

SRA Amendments to Regulatory Arrangements (Insurance Distribution) Rules 2018

Rules made by the Solicitors Regulation Authority Board on 19 April 2018.

Made under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985, paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990, section 83 of, and Schedule 11 to, the Legal Services Act 2007 and section 332 of the Financial Services and Markets Act 2000.

Approved by the Financial Conduct Authority under section 332(5) of the Financial Services and Markets Act 2000 on 14 June 2018.

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 on 26 June 2018.

Rule 1

The SRA Financial Services (Scope) Rules 2001 shall be amended as follows:

- (a) in rule 3.1(t) delete “or”;
- (b) in rule 3.1(u), replace “.” with “; or”
- (c) insert after rule 3.1(u):
 - “(v) *insurance distribution activities* in relation to *insurance-based investment products*; or
 - (w) creating, developing, designing and/or underwriting a *contract of insurance*.”;
- (d) replace rule 5.6 with:
 - “5.6 Insurance distribution activities
 - (a) A *firm* may only carry on *insurance distribution activities* as an *ancillary insurance intermediary*.
 - (b) A *firm* must not carry on any *insurance distribution activities* unless the *firm*:
 - (i) is registered in the *Financial Services Register*; and
 - (ii) has appointed an *insurance distribution officer* who will be responsible for the *firm's insurance distribution activities*.

- (c) If a *firm* is carrying on, or proposing to carry on, *insurance distribution activities* it must notify the SRA in the *prescribed* form.
 - (d) The *SRA* may give the *FCA* any of the information collected on the *prescribed* form and the *firm* must notify the *SRA* without undue delay of any changes to this information or to any information about the firm that appears on the *Financial Services Register*.
 - (e) Rule 5.6(c) does not apply to a *firm* that has been registered in the *Financial Services Register* and was able to carry on insurance mediation activities before 1 October 2018.”;
- (e) delete note (i) to rule 5; and
 - (f) delete rules 7.4 and 7.5.

Rule 2

The SRA Financial Services (Conduct of Business) Rules 2011 shall be amended as follows:

- (a) in rule 3.2 after “regulated activity” insert “and in good time before the conclusion of a *contract of insurance*”;
- (b) in rule 3.3:
 - (i) replace “*mediation*” with “*distribution*” (in both places);
 - (ii) after “*client*” insert “and in good time before the conclusion of a *contract of insurance*,”
 - (iii) after “must” insert “state that it is an *ancillary insurance intermediary* and”;
 - (iv) after “by” insert “the”; and
 - (v) replace the website address with “www.fca.org.uk/firms/financial-services-register”;
- (c) in note (i) to rule 3 replace “*mediation*” with “*distribution*”;
- (d) in rule 9 replace “*mediation*” with “*distribution*” (in both places);
- (e) in note (i) to rule 11:
 - (i) after “requirements of” insert “Directive (EU) 2016/97 on insurance distribution or”;
 - (ii) delete “the”; and
 - (iii) replace “policies” with “policy”;
- (f) delete rules 12.3 and 12.4; and

- (g) replace appendix 1 with the appendix set out in the Schedule to these amendment rules.

Rule 3

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) after the definition of "**AJA**" insert:

"ancillary insurance intermediary

has the meaning given in Article 2(1)(4) of the *IDD*.”;

- (b) after the definition of "**candidate**" insert:

"CBTL credit agreement

has the meaning given in the *FCA Handbook*.”;

- (c) after the definition of "**document**" insert:

"durable medium

means any instrument which:

- (i) enables the recipient to store information personally addressed to them in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
- (ii) allows the unchanged reproduction of the information stored.”;

- (d) after the definition of "**HOLP**" insert:

"home finance mediation activity

has the meaning given in the *FCA Handbook*.”;

- (e) after the definition of "**home purchaser**" insert:

"IDD

means Directive (EU) 2016/97 on insurance distribution.”;

- (f) after the definition of "**insolvency practice**" insert:

"insurance-based investment product

has the meaning given in Article 2(1)(17) of the *IDD*.

insurance distribution activities

means any of the following regulated activities as specified in the *Regulated Activities Order* which are carried on in relation to a *contract of insurance* or rights to or interests in a *life policy*:

- (i) dealing in investments as agent (article 21)
- (ii) arranging (bringing about) deals in investments (article 25(1))
- (iii) making arrangements with a view to transactions in investments (article 25(2))
- (iv) assisting in the administration and performance of a contract of insurance (article 39A)
- (v) advising on investments (except peer to peer agreements) (article 53(1))
- (vi) agreeing to carry on a regulated activity in (a) to (e) above (article 64).

insurance distribution officer

means the individual within the management structure of the *firm* who is responsible for *insurance distribution activity*.

insurance intermediary

has the meaning given in Article 2(1)(3) of the *IDD*.

Insurance Product Information Document

means a document that meets the requirements of Article 20(5) to Article 20(8) of the *IDD* and the Commission Implementing Regulation (EU) 2017/1469.”;

- (g) after the definition of "**Legal Ombudsman**" insert:

"legal or equitable mortgage

includes a legal or equitable charge and, in Scotland, a heritable security.”;

- (h) after the definition of "**material interest**" insert:

"MCD

means the Mortgage Credit Directive - Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property.

MCD credit agreement

has the meaning given in the *FCA Handbook*.”;

- (i) after the definition of "**personal pension scheme**" insert:

"personal recommendation

means a recommendation that is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.”;

- (j) after the definition of "**reinsurance contract**" insert:

"reinsurance distribution

has the meaning given in Article 2(1)(2) and Article 2(2) of the *IDD*.”

- (k) after the definition of "**relevant work-based experience**" insert:

"remuneration

means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of *insurance distribution activities* and references to “remunerate” and “remunerated” shall be construed accordingly.

- (l) replace the definition of “**insurance undertaking**” with:

“insurance undertaking

has the meaning given in Article 2(1)(6) of the *IDD*“; and

- (m) delete “**insurance mediation activities**” and “**insurance mediation officer**”.

Rule 4

These amendment rules come into force on 1 October 2018.

Schedule

APPENDIX 1: Insurance Distribution Activities

1 Communication and disclosure

- 1.1 A *firm* must ensure that, in relation to *insurance distribution*:
- (a) it communicates all information, including marketing communications, in a way that is clear, fair and not misleading.
 - (b) its marketing communications are always clearly identifiable as such.

2 General information to be provided

- 2.1 In good time before the conclusion of a *contract of insurance*, a *firm* must disclose the following information to *clients*:
- (a) whether the *firm* provides a *personal recommendation* about the insurance products offered;
 - (b) the procedures allowing *clients* and other interested parties to register complaints about the *firm* and information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*;
 - (c) whether the *firm* is representing the *client* or acting for and on behalf of the *insurer*;
 - (d) whether the *firm* has a direct or indirect holding representing 10% or more of the voting rights or capital in a relevant *insurance undertaking*;
 - (e) whether a given *insurance undertaking* or its parent undertaking has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*.

3 Scope of service

- 3.1 Where a *firm* proposes, or gives a *client* a *personal recommendation* for, a *contract of insurance*, then in good time before the conclusion of an initial *contract of insurance* and if necessary on its amendment or renewal, the *firm* must provide the *client* with information on whether the *firm*:
- (a) gives a *personal recommendation* on the basis of a fair and personal analysis;

- (b) is under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*, in which case the *firm* must provide the names of those *insurance undertakings*; or
 - (c) is not under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair and personal analysis, in which case the *firm* must provide the names of the *insurance undertakings* with which the *firm* may and does conduct business.
- 3.2 If a *firm* informs a *client* that it gives a *personal recommendation* on the basis of a fair and personal analysis:
- (a) 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 that recommendation; and
 - (b) that *personal recommendation* must be in accordance with professional criteria regarding which *contract of insurance* would be adequate to meet the *client's* needs.

4 Demands and Needs

- 4.1 Prior to the conclusion of a *contract of insurance*, a *firm* must specify on the basis of information obtained from the *client*, the demands and needs of that *client*.
- 4.2 The details must be adapted according to the complexity of the *contract of insurance* proposed and the individual circumstances of the *client*.
- 4.3 A *firm* must give the *client* a statement of the *client's* demands and needs prior to the conclusion of a *contract of insurance*.
- 4.4 Any *contract of insurance* proposed by the *firm* must be consistent with the *client's* demands and needs and where the *firm* has given a *personal recommendation* to the *client*, the *firm* must, in addition to the statement of the demands and needs, provide the *client* with a personalised explanation of why a particular *contract of insurance* would best meet the *client's* demands and needs.

5 Use of intermediaries

- 5.1 A *firm* must not use, or propose to use, the services of another person consisting of:
 - (a) *insurance distribution*;
 - (b) *reinsurance distribution*;
 - (c) *insurance distribution activity*; or
 - (d) *home finance mediation activity*;

unless the person in relation to the activity is:

- (i) registered in an **EEA** State for the purposes of the **IDD**; or
- (ii) in relation to **insurance distribution activity**, is not carrying this activity on in the **EEA**

5.2 Before using the services of the intermediary, a **firm** must check:

- (a) the **Financial Services Register**, or
- (b) in relation to **insurance distribution** or **reinsurance distribution** carried on by an **EEA** firm, the register of its home state regulator,

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

6 Treating complaints fairly

6.1 In addition to the **firm's** obligations under O(1.9) and O(1.10) of the **SRA Code of Conduct**, the **firm** must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not a **client**.

7 Remuneration and the client's best interests

7.1 A **firm** must not:

- (a) be **remunerated**; or
- (b) **remunerate** or assess the performance of its **employees**;

in a way that conflicts with their duty to act in each **client's** best interest.

7.2 In particular, a **firm** must not make any arrangement by way of **remuneration**, sales target or otherwise that could provide an incentive to the **firm** or its **employees** to recommend a particular **contract of insurance** to a **client** when it could offer a different **contract of insurance** which would better meet its **client's** needs

8 Remuneration disclosure

8.1 In good time before the conclusion of the initial **contract of insurance** and if necessary, on its amendment or renewal, a **firm** must provide the **client** with information:

- (a) on the nature of the **remuneration** received in relation to the **insurance contract**.
- (b) about whether in relation to the contract the **firm** works on the basis of:
 - (i) a fee, that is **remuneration** paid directly by the **client**;
 - (ii) a commission of any kind, that is **remuneration** included in the premium;

- (iii) any other type of **remuneration**, including an economic benefit of any kind offered or given in connection with the contract; or
- (iv) a combination of any type of **remuneration** set out above in (i), (ii) and (iii).

9 Fee disclosure: additional requirements

- 9.1 Where a fee is payable, a **firm** must inform the **client** of the amount of the fee before the **client** incurs liability to pay the fee, or before conclusion of the **contract of insurance**, whichever is earlier.
- 9.2 To the extent that it is not possible for the amount in paragraph 9.1 to be given, a **firm** must give the **client** the basis for its calculation.
- 9.3 This paragraph applies to all such fees that may be charged during the life of the **policy**.

10 Means of communication to clients

- 10.1 This paragraph applies to all information required to be provided to a **client** in this appendix.
- 10.2 A **firm** must communicate information to the **client** on paper or using any of the following means:
 - (a) a **durable medium** other than paper where the following conditions are satisfied:
 - (i) the use of a **durable medium** other than paper is appropriate in the context of the business conducted between the **firm** and the **client**; and
 - (ii) the **client** has been given the choice between information on paper and on a **durable medium** other than paper and has chosen a **durable medium** other than paper; or
 - (b) on a website (where it does not constitute a **durable medium**) where the following conditions are satisfied:
 - (i) the provision of that information by means of a website is appropriate in the context of the business conducted between the **firm** and the **client**;
 - (ii) the **client** has consented to the provision of that information by means of a website;
 - (iii) the **client** has been notified electronically of the address of the website, and the place on the website where that information can be accessed; and
 - (iv) the **firm** ensures that the information remains accessible on the website for such period of time as the **client** may reasonably need to consult it.

- 10.3 For the purposes of paragraphs 10.2(a)(i) and (b)(i), the provision of information using a **durable medium** other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the **firm** and the **client** 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 that business is sufficient evidence.
- 10.4 A **firm** must communicate the information:
- (a) in a clear and accurate manner, comprehensible to the **client** ;
 - (b) in an official language of the Member State in which the insured risk, or proposed insured risk, is situated or in any other language agreed upon by the parties; and
 - (c) free of charge.
- 10.5 Where a **firm** communicates the information using a **durable medium** other than paper or by means of a website, the **firm** must, upon request and free of charge, send the **client** a paper copy of the information.
- 10.6 A **firm** must ensure that a **client's** choice or consent to receive the information by means of a website (whether a **durable medium** or where the conditions under paragraph 10.2(b) are satisfied) is an active and informed choice or consent.
- 10.7 In the case of services supplied to the **client** by telephone that are subject to the Financial Services (Distance Marketing) Regulations 2004:
- (a) the information must be given in accordance with those regulations; and
 - (b) if prior to the conclusion of the **contract of insurance** the information is provided:
 - (i) orally; or
 - (ii) on a **durable medium** other than paper;
- the **firm** must also provide the information to the **client** in accordance with paragraph 10.2 immediately after the conclusion of the **contract of insurance** .

11 Cross-Selling requirements where insurance is the ancillary product

- 11.1 When a **firm** offers a non-insurance ancillary product or service as part of a package or in the same agreement with an insurance product, it must:
- (a) inform the **client** whether it is possible to buy the components separately and, if so must provide the **client** with an adequate description of:
 - (i) the different components;

- (ii) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with taking the components separately; and
 - (b) provide the *client* with separate evidence of the charges and costs of each component.
- 11.2 When a *firm* offers an insurance product ancillary to and as part of a package or in the same agreement with a non-insurance product or service, it must offer the *client* the option of buying the non-insurance goods or services separately.
- 11.3 Rule 11.2 does not apply where the non-insurance product or service is any of the following:
- (a) investment service or activities; or
 - (b) a *credit agreement* as defined in point 3 of article 4 of the *MCD* which is:
 - (i) an *MCD credit agreement*;
 - (ii) an exempt *MCD credit agreement*;
 - (iii) a *CBTL credit agreement*; or
 - (iv) a *credit agreement* referred to in articles 72G(3B) and (4) of the *Regulated Activities Order*;
 - (c) a payment account as defined in point 3 of Article 2 of Directive 2014/92/EU.
- 11.4 This paragraph shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).
- 11.5 In the cases referred to in paragraphs 11.1 and 11.2, the *firm* must still comply with other provisions in this appendix relating to the offer and sale of insurance products that form part of the package or agreement, including specifying the demands and needs of the *client* in accordance with paragraph 4.

12 Professional and organisational requirements

- 12.1 A *firm* must ensure that:
- (a) the *firm* and each relevant *employee* possesses appropriate knowledge and ability in order to complete their tasks and perform duties adequately; and
 - (b) that all the persons in its management structure and any staff directly involved in *insurance distribution activities* are of good repute.
- 12.2 In considering a person's good repute, the *firm* must as a minimum ensure that the person:

- (a) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
 - (b) has not previously been declared bankrupt
- unless they have been rehabilitated in accordance with national law.

13 Insurance Product Information Document and appropriate information

- 13.1 A *firm* must ensure that the *client* is given objective and relevant information about a *policy* in good time prior to the conclusion of the *policy*, so that the *client* can make an informed decision.
- 13.2 A *firm* must provide the information in paragraph 13.1 to the *client*:
- (a) whether or not it gives a *personal recommendation*; and
 - (b) irrespective of the fact that the *policy* is offered as part of a package with:
 - (i) a non-insurance product or service; or
 - (ii) another *policy*.
- 13.3 A *firm* must ensure that the level of information provided takes into account the complexity of the *policy* and the individual circumstances of the *client*.
- 13.4 When dealing with a *client* who is an individual and who is acting for purposes which are outside his trade or profession the information provided under paragraph 13.1 must include an *Insurance Product Information Document*.
- 13.5 A *firm* must provide the information required in paragraph 13.4 by way of an *Insurance Product Information Document* for each *policy* (other than a pure protection contract).
- 13.6 Where a *firm* distributes *contracts of insurance*, it must have in place adequate arrangements to:
- (a) obtain from the manufacturer of the *contract of insurance*:
 - (i) all appropriate information on the *contract of insurance* and the product approval process; and
 - (ii) the identified target market of the *contract of insurance*; and
 - (b) understand the characteristics and the identified target market of each *contract of insurance*.

14 Exclusions for large risks

- 14.1 Only paragraphs 1, 5, 6, 10, 11, 12 and 14 of this appendix apply where a *firm* carries on *insurance distribution activities* for commercial *clients* in relation to *contracts of insurance* covering risks within the following categories:

- (a) railway rolling stock, aircraft, ships (sea, lake, river and canal vessels), goods in transit, aircraft liability and liability of ships (sea, lake, river and canal vessels);
- (b) credit and suretyship, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
- (c) land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following three criteria:
 - (i) balance sheet total: €6.2 million;
 - (ii) net turnover: €12.8 million;
 - (iii) average number of employees during the financial year: 250