

Insurance Distribution Directive (2016/97/EU) Guidance to Law Society of Northern Ireland

The Directive

The Insurance Distribution Directive (“the Directive”) aims to enhance consumer protection when buying insurance (including non-investment insurance, life insurance and insurance-based investment products (IBIPs)) and to support competition between insurance distributors by creating a level playing field. The Directive replaces the Insurance Mediation Directive (“IMD”).

The Directive includes provision for the regulation of ancillary insurance intermediaries. An ‘ancillary insurance intermediary’ means 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.

In the Directive, ‘insurance distribution’ means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts.

A Solicitor in Northern Ireland could act as an ancillary insurance intermediary when, for example, arranging title indemnity insurance or “after the event” litigation insurance on behalf of a client.

Financial Services and Markets Act 2000

The Financial Services and Markets Act 2000 (“FSMA”) prohibits a person carrying on a “regulated activity” in the UK unless that person is authorised by the Financial Conduct Authority (FCA) or exempt. FSMA provides an exemption from the general prohibition in the case of a professional who carries on a regulated activity which is incidental to his professional services, the provision of which are supervised and regulated by a Designated Professional Body. The Law Society of Northern Ireland (“the Law Society”) is a Designated Professional Body in accordance with FSMA.

Under FSMA, the Law Society is required to make rules to govern “regulated activities” by Solicitors in Northern Ireland; the definition of “regulated activities” includes contracts of insurance. Such rules must be designed to secure that, in providing a particular professional service to a particular client, the member carries on only regulated activities which arise out of, or are complementary to, the provision by the Solicitor of that service to that client. All rules made by a designated professional body require the approval of the FCA.

The Law Society has issued the Solicitors' Financial Services Regulations 2012 ("the Regulations") which include provisions to deal with the IMD. These Regulations were approved by the Financial Services Authority, the predecessor the FCA. The Law Society now needs to amend the Regulations to remove references to the IMD and replace these with references to the Directive and appropriate provisions to cover ancillary insurance intermediary activities by Solicitors.

Regulations

The attached Regulations (which have been approved by the FCA) implement the following key provisions of the Directive:

1. A firm must not carry on any insurance distribution activities unless the firm is included on the Law Society's financial services register as an Ancillary Insurance Intermediary. To be included on the Society's financial services register, a firm must make an application to the Society, in such form and at such times as may be prescribed by the Society (see Regulation 14.2).
2. The Law Society will notify the firm, within 3 months of the receipt by the Law Society of a completed application, of the Society's decision whether to include the firm in the Society's financial services register as an Ancillary Insurance Intermediary (see Regulation 14.3).
3. The Society will deliver a copy of its financial services register to the FCA which shall include the details in its register of exempt persons (see Regulation 14.5) – see Note below.
4. A Solicitor must disclose in writing to the client in a manner which is clear, fair and not misleading the Law Society's existing complaints mechanism which will apply to any client complaints relating to insurance distribution activities (see Regulation 10.2).
5. A firm may only carry on insurance distribution activities as an Ancillary Insurance Intermediary if the Solicitor or employee or other persons within the management structure of the firm responsible for carrying on the insurance distribution activity possesses appropriate knowledge and ability in order to complete the tasks and perform the duties adequately (see Regulation 10.4).
6. When carrying on insurance distribution activities as an Ancillary Insurance Intermediary, Solicitors shall not be remunerated, and shall not remunerate or assess the performance of his employees, in a way which conflicts with their duty to act in accordance with the best interests of their clients. In particular, a Solicitor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to the Solicitor or their employees to recommend a particular insurance product to a client when the solicitor could offer a different insurance product which would better meet the client's needs (see Regulation 5.2).
7. When monies are held by a solicitor in connection with any insurance distribution activity, such money shall not (a) be held jointly with the solicitor's client, another firm or any other third party and (b) be used to reimburse other creditors in the event of the bankruptcy of the solicitor (see Regulation 10.6).
8. A Solicitor must, in good time before the conclusion of any contract of insurance arising out of an insurance distribution activity, disclose to the client:
 - a. That the Solicitor is not authorised by the FCA

- b. That the Solicitor is acting as an Ancillary Insurance Intermediary
 - c. If he holds more than 10% of an insurance undertaking, and
 - d. The nature of the remuneration (if any) received by the solicitor in relation to the insurance contract (see Regulation 15.1).
9. A Solicitor carrying on insurance distribution activities as an Ancillary Insurance Intermediary shall always act honestly, fairly and professionally in accordance with the best interests of the Solicitor's clients (see Regulation 15.2).
 10. In good time before the conclusion of a contract of insurance the Solicitor or firm must take reasonable steps to ensure that the contract is consistent with the client's demands and needs (see Regulation 16.1).
 11. In good time before the conclusion of a contract of insurance the Solicitor or firm must provide the client with objective and relevant information about the insurance product in a comprehensible form to allow that client to make an informed decision while taking into account the complexity of the insurance product and the type of client (see Regulation 16.4.1).
 12. The information referred to at 11 above shall be provided by way of a standardised insurance product information document ("IPID") on paper or on another durable medium and the IPID shall be drawn up by the manufacturer of the product (see Regulation 16.4.2).
 13. All information relating to insurance distribution activities, including marketing communications, provided by a firm to its clients or potential clients shall be fair, clear and not misleading (see Regulation 16.8).
 14. Information may be provided to clients using a durable medium other than paper if the use of the durable medium is appropriate (in the context of the business conducted between the Solicitor and the client) and the client has been given the choice between information on paper and on a durable medium and has chosen the latter medium (see Regulation 16.11).
 15. Acting as Ancillary Insurance Intermediary includes arranging insurance (e.g. title indemnity or "after the event" legal expenses) on behalf of a client for remuneration. Remuneration includes any commission from an insurance company or any fee paid by the client. If a Solicitor will receive remuneration for providing this service, the Solicitor must be included on the Law Society's Financial Services Register as an Ancillary Insurance Intermediary. However, if a Solicitor will not receive any such remuneration and includes a written statement to this effect in each relevant engagement letter, then the Solicitor will not need to be included on the Law Society's Financial Services Register as an Ancillary Insurance Intermediary

Note: There is an existing Memorandum of Understanding between the FCA and the Law Society (<https://www.fca.org.uk/publication/mou/mou-lsni.pdf>) which will regulate the sharing of information.