

Guidance

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Law firms carrying on insurance distribution activities

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Updated 25 November 2019 (Date first published: 27 September 2018)

Status

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

Who is this guidance relevant to?

This guidance is for law firms that carry on insurance distribution activities under the scope of our regulation as exempt professional firms (EPFs).

This guidance should be read in the context of decision making at the SRA and other guidance documents listed at the end of this document. It is a living document and we will update it from time to time.

Purpose of this guidance

This guidance explains key changes introduced by the Insurance Distribution Directive (IDD).

General

Law firms involved in personal injury, conveyancing and probate will most likely be carrying on insurance distribution activities. For example, they may arrange for clients' after the event insurance in a personal injury matter or insurance for defective title in a conveyancing matter. There may be other insurance products that firms advise on or arrange for their clients.

What rules apply?

You should have particular regard to the SRA Financial Services (Scope) Rules (Scope rules) [<https://www.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/>] and the SRA Financial Services (Conduct of Business) Rules (COB rules) [<https://www.sra.org.uk/solicitors/standards-regulations/financial->



services-conduct-business-rules/] . The specific requirements which relate to insurance distribution activities are set out in Part 3 of the COB rules.

In addition, you should have regard to the Principles and Standards and Regulations.

What are insurance distribution activities?

The IDD defines 'insurance distribution' as 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.

What does the IDD do?

The IDD seeks to strengthen consumer protection by imposing requirements on firms that provide, facilitate and arrange insurance products.

The IDD aims to deliver a number of requirements of a professional and organisational nature, for example continuing professional development and professional indemnity insurance requirements, as well as dealing with requirements for the provision of information, complaints handling and out of court redress.

Why do we update our rules?

As a designated Professional Body (DPB) for financial services activities we are required to make changes to our rules so that we implement the IDD within our arrangements.

The Scope and COB rules were last updated on the 1 October 2018.

What does this mean for firms?

You should take time to familiarise yourself with the requirements set out in our Scope and COB rules. The following guidance is to reflect some of the key changes that have been introduced by the IDD.

Registration requirements - before doing anything

The Financial Conduct Authority (FCA) already maintains a register of firms [<https://register.fca.org.uk/>] which includes those that are carrying on insurance mediation activities. This register will continue to include details of EPFs that are carrying on insurance distribution activities.

If you propose to begin to carry on insurance distribution activities you will need to notify us using the FA8 form [<https://www.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/financial-services/>] . We will then provide the FCA with information for the register. Contact us [<https://www.sra.org.uk/home/contact-us/>] if you have any queries before you submit your notification.

As a condition of registration, information that you must provide to us includes:

- details of your firm's insurance distribution officer (this needs to be a person within the management of your firm that will be responsible for the insurance distribution activities)
- the identities of shareholders or members, whether natural or legal persons, that have a holding in your firm that exceeds 10%, and the amounts of those holdings;
- the identities of persons who have close links with your firm (close links is defined (in Article 13 point 17 of Directive 2009/138/EC) as a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship)
- information that those holdings or close links will not prevent us exercising our supervisory or regulatory functions.

You must inform us without any delay of any change in the information provided by completing a new FA8 [<https://www.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/financial-services/>] and forwarding that to our notifications team.

We may also provide the FCA with other information collected through the FA8.

Any EPF whose details do not appear on the register maintained by the FCA that carries on, or proposes to carry on, insurance distribution activities is likely to be breaching the general prohibition which is a criminal offence under section 23 of the Financial Services and Market Act 2000 and may find that the contracts of insurance arranged for clients are invalid.

Professional and organisational requirements - what you need to do

In addition to making sure that you have appointed an insurance distribution officer, you must make sure that:

- the relevant persons within the management structure of the firm involved in insurance distribution activities, and

- all staff directly involved in insurance distribution activities.

hold appropriate knowledge and ability to perform their duties.

So, for example, solicitors involved in insurance distribution activities should refer to our approach to continuing competence

[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/>] and reflect on their practice and undertake regular learning and development so their skills and knowledge remain up to date.

The FCA have stated for firms that are authorised and regulated by them for insurance distribution activities they will need to make sure that they have the necessary knowledge of, for example:

- the terms and conditions of policies offered
- laws covering the distribution of insurance products
- claims and complaints handling requirements
- how to assess a customer's needs.

To make sure that all those involved in insurance distribution activities in your firm have the appropriate knowledge and competence you might want to refer to the FCA's requirements as a starting point.

Because you will not be manufacturing insurance products (this is set out as a prohibition in the Scope Rules) you should make sure that you have in place adequate arrangements to:

- obtain information about the insurance products you might think are suitable for your clients, and
- understand the key features of the insurance product and who the product is being marketed for.

You must also make sure that you do not carry on any insurance distribution activities unless you have in place a policy of qualifying professional indemnity insurance. More information about the obligations on you can be found in the SRA Indemnity Insurance Rules.

Information requirements - what you tell your client

Rule 2.1 and 2.2 of the COB rules sets out the sort of information that you must provide about you, your firm and the services you can provide when arranging insurance.

You must make appropriate pre-contract disclosures about yourself, for example, that you are regulated by the Solicitors Regulation Authority for this work and the scope of your services, i.e. that you can only carry on

insurance distribution activities limited to those not prohibited by our Scope Rules.

Rules 15 to 17 of the COB rules set out information that you will need to give to your clients about any remuneration you receive for arranging the insurance and any fees that might be payable by the client.

The IDD introduces new requirements for you to disclose to your clients the nature and basis of the remuneration you receive in relation to the insurance contract.

If you collect a fee from a client, you must disclose the exact amount of that fee (not an estimate or range). If the exact amount is not known, then the method of calculation must be provided. This requirement also applies to all post-contract fees that might be payable, for example, if there are adjustments to the policy.

You should carefully consider how information is made meaningful to your clients and at which point in the process of arranging insurance the information will be most useful to the client. This is so that they can make an informed decision.

When providing information to your client you will need to make sure that it is in a durable medium and in a way that is fair, clear and not misleading. 'Durable medium' is defined in the SRA Glossary.

In addition to providing information about the status of your firm, you must provide your clients with information confirming:

- that you are an insurance intermediary, as opposed to an insurer and that you cannot manufacture insurance products
- whether you provide a personal recommendation in respect of the insurance products offered
- whether you act on behalf of the client and/or the insurer. If you act for both you will need to explain in what circumstances you can act for each party, and
- if you have "10% or more" of the voting rights in an insurer (for example, as a shareholder).

If you are contractually bound to place business with a specific insurer or insurers, then you will need to provide the name of these insurers upfront. On the other hand, if you do business with more than one insurer then you should provide your clients with the name of those insurers and let them decide which provider they would like to go with.

It is important that all information which is provided to clients is in a clear manner that can be understood.

Conduct of business requirements

The IDD introduces a new requirement that all firms must act honestly, fairly and professionally in the client's best interests and retain all documentary evidence to illustrate that the firm is meeting this requirement.

A failure to act honestly, fairly and professionally in the client's best interests would suggest that you have acted in breach of the Principles and the requirements of paragraph 3.1 - 3.6 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 4.1 - 4.4 of the Code of Conduct for Firms.

In addition to the client information and publicity requirements at paragraph 8.8 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 7.1 (c) of the Code of Conduct for Firms you should also make sure that your marketing communications, addressed to clients or potential clients are fair, clear and not misleading. Marketing communications should always be clearly identifiable as such.

The demands and needs of your client

The IDD makes the following changes:

- a new explicit requirement that all contracts proposed must be consistent with the client's demands and needs
- if you advise on a certain product then you must provide a personalised recommendation explaining why the product recommended best meets the client's needs.

To comply with these additional requirements you should for example, identify the client's demands and needs matching them to available products and make sure that the client is given objective and relevant information about a policy in good time prior to the conclusion of the insurance policy. This is so that the client can make an informed decision about the arrangements being proposed and the protections offered.

The IDD also introduces a new summary document for general insurance products in the form of an Insurance Product Information Document (IPID). This must be provided to clients before you conclude a contract.

The product manufacturer (i.e. the insurer) is required to draw up the IPID and must set out the key information a client will need to make an informed decision about the product. You might be asked by the client to explain the information contained in the IPID, though insurers will have little scope for varying the appearance or format of the IPID.

Further help

If you require further assistance with understanding your obligations, please contact the Professional Ethics Guidance Team

[<https://www.sra.org.uk/home/contact-us/>] .