website without being first given other options.

Means of communications to customers: telephone sales

- 4.1A.6 R In the case of telephone selling:
- (1) the information may 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 to *ICOBS* 4.1A.1R 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 *ICOB*S 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* understands ~~he is~~ they are responsible for deciding whether a *policy* meets ~~his~~ their 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); and

(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~~ *PRA Rulebook: Solvency II firms: Conditions Governing Business*).

### 4.3 **Fee Remuneration disclosure**

#### Remuneration disclosure: insurance intermediaries

- 4.3.-7 R (1) 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:
- (a) on the nature of the remuneration received in relation to the contract of insurance:
  - (b) about whether in relation to the contract it works on the basis of:
    - (i) a fee, that is remuneration paid directly by the customer; or
    - (ii) a commission of any kind, that is the remuneration included in the premium; or
    - (iii) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract; or
    - (iv) on the basis of a combination of any type of remuneration set out above in (i), (ii) and (iii).

**[Note: article 19(1)(d) and (e) of the *IDD*]**

#### Remuneration disclosure: insurers

- 4.3.-6 R An insurance undertaking must provide the 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 in *ICOBS 4.3.-7R* and *ICOBS 4.3.-*

6R includes the type of the 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 firm (or its employee) 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 paragraph (1) must be given before the customer incurs liability to pay the fee, or before conclusion of the ~~contract~~ 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     **G**     The fee disclosure requirement extends to all such fees that may be charged during the life of a policy.

**R**

[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 R This section applies to: an insurance distributor when carrying on insurance distribution activities other than in relation to a connected travel insurance contract

(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 R (1) Prior to the conclusion of a ~~contract~~ 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*]

5.2.2C 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. The firm's assessment of the demands and needs must be provided

to the customer prior to the conclusion of the contract.

[Note: recital 44 to, and article 23 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 ICOPS 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 Once 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~~ their 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~~ judgement.

## 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~~ policies nor *customer* needs that are not relevant to the type of ~~policy~~ 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



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
- (2) 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
  - (c) the 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*; or
  - (2) a credit agreement as defined in point 3 of article 4 of the *MCD* which is:
    - (i) an *MCD credit agreement*; or
    - (ii) an *exempt MCD credit agreement*; or
    - (iii) a *CBTL credit agreement*; or
    - (iv) a credit agreement referred to in articles 72G(3B) and (4) of the *RAO*;
  - (4) 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* shall 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*]

## Annex G

## 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*]

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